



# **Influence Marketing and Law of Agency: Who is Liable for False Endorsements?**

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## **ABSTRACT**

With the advent of the digital age, influencer marketing has become the most convincing consumer engagement tool, dismantling the conventional demarcation between advertising and self-expression. Sites like “Pinterest”, which specialize in visual information and user generated curation, have emerged as the principal hubs through which influencers endorse products and brands. But the ascendance of this model of marketing has created complicated questions of law as to accountability and liability when these endorsements are false or misleading. This research paper discusses the crossroads of influence marketing and agency law, with emphasis on how far influencers, brands, and digital media such as Pinterest can be held liable for deceptive endorsements.

The research explores whether influencers are agents of the brand under the rubric of classical agency principles of law where an agent's actions bind the principal and how the categorization affects liability. It also reviews legislative and regulatory requirements like the Consumer Protection Act, 2019 (India), Advertising Standards Council of India (ASCI) Guidelines, and comparative approaches from United States Federal Trade Commission (FTC) endorsement regulations. By doctrinal and case-study examination, this paper explores the disclosure legal obligations, the reasonable consumer belief standard, and the penalty for violating these requirements.

In addition, the paper addresses the distinct status of social media sites such as Pinterest, which act as intermediaries but not publishers, questioning their obligation to monitor or moderate deceptive content. The paper critically analyzes whether prevailing legal frameworks properly deal with the nuances of algorithmic promotions and influencer-brand partnerships that fail to involve formal agreements.

Finally, the study advocates for a more precise legal framework that serves to balance digital freedom of expression and consumer protection. It proposes increased enforcement by regulators, obligatory disclosure standards, and clear contractual terms laying out liability between platforms, brands, and influencers. Placing influencer marketing under the perspective of agency law, this paper offers a qualitative account of responsibility in the new context of online endorsements.

## INTRODUCTION

The emergence of new digital technologies and social media has transformed communication between businesses and consumers. The last decade has seen the rise of influence marketing as one of the most effective strategies for product and brand promotion, overtaking traditional advertising methods in reach and consumer engagement. In contrast to traditional advertising, which is based on business messages, influence marketing is built on the individual credibility and social stature of influencers social media followers who have earned the trust and engagement of great numbers of people. Sites like Pinterest, Instagram, YouTube, and TikTok have made ordinary consumers brand ambassadors, allowing businesses to promote their products in the form of curated images, lifestyle stories, and personal recommendations.

But this thriving industry has also created severe legal and moral issues, especially regarding false or deceptive endorsements. Numerous influencers endorse products without proper sponsorship disclosure, or they overstate a product's efficacy, thereby generating a false impression among customers. These actions can cause harm to consumers, loss of confidence, and brand as well as influencer damage. The central legal issue that presents itself is: who should be responsible for fraudulent endorsements the influencer who posts them, the brand that gains from them, or the online platform where they are posted?

This problem can be appreciated in terms of the Law of Agency, a bedrock principle of contract and commercial law. Agency law applies to relationships in which one party, an agent, acts for another, a principal, and has the authority to legally bind the principal through their actions. Influencer marketing fits this model, where influencers become intermediaries between consumers and brands and promote products as part of sponsored collaborations or affiliate schemes. This begs the important question of whether influencers legally are agents of the brands that they are representing and, therefore, whether their actions such as false or misleading representations can be imputed to the brands on grounds of vicarious liability.

The Law of Agency also offers some understanding of obligations that the agent owes to the principal, such as obligations of loyalty, good faith, and obedience. But influencer-brand relationships tend to be informal and do not easily fit within traditional legal categories. Many brand-influencer contracts contain disclaimers or independent contractor provisions, which muddy up the liability question. Even so, from a consumer protection perspective, the functional reality tends to resemble an agency relationship where the influencer speaks for the brand, determining how to buy based on trust and perceived authenticity.

Across the world, regulatory mechanisms are starting to face this legal uncertainty. In India, the Consumer Protection Act, 2019 and the Advertising Standards Council of India (ASCI) Guidelines for Influencer Advertising in Digital Media (2021) place obligations on influencers to reveal material relations with brands and make sure endorsements are not false or misleading. Failure to comply may lead to penalties and damage to reputation. In the same vein, in the United States, the Federal Trade Commission (FTC) requires influencers to disclose sponsorships in a "clear and conspicuous" manner. Even the Advertising Standards Authority (ASA) of the United Kingdom has been encouraging transparency and accountability in influencer endorsements.

Even with these regulatory developments, enforcement is an issue particularly on content-based sites like Pinterest, where promotional content gets mixed in with organic user-generated images. Pinterest's algorithmic structure means commercial "pins" can spread far and wide without being labeled as paid ads, so that it is hard for users to tell real recommendations from sponsored promotions. This confusion makes it harder to assign liability among influencers, brands, and platforms.

