



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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INSTAGRAM INFLUENCERS AND INDIAN LAW: ARE PAID PROMOTIONS PROPERLY REGULATED?

~ Vidhi Bhatnagar

INTRODUCTION

The emergence of social media has transformed advertising in innovative ways. Among various digital platforms, Instagram has emerged as a dominant marketplace where influencers shape consumer preferences, purchasing decisions, and brand perceptions. From beauty products and fitness supplements to financial services and educational courses, influencers command significant trust among their followers. Businesses increasingly rely on influencer marketing because consumers often observe recommendations from influencers as more authentic than traditional advertisements. However, this growing commercial ecosystem raises an important legal question: are paid promotions by Instagram influencers adequately regulated under Indian law?¹

The issue has become particularly relevant as influencers marketing expenditures continue to grow in India. While influencers benefit from sponsorship agreements and affiliate partnerships, consumers often struggle to distinguish between genuine recommendations and paid promotions. The lack of transparency can mislead consumers, distort competition, and undermine trust in digital advertising. Recognising these concerns, Indian regulatory authorities have begun developing legal and self-regulatory framework to address influencer marketing practices. Nevertheless, questions remain regarding the effectiveness of existing regulations and the challenges associated with their enforcement.

¹ Federal Trade Commission, Disclosures 101 for Social Media Influencers (2019).

THE EMERGENCE OF INFLUENCER MARKETING

Influencer marketing is a form of digital advertising in which individuals with substantial social media followings promote products or services in exchange for monetary compensation, gifts, commissions, or other benefits. Unlike traditional celebrity endorsements, influencers cultivate direct engagement with audiences through personalized content. This recognised authenticity significantly enhances their persuasive power.

Instagram in particular, has become a preferred platform for influencer marketing due to its visual format, engagement tools, and extensive user base. Influencers frequently integrate promotional content into their everyday posts, stories, and reels, making advertisements appear seamless and organic. While this strategy benefits brands, it also creates legal concerns regarding disclosure and consumer protection.

LEGAL FRAMEWORK GOVERNING INFLUENCER MARKETING IN INDIA

India does not currently have a single comprehensive statute specifically dedicated to influencer marketing. Instead, influencer activities are regulated through a combination of consumer protection laws, advertising guidelines, and digital platform policies.

CONSUMER PROTECTION ACT, 2019

The primary legal framework governing misleading advertisements is the Consumer Protection Act, 2019. The Act empowers authorities to take action against false or deceptive advertisements that may mislead consumers.² Section 2(28) broadly defines misleading advertisements and provides a foundation for regulating promotional content disseminated through social media platforms.

The Act also establishes the Central Consumer Protection Authority (CCPA), which possesses the authority to investigate misleading advertisements and impose penalties on endorsers and advertisers.³ Significantly, influencers may be treated as endorsers when they promote products or services for commercial gain.

² Consumer Protection Act, No. 35 of 2019, § 2(28), India Code (2019).

³ Id. §§ 18-21.

The law reflects an important shift from traditional advertising regulation by recognizing that individuals who endorse products can influence consumer decisions and should therefore bear certain responsibilities regarding the accuracy of their claims.

CENTRAL CONSUMER PROTECTION AUTHORITY GUIDELINES

In 2022, the CCPA issued the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements.⁴ These guidelines require endorsers to exercise due diligence before making endorsements and prohibit advertisements that mislead consumers regarding product characteristics, benefits, or performance.

The guidelines are particularly relevant for influencers because they extend liability beyond manufacturers and advertisers. Influencers cannot simply rely on information provided by brands if they have reason to believe that promotional claims are inaccurate or deceptive. This due diligence requirement seeks to ensure greater accountability within the influencer ecosystem.

ASCI GUIDELINES FOR INFLUENCER ADVERTISING

The most significant regulatory development for influencer marketing has been the introduction of the Influence Advertising Guidelines by the Advertising Standards Council of India (ASCI).⁵ These guidelines require influencers to clearly disclose material connections with brands whenever content constitutes advertising.

According to ASCI, disclosures such as “#Ad,” “Sponsored,” “#Collaboration,” or similar labels must be prominent, visible, and understandable to consumers. Hidden disclosures, ambiguous hashtags, or disclosures placed where viewers are unlikely to notice them are considered inadequate.

