



# INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

**IJLAR**

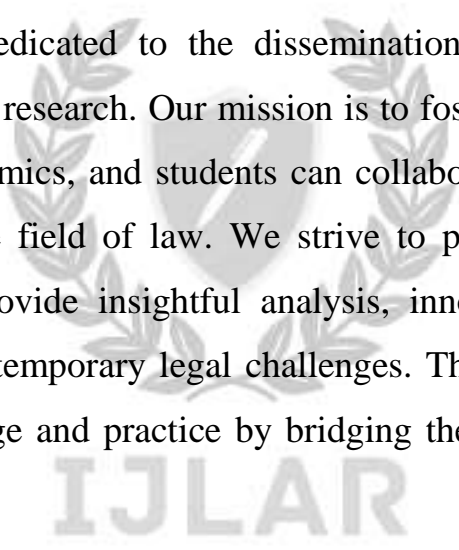
+91 70421 48991  
editor@ijlar.com  
www.ijlar.com

## **DISCLAIMER**

The views and opinions expressed in the articles published in the Indian Journal of Legal Affairs and Research are those of the respective authors and do not necessarily reflect the official policy or position of the IJLAR, its editorial board, or its affiliated institutions. The IJLAR assumes no responsibility for any errors or omissions in the content of the journal. The information provided in this journal is for general informational purposes only and should not be construed as legal advice. Readers are encouraged to seek professional legal counsel for specific legal issues. The IJLAR and its affiliates shall not be liable for any loss or damage arising from the use of the information contained in this journal.

## **Introduction**

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

A large, faint watermark of the IJAR logo is centered on the page. It features a circular emblem with a shield in the center, flanked by laurel branches. Below the emblem, the letters 'IJLAR' are printed in a large, bold, sans-serif font.

## Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

# **AUTHENTICITY & ACCOUNTABILITY: A LEGAL ANALYSIS OF INFLUENCER- CREATED CONTENT IN THE BEAUTY & PERSONAL CARE SECTOR**

AUTHORED BY - MS. VARSHA RATHI

Ph.D. Scholar, Faculty of Legal Studies, HRIT University, Ghaziabad

CO-AUTHOR - DR. AJAY KUMAR

Professor, Faculty of Law

## **INTRODUCTION**

Due to the growth in social media popularity, influencer marketing is particularly evident in the cosmetics and personal care sectors. Several scholars have emphasized the revolution brought about by social media on marketing techniques and consumer behavior.<sup>1</sup> There are basic studies that have analyzed the role of influencers in shaping consumer behavior and perception by creating an illusion of authenticity while obscuring the distinction between personal views and promotional content.<sup>2</sup> Consumers are greatly swayed by the product suggestions made by influencers through their endorsements and demos.<sup>3</sup> As the influencers make money from their posts, there is an increasing problem of a lack of authenticity and sponsorship in advertisements,<sup>4</sup> as discussed in current marketing studies.

These developments give rise to significant questions about the law:

- Is influencer-generated content still authentic?
- What are the legal obligations of influencers?

Does the present legal regime effectively regulate influencer responsibility?

---

<sup>1</sup> Crystal Abidin, *Internet Celebrity: Understanding Fame Online* (Emerald Publishing, 2018).

<sup>2</sup> Brooke Erin Duffy & Emily Hund, 'Having it All on Social Media: Entrepreneurial Femininity and Self-Branding Among Fashion Bloggers' (2015) 22(1) *Social Media + Society* 5.

<sup>3</sup> Marijke De Veirman, Veroline Cauberghe & Liselot Hudders, "Marketing Through Instagram Influencers..." (2017) 36(5) *International Journal of Advertising* 798.

<sup>4</sup> Federal Trade Commission, *Disclosures 101 for Social Media Influencers* (FTC, 2019) <https://www.ftc.gov>

Although several academic studies have explored the effect of influencer marketing, there appears to be a significant void in the literature as well as regulatory assessment. Specifically, there has not been enough scholarly work done on evaluating how Indian legal systems deal with the conflict between the authenticity of content generated by influencers and its business interests, particularly in relation to products of beauty and personal care. There is a lack of systematic investigation of how effective the disclosures required by Indian law have been, and the judiciary has ruled in cases involving influencer liability vis-à-vis international practices.

The main research objectives of this study include: (a) To examine the authenticity of influencer-generated content relating to beauty and personal care products; (b) To study the current legal regime regarding influencer marketing in India; (c) To study judicial perspectives on influencer liability; and (d) To conduct a comparative legal study.

### **3. RESEARCH HYPOTHESIS**

H1: The current legal framework in India is sufficient to regulate influencers' content of beauty & personal care & its authenticity.

H2: Disclosure rules that promote accountability and protect consumers from influencer recommendations.

