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#AD OR #DECEPTION: HOW THE FTC'S CURRENT DISCLOSURE FRAMEWORK FAILS TO PROTECT CONSUMERS IN AN ALGORITHM-DRIVEN ECOSYSTEM

❖ Note ❖

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I. INTRODUCTION

For more than a decade, social media has consistently grown and expanded around the world.[1] By 2028, the total number of social media users is expected to hit over 6.05 billion individuals.[2] Social media users span all ages, with 56.4 million users ages 11-26, and 36.9 million users ages 59-77; numbers expected to grow.[3] Social media platforms include but are not limited to Instagram, Facebook, Snapchat, X (Twitter), YouTube, and TikTok.[4] In 2024, TikTok had over 1.8 billion monthly active users globally, with 121.5 million users just in the United States.[5] Scrolling through posts and videos on these platforms, users are frequently exposed to advertisements that promote a wide range of brands and products, blending seamlessly into the content and influencing users' attention and purchasing

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[1] Jeffrey Gottfried & Eugenie Park, *Americans' Social Media Use 2025*, PEW RESEARCH CENTER (Nov. 20, 2025), https://www.pewresearch.org/internet/2025/11/20/americans-social-media-use-2025.

[2] *Social Media & User-Generated Content*, STATISTA (last visited Feb. 21, 2026), https://www.statista.com/markets/424/topic/540/social-media-user-generated-content/#overview.

[3] Jaw de Guzman, *Khoros Social Media Demographics: Finding the Best Platforms for You,* COMMSROOM (Nov. 16, 2022), https://commsroom.co/khoros-social-media-demographics-finding-the-best-platforms-for-you/.

[4] *Social Media Fact Sheet*, PEW RESEARCH CENTER (Nov. 20, 2025), https://www.pewresearch.org/internet/fact-sheet/social-media.

[5] *TikTok Statistics, Facts & User Demographics*, GRATEFUL CARE ABA (last visited May 26, 2026), https://www.gratefulcareaba.com/blog/tiktok-statistics-facts-user-demographics.

decisions.[6] As of 2026, there are 117.1 million social media buyers in the United States, equivalent to 33.5% of the country's population.[7] In an algorithm-driven ecosystem, advertising is not only widespread but also highly targeted and personalized, making it more difficult for consumers to distinguish between organic content and paid promotion.[8] With the continuous expansion of social media influence, the FTC's current disclosure frameworks have become increasingly inadequate to protect consumers from deceptive advertising practices.[9]

To stop deceptive ads, the Federal Trade Commission ("FTC") has laid out guidelines for influencers' disclosures.[10] When users encounter videos or posts that endorse a product, usually somewhere in the post or videos, the influencer includes hashtags such as "#Ad" in their caption or disclose the endorsement in-video.[11] Although influencers often disclose paid relationships, social media platform algorithms frequently amplify sponsored content in ways that obscure its commercial nature.[12] Content that appears to be ordinary is, in fact, paid advertising, yet it is presented to consumers without meaningful distinction.[13] This lack of transparency undermines consumers' ability to make informed decisions and increases the risk of deception, particularly in an algorithm-driven ecosystem.[14] As a result, the FTC's existing disclosure framework fails to adequately protect consumers from these advertising practices.

This Note will analyze how the FTC's current disclosure framework is inadequate in protecting consumers in an algorithm-driven advertising ecosystem. Part II of this Note will explore the history behind the FTC's guidelines for advertisement disclosures, discuss the background and operation of social media algorithms, and show how the modern commercial ecosystem has raised issues concerning the unfair or deceptive acts or practices under Section 5 of the FTC Act (15 U.S.C § 45).[15] Part III analyzes how this algorithm-driven ecosystem constitutes an unfair and deceptive act under 15 U.S.C § 45 and why the current framework and legal regulations cannot adequately monitor and police such

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[6] NAT'L ACADS. OF SCIS., ENG'G & MED., SOCIAL MEDIA AND ADOLESCENT HEALTH (Sandro Galea, et al. eds., 2024).

