



September 26, 2022

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, NW  
Suite CC-5610 (Annex B)  
Washington, DC 20580

**RE: Request for Comment on Endorsement Guides; P204500**

The Interactive Advertising Bureau (“IAB”) welcomes this opportunity to respond to the Federal Trade Commission’s (“FTC” or “Commission”) request for public comment on its proposed revisions to the Guides Concerning the Use of Endorsements and Testimonials in Advertising (“Guides” or “Endorsement Guides”). The IAB, along with its member companies, works to help ensure that businesses can employ effective advertisements, including through endorsements and testimonials, while also providing necessary disclosures to consumers. We support the Commission’s efforts to provide consumers with appropriate disclosures in the context of endorsements and testimonials. However, as explained in our comments, we encourage the FTC to reevaluate proposed revisions to the Guides that may significantly shift market practices and make it more challenging for consumers to benefit from endorsement-related advertising.

Founded in 1996 and headquartered in New York City, the IAB ([www.iab.com](http://www.iab.com)) represents over 700 leading media companies, brand marketers, agencies, and technology companies that are responsible for selling, delivering, and optimizing digital advertising and marketing campaigns. Together, our members account for 86 percent of online advertising expenditures in the United States. Working with our member companies, the IAB develops both technical standards and best practices for our industry. In addition, the IAB fields critical consumer and market research on interactive advertising, while also educating brands, agencies, and the wider business community on the importance of digital marketing. The organization is committed to professional development and elevating the knowledge, skills, expertise, and diversity of the workforce across the digital advertising and marketing industry. Through the work of our public policy office in Washington, D.C., IAB advocates for our members and promotes the value of the interactive advertising industry to legislators and policymakers.

To date, the Guides have played an important role in illustrating ways businesses can engage in endorsement and testimonial advertising in compliance with the FTC Act. We appreciate the FTC’s efforts to update the Guides to provide further clarification to businesses, including additional examples that relate to relatively newer advertising mediums. As technology changes and consumers interact more frequently with online endorsements, the IAB is committed to working with policymakers, regulators, and enforcers to ensure that consumers continue to have access to transparent, truthful advertising while enabling an environment that is conducive to continued innovation.

## **I. Digital Advertising Through Influencer Endorsements Provides Significant Value to the Consumers, Businesses, and the Economy.**

For decades, digital advertising has created incredible value for consumers and businesses, fueling the growth of the Internet by providing innovative means for businesses and consumers to engage with one another. In doing so, digital advertising has stimulated national economic growth, allowing businesses to reach new audiences and enabling consumers to access new and relevant products. While digital advertising has long connected consumers and businesses, social media advertising in particular has become a dominant form of digital advertising since the Guides were last updated, with social media advertising now being the second largest market in digital advertising.<sup>1</sup> Use of social media advertising has significantly benefited the U.S. economy, with brands reporting that social media advertising was the biggest driver of success to navigating market disruptions during the COVID-19 pandemic.<sup>2</sup>

In part, use of influencers and content creators in social media advertising allowed businesses both small and large to withstand substantial market disruptions. IAB's Brand Disruption Survey 2022 found that eight-in-ten U.S. brands are now working with influencers and content creators, and nearly half of them entered these partnerships for the first time following the start of the COVID-19 pandemic.<sup>3</sup> Further, as Chair Lina Khan's comments accompanying this request for comment noted, the global influencer marketing industry has experienced massive growth in recent years, with more than 75% of brand marketers intending to dedicate a budget to influencer marketing in 2022.<sup>4</sup>

Influencer marketing is vital to businesses seeking to access and engage with new audiences. As a result, consumers gain access to content that is relevant to their preferences and discover new products and brands. In a 2019 study, 61% of surveyed consumers said that they interact with an influencer at least once a day.<sup>5</sup> This level of engagement has a clear impact, with 73% of consumers stating that they have purchased from a brand or tried a service mentioned by

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<sup>1</sup> STATISTA, *Digital Advertising Report 2021 - Social Media Advertising* (Dec. 2021), <https://www.statista.com/study/36294/digital-advertising-report-social-media-advertising/>.