The guidelines further require influencers to possess evidence supporting objective claims made in advertisements, especially concerning health, finance, education, and technical products.⁶ This requirement aims to prevent the dissemination of exaggerated or unsubstantiated promotional claims.

⁴ Central Consumer Protection Authority, Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022.

⁵ Advertising Standards Council of India, Guidelines for Influencer Advertising in Digital Media (2021).

⁶ Id.

Although ASCI is a self-regulatory body and lacks direct statutory enforcement powers, its guidelines have significantly influenced industry practices and are increasingly recognized by regulatory authorities.

CHALLENGES IN REGULATING PAID PROMOTIONS

Despite these developments, several challenges continue to hinder effective regulation of influencer marketing in India.

DIFFICULTY IN MONITORING CONTENT

Instagram hosts millions of posts, stories, and reels daily. Monitoring every piece of sponsored content presents substantial practical challenges. Influencers may delete content, use temporary stories, or employ indirect promotional techniques that make regulatory oversight difficult.

Furthermore, many micro-influencers operate outside the spotlight enjoyed by major creators. Regulatory agencies may find it difficult to identify undisclosed sponsorship arrangements involving smaller influencers who nonetheless exert considerable influence within niche communities.

AMBIGUITY IN COMMERCIAL RELATIONSHIPS

Not all promotional relationships involve direct monetary compensation. Influencers may receive free products, discounted services, travel benefits, event invitations, or affiliate commissions. Determining when such benefits trigger disclosure obligations can be complex.

While ASCI guidelines attempt to address these situations, practical enforcement often depends upon identifying the existence and nature of commercial relationships between brands and influencers.

CROSS-BORDER ENFORCEMENT ISSUES

Social media platforms operate globally. Influencers based outside India may target Indian consumers, while Indian influencers frequently collaborate with international brands. Jurisdictional complexities can complicate enforcement efforts, particularly when promotional content originates outside Indian territory.

EMERGING CATEGORIES OF RISK

Certain categories of influencer promotions present heightened legal concerns. Financial influencers, commonly known as "finfluencers," often provide investment-related content that may affect consumer financial decisions. Similarly, health and fitness influencers promote supplements, diets, and wellness products that may involve scientific claims.

In recent years, Indian regulators have expressed concern regarding misleading financial advice and unverified health claims circulated through social media platforms.⁷ These developments illustrate the need for specialized regulatory oversight in high-risk sectors.

ARE EXISTING REGULATIONS SUFFICIENT?

India's regulatory framework has undoubtedly evolved in response to the rapid growth of influencer marketing. The combination of consumer protection legislation, CCPA guidelines, and ASCI disclosure requirements represents a significant step toward transparency and accountability.

However, the current framework remains fragmented. Much of influencer regulation depends upon self-regulatory compliance rather than direct statutory enforcement. While ASCI guidelines have improved disclosure practices, enforcement mechanisms remain limited compared to formal legal sanctions.

Moreover, consumer awareness remains a challenge. Many users may not fully understand disclosure labels or recognize the commercial motivations underlying influencer endorsements. Effective regulation therefore requires not only legal obligations but also consumer education initiatives.

A more comprehensive framework could include mandatory disclosure standards codified in legislation, enhanced platform accountability, stronger penalties for repeated violations, and greater cooperation between regulators and social media companies.

⁷ Securities and Exchange Board of India, Consultation Paper on Association of SEBI Registered Intermediaries\Regulated Entities with Unregistered Financial Influencers (2024).

CONCLUSION

Instagram influencers occupy an increasingly powerful position within India's digital economy. Their ability to shape consumer behaviour creates both commercial opportunities and legal responsibilities. Indian law has begun addressing the challenges associated with paid promotions through the Consumer Protection Act, CCPA guidelines, and ASCI's influencer advertising framework. These measures have significantly improved transparency and accountability in digital advertising.

Nevertheless, substantial regulatory gaps remain. Enforcement challenges, evolving advertising techniques, and cross-border promotional activities continue to test the effectiveness of existing frameworks. As influencer marketing becomes more sophisticated, Indian regulators must adapt accordingly to ensure that consumer interests remain protected without stifling innovation in the digital marketplace.

Ultimately, the future of influencer regulation in India will depend upon striking an appropriate balance between commercial freedom, technological innovation, and consumer protection. Transparent disclosures, responsible endorsements, and effective enforcement mechanisms will remain essential to maintaining public trust in the rapidly expanding influencer economy.