[7] *Social Commerce Statistics of 2026 (Demographics And Trends),* SELLERSCOMMERCE (Apr. 27, 2026), https://www.sellerscommerce.com/blog/social-commerce-statistics/#:~:text=Instagram%20and%20TikTok%20are%20also,Go%20Viral%20Sell%20Out%20Fast.

[8] NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 6.

[9] *Id*.

[10] *Disclosures 101 for Social Media Influencers*, FED. TRADE COMM'N (Nov. 2024), https://www.ftc.gov/business-guidance/resources/disclosures-101-social-media-influencers.

[11] *Id*.

[12] NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 6.

[13] *Id*.

[14] *Id*.

[15] *See infra* section II; 15 U.S.C. § 45 (2024).

conduct.[16] Part IV recommends the direction in which the FTC must evolve its disclosure approach to account for this algorithm amplification.[17]

II. BACKGROUND

A. Evolving Social Media as a New Platform for Commercial Activities

Social media platforms rely on different algorithms to control and personalize the content displayed to users.[18] An algorithm can be defined as a set of instructions or a series of steps a computer or program follows to perform a specific task or solve a problem.[19] In social media, algorithms are used to manage and moderate the content people see online.[20] Social media platforms use a variety of algorithms, including artificial intelligence ("AI") techniques, to determine which content to show users.[21] Platforms collect data about their users and use it to push content and make personalized recommendations, which support targeted advertisements.[22]

Further, many platforms account for engagement with a post by its likes, shares, and comments.[23] Posts with high engagement are more likely to be recommended to users.[24] These algorithms can use contextual cues to create targeted advertising campaigns, determining which users should see which ads.[25] With social media platforms collecting data about users, these ad-targeting algorithms use that data to show ads to users most likely to be interested.[26]

B. Section Five of the FTC Act: Unfair or Deceptive Acts or Practices

As social media increasingly serves as a platform for commercial activities, it has raised concerns under Section 5 of the FTC Act, unfair or deceptive acts or practices. Section five of the FTC Act prohibits "unfair or deceptive acts or practices in or affecting commerce."[27] The prohibition applies to all individuals

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[16] *See infra* section III.
[17] *See infra* section IV.
[18] CLARE Y. CHO & LAURIE HARRIS, CONG. RSCH. SERV., IF12462, SOCIAL MEDIA ALGORITHMS: CONTENT RECOMMENDATION, MODERATION, AND CONGRESSIONAL CONSIDERATIONS (2023).
[19] NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 6.
[20] CHO & HARRIS, *supra* note 18, at 2.
[21] NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 6.
[22] CHO & HARRIS, *supra* note 18.
[23] NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 6.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] 15 U.S.C. § 45 (2024).

engaged in commerce, including influencers.[28] Congress drafted this provision to address changes in the market and unfair or deceptive practices that may emerge.[29]

The FTC defines an act as unfair where it is likely to (1) cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers; and (3) is not outweighed by countervailing benefits to consumers or competition.[30]

An act or practice is deceptive where (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances; and (3) the misleading representation, omission, or practice is material.[31] These standards for unfairness and deception are independent of each other, but an act or practice may be both unfair and deceptive.[32]

C. Disclosures 101 for Social Media Influencers

The FTC has created Endorsement Guides to stop deceptive ads.[33] The Guides are consistent with the application of Section 5 of the FTC Act (15 U.S.C § 45) and provide a basis for social media influencers to follow.[34] Under these guidelines, influencers endorsing a product must make the "material connection" with the brand obvious.[35] A material connection to the brand includes a personal, employment, or financial relationship.[36] This includes when a brand either pays for promotion or gives free or discounted products.[37] In essence, anything valuable that an influencer receives should be disclosed if posted.[38]

The FTC provides different disclosure guidelines for different types of postings.[39] For all postings, disclosures should be located within the endorsement message and placed where they are readily noticeable.[40] For an endorsement in a picture on a platform, such as Instagram or Facebook, the disclosure should be placed over the picture for viewers to notice and read it.[41] In a video endorsement, the disclosure should be made not only in the description of the video, but in the