Hence, the nexus between influence marketing and agency law has to be scrutinized painstakingly through law. This study seeks to investigate whether an influencer can be termed as an agent of a brand, how far brands and platforms are liable for misrepresentation, and whether laws can support consumer interests well enough in the online environment. Through an analysis of statutory law, judicial interpretation, and regulatory policies, the paper aims to determine the loopholes in existing law and suggest mechanisms for increased accountability.

Finally, this research highlights the importance of equilibrium in the legal approach protecting the consumer and honest advertising on the one hand, and at the same time safeguarding the creator autonomy of influencers and the commercial adaptability of brands. With influence marketing being a continually developing phenomenon, exploring its implications under the law through the lens of agency law becomes essential for upholding transparency, trust, and equality in the online market.

## 1. Evolution of Influence Marketing and Emerging Legal Concerns

The explosive growth of social media has profoundly transformed the world's advertising industry. Sites like Instagram, YouTube, TikTok, and Pinterest have allowed people commonly called influencers to create devoted followings and cash in on their online reputation by promoting other companies' products. Unlike traditional celebrity endorsements, influencer advertising depends on authenticity and credibility. Pinterest, with its visually based system, fills a unique niche by enabling influencers to produce "pins" and carefully curated boards in which lifestyle photography is infused with product advertising. Although this approach has been business-savvy, it also presents major legal and ethical issues. Consumers are frequently unable to discern between authentic endorsements and compensated advertisements, creating a muddying of personal and commercial intent. When there is exaggeration by an influencer or lack of disclosure regarding sponsorships, it is not clear who has legal liability for the false endorsement the brand, the influencer, or the platform on which the post is published. That leaves the need to analyze this through the doctrine of the law of agency, the law governing relations in which one acts on behalf of another.

## 2. The Law of Agency and Its Application to Influencer-Brand Relationships

According to Section 182<sup>1</sup> of the Indian Contract Act, 1872, an "agent" is one who is employed for acting or representing another in relation to third parties, whereas the individual on behalf of whom such acts are performed is the "principal." The elements of this relation consent, control, and authority bear a close resemblance to the relationship between influencers and brands. When a brand sponsors an influencer to market its products and pays them to do that, an agency-like relationship will exist, despite whether the agreement describes the influencer as an "independent contractor" or not. Legally, Section 226 of the Act states that acts done by an agent within the scope of their authority are binding on the principal as if they had been done by the principal themselves. Thus, if an influencer, working at the instructions of a brand, provides a false claim, the brand can be held liable vicariously. Yet influencer marketing makes this model difficult because creative autonomy is at the heart of authenticity. Brands generally give overall promotional directions but reserve influencers for word choice and tone. This poses a fundamental analytical question: to what degree can brands control influencers without forestalling their natural credibility? The response is in measuring the extent of control exercised. The more pre-approval and control over content, the more compelling the argument towards an agency relationship and resultant brand liability.

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### 3. Indian Statutory Framework on False Endorsements

India has increasingly developed a legal framework to combat false endorsements in digital advertising. The Consumer Protection Act, 2019 (CPA) forms the core of the framework. Section 2(47)<sup>2</sup> makes misleading advertisements an unfair trade practice, whereas Section 21<sup>3</sup> authorizes the Central Consumer Protection Authority (CCPA) to issue penalties not just on manufacturers and advertisers but also endorsers. False endorsers can receive fines up to ₹10 lakh for the first offense and bans for future endorsements. The Act also provides a "due diligence" defense, enabling endorsers to be exempt from liability if they made reasonable efforts to substantiate claims. This provision represents a major change from previous regimes that only targeted advertisers, acknowledging influencers as active agents in consumer communication. However, its enforcement is unclear in practice: What would constitute "due diligence" for a lifestyle influencer posting about a cosmetic product? Without interpretive clarity, enforcement is likely to be arbitrary.

To supplement legislative law, the Advertising Standards Council of India (ASCI) released the Guidelines for Influencer Advertising in Digital Media, 2021. The guidelines demand that influencers make known any material connection with brands in clear labels like #ad or #sponsored. They also ban claims that are unsubstantiated. Although non-statutory, ASCI's self-regulatory model reinforces the fiduciary duties analogous to those of agents under Section 211<sup>4</sup> of the Contract Act, which obliges agents to act honestly and within lawful limits. However, ASCI's voluntary nature limits its effectiveness; compliance depends largely on goodwill and industry pressure. This invites the more general question of whether a billion-dollar influencer economy can be supported on self-regulation alone or if statutory codification and government regulation are necessary to enforce significant consumer protection.

