

Beyond the FTC: Consumer Class Actions Are Redefining Influencer Marketing Risk

The influencer marketing ecosystem has evolved into a multibillion-dollar engine of digital commerce, delivering measurable ROI to brands across industries. However, as the industry matures, so too does the legal landscape underpinning it. While many marketers are familiar with the Federal Trade Commission's ("FTC") endorsement guidelines, what's becoming increasingly apparent is that compliance with FTC regulations is no longer enough.

A growing number of consumer class actions are testing the boundaries of influencer liability under state consumer protection laws. These suits draw on so-called "Little FTC Acts," which closely mirror federal guidance and give private individuals the right to pursue claims. Although it remains to be seen how successful these lawsuits will be on the merits, the trend suggests that brands and influencers should be watching closely and preparing accordingly. If these suits continue to survive early motions and succeed on the merits, they could encourage more consumers to pursue similar claims, expanding the legal exposure associated with influencer campaigns.

A New Form of Enforcement: The Revolve Class Action

The *Negreanu v. Revolve* lawsuit marks a turning point. Filed in April 2025 in the Central District of California, the \$50 million class action alleges that Revolve, an online clothing retailer, paid influencers to promote its clothing on platforms like Instagram and TikTok without adequately disclosing the sponsorships. The plaintiffs claim the posts were presented as personal style recommendations, not advertisements, and lacked clear indicators such as "#ad" or "paid partnership." The suit cites violations of the FTC endorsement guidelines, Florida's Deceptive Trade Practices Act, the Consumers Legal Remedies Act, and consumer protection statutes in over 20 states.

This shift from regulatory oversight to private enforcement is a noteworthy development. It suggests that compliance with FTC guidelines may no longer be sufficient to insulate brands from risk if influencer content is perceived as misleading.

Influencer Endorsements on Trial: Four Cases to Watch

Pop v. Lulifama.com (2023) – The Importance of Particularity

In this case, consumer Alin Pop sued swimwear brand Luli Fama and several influencers for promoting products without disclosing their paid relationships. The court dismissed the case with prejudice, holding that the complaint lacked the specificity required under Rule 9(b). The court found that Mr. Pop failed to identify which specific posts influenced his purchase or to provide evidence that the undisclosed sponsorships led to economic harm. The court also clarified that FTC guidelines (16 C.F.R. § 255.5) are not binding regulations and therefore cannot, on their own, establish a per se violation of Florida's consumer protection law (FDUTPA).

Key takeaway: Simply alleging non-disclosure is insufficient. Plaintiffs must link specific misrepresentations to consumer action and economic injury.

Sava v. 21st Century Spirits (2024) – A Stronger Complaint Survives

In contrast, the same plaintiff, Alin Pop, joined Mario Sava in a suit against Blue Ice Vodka maker, 21st Century Spirits, and its influencer partners. The plaintiffs alleged that the product was deceptively marketed as "handcrafted," "low-calorie," and "fit-friendly," and that influencers failed to disclose their paid relationships. This time, the court allowed most of the claims to proceed. The plaintiffs provided detailed factual allegations, identifying marketing claims, influencer posts, and specific purchase decisions.

The court found the plaintiffs had Article III standing, a constitutional threshold for bringing suit in federal court requiring them to plausibly allege a "concrete" and "particularized" injury, based on their claim that they suffered an economic injury – specifically, that they overpaid for a misrepresented product – and noted that while FTC guidelines do not carry the force of law, they may inform whether conduct is deceptive under state law.

Bengoechea v. Shein (2025) – Class Action Momentum Grows

Filed by consumers Amanda Bengoechea and Makayla Gipe, this suit targets fashion retailer Shein and several influencers for promoting products without clear disclosures. The plaintiffs claim the influencers' paid relationships were obscured in dense hashtags or hidden behind "see more" links, misleading consumers into thinking the endorsements were genuine. The complaint alleges that the received products were of lower quality than expected and seeks over \$500 million in damages.

Dubreu v. Celsius Holdings (2025) – Targeting Health Claims

In a similar action, Lauren Dubreu sued energy drink company Celsius and three influencers who promoted the product as a fitness-friendly beverage without disclosing compensation. Some posts claimed that Celsius cocktails had "fewer calories than an apple," a representation the plaintiffs allege was materially misleading. The suit alleges violations of California's False Advertising Law, Unfair Competition Law, and the Consumers Legal Remedies Act and seeks at least \$450 million in damages.

These cases remain in early stages, but they demonstrate how courts and consumers are beginning to engage more actively with the question of whether influencer marketing is appropriately transparent.

Understanding the Legal Risk: Why This Matters Now

These lawsuits reflect a broader redefinition of influencer marketing risk. Courts are increasingly recognizing that influencer endorsements can have a powerful effect on consumer decision-making, particularly when they appear personal or authentic. When the paid nature of that endorsement is hidden or unclear, courts have shown a willingness to find that consumers may have been misled.

A few elements are repeatedly under scrutiny:

- Whether claims made in the content are objectively misleading or unverifiable.
- Whether there was a clear, conspicuous disclosure of the material connection between the brand and the influencer.

As a result, compliance with the FTC's Endorsement Guides remains a prudent baseline, but it may no longer be the final word. Plaintiffs' attorneys are testing these boundaries, and courts appear increasingly open to allowing such claims to proceed past initial motions.

Risk Management: What Brands and Influencers Can Do Now

While the current wave of litigation is still developing, brands and agencies should view it as a signal to reassess and reinforce their influencer compliance frameworks. Consider taking the following steps:

- ☐ **Clarify and Standardize Disclosures.** Use prominent, platform-appropriate tags like "#ad" or "sponsored" placed early in the caption. Avoid burying disclosures in dense hashtag blocks or requiring users to click "see more."
- ☐ **Contract Thoughtfully.** Influencer agreements should include disclosure obligations aligned with FTC guidelines and applicable state law. Brands and agencies should retain the right to approve posts, especially when specific product claims are made.
- ☐ **Monitor and Audit Content.** Implement systems for periodically reviewing influencer posts to verify compliance. Screenshots and logs can serve as helpful evidence if a dispute arises.
- ☐ **Substantiate All Product Claims.** Statements like "handcrafted," "low calorie," or "healthier than an apple" must be backed by verifiable data, or avoided entirely. Courts are increasingly looking for objective substantiation, especially in health or pricing claims.
- ☐ **Train Internal Teams and Partners.** Marketers and legal teams should stay informed about evolving disclosure standards and train influencers accordingly. Missteps are most likely when expectations are unclear or assumed.

Looking Ahead: A Trend Worth Watching

While the long-term viability of consumer-led class actions in this space is still unfolding, the early signs point to increased judicial interest in the sufficiency of influencer disclosures. Courts are not yet unanimous in how these cases should be treated, but they are taking them seriously.

In the meantime, the safest course for brands and agencies is to assume that influencer endorsements are commercial speech, and should be governed accordingly. Building strong, documented compliance procedures is no longer just a best practice – it is a necessary safeguard.



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