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[28] *See id*.
[29] *See id*.
[30] *See id*.
[31] *See id*.
[32] BD. OF GOVERNORS OF THE FED. RSRV. SYS., FEDERAL TRADE COMMISSION ACT SECTION 5: UNFAIR OR DECEPTIVE ACTS OR PRACTICES (2008), https://www.federalreserve.gov/boarddocs/supmanual/cch/200806/ftca.pdf.
[33] FED. TRADE COMM'N, *supra* note 10.
[34] 16 C.F.R. § 255.0 (2024).
[35] FED. TRADE COMM'N, *supra* note 10.
[36] *Id*.
[37] *Id*.
[38] *Id*.
[39] *Id*.
[40] *Id*.
[41] *Id*.

video itself.[42] In a live-stream endorsement, such as those on TikTok live, the disclosure should be repeated periodically, as viewers continuously enter and exit the live stream.[43] Simple and clear language for easy understanding should be implemented, including recommended terms such as "advertisement", "ad", and "sponsored.[44] In addition, the FTC requires recommendations to be honest and truthful.[45] This includes promoting products that have been tried, giving an honest review, and not adding claims that cannot be supported. [46]The FTC provides these guidelines for the purpose of aiding influencers in complying with the laws of Section Five of the FTC Act.[47]

III. ANALYSIS

The current influencer advertising ecosystem operates within platforms fundamentally different from the environment in which the FTC's endorsement guides were originally conceived.[48] Although the FTC has articulated disclosure obligations for influencers, the central issue is no longer limited to whether influencers provide adequate disclosures. Rather, when platforms algorithmically amplify sponsored content in a way that disrupts its commercial nature, it may result in unfair and deceptive acts or practices under Section Five of the FTC Act.[49] Even when influencers include compliant disclosures, algorithms can fragment content in ways that diminish its commercial nature.[50]

A. Deceptive Acts or Practices

Under Section Five, a practice is deceptive if there is (1) a representation, omission, or practice that misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances; and (3) the misleading representation, omission or practice is material.[51]

Social media platforms oversee users' feeds by using proprietary algorithms designed to maximize engagement.[52] On platforms such as TikTok and Instagram, users are presented with content tailored to their interests, behavior, and viewing

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[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] FED. TRADE COMM'N, *supra* note 10.
[49] 15 U.S.C. § 45.
[50] NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 6.
[51] *See id.*
[52] NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 6.

history.[53] On TikTok's support page, they acknowledge that they use recommender systems on their platform.[54] These systems suggest and rank content and products based on interactions on TikTok, such as liking or commenting on a post.[55] It is important to acknowledge that TikTok allows users to refresh their feeds or click on the "Not Interested" button.[56] However, to do this, users must first tap the three dots and choose "Not Interested." [57] For many users, this extra step is inconvenient. Although the feature exists, it is not as accessible as it could be, limiting its effectiveness. While the FTC does give disclosure guidelines for ads and endorsements, sponsored content frequently appears indistinguishable from organic posts.[58]

The FTC requires disclosures be on a clear and conspicuous standard, meaning they must be easily understandable, and presented in a manner to which consumers can detect the advertisement.[59] A disclosure should be clear and conspicuous if there is a connection between an endorser/advertiser and the marketer that consumers would not expect.[60]

Although influencers technically comply with FTC guidance by including "sponsored" or "#ad", these disclosures are often placed in captions that require users to click "more" to view, embedded among numerous hashtags, or displayed briefly in videos, failing to satisfy the FTC's clear-and-conspicuous standard.[61] These presentations are likely to mislead consumers and obscure their commercial nature. For example, Alix Earle, an influencer with 8.3 million followers on TikTok, frequently posts advertisements and partnerships with beauty brands, clothing brands, and skincare brands.[62] On February 11, 2026, Alix Earle posted what looked like a simple 'Lip & Blush Combo' video using YSL Beauty products.[63] The video appears to be an organic and honest review; however, once users click to see more in the caption, the hashtag "#YSLbeautypartner" appears.[64] Moreover, in the

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[53] *How TikTok Shop Recommends Content*, TIKTOK, https://support.tiktok.com/en/using-tiktok/exploring-videos/how-tiktok-shop-recommends-content (last visited Feb. 21, 2026).