### **4. RESEARCH METHODOLOGY**

For this paper, a doctrinal and comparative legal approach will be adopted, and a qualitative approach will also be followed. The choice of using a doctrinal method is fitting for this paper since it requires a careful analysis of statutes, case laws, policies, and regulatory guidelines in relation to influencer marketing within the beauty and personal care industry. The use of the comparative approach facilitates understanding how other jurisdictions tackle similar issues and thus offers the basis to compare India's legal framework with others in terms of effectiveness. Relevant sources will be considered in this study, including primary laws, judicial rulings, official guidelines from regulatory bodies, and reputable academic sources. Jurisdictions for this research will be chosen based on the nature of their approaches, whether rule-based (the US) or substantive (China).

- a) Doctrinal analysis - examination of legislatures, rules & regulations, guidelines.

- b) Case law analysis - study of judicial precedent, addressing influencers' liability & misleading advertising.
- c) Comparative approach - study the regulatory framework in the United States and China.

## **5. AUTHENTICITY OF INFLUENCER'S CONTENT OR INFLUENCER'S MARKETING**

Authenticity means that influencer content is seen as reflecting real opinions and personal experiences.<sup>5</sup> But when influencers are paid for collaborations, their content is often carefully planned to serve marketing goals.

In the beauty industry, influencer content has a strong persuasive effect due to:

- Visual Demonstrations
- Emotional Relatability
- Perceived Expertise

In doing so, we arrive at what can be termed “commercialized authenticity,”<sup>6</sup> where social media users work hard to maintain credibility despite pushing paid-for posts. There is worry about consumers being deceived.

## **6. LEGAL FRAMEWORK IN INDIA**

### **6.1 Consumer Protection Act 2019**

The Consumer Protection Act 2019 (CPA) is the principal legislation that addresses misleading advertisements.<sup>7</sup> Influencers fall under the category of “endorsers,”<sup>8</sup> and can be taken to court in case of false/misleading claims.

In cases where the guidelines are violated, the law permits the imposition of fines and restrictions on endorsements by the influencer.

---

<sup>5</sup> Alice E Marwick, *Status Update: Celebrity, Publicity and Branding in the Social Media Age* (Yale University Press 2013) 147.

<sup>6</sup> Theresa M Senft, *Camgirls: Celebrity and Community in the Age of Social Networks* (Peter Lang Publishing 2008) 89

<sup>7</sup> The Consumer Protection Act 2019, s 2(28), No 35 of 2019,

<sup>8</sup> Central Consumer Protection Authority, *Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022*, Gazette of India, 9 June 2022.

## 6.2 ASCI Guidelines for Influencer Marketing

The ASCI Guidelines (2021)<sup>9</sup> include:

- Disclosure of the sponsorship nature of the post.
- Using tags like #ad or #sponsored
- Due diligence by influencers before making claims.

Despite being non-statutory, these guidelines can be enforced through the CPA framework.

## 6.3 Guidelines on CCPA (2022)

The Central Consumer Protection Authority made guidelines<sup>10</sup> for controlling misleading advertisements, which even included influencers and endorsers.

Such guidelines include honesty and accountability.

*Examining how courts have addressed influencer liability provides further insight:*

In *Marico Ltd. v. Abhijeet Bhansali*,<sup>11</sup> the Bombay High Court addressed the liability of a social media influencer who made claims regarding product quality.

The decision stated that:

- Influencers have the ability to change consumer behavior.<sup>12</sup>
- This influence comes with a responsibility to act with caution.
- It must not mislead or rest on any claims without factual support.

Such an approach recognized that influencers' messages are a type of commercial expression, which can be controlled.

## **7. LEGAL IMPLICATIONS**

This case proves the following:

There can be tort liability of influencers<sup>13</sup> (misrepresentation and disparagement).

Freedom of expression can be subjected to justifiable limitations.

There can be legal liability for the online content creator.

---

<sup>9</sup> Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (ASCI, 2021) <https://ascionline.in>

<sup>10</sup> Central Consumer Protection Authority, *Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022* (Ministry of Consumer Affairs, Government of India).

<sup>11</sup> *Marico Ltd. v. Abhijeet Bhansali*, 2020 SCC OnLine Bom 139.

<sup>12</sup> *Marico Ltd. v. Abhijeet Bhansali*, 2020 SCC OnLine Bom 139, para 18.

<sup>13</sup> Ratanlal & Dhirajlal, *The Law of Torts* (28th edn, LexisNexis 2021) 415.

## 8. COMPARISON WITH OTHER LEGAL SYSTEMS

### 8.1 USA

The FTC governs influencer marketing by endorsing rules.<sup>14</sup>

Core rules are:

Disclosure of material connection

No deceptive advertisement

Key Cases:

- *FTC v. Lord & Taylor LLC* (2016)<sup>15</sup>
- *FTC v. Warner Bros.* (2016)<sup>16</sup>
- *FTC v. Teami LLC* (2020)<sup>17</sup>

The US employs a disclosure system where the emphasis is on being transparent rather than restricting the kinds of posts that influencers can share.

