

FOUR AGREEMENTS YOUR BRAND NEEDS BEFORE WORKING WITH A SOCIAL MEDIA INFLUENCER



The landscape of the digital world when it comes to Entertainment is constantly evolving. The early years where anything goes are now long gone as more laws have taken effect. Activities that were completely acceptable a few years ago are now being regulated (even though many people try to ignore these regulations).

For example, remember when you could pay a bunch of celebs to freely post a promotion on their Myspace pages (took you back, huh)? Well, nowadays the FTC requires individuals to disclose paid endorsements or face steep fines.

It is important for companies to comply with the changing laws, but it is just as critical for companies to translate the legal safeguards that it uses for traditional advertising, marketing, and promotional activities to its digital efforts.

The following are four essential agreements that companies, brands and SMIs (social media influencers) should have in their toolbox before initiating a campaign:

ENGAGEMENT AGREEMENT

The most important agreement that a Company or Brand will make with a SMI is the Engagement agreement.

First, it is important to note that the agreement itself does not dictate whether a SMI is

classified as an employee or an independent contractor.

Just because you call someone an independent contractor does not mean that the law considers them one. This classification depends on many factors, including the treatment of the person and the amount of control that the worker has over their work.

Some other key points to consider include:

- Who Will Dictate Creative Control of Content? If content (i.e., videos, pictures, copy) is being created, who creates or selects it? Will there be minimum requirements for the appearance of trademarks, mentions of the brand's name, tracking links, and/or promo codes? Will the Brand provide copy points that the influencer puts in their own words?
- Who Will Own the Content? Does the Brand's payment to the SMI include a buyout of all rights to specially created content, or is payment intended to merely to secure a license for the Brand to use the content? If it is the latter, is that license exclusive or nonexclusive?
- Is there a holdback period (i.e., Is there an exclusivity period or, to a lesser extent, a period or place where the influencer cannot post the content)?
- Is There An Approval Process? Will there be preapproved posts (i.e., photos, topics) or does every post need to be approved beforehand?
- What Does Each Party Expect? What are both parties expectations with regards to message, deliverables, campaign and posting schedules, platforms, accounts/channels within certain platforms, etc.?
- Are There Competitor Restrictions? Who is SMI restricted from entering into an agreement with or mentioning (i.e., direct competitors) during the contract period And, of course, payment structure and schedule should be determined. Be aware that some of the points above may also apply to the agreements below.

BRAND AMBASSADOR AGREEMENT

This is a specific type of engagement agreement for when a Brand uses a SMI to endorse and promote the Brand, or its products using his or her social media influence.

The scope of this agreement is limited and the relationship is more likely considered that of an independent contractor.

As noted above, control over content, ownership, approval requirements, party expectations, and competitor restrictions are important to work out.

SPONSORSHIP AGREEMENT

This is an agreement that should be put in

place when a Brand sponsors an event that is hosted by a SMI. From the Brand's perspective, the most important point is whether the relationship is exclusive, exclusive within a certain industry, or nonexclusive.

An exclusive sponsor means that no other brand names are mentioned in promotions or during the sponsored activity. Usually the sponsoring brand pays a large fee to secure this right. Exclusivity by industry means that the SMI is allowed to have other sponsors in industries that are unrelated to the Brand's industry. So, if the main sponsoring brand is an apparel company, then the SMI is allowed to secure a beverage sponsor.

A nonexclusive sponsorship means that there are no restrictions on the SMI to engage other sponsors, even with competitors. This is usually the case where the sponsors pay a low fee or just provide product for the event. Other typical points in sponsorship agreements include defining the use of trademarks, payment and product display specifications, and the parties' promotional obligations, such as social media campaigns and other cross promotional activities.

PROMOTION AND PRODUCT PLACEMENT AGREEMENT

This is an agreement that sets forth the terms and conditions related to a Brand's placement of its product or services within a SMI's content (i.e., video), which will be promoted to the SMI's and Brand's audiences.

Other points that need to be specified in this agreement include the exclusivity issue discussed above and the specify visibility of trademarks and products. For example, a Brand will want to know how many close up shots it will get in the content so that their trademark is clear.

What's the risk of NOT having one of these agreements in place? The risks are obvious once you understand the potential issues. For example, what if you don't have a non-disparagement clause in your agreement (a clause that says that the SMI cannot bad mouth the Company or Brand) and a dispute arises. Can you imagine the damage to your Brand if the SMI goes on a rant on their platform?

Remember, you purposely sought this person out because of their following! If you can't afford to hire an attorney to draft these agreements for you (which is always my first recommendation), visit the link below for an affordable package of Social Media Influencer Templates.



BY
RICHARD B. JEFFERSON, ESQ.
INFO@LAWYERSROCK.COM
WWW.LAWYERSROCK.COM