

Case 3a. Endorsed on Instagram by a Kardashian (but Is It Love or Just an Ad?)

By [SAPNA MAHESHWARI](#), New York Times AUG. 30, 2016

Photo



An image from Kim Kardashian’s social media account, showing a paid advertisement.

The millions of people who follow Kim Kardashian West and her sisters on social media have become accustomed to seeing them praise everything from fat-burning tea to gummy vitamins for healthier hair.

“Ever since I started taking two @sugarbearhair a day, my hair has been fuller and stronger than ever!! Even with all the heat and bleaching I do to it!” Khloé Kardashian posted on Instagram this month.

But in the last week, close watchers of the sisters' accounts may have noticed a small addition to those laudatory messages about the latest miracle product: “#ad.”

For marketers contending with consumers who use ad blockers online and have cut the cord to their TVs in favor of streaming services, social media has become a way to reach an elusive audience. Popular US brands such as Jack in the Box and Red Bull have proved willing to pay thousands of dollars per social media mention to people like the Kardashians and other so-called influencers who command big, loyal followings on services **like Instagram, Twitter, Snapchat and YouTube.**

These mentions, however, are often presented as testimonials rather than advertisements, a practice that at least one consumer advocacy group has claimed is deceptive. And the **US Federal Trade Commission (F.T.C)** has found itself struggling to articulate exactly how these sorts of paid brand endorsements should be handled to ensure that they are identified as ads.

In the case of Ms. West and her sisters, Khloé and Kourtney Kardashian and Kylie and Kendall Jenner, **TruthinAdvertising.org**, a nonprofit that fights deceptive advertising, asserted that dozens of Instagram posts from the sisters violated guidelines from the F.T.C. that say it should be “clear and conspicuous” to consumers if a person endorsing a product “has been paid or given something of value.” However, while the F.T.C. suggests putting “#ad” or “#sponsored” at the start of those kinds of social media posts, or providing verbal disclosures in videos, there are no hard and fast rules.

“We’re not prescriptive about that,” said Mary K. Engle, the F.T.C.’s associate director for advertising practices. “But it has to be unambiguous.”

It's amusing to me how all of those quoted bent over backwards to use terms like "uncomfortable", as if the user is simply uncomfortable...

For example, simply saying “thank you” to a brand or adding “#sp” or “#spon” probably isn’t clear enough, while saying a brand is a “partner” probably is, she said.

The gray area was on display last week when Kylie Jenner changed a caption on an Instagram picture of a lavish mansion in Turks and Caicos from “Thanks for the birthday home, @airbnb” to “Thanks for the gift of a lovely birthday home, @airbnb.” After a lawyer for the sisters received an Aug. 17 letter from **TruthinAdvertising.org**, they also edited the captions on at least a dozen other Instagram photos and deleted others.

Michael Kump, a lawyer for the sisters, confirmed on Wednesday that he was talking with TruthinAdvertising.org.

Audiences “have a very visceral reaction to ‘#ad’ or ‘#spon’ or whatever it is, where they don’t want to know people are getting paid for stuff even if they are,” said Jaclyn Johnson, president of creative services at **Small Girls PR**, where she connects brands like L’Oréal Paris and Urban Decay cosmetics to influencers who have large social media followings. “A few bloggers we

work with say, 'I want you to know, my engagement on posts that are tagged "#ad" or "#spon" get lower engagement than if that wasn't there.'

 **Kylie Jenner** ✓
@KylieJenner

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thanks for the birthday home, [@airbnb](#)



RETWEETS **7,663** LIKES **35,073**

1:49 PM - 15 Aug 2016

Posted on Twitter.

Brands are “toeing this line of how to make it come across as authentic but also in line with the legalese of social media endorsements,” Ms. Johnson added.

Disclosure, which the F.T.C. has been wrestling with for years, has become more important as the money offered to influencers has jumped and the number of sponsored posts on services like Instagram and YouTube has surged.

Captiv8, a company that connects brands to influencers, says someone with three million to seven million followers can charge, on average, \$187,500 for a post on YouTube, \$75,000 for a post on Instagram or Snapchat and \$30,000 for a post on Twitter. For influencers with 50,000 to 500,000 followers, the average is \$2,500 for YouTube, \$1,000 for Instagram or Snapchat and \$400 for Twitter.

The company has counted more than 200,000 Instagram posts a month since January tagged with “#ad,” “#sp” or “#sponsored” — and that does not include those that were not properly marked. Any one brand could be working with thousands of influencers, said Ms. Engle of the F.T.C., and most are not reality television stars.

“Most of them are just more or less regular people,” she said.

Shaun McBride, a 29-year-old who is known as Shonduras on social media, has worked with companies like Google and Red Bull on campaigns on Snapchat, where he said he had about 700,000 followers. His posts feature him doing activities like skateboarding and launching homemade rockets, as well as photos of his infant daughter and cereal.

For top Snapchat users, brands will start rates “at around \$10,000” for a story, he said, referring to a collection of images and videos that disappear after 24 hours. He said he did at least five of those a month.

“All brands have always been worried about the F.T.C. guidelines, but I definitely think they’re focusing on it more,” Mr. McBride said. “Recently, it’s like, ‘Can you have ‘#sponsored’ on the first snap and the last snap?’ Or ‘Can you put ‘#ad’ on every single snap in the corner?’”

That makes Mr. McBride even more inclined to make paid posts “very, very obvious.” That could, for instance, mean thanking Red Bull for a free trip to Hawaii. Otherwise, posts with “#ad” or “#sponsored” can give his followers an “uncomfortable feeling,” he said.

Disclosures can also be complicated as brands increasingly give creative leeway to social media stars. Jack in the Box, for example, told investors and analysts in May about its work with the YouTube star Miranda Sings, who created a passionate serenade for one of its hamburgers called “Sexy Buttery Love Song.” It surpassed a million views, and she later performed it in concert, executives told the investors and analysts.

Her YouTube post description includes a line that says, “This video is sponsored by Jack in the Box,” and that same line appears in the corner of her video after the two-minute mark.

In July, **Warner Bros.** settled charges with the F.T.C. over a marketing campaign it ran with YouTube video game influencers. Part of the problem was that most of the disclosures were visible only if users clicked the “Show More” button under the videos.

“It would definitely be awesome to see specific examples on every single platform so you don’t have issues like the Warner Bros. one,” said Krishna Subramanian, a founder of Captiv8. “If there were very clear definitions of what’s right and what’s wrong, then we as an industry could embrace it and help move things forward.”

QUESTIONS:

1. Present the arguments for and against the following statements:

a. It is ethical for companies to buy endorsements from celebrities and ordinary people in their posts on sites like Twitter, Instagram, Snapchat and YouTube as long as there is a prominent display that it is a paid endorsement somewhere in the post with “#ad,” “#sp” or “#sponsored”.

b. If I were a celebrity, I would not consider it unethical to accept payment to endorse products I only consume or use, if only in a nominal way.

(In answering Q1b, be sure to indicate which of the philosophical approaches to ethics would argue for or against this practice.)

(maximum length: 250 words total for both questions)