

LAWS REGULATING SOCIAL MEDIA INFLUENCERS IN SOUTH AFRICA

Category: Media and OTT
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In light of the recent Hello Darlings saga, many people as well as influencers themselves, are questioning what laws or rules are applicable to social media influencers and marketers. Most people are not aware, but there is a [Social Media Code of Conduct](#) ("the Code") that has been published by the Advertising Regulatory Board. In addition to the Code, influencers and marketers are governed by the Code of Advertising Practice which is based on the International Code of Advertising Practice. In the digital age that we live in, it is important to understand your rights as a consumer and as a social media influencer.

Social media marketing is marketing that takes place on a variety of online digital platforms which allows a brand or a company to widen their reach or exposure through content creation or paid social media advertising. For companies aiming to widen their exposure and reach new target markets, social media marketing can be extremely beneficial in generating new customers and to promote or launch new products or services. People are becoming increasingly reliant on word-of-mouth advertising as opposed to ordinary television advertising. This is also because of the high engagement rate on social media platforms from followers. Often times, social media influencers are engaged to assist with launching a new product or service by promoting it through the creation of new content around the product or service. The term "influencer" refers to an individual or a group

who is paid by companies or brands to engage with their followers on social media in a certain way so as to influence the behaviour of their followers to increase the visibility of that brand or company.

In terms of the Code and to achieve a measure of transparency, social media influencers are required to disclose if their content is part of a social media advertising campaign. On Facebook, these posts should be marked as "Sponsored" or "Promoted" on Twitter. The material should be clearly identifiable to an average social media user as advertising on behalf of a third party. Examples of these social media identifiers include: "#AD", "#Advertisement", or "#Sponsored". These identifiers must be included in the post itself. Where advertisers are provided with goods (permanently or on loan) in exchange for marketing services, this must be disclosed to followers on the platform as well. This allows for transparency and for consumers to make an informed decision or opinion of the advertised goods. This further reinforces the integrity and reputation of the social media influencer.

Furthermore, and in line with the provisions of the Consumer Protection Act, 68 of 2008 ("CPA"), the advertising must not contain deceptive, false, or misleading content, including deceptive claims, offers or business practices. Any claims made by the influencer must comply with the Code of Advertising Practice. An influencer cannot rely on the defence of "it was my opinion" if false claims are made. Therefore, as a brand or company, it is important to ensure that the influencer with whom you engage the services of, understands the product or service sufficiently so as to endorse it without misleading consumers. Overly positive reviews or recommendations are not advised. Furthermore, influencers are bound by the terms of their engagement, and they are not allowed to post negative content relating to a brand.

It is advisable for brands or companies to have a written contract in place with any paid influencers which details the following:

1. A clear duration clause;
2. which Social Media platforms the content will be hosted on;
3. details on the type of social media engagement and content with followers;
4. terms and conditions of the remuneration or payment;
5. the obligation of the influencer to disclose that it is a paid advertising campaign;
6. if content is not self-created, the obligation to credit the creator, and other content rights including the ownership of content;
7. other terms and conditions that may be relevant to the brand or company's industry including any other specific marketing regulations;
8. grounds of termination;
9. standard contractual clauses.

We are ready and available to assist you if you require our services to draft or negotiate a sound social media marketing contract.

[Contact us](#) for more good, clear, precise advice.