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *How to Report Content on TikTok*, TIKTOK, https://www.tiktok.com/support/faq_detail?category=web_using_tiktok&id=7581820706028296760 (last visited May 26, 2026).

[58] NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 6.

[59] *FTC's Endorsement Guides: What People are Asking*, Fed. Trade Comm'n (June 29. 2023), https://www.ftc.gov/business-guidance/resources/ftcs-endorsement-guides-what-people-are-asking.

[60] *Id.*

[61] FED. TRADE COMM'N, *supra* note 10.

[62] Megan McCluskey, *Alix Earle*, TIME (Jul. 9, 2025), https://time.com/collections/time100-creators-2025/7299095/alix-earle/.

[63] Alix Earle (@alixearle), TikTok (Feb. 11, 2026), https://www.tiktok.com/t/ZP8xdrkmq/.

[64] *Id.*

top right of the video, in white font, behind a white background, the same appears. Many of her followers are likely to interpret the video as being honest and organic, and her own review of the products, instead of a paid partnership. While the disclosures have been made under the FTC guidelines, they are not enough under the Deceptive Acts or Practices standards. A consumer's interpretation of the representation as honest and organic would be reasonable under the circumstances, as they assume that Alix Earle, as a beauty influencer, is giving her honest review on products. As a result, its placement reduces the likelihood that an ordinary consumer will notice it before forming an opinion about the product, thus failing to satisfy the clear-and-conspicuous standard.[65]

The FTC's current guidelines requiring honesty and transparency in brand disclosures and reviews are inadequate as many influencers are not fully truthful in their reviews, resulting in deceptive acts and not following FTC guidelines.[66] In January 2023, beauty influencer Mikayla Nogueira, with approximately 17.4 million followers on TikTok, faced great backlash for allegedly wearing false eyelashes while promoting L'Oréal's Telescopic Lift Mascara.[67] Social media users on both TikTok and other platforms, as well as beauty influencers, responded to the video questioning her authenticity in the product review.[68] Zaven Nahpetyan, co-founder of social media platform Niche, said, "People have so much trust for the creators and influencers they follow, rather than the ads they see on TV… So this feels like a violation of trust."[69] Users on social media follow influencers in hopes of honest reviews and authenticity.[70] However, the line between genuine recommendation and paid promotion has become increasingly blurred, misrepresenting products to reasonable consumers.[71] As brand partnerships grow on social media, some influencers prioritize profitability over transparency, raising concerns about the effectiveness of current FTC guidelines and influencers' failure to comply with them.

B. Unfair Acts or Practices

Under Section 5 of the FTC, an act or practice is unfair if it (1) causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably

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[65] *FTC's Endorsement Guides, supra* note 59.

[66] Moises Mendez, *A Mascara Drama Unfolding on TikTok Raises Questions about Authenticity Among Beauty Influencers*, TIME (Jan. 27, 2023, at 3:56 PM CT), https://time.com/6250881/mikayla-nogueira-mascara-fake-eyelashes.

[67] *Id.*

[68] Emma Sandler, *What's Behind the Mikayla Nogueira Mascara Controversy*, GLOSSY (Jan. 27, 2023), https://www.glossy.co/beauty/understanding-whats-behind-the-mikayla-nogueira-mascara-controversy.