### 8.2 China

China follows a stricter regulatory model<sup>18</sup> emphasizing:

- Content verification
- Mandatory qualifications for influencers in specialized fields
- Strong platform accountability

This reflects a **state-controlled approach prioritizing substantive authenticity** over mere disclosure.

### 8.3 India's Hybrid Model

India combines<sup>19</sup>:

- Statutory regulation (CPA)
- Administrative enforcement (CCPA)
- Self-regulation (ASCI)

---

<sup>14</sup> Federal Trade Commission, *Endorsement Guides: What People Are Asking* (FTC, 2023) <https://www.ftc.gov>

<sup>15</sup> *Federal Trade Commission v Lord & Taylor LLC*, *FTC Docket No C-4576* (2016) <https://www.ftc.gov/legal-library/browse/cases-proceedings/152-3181-c4576-lord-taylor-llc-matter>

<sup>16</sup> *Federal Trade Commission v Warner Bros Home Entertainment Inc*, *FTC Docket No C-4582* (2016) <https://www.ftc.gov/system/files/documents/cases/160711warnerbroso.pdf>

<sup>17</sup> *Federal Trade Commission v Teami LLC*, *FTC File No 182 3174* (2020) <https://www.ftc.gov/legal-library/browse/cases-proceedings/182-3174-teami-llc>

<sup>18</sup> Angela Huyue Zhang, *Chinese Antitrust Exceptionalism* (Oxford University Press 2021) 221.

<sup>19</sup> Aparna Viswanathan, 'Regulating Influencer Advertising in India' (2023) 15(2) *NUJS Law Review* 97.

Nevertheless, enforcement issues have made India's model less effective than that in the US and China. For instance, even though the CCPA imposed sanctions against some influencers in 2023 for not disclosing their sponsored posts, compliance levels are low. As stated in the ASCI Annual Report,<sup>20</sup> more than 40 percent of the influencer marketing campaigns found to be in violation of the rules in 2022 did not have the required disclosure icons. Many of the cases had to be sorted out after extended communications with the authorities. There is also little record of any legal action against repeat offenders.

## **9. LEGAL CONCERNS INVOLVED**

### **9.1 Non-disclosure of Sponsored Posts**

The failure to disclose endorsement causes consumers to be misled.<sup>21</sup>

### **9.2 Misrepresentation**

Misleading statements on the effectiveness of beauty products could cause false advertisement issues.

### **9.3 Influencer Liability**

Influencers must exercise due diligence,<sup>22</sup> and influencers need to check and verify claims before they endorse products. Strong intermediary liability frameworks remain a major gap.

## **10. RECOMMENDATIONS**

1. Strengthening enforcement under the CPA
2. Mandatory legal awareness programs for influencers
3. Platform-level disclosure mechanisms
4. Standardized disclosure formats
5. Higher fines for infractions

---

<sup>20</sup> Advertising Standards Council of India, *Annual Complaints Report 2022–23* (ASCI 2023) 18.

<sup>21</sup> OECD, *Transparency in Online Advertising* (OECD Digital Economy Papers No 290, 2020) 14.

<sup>22</sup> ASCI, *Guidelines for Influencer Advertising in Digital Media* (2021), cl 1.4.

## **11. CONCLUSION**

The conflict between authenticity and commercialism is thus a fundamental issue associated with influencer marketing. Notwithstanding the aforementioned progress, no legal framework has been enacted in India that could help solve such issues. It is therefore necessary for the law to impose stricter measures aimed at protecting the interests of the consumer as well as promoting genuine advocacy on social media platforms.

Such measures can be adopted in the following ways in India. Firstly, the enforcement of the CPA can be improved by creating special regulation teams for monitoring influencer marketing activities, as well as by simplifying the mechanism for reporting suspicious advertisements. Secondly, the regulatory bodies together with other industries may cooperate in order to create mandatory training programs about the laws relevant for influencers. Such courses may become compulsory for influencers' access to digital platforms or involvement in the campaigns. Thirdly, the platform itself should require the influencers to add a disclaimer before publishing any posts. Fourthly, performing evaluations and adjustments based on feedback from the stakeholders and international practices would guarantee that the regulations stay in line with the dynamics of influencer marketing.

Following this advice, the country of India will be able to gain transparency in its influencer market.

Authenticity should not just be a moral expectation.<sup>23</sup> It needs to become a clear legal requirement to protect consumers in the beauty and personal care industry. Action is needed now to prevent lasting damage to the sector's credibility.

---

<sup>23</sup> Shubham Kulshreshtha, 'Consumer Protection and Influencer Accountability in India' (2024) 9(1) *Indian Journal of Law and Technology* 61.