



# SHIELDING BRILLIANCE: Agency/Client Issues & Strategies to Fortify Brand Reputation

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# WHAT IS BRAND PROTECTION AND WHY IS IT IMPORTANT?



**Brand protection** refers to the strategies and practices used to protect a company's intellectual property, including trademarks, copyrights, and patents.

**Brand protection** is important to prevent counterfeit products, infringement, and dilution of a company's brand.

**Without proper brand protection**, a company's reputation, revenue, and market share can be negatively impacted.

# BENEFITS OF WORKING WITH AN AGENCY FOR BRAND PROTECTION

- Expertise and experience in brand protection strategies and practices
- Access to cutting-edge technology and tools.
- The ability to focus on core business activities while leaving brand protection to the experts.
- Increased protection and enforcement of intellectual property rights.
- Reduced risk of reputational damage and lost revenue.



# Agency Services

## Issues & Crisis Management

- Prepare crisis management plans to quickly respond to negative incidents or press, minimizing damage to the brand's reputation
- **Advise on cultural trends and sociopolitical trends**
- **Training to C-Suite and Key Employees to prepare for issues and crisis matters**

# Media Training

## Providing media training for Company employees and spokespersons

- Ensure consistent, effective communication
- Train on media responses in connection with brand values, especially under scrutiny

# Proactive Publicity

## Proactively promote positive stories

- Proactively promote achievements
- Create assets to build a strong, positive public perception that can withstand potential negative incident

## Monitoring and Analysis

Constant monitoring of media and online mentions allows PR agencies to quickly address negative sentiments or misinformation about the company

- Social media listening
- Removal of imposters/scams
  - Major issue that the Federal Trade Commission and other consumer protection related entities are aware of
  - Difficult task due to the current scammer tactics



# Strategic Communication

Developing and maintaining a strategic communication plan that aligns with the brand's values and goals, ensuring all messaging reinforces the desired brand image

- Provide services that ensure campaigns and communication plans will be successful
  - Surveys
  - Data services
  - Metrics
  - PR Counsel

# Stakeholder Engagement

Engaging with key stakeholders, including customers, partners, and influencers, to foster positive relationships and advocacy for the company

- Trainings
- Audits of Company policies and SOPs

# Content Creation

Creating compelling content across various platforms to control the narrative and highlight the company's strengths and achievements

- Campaign Materials
  - Press Releases
  - MAT Releases
  - Sponsored Content/Media Buys
  - Satellite Media Tours/Radio Media Tours/Audio News Releasees
  - Video Productions/Commercials
  - Ensuring Proper Content for Earned Media

# SEO and Online Presence

Enhancing the company's online presence through SEO and content strategies

- Ensure positive content ranks higher on search engines, overshadowing any negative content.
- Review of consumer feedback/reviews



## **Influencers/Celebrities: Updated FTC Endorsement Guides**

# ENDORSEMENTS AND TESTIMONIALS

## What is an Endorsement?

When someone approves the use of his/her/their name, image, likeness, etc. to help promote a product or service

## What is a Testimonial?

Recounting a person's positive experience with a product/service or a positive opinion about a product/service

## THREE RULES

- 1 Must provide their honest, true opinions, findings, beliefs or experiences
- 2 Advertisers should not use a person to saying something about the product/service that advertiser could not have said itself (e.g. facts still must be true and supported)
- 3 Must disclose material connection to advertiser

# CHANGES TO DEFINITIONS OF ENDORSER AND ENDORSEMENT

## Endorser

An **endorser** is not only an individual, group, or institution, but also any entity that appears to be one, such as a virtual/AI influencer

## Endorsement

Marketing or promotional messages, such as tags in social media posts, **can qualify as endorsements**

Fake positive reviews and reviews by influencer who receive unsolicited products and post about (even though not required to) **are endorsements**

## NOT AN ENDORSEMENT

An endorsement **does not** include:

- Paid or other incentivized negative statements about a competitor's product; or
- Fake social media followers to indicated influence
- **BUT** such practices can qualify as deceptive **practices**.

# WHEN DO YOU HAVE TO DISCLOSE AN ENDORSEMENT?

When the connection between the endorser and advertiser is **material**.

- The connection must affect the weight or credibility the audience gives to the endorsement.

When the connection is **unexpected**.

- A material connection must be disclosed when a significant minority of the audience for an endorsement does not understand or expect the connection.
- Kim Kardashian endorsing Skims (her company) is likely expected and does not require a disclosure.

The details of the connection do not need to be disclosed (such as what the endorser was paid) but must disclose the nature of the connection so consumers can evaluate its significance.



## EXPANDED DEFINITION OF MATERIAL CONNECTIONS

The Endorsement Guides provide several type of material connections that require disclosure including:

- Business family or personal relationships.
- The receipt of monetary payments.
- The endorser's receipt of free or discounted products.
- Early access to a product.
- The chance of winning a prize or money.

Material connections can also include incentivized reviews, employee reviews, and fake negative reviews by competitors.

# A HIGHER BAR FOR “CLEAR AND CONSPICUOUS” DISCLOSURES

“**Clear and Conspicuous**” means the disclosure is difficult to miss and easily understandable by ordinary consumers. However, the FTC has now enhanced this standard by noting it **must be UNAVOIDABLE**:

- Social an online disclosures must be unavoidable (cannot require clicking a “More” button
  - If an endorsement is made **visually**, disclosure should be made in visually
  - If an endorsement is made in **audio**, disclosure should be made in **audio**
  - If an endorsement is made in **both**, disclosure should be made in both **visual** and **audio**
- “Ordinary” consumer is relative
  - If the ad is targeted to older adults, it must account for their vision, hearing and cognitive abilities
  - If the ad is in another language, the disclosure should be too

# FTC ENFORCEMENT

The FTC has been issuing numerous Notice of Penalty Offenses in order to put advertisers on notice.

The FTC can also issue new rules which allows it to pursue civil penalties.

The FTC is authorized to take action against misleading advertising by utilizing civil investigative demands, cease and desist orders, injunctive relief, and civil penalties.

– **Civil penalties can be up to \$50,120 per violation if a Notice of Penalty Offenses was previously issued.**

# Key Provisions in Influencer/Celebrity Agreements

- As companies are spending more money than ever on social media activations, it is critical for companies to ensure they are protected in their agreements with influencers and celebrities
  - Compliance with the FTC Guidelines
    - Truthful & Accurate, actual experience with the product/service
    - Inclusion of correct FTC disclosures
  - Ownership
    - Full Ownership? License? Right to whitelist/amplify via paid media?
  - Exclusivity
  - Morals Clause
    - Acts before and during the Term
    - Ensure broadness to cover negative PR affecting the influencer/celeb
  - Review and approval of all content created.
    - Ensure third party IP clearance is in place

A man with short hair and glasses, wearing a grey hoodie, is looking down at a silver laptop. He is standing in a dark room with blue bokeh lights in the background. The text "Thank you" is overlaid on the left side of the image.

# Thank you