

Turning Clicks into Contracts: Top Ten Tips for an Influencer Marketing Contracts

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The rise of the influencer as a marketing tool has been much discussed in the Middle East. From Kuwaiti beauty bloggers, who attract several million followers, to Saudi comedians with strong and loyal fan bases, more and more legitimate brands are using the voices and names of media influencers to assist with the promotion of their brand.

In all of this, as with all activities where third parties are associated with a brand, it is imperative that influencers are closely monitored to ensure that they are complying with the brand's guidelines and the law. The most practical way to ensure this level of compliance is create a contract between the brand and the influencer. But, aside from trying to ensure that they comply with the law, what else should go into this contract?

Proper identification of the influencer

Under UAE law, a business should only be operated by way of a trade license. An influencer acting in their personal name may not be acting legally. If it is in their personal name, it may be that they have a freelance visa or a licence from the DED. It is also possible that the influencer is operating a side business with consent of their employer and, if this is the case, they should provide a no objection certificate to that effect. Some agencies are now entering into contracts on behalf of influencers.

In all cases, it is important to ask for the paperwork that establishes the arrangement, be it a licence or contractual. Then ensure that the full and correct details of the contracting party are used in the contract itself and all subsequent paperwork (purchase orders and invoices for example).

Scoping of services

Before the rise of influencer marketing, when brands initiated product placement deals and sponsorship for a brand, it was necessary to scope out the type of services and deliverables that would be provided by the brand ambassador. This may include a certain number of attendances at events or perhaps an agreement to meet a member of the public. There may be television commercials and public appearances. No matter what was agreed, the obligations were always scoped carefully in order to ensure that the brand received the exposure it anticipated. With social media, it can be much harder to properly define the services that an influencer is expected to provide and, because of this, it is easy to fall into the trap of not scoping them well, or not scoping them at all. However, including a clear scope is vital. We have seen deal memos where the deliverable is "tweets", without any reference to numbers across the term or to frequency. This becomes extremely difficult to manage, as the expectations of both parties may well be very different. Three a week may be the brand expectations, with the influencer intending to deliver only two a month.

Many influencers work across multiple social media platforms and each platform has its own particular style of messaging - thus it is important to ensure that the social media platform (Instagram, for example) is clearly noted with reference to the way in which brand must be shown on a product in the image (such as a t-shirt or hat) or referenced in the words. Do all Instagram images have to contain the brand logo or can this be limited to, say, one image per week and one further mention per week? The more clarity that is provided within the services, the more readily the influencer can comply with the terms.

For brands, dates are often incredibly important. Product launches or major marketing campaigns will often need that extra push that an influencer can provide. If this the case, dates needs to be included in the contract with clear deliverables around the relevant activities. If you need them to attend and event or do an interview for a magazine, ensure that it is clear that this will be arranged for and that they must attend.

Ownership of the influencer's output

It is difficult to analyse a tweet or an Instagram post in the light of the complexities of copyright law. Whilst we can assume such rights do exist, they may not be protectable in all instances.

However, even if that is the case, the usage that can be made by both parties of the content created for your brand should be clear and unambiguous. It is likely that a brand will want to reuse posted images in its own social media pages or possibly share them via its website or on other platforms. This should be clear in the contract. It should also be clear that the influencers themselves cannot use brand associated images for any other purpose. Using them outside of the campaign would not be acceptable except with the brand's prior written consent.

But what about timelines? How long do you want the content to be on the social media feed? Does it need to be taken down at any point or can it remain there but with the proviso that it is not be reposted at any point without permission. Brands tend to target particular messaging within campaigns for a particular period of time. Old campaigns may not be compatible with the new messaging yet may resurface six or twelve months later. If this may be problematic, then ensure the contract includes a take down date. Either way, the brand should always have the right to request a takedown of any content for any reason. These rights should continue beyond the term of the contract.

Approval rights

Influencers are often followed by numerous consumers because of the nature of their "voice". This may mean they have particular sense of humour or a unique way of expressing themselves. Because of this, many are very particular about maintaining that voice and tone for their audience, safe in the knowledge that this is the very reason that their followers are with them in the first place. It can be therefore difficult for brands to require approval rights over posts. And further, it would be unusual for an influencer to agree that a brand could write post for them or on their behalf. It would also be unusual as an example for them to agree that you can change a post before it is sent.

