



What “Legally Blonde” Warned Us About Social Media Influencers Like “Liver King” Way Back in 2001

What do you and the 2001 movie “Legally Blonde” have in common? You’re living in an era of fraudulent influencer marketing. And litigation is on the rise.

The famous scene in “Legally Blonde” unfolds as Harvard’s legal clinic client, Brooke Taylor Windham, reveals from jail to law school underdog Elle Woods that Windham did not achieve her coveted physique from her fitness classes, but from liposuction. Fast forward 22 years, and we are experiencing major déjà vu amid the “Raw Meat Influencer” a/k/a “Liver King” litigation regarding his steroid use.

The Raw Meat Influencer, otherwise known as Brian Johnson, claimed fame in 2021 by eating a nearly raw steak day after day. Generating an enormous fanbase through his primitive diet and achieving a ripped physique, Johnson did what most influencers do and launched his own supplement brand. As the face (and body) of the product, fan sales cut the Raw Meat Influencer a check of more than \$100 million in sales per year. But, like Legally Blonde, the Raw Meat Influencer made a confession of his own. His results were attributed to his \$11,000 monthly investment in steroids. A \$25 million lawsuit followed.

Let’s talk regulation. The Federal Trade Commission (FTC) has its eye on influencer marketing. Just last month, the FTC released an update on how to properly disclose partnerships in influencers’ campaigns. Influencers should no longer simply use a hashtag – #ad or #sponsored – to safely cash their campaign checks. Here are two major takeaways from the FTC’s November 15 warning letters to the two trade associations and twelve influencers.

1. Writing #ad or #sponsored somewhere in the caption is not enough. Regulators now want disclosures superimposed onto picture and videos. Why? Because

viewers often do not read the caption in its entirety (if at all). This calls for aesthetic and branding concerns, but creative challenges are this industry's bread and butter.

2. Second, simply including #ad or #sponsored (or using Instagram's "Paid Partnership" feature) in the caption often does not signal the brand the influencer is working with. A cozy cabin photo showing the influencer sipping on a cup of tea gives no indication of what the sponsored brand or product being advertised is. Clearly state the brand in the audio/video/text portion of the post to avoid confusion or nondisclosure.

There's good news, though. Protection from this creative nightmare is available. Having a legal partner who can review an influencer contract or campaign agreement is key. Your expertise in content creation meeting an attorney's experience in avoiding legal issues means you can get back to creating, and likely avoid litigating.

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