<sup>2</sup> INTERACTIVE ADVERTISING BUREAU, *Brand Disruption 2022: The IAB Annual Report on the Evolving Consumer Ecosystem* (Nov. 8, 2021), [https://www.iab.com/wp-content/uploads/2021/11/Brand-Disruption-2022\\_The-IAB-Annual-Report-on-the-Evolving-Consumer-Ecosystem-FULL-REPORT-1.pdf](https://www.iab.com/wp-content/uploads/2021/11/Brand-Disruption-2022_The-IAB-Annual-Report-on-the-Evolving-Consumer-Ecosystem-FULL-REPORT-1.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> Sydney Bradley, *Instagram Wins Social Commerce But YouTube Is a Consumer Favorite: 5 Key Takeaways From a New Influencer-Marketing Survey*, BUSINESS INSIDER (June 29, 2022), <https://www.businessinsider.com/data-survey-influencer-marketing-spending-dollars-youtube-instagram-shopping-2022-6>.

<sup>5</sup> RAKUTEN MARKETING, *2019 Influencer Marketing Global Survey of Consumers* (Mar. 2019), <https://www.iab.com/wp-content/uploads/2019/03/Rakuten-2019-Influencer-Marketing-Report-Rakuten-Marketing.pdf>.

an influencer.<sup>6</sup> Surveys also reflect that consumers appreciate influencer marketing, with 71% of consumers trusting advertising, opinions, and product placements from influencers.<sup>7</sup>

Understanding the significant role that digital advertising—and influencer marketing through social media, in particular—has in both the economy at large and consumers’ lives, we encourage the Commission to ensure that the Guides are adaptive to innovative forms of advertising, consumer preferences, and technological advances. With flexible guidance, digital advertising can continue to flourish and connect businesses and consumers for years to come.

## **II. The Guides Should Support Digital Advertising.**

IAB appreciates the Commission’s interest in providing guidance regarding endorsement and testimonial advertising, and IAB welcomes updates to the Guides that provide clear and flexible guidance. However, we urge the Commission to reconsider two proposed updates to the Guides, as explained below, to better support consumer access to information provided via digital advertising. First, we believe that the proposed “unavoidable” standard for disclosures provided online is both unnecessary and unclear. Second, the proposed Guides appear to create confusion around the use of platform developed transparency tools, even though such tools have historically provided consumers with reliable means of identifying advertisements and have been preferred by advertisers.

### *A. Disclosures Made Online Should Not Be Held to Unclear Standards.*

IAB supports transparent, truthful advertising. The Commission, however, has proposed a new definition for “clear and conspicuous” that would impose unclear requirements for advertisements delivered via interactive electronic medium, including the Internet. Specifically, as currently drafted, the proposed Guides would necessitate that disclosures made through “any communication using an interactive electronic medium, such as social media or the [I]nternet” be “unavoidable” in order to be “clear and conspicuous.” Based on the proposed Guides, the unavoidability standard would appear to create “notice gates”—in effect requiring consumers to confront disclosures before accessing the underlying content—across the digital medium.

The mere fact that an advertisement is delivered online does not necessitate such a “notice gate.” Today’s consumers are adept Internet users, with 85% of Americans reporting daily Internet use.<sup>8</sup> Further, consumers are keenly aware of sponsored content online, with 73% of surveyed social media users reporting in 2019 that they could distinguish paid content from genuine content

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<sup>6</sup> COMMUNICATE, *Results of the 2019 Social Media Influencers’ Survey* (Nov. 24, 2019), [https://www.communicateonline.me/wp-content/uploads/2019/11/Infographics\\_English.jpg](https://www.communicateonline.me/wp-content/uploads/2019/11/Infographics_English.jpg).

<sup>7</sup> NIELSEN, *Getting Closer: Influencers Help Brands Build More Personal Consumer Connections* (May 2022), <https://www.nielsen.com/insights/2022/getting-closer-influencers-help-brands-build-more-personal-consumer-connections/>.

<sup>8</sup> Andrew Perrin and Sara Atske, *About Three-In-Ten U.S. Adults Say They Are ‘Almost Constantly’ Online*, PEW RESEARCH CENTER (Mar. 26, 2021), <https://www.pewresearch.org/fact-tank/2021/03/26/about-three-in-ten-u-s-adults-say-they-are-almost-constantly-online/>.

in influencer posts.<sup>9</sup> Given the significant increase in both social media use generally and influencer marketing since 2019, we anticipate that consumers in 2022 are even better positioned to identify endorsements online today. As such, we do not believe that an intrusive disclosure standard for advertisements delivered online is needed. Additionally, requiring notices to be “unavoidable” is unlikely to benefit consumers. Studies have shown that the use of “notice gates” required under European privacy laws do not provide meaningful disclosures to consumers,<sup>10</sup> even referring to cookie banners required by such laws as a “useless exercise.”<sup>11</sup> Consumers have likewise expressed that cookie banners are annoying and frustrating.<sup>12</sup> As a result, some European regulators are actively revisiting “notice gate” requirements.<sup>13</sup> To avoid imposing requirements that similarly do not meaningfully inform consumers and lead to consumer frustration, we encourage the Commission to remove the unavoidability standard from the final Guides.