[69] *Id.*

[70] *Id.*

[71] *Id.*

avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or competition.[72]

Algorithm-driven amplification of sponsored content causes substantial injury in both economic and non-economic forms.[73] Consumers frequently make purchasing decisions based on influencer endorsements that appear organic.[74] Even when influencers include disclosures, algorithms elevate sponsored posts because of engagement and previous browsing history.[75] As mentioned, as of 2026, there are 117.1 million social media buyers in the United States, equivalent to 33.5% of the country's population.[76] Moreover, 69% of shoppers have engaged in ambient shopping, where they end up buying something while doing something, like scrolling through social media, without actively searching for the product.[77] The result is increased consumer exposure to advertising disguised as authentic content, leading to purchases that might not otherwise occur absent the algorithmic boost.[78]

The injury extends beyond economic harm. As social media platforms curate highly personalized feeds based on user data, the persuasive effect is magnified. Users, particularly minors and older adults, may lack the digital literacy necessary to identify subtle disclosures or understand how platform algorithms prioritize sponsored material.[79] In a 2024 Harvard T.H. Chan School of Public Health Study, Facebook, Instagram, Snapchat, TikTok, X (Twitter), and YouTube derived nearly $11 billion in advertising revenue from U.S.-based users younger than 18 in 2022.[80] Amanda Raffoul, a pediatrics instructor at Harvard Medical School, exclaimed the need for greater data transparency and government regulations.[81]

Consumers cannot reasonably avoid injury when algorithms determine what content is displayed, often without transparency; sponsored content is designed to resemble ordinary posts, and disclosure mechanisms, such as the Alix Earle ad, are inconsistent. The line between aggressive marketing and unfair conduct under Section 5 of the FTC Act is crossed when social media algorithms repeatedly promote sponsored content and reinforce similar content based on prior

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[72] 15 U.S.C. § 45.
[73] NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 6.
[74] *Id*.
[75] *Id*.
[76] SELLERSCOMMERCE, *supra* note 7.
[77] *Id*.
[78] *Id*.
[79] Salman Khan et al., *Key Challenges and Barriers to Digital Literacy for Older Adults: Scoping Review,* 9 JMIR AGING 1 (2026).
[80] Maya Brownstein, *Targeting Kids Generates Billions in Ad Revenue for Social Media,* THE HARVARD GAZETTE (Jan. 2, 2024), https://news.harvard.edu/gazette/story/2024/01/social-media-platforms-make-11b-in-ad-revenue-from-u-s-teens.
[81] *Id*.

engagement.[82] Consumers lose their ability to make fully informed purchasing decisions, and at this point marketing shifts from persuasion to manipulation.[83] Consumers are being influenced by this algorithmic system of continuous showing them prior engagement, resulting in unfair conduct under Section 5.[84]

Platforms and advertisers may argue that algorithmic promotion of sponsored content increases efficiency and brings economic benefits. In 2024, social media advertising revenue saw an increase of $23.8 billion since 2023, totaling $88.8 billion in 2024.[85] Digital advertising is a powerful tool for innovation, job creation, and economic performance.[86] However, transparent advertising can achieve similar economic benefits without disguising paid influence as organic expression. Clear visual labeling, standardized disclosure formats, and identification of sponsored amplification would still preserve competition while reducing consumer harm.

IV. RECOMMENDATIONS

To protect both consumers from harm and social media influencers from legal issues, the FTC's Disclosure guideline must be strengthened to reduce deceptive and unfair practices or acts. Sponsored content should be clearly labeled as advertising at the point where the video is initially viewed, ensuring that disclosures are immediately visible and cannot be obscured in captions or videos.

In addition, platforms should be required to implement built-in disclosure tools that automatically flag paid partnerships and prevent creators from publishing sponsored content without proper labeling. Clear and consistent language, such as "Paid Advertisement" or "Sponsored by [Brand]" should replace vague terms such as "#partner", which many viewers may not recognize. The guidelines should also require disclosure to be spoken aloud in video and audio content, either at the beginning or in the middle of the video.

The FTC should increase monitoring of influencer marketing practices and impose meaningful penalties for repeated violations to deter noncompliance. By modernizing and reinforcing these disclosure requirements, regulators can promote transparency, protect consumers from misleading advertising practices, and provide clearer standards that help influencers operate responsibly within the law.