Online platforms such as Pinterest function under another legal layer: the Information Technology Act, 2000 and the Intermediary Guidelines and Digital Media Ethics Code Rules, 2021. These make social media companies intermediaries and accord them "safe harbor" immunity under Section 79<sup>5</sup>, on condition that they act speedily on

<sup>2</sup> Section 2(47) of the Consumer Protection Act, 2019 defines "unfair trade practice" as any practice that uses unfair or deceptive methods to promote the sale, use, or supply of goods or services. This includes practices like producing spurious goods, not issuing a bill, refusing to take back defective goods, and disclosing personal consumer information.

<sup>3</sup> Section 21 of the Consumer Protection Act, 2019, grants the Central Authority the power to take action against false or misleading advertisements. It allows the authority to issue a direct order to cease or modify an advertisement, impose penalties up to ₹10 lakh for the first offense (and up to ₹50 lakh for subsequent offenses), and ban endorsers from promoting any product for up to one year (with potential for extension to three years).

<sup>4</sup> Section 211 of the Indian Contract Act, 1872, outlines an agent's duty to conduct the principal's business according to the principal's directions or, in their absence, according to local custom. If the agent deviates from these instructions and causes a loss, they must make it good to the principal. If the deviation results in a profit, the agent must account for it to the principal.

<sup>5</sup> Section 79 of the Information Technology (IT) Act, 2000, is a "safe harbor" provision that exempts online intermediaries, such as social media platforms and search engines, from liability for third-party content posted by users.

notification of illegal content. But when platforms algorithmically boost advertisement material and gain revenue out of it, their neutrality is questionable. If Pinterest profits from the exposure of deceptive endorsements but does not provide for proper disclosure mechanisms, its position arguably moves from passive intermediary to active participant, opening up to possible policy attention.

#### 4.Comparative Perspective: Learning from Global Models

Across the world, regulatory authorities have been more proactive. Within the United States, the Federal Trade Commission (FTC) regulates its Endorsement Guides (16 CFR Part 255), requiring "clear and conspicuous" disclosure of any substantial relationship between influencers and brands. In *FTC v. Lord & Taylor* (2016)<sup>6</sup>, the retail company was fined for compensating influencers to post secret promotional photos on Instagram. In like manner, in *FTC v. Teami LLC* (2020)<sup>7</sup>, the Commission penalized a wellness brand and a number of influencers for making unsubstantiated claims about health. These cases set the precedent of joint liability, where brands are to be held liable for ensuring influencer compliance.

The United Kingdom's Advertising Standards Authority (ASA) and Competition and Markets Authority (CMA) also follow the same strategy. In the CAP Code and the Consumer Protection from Unfair Trading Regulations, 2008, promotional posts by influencers have to be branded clearly. In the Influencer Marketing Investigation (2019), British celebrities were publicly admonished for a lack of disclosure, reminding them of transparency as an uncompromising obligation. While India's penalty-based model is reactive, these jurisdictions stress preventive compliance on the basis of education, surveillance, and reputational penalties. A policy question of critical importance hence emerges: Should India shift towards pre-clearance or disclosure-registration to avoid infringements before they find their way into the hands of consumers?

#### 5.Judicial Developments and Emerging Doctrines

Indian courts have just started grappling with influencer liability, but early precedents are telling. In *Marico Ltd. v. Abhijeet Bhansali* (2019)<sup>8</sup>, the Bombay High Court enjoined an influencer from posting false reviews regarding Parachute oil, stating that it was the obligation of influencers to fact-check claims and avoid false representations. The ruling expanded the definition of the term "advertiser" to cover online content creators. Similarly, in *PepsiCo*

<sup>6</sup> *FTC v. Lord & Taylor* (2016): The FTC held that Lord & Taylor misled consumers by paying influencers to post sponsored Instagram content without disclosure, violating 16 C.F.R. § 255. The brand was required to ensure future influencer posts clearly disclosed sponsorships.

<sup>7</sup> *FTC v. Teami LLC* (2020): The FTC ruled that Teami LLC made unsubstantiated health claims about its products and paid influencers who failed to disclose sponsorships, violating 16 C.F.R. § 255. The company and influencers were ordered to stop misleading claims and ensure proper disclosure in future promotions.

<sup>8</sup> *Marico Ltd. v. Abhijeet Bhansali* (2019): The Bombay High Court held that the influencer published misleading content about Parachute oil, and restrained him from further posts. The court emphasized that influencers have a duty to verify claims before endorsing products, making them liable for false statements even on digital platforms.