However, it is not unreasonable to request a review of a post before it is made public, particularly where the marketing message is important to other aspects of the current brand messaging. Compromises can always be reached so if you cannot agree that approval is appropriate; perhaps it can be agreed that the brand has veto right if a content that fails to meet the brand messaging expectation.

In this matter, some compromises may have to be made by both parties. But there can be no doubt that for significant launch campaigns or rebranding campaigns, where a lot of money is at stake, brands will not be as flexible as the influencer may usually like. It is important that all parties recognise that both of their interests lie in maintaining an honest voice from the influencer in the public forum. This voice is, after all, what they are being paid for.

Data

More sophisticated influencers have access to a lot of volumes of data about their engagement with consumers - more detailed than a simple log of 'views' and 'likes'. If this is available, it is in the interest of the brand to seek access to that data by requiring it under the contract.

Declaring content to be sponsored

In many foreign markets, influencers commonly declare that content is an advertisement where they are paid to provide the message. This is not yet the case in the Middle East, with influencers still largely pushing back on this requirement when it is requested. However, we consider that the provisions of National Media Council Regulation No. 30 of 2012 on Advertising and Cabinet Resolution No. 23 of 2017, when read in conjunction with the recently passed Electronic Media Activity Regulation Resolution 2018 are quite clear. Advertising content should be identified as such when payment changes hands, and should nonetheless be clearly delineated from editorial content.

Because at this stage, influencers are not inclined to include “ad” or “sponsored” within a post, the brands must request that this be done within the contract. In relation to specific terms, the contract may simply require the influencer to conspicuously declare the commercial relationship between the parties but it may go as far as to mandate particular wording such as “#ad” within the post.

Controversial content

In the UAE, under the Electronic Media Activity Regulation Resolution 2018, social media posts should comply with the content and advertising regulations of the jurisdiction. Aside from requiring that an influencer “comply with the content regulations set out in the laws and regulations within the UAE” it may also be prudent to clearly establish content that would be unacceptable to the brands.

Some brands require influencers to sign a statement of conduct including laws as well as the moral and social concerns of the brand to ensure that the content is of the required standards. Whilst a statement of conduct does not have more strength than the contract itself, it indicates to the influencer that the brand is serious about this aspect of the relationship. Naturally, any breach of the statement of conduct should give rise to a right of termination.

Brands may also require that the influencer does not radically alter their online persona. For example, it might be problematic for a youth focused soda brand if a video game blogger begins discussing parenting issues because they became a mother.

Conflicting brand relationships

Inevitably, influencers that are chosen to represent one brand will also be working with other brands in the same country. It is important that the level of exclusivity is specified, including the duration of the exclusivity. It may reasonably extend beyond the end of the term so that there is a buffer between the commercial association with one brand and the subsequent one with the competing brand.

It is also important to scope the conflicting brand activities concisely. The difference between ‘telecommunications’ and ‘mobile phone handset’ is vast.

A brand may also want to consider whether the influencer must only post items that are solely related to that product. Influencers often put multiple brands within a single post. This may be appropriate but you may wish to have some control or approval over the other brand that is involved – weedkiller is not okay with organic tomatoes – and it may also be prudent to consider if a discount applies to the fee in these cases.

Payment and fees

The Middle East market is proving to be lucrative for influencers. Because of this, many influencers will not start a campaign unless they are paid however there is no commercial reason why all fees should be paid upfront. Some should reasonably be held back until the last activity is undertaken by the influencer.

It is also best practice to ensure that fees are allocated against each activity where multiple activities are involved in contract. So, for example, if the services comprise tweets, Instagram posts, a billboard campaign, and an interview then the fees should be allocated amongst each of these activities to ensure

that, if the relationship is terminated, it is easy to determine the fees that are payable for the services that have actually been provided up to the date of termination of the relationship.

And don't forget to add VAT.

Conclusion

Relationships with influencers are becoming part of mainstream business and an acceptable part of any marketing campaign. However, failure to properly contract with the influencer may mean that a brand is left without the exposure and deliverables that were expected. With influencers now coming with a hefty price tag, it is imperative that brands provide clear and proper contracts to ensure that all parties understand what the relationship requires.