The Algorithmic Accountability Act of 2022 was introduced in the US Senate during the 117th Congress (2021-22) and was reintroduced during the 118th

[82] National Academics of Sciences, Engineering and Medicine, Social Media and Adolescent Health, (Sandro Galea, Gillian J. Buckley & Alexis Wojtowicz eds., 2024), https://doi.org/10.17226/27396.

[83] *Id.*

[84] Id.

[85] *Internet Advertising Report: Full Year 2024 Results,* IAB (Apr. 17, 2025), https://www.iab.com/wp-content/uploads/2025/04/IAB_PwC-Internet-Ad-Revenue-Report-Full-Year-2024.pdf.

[86] *Id.*

Congress as H.R. 5628 and S. 2892.[87] This proposed legislation would have required large technology companies to conduct algorithmic impact assessments and report those findings to the FTC.[88] This would result in a step toward algorithmic transparency and allow the FTC to make decisions about social media platforms.[89] However, the bill has not progressed beyond the Congress committees. Congress and the FTC should revive legislative efforts like the Algorithmic Accountability Act to allow regulators to evaluate whether platforms contribute to consumer deception under Section 5.[90]

The FTC should increase enforcement efforts against both platforms and influencers that engage in deceptive advertising practices by imposing meaningful civil penalties, monitoring requirements and measures that would create stronger incentives for compliance and transparency.[91] In 2021, the FTC puts hundreds of businesses on notice about fake reviews and misleading endorsements.[92] They began using its Penalty Offense Authority by sending a Notice of Penalty Offenses to more than 700 companies to remind advertisers of the law.[93] Continuing to implement these strategies not only on companies, but on social media influencers can increasingly protect consumers from deceptive advertising.[94]

Moreover, the FTC should take steps to protect consumer privacy and hold social media companies accountable for breaches of privacy. Regulatory actions should involve opt-out provisions and privacy options such as: the right for users to opt out of the sale of personal information, the right to restrict or opt out of the use of specific pieces of personal data, the right for a user to know and access data that has been collected, and the right to delete specific portions of collected data based on the history of use.[95] These measures address the deceptive and unfair nature of algorithmic amplification by limiting platforms' ability to rely on data-driven targeting. When users lack control over their personal data, platforms can algorithmically curate and amplify advertisements. By restoring user control and transparency over data, these protections reduce the capacity for misleading

[87] Kayla Dunn, *Mitigating Algorithmic Targeting in Social Media Platforms*, 10 SCI., TECH., ENG'G, & POL'Y STUD. 38, 43 (Dec. 2024).

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] Press Release, Fed. Trade Comm'n, FTC Puts Hundreds of Businesses on Notice about Fake Reviews and Other Misleading Endorsements (Oct. 13, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-puts-hundreds-businesses-notice-about-fake-reviews-other-misleading-endorsements.

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] Dunn, *supra* note 83, at 43.

endorsements.[96] In turn, this would give users autonomy over data collection and processing, resulting in more commercial nature social media feeds.

V. CONCLUSION

The Federal Trade Commission's disclosure guidelines provide an important foundation for regulating influencer advertising but must be strengthened to keep pace with evolving social media platforms and algorithm-driven advertising practices. Consumers reasonably expect honesty and transparency when viewing online content, especially when making purchasing decisions based on influencer recommendations that appear authentic. However, as platforms increasingly rely on algorithmic amplification to maximize engagement, disclosures that may once have been sufficient are no longer effective in distinguishing between organic posts and sponsored content.

Without stronger oversight by the FTC, consumers will remain vulnerable to deceptive and unfair advertising practices. Clearer and more prominently placed disclosures would reduce unfair and deceptive practices while also protecting influencers from legal liability. The FTC reinforcing these guidelines protects both consumers and influencers. As social media continues to grow and advertising continues to evolve, the FTC must modernize its enforcement and current disclosure framework.

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[96] NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 6.