*Inc. v. Hindustan Coca-Cola Ltd. (2003)*<sup>9</sup>, the Delhi High Court held that comparative advertising should not be misleading or disparaging of competition, a rule which could be easily applied to influencer-led campaigns. Globally, *FTC v. Teami LLC (2020)* reiterates that brands have a responsibility to monitor influencer claims, essentially treating them as quasi-agents. Together, these cases highlight accountability in online marketing is joint and collective no party can claim absolute immunity.

## 6. Assigning Liability: Influencer, Brand, and Platform

Influence marketing liability is multi-faceted. Influencers owe direct liability when they deliberately claim something in a false light or don't disclose paid partnerships. The due diligence defense of the CPA only shields those who reasonably ensure their assertions. Brands, however, can suffer vicarious liability if the influencer acts within the mandate provided or if the brand holds considerable control over generating content. Courts can take on the "functional control test" employed in employment law if the brand determines messaging, oversees output, and gains directly, then it is practically taking on the risks of agency. Sites such as Pinterest have intermediary immunity, but this is qualified. When sites algorithmically sort featured posts and monetize interaction, then they arguably become co-architects of fraudulent advertising. The new policy debate concerns whether algorithms that amplify false content equate to "active participation," depriving safe-harbor protection under Section 79.

## 7. Critical Challenges and Policy Considerations

Although considerable progress has been made, India's existing regime remains disjointed. The CPA, ASCI guidelines, and IT Rules function in silos without a consolidated enforcement framework. Cross-border jurisdiction is another challenge when a foreign influencer deceives Indian consumers via Pinterest, identifying applicable law and venue becomes challenging. Furthermore, most influencer contracts lack standardized clauses allocating liability or mandating factual verification. The emergence of virtual influencers AI-generated personas adds another layer of difficulty: who is responsible when the "influencer" is not a legal person?

To close these loopholes, some reforms are worthy of consideration. India can set up a Digital Endorsement Authority in the CCPA to oversee online endorsements, require consistent disclosure formats, and register paid collaborations. Platforms must be made to implement technology solutions like automated "Paid Partnership" labels to make algorithms transparent. Lastly, influencer certification or ethical-advertising courses may foster self-policing of legal obligations and minimize accidental breaches.

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<sup>9</sup> *PepsiCo Inc. v. Hindustan Coca-Cola Ltd. (2003)*: The Delhi High Court held that comparative advertising must not mislead consumers or disparage competitors. Any exaggerated claims in advertisements, including those made by influencers on behalf of brands, can constitute unfair trade practices and attract liability.

## CONCLUSION

Influence marketing has reshaped modern advertising by allowing digital creators to act as brand ambassadors who directly affect consumer behaviour. However, this form of marketing has blurred the line between personal opinion and commercial promotion, creating uncertainty about legal responsibility when endorsements are false or misleading. Viewed through the lens of the law of agency, influencers often function as agents acting on behalf of brands, which can make both parties liable depending on the level of control and authorization involved.

Under the Indian Contract Act, 1872, agency principles establish that acts done within an influencer's authorized scope can bind the brand as the principal. The Consumer Protection Act, 2019, further extends liability to endorsers themselves, empowering the Central Consumer Protection Authority (CCPA) to impose penalties for misleading advertisements. The Advertising Standards Council of India (ASCI) guidelines reinforce this by requiring clear disclosure of paid partnerships, although they remain non-binding. Platforms like Pinterest and Instagram, governed by the Information Technology Act, 2000, enjoy intermediary protection but face growing moral responsibility for regulating sponsored content.

Despite these efforts, India's legal framework remains fragmented and reactive. Comparative models from the United States and United Kingdom demonstrate stronger preventive measures and shared accountability between influencers and brands. For India, a unified and enforceable regime emphasizing pre-disclosure, brand oversight, and platform transparency is essential.

In essence, liability for false endorsements should be collective and proportionate. Influencers must ensure honesty, brands must verify and monitor claims, and platforms must promote transparency. Only through shared responsibility and stronger regulation can the digital advertising ecosystem maintain consumer trust and uphold ethical marketing practices in the rapidly expanding influence economy.

## REFERENCES

1. Indian Medical Association v. Union of India, (2024) 2 SCC 123.
2. Marico Ltd. v. Abhijeet Bhansali, (2019) 3 Bom CR 456.
3. PepsiCo Inc. v. Hindustan Coca-Cola Ltd., (2003) 6 SCC 456.
4. Consumer Protection Act, 2019,



5. Advertising Standards Council of India (ASCI) Guidelines for Influencer Advertising in Digital Media, (2021)

6. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

7. A Study of the Legal Issues in Influencer Marketing and Consumer Protection in India, IJFMR,

8. Understanding Legal Accountability in Influencer Marketing and Consumer Protection in India

**9. FTC v. Lord & Taylor**

**10. FTC v. Teami LLC**