Finally, it is not evident from the proposed Guides and examples provided therein when a disclosure would be “unavoidable.” To the extent the Commission includes the unavoidability standard in the final Guides, we recommend that the Commission illustrate the standard through clearer examples. Doing so will better enable industry to align practices with the Guides.

*B. Built-In Transparency Tools Provide Significant Benefits and Should Be Promoted.*

Recognizing the significant value that platform-provided transparency tools offer, the Commission should draft the Guides in a manner that encourages development of such tools. Platform-provided transparency tools, like built-in disclosure tools for endorsements delivered via social media, provide significant consumer benefits. For instance, platform-developed transparency tools have enabled advertisers, brands, and influencers to provide uniform disclosures more easily and in a format with which consumers are familiar. By way of these tools, consumers have a more consistent and reliable way to identify endorsements, which stands to reduce consumer harm. Further, these tools provide added benefits beyond providing clearer endorsement disclosures, such as better monitoring and reporting of automated or suspicious activity. In addition to providing consumer benefits, many brands and influencers prefer the ease of built-in disclosure tools over text disclosures, such as #ad, and have increased disclosure of material connections through such tools. Additionally, such tools allow for easier monitoring and tracking of compliance with the Guides. We therefore encourage the Commission to reconsider proposed

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<sup>9</sup> COMMUNICATE, *Results of the 2019 Social Media Influencers’ Survey* (Nov. 24, 2019), <https://communicateonline.me/category/industry-insights/post-details/results-of-the-2019-social-media-influencers-survey>.

<sup>10</sup> Oksana Kulyk et al., *Has the GDPR Hype Affected Users’ Reaction to Cookie Disclaimers?* 6 JOURNAL OF CYBERSECURITY 1, OXFORD UNIVERSITY PRESS (Dec. 24, 2020).

<sup>11</sup> Joe Nocera, *How Cookie Banners Backfired*, NEW YORK TIMES (Jan. 29, 2022), <https://www.nytimes.com/2022/01/29/business/dealbook/how-cookie-banners-backfired.html> (quoting Max Schrems).

<sup>12</sup> Christine Utz et al., *(Un)informed Consent: Studying GDPR Consent Notices in the Field*, p. 10, In Proceedings of the 2019 ACM SIGSAC Conference on Computer and Communications Security (Nov. 2019), <https://doi.org/10.1145/3319535.3354212>.

<sup>13</sup> E.g., Thomas Seal, *UK to Kill ‘Irritating’ Cookie Pop-Ups in Brexit Data Plan*, BLOOMBERG (June 16, 2022), <https://www.bloomberg.com/news/articles/2022-06-16/uk-to-kill-irritating-cookie-pop-ups-in-post-brexit-data-plan>.

revisions in Section 255.0(g)(9) to recognize the additive benefit these transparency tools provide and embrace the utility of these tools to facilitate compliance with the Guides.

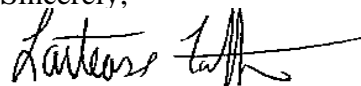
### **III. To Enhance Flexibility, The Guides Should Recognize the Role of Industry Self-Regulation.**

Finally, the Commission could better address emerging advertising practices by endorsing industry self-regulatory guides in the proposed Guides. Self-regulation is one means by which companies can be held accountable to consumers for their practices and ensure transparency in advertising, and the Commission has recognized the value of self-regulation in many contexts. When designed effectively, industry self-regulation can allow companies to respond easily to market and technology-driven changes and supplement existing regulations by providing dynamic, clear rules to govern the behavior of companies. While we understand from the proposed Guides that the Commission will make FTC staff business guidance available on the FTC website on a more frequent basis, expressly endorsing industry self-regulation in the final Guides would better enable industry to benefit from up-to-date guidance in between such staff updates.

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IAB thanks the Commission for this opportunity to submit these comments and looks forward to working closely with the Commission on this important topic. Please do not hesitate to contact me at [lartease@iab.com](mailto:lartease@iab.com) with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lartease M. Tiffith", followed by a long, horizontal, slightly wavy line that extends to the right.

Lartease M. Tiffith, Esq.  
Executive Vice President for Public Policy  
Interactive Advertising Bureau