

The Influencing Industry: Balancing Power, Ethics, and Protection

Executive Summary: *Social media influencers significantly influence consumer choices, but the rise of incorrect advice and misleading information raises concerns. **Unthinkingly or Blindly** following influencers can have adverse consequences, highlighting the need for research and guidance. Regulatory measures and guidelines promote transparency and protect consumers. Influencers must prioritise disclosure, clear communication, due diligence, and understanding of consequences. By adhering to policies, influencers contribute to a responsible industry that fosters trust. Consumers play a vital role by exercising judgment and staying informed. Balancing power, ethics, and protection in the influencing industry requires collaboration and responsible practices.*



Varun Jain

CEO

E: varun@singhania.in

In today's ever-evolving landscape of social media influencers, whose influence over consumer choices is undeniable, a concerning trend revolves around the prevalence of incorrect advice. While influencers hold significant power in shaping consumer decisions, it is essential to recognise the potential risks that come with relying solely on their guidance. From financial scams to misleading information, consumers are increasingly susceptible to falling victim to unregulated entities and fraudulent schemes.

Recently, the self-styled investment advisor Gunjan Verma was fined Rs 1 lakh and ordered to refund her clients for offering unregistered services since 2018, directly violating SEBI regulations. In a similar vein, Finfluencer PR Sundar faced SEBI's ire and was barred from trading in the securities market for one year due to similar violations.

People like Verma and Sundar lure investors with promises of high returns but operate outside the law, leaving their victims with substantial financial losses. These cases highlight the alarming rise of financial fraud in the country, a reminder that *blindly* following influencers can have adverse consequences.

As per a [report](#) which came out last year, in India, it is revealed that influencers hold sway over more than one in four people, with three in five consumers being influenced to try a product after hearing about it from an influencer. Furthermore, it highlights that consumers tend to follow an average of 7.5 influencers on social media, with nearly two out of five individuals following more than five influencers. These statistics underscore influencers' substantial impact and popularity in shaping consumer behaviour.

The Perils of Blind Trust: Risks in Following Influencers

Mindlessly trusting influencers can be dangerous. Many middle-aged individuals fall prey to financial investment scams after heedlessly following social media influencers' advice. This cautionary tale underscores the need for thorough research and professional guidance when making financial decisions based on influencer endorsements. The NSE now mandates brokers to obtain prior approval and include disclaimers when compensating influencers to curb such unethical practices. Additionally, influencers with over 10 lakh followers are barred from participating in ads. These regulations are outlined in the [circular](#) dated February 2, 2023.

While navigating the risks posed by mindlessly following influencers, it becomes crucial to acknowledge the legal implications governed by the Consumer Protection Act, 2019 (CPA). This act serves as a framework designed to safeguard consumers' rights and interests, holding influencers accountable for their actions and the content they promote. By complying with the CPA, influencers are legally obligated to provide accurate information, disclose any conflicts of interest, and refrain from engaging in unfair trade practices that may mislead consumers. Embracing these principles ensures consumer protection and fosters an environment of trust and integrity within the influencer industry.

Paving the Way for Responsible Influence: Regulations and Transparency for Consumer Protection

In 2022, the Ministry of Consumer Affairs took a significant step in regulating influencer marketing by introducing guidelines for endorsements and advertisements in digital media. These guidelines aimed to prevent misleading advertisements, protect consumers from false claims, and ensure the safety of products and services.

In the same year, the Advertising Standards Council of India (ASCI), a self-regulatory body, issued guidelines for influencer marketing. The ASCI guidelines mandate influencers to disclose any financial or other interests they may have in the products or services they promote. This disclosure requirement was put in place to promote transparency and enable consumers to make informed decisions regarding the credibility of the influencers' endorsements.

Building on these efforts, in 2023, the Department of Consumer Affairs issued the 'Endorsement Know-How Guidelines' to safeguard consumers further and ensure compliance with the CPA. These guidelines provided specific directions for celebrities, influencers, and virtual influencers to maintain transparency, prevent misleading practices, and protect consumer rights.

Critical Considerations for Influencers: Insights from 2022 Guidelines

In the ever-evolving realm of influencers, it is paramount to embrace the critical considerations outlined in the 2022 guidelines. Influencers must diligently disclose their *material connections, deliver clear and prominent disclosures, and conduct thorough due diligence*. By adhering to these principles, influencers not only foster trust and empower informed decision-making but also contribute to the cultivation of a responsible and reputable industry. Now, let us delve into a captivating illustration that brings these principles to vivid fruition.

An influencer who partners with a makeup brand to promote their new foundation. To adhere to material connection disclosure, the influencer openly shares that the post is sponsored and receives the product for free. This upfront disclosure establishes transparency and helps consumers understand the influencer's affiliation with the brand.

Moving on to clear and prominent disclosures, the influencer makes sure to include the sponsorship and product information in captions and descriptions. This allows their audience to easily notice and comprehend the nature of the partnership, promoting transparency and informed engagement.

Additionally, the influencer demonstrates due diligence by thoroughly researching the foundation, testing it on their skin, and seeking input from makeup professionals. By verifying the product's claims and assessing its credibility, the influencer offers reliable and responsible content that safeguards the interests of their audience.

Through this illustration, we can see how material connection disclosure, clear and prominent disclosures, and due diligence play a vital role in responsible influencer marketing. By adhering to these practices, influencers build trust, provide accurate information, and ensure the interests of their audience are protected.

Consequences for Non-Compliance:

Influencers should be mindful of the consequences of non-compliance with transparency guidelines, as violations can lead to penalties of up to Rupees 10 lakhs and endorsement bans. Similarly, manufacturers or endorsers who repeatedly contravene these guidelines may face penalties of up to fifty lakh rupees. Upholding accountability in this manner is essential for fostering a responsible influencer industry that prioritizes consumer trust and protection.

In **conclusion**, the world of social media influencers demands a delicate balance between power, ethics, and protection. While influencers hold significant sway over consumer decisions, the prevalence of misleading information highlights the risks of unthinkingly following their advice. By embracing regulatory measures and adhering to guidelines, influencers can contribute to a responsible industry that prioritises transparency and safeguards consumer interests. Key considerations such as disclosure, clear communication, due diligence, and understanding the consequences of non-compliance are essential in fostering trust and integrity. With consumers exercising critical judgment and staying informed, we can forge a path towards a balanced and ethical influencing industry that benefits influencers and their audiences.

© 2023 All rights reserved. This article is for information purposes only. No part of the article may be reproduced or copied in any form or by any means [graphic, electronic or mechanical, including photocopying, recording, taping or information retrieval systems] or reproduced on any disc, tape, perforated media or other information storage device, etc., without the explicit written permission of Singhania & Partners LLP, Solicitors & Advocates ("The Firm").

Disclaimer: Though every effort has been made to avoid errors or omissions in this article, errors might creep in. Any mistake, error or discrepancy noted by the readers may be brought to the notice of the firm along with evidence of it being incorrect. All such errors shall be corrected at the earliest. It is notified that neither the firm nor any person related with the firm in any manner shall be responsible for any damage or loss of action to anyone, of any kind, in any manner, therefrom