

Franchise Advertising and the Use of Influencers in Social Media

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Social Media Influencers

All the Rage!

All the Benefit!



ALL THE RISK?



Franchise Advertising with Influencers

1. Disclosure

- What is Required / Appropriate / What Does It Look Like?

2. Brand

- This is the Point, Right?

3. Crisis Management

- When it Doesn't Go to Plan

4. Success

- What Does This Look Like?

Who is an Influencer?

Types Of Social Media Influencers (By Follower Count)

Nano Influencer (1,000 to 10,000)

With a modest following, nano influencers typically have more trusting relationships with followers and are great for hyper-targeted campaigns.

Micro Influencer (10,000 to 100,000)

Popular within a specific niche, micro influencers remain relatable and maintain high engagement rates with their target audience while getting more attention.

Macro Influencer (100,000 to 1,000,000 followers)

Macro influencers possess broad appeal, which can originally stem from a niche. Their large audience is established over a long time at the expense of lower engagement rates.

Celebrity Influencer (1,000,000+ followers)

These are well-known names in an industry with huge global audiences, making them great options for brand awareness campaigns but will likely cost a lot to work with.



<https://www.searchenginejournal.com/top-social-media-influencers/475776/>

Disclosure

- **Disclosure**

- What is Required
 - What Rules/Law Apply?
 - FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising
 - The FTC Rule on the Use of Consumer Reviews and Testimonials
- The Devil is in the Details



Key Disclosure Requirements To Remember

1. Endorsements must reflect the **honest** opinions, findings, beliefs, or experience of **the endorser**.
2. An advertiser may use an endorsement of an influencer, expert, or celebrity only so long as it has **good reason to believe** that the endorser **continues to subscribe** to the views presented.
3. An advertiser may satisfy this obligation by **securing the endorser's views at reasonable intervals** where reasonableness will be determined by such factors as new information about the performance or effectiveness of the product.
4. The endorser must have been a **bona fide user** of the product at the time the endorsement was made.
5. **“Material”** connections **must be disclosed** when a significant minority of the audience for an endorsement does not understand or expect the connection. Complete details of the connection are not required, but the endorsement must clearly communicate the nature of the connection sufficiently **for consumers to evaluate its significance**.

How to Disclose?

- When influencers/endorsers have a material connection to the advertiser, they must disclose the connection **clearly and conspicuously**.
- “Clear and conspicuous” is defined as a disclosure that is “difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers” and **unavoidable!**
- A disclosure **must stand out** from surrounding text or audio by its color, font, size, location, duration, speed, and/or cadence, depending on the context, and should appear in the same medium as the triggering claim.
- The disclosure must also **not contradict** the net consumer takeaway. Commonly used disclosures that don’t contain the brand or product name may be ambiguous, since they may not properly identify the sponsoring advertiser. While #ad or #sponsored may still be effective in certain contexts, the FTC advises that “**Sponsored by [BRAND]**” or “**Promotion by [BRAND]**” would be clearer.
- The FTC warns advertisers not to assume that a social media platform’s disclosure tools alone will produce a disclosure that is unavoidable.

Disclosure

- **Disclosure Discussion**
 - Franchisor Perspective
 - Franchisee Perspective



**Franchisor
Says ...**

**... Franchisee
Hears**

Disclosure

- **Disclosures - What Can Go Wrong?**



Disclosures Gone Wrong



<https://www.sec.gov/newsroom/press-releases/2022-183>

"Ms. Kardashian's case also serves as a reminder to celebrities and others that the law requires them to disclose to the public when and how much they are paid to promote investing in securities," Chair Gensler added.

- In June 2021, Kim Kardashian posted a story promoting Ethereum Max, a **new cryptocurrency** token, which contained a link to the Ethereum Max website, which featured instructions about how to buy the token.
- "Are you guys into crypto? This is **not financial advice** but sharing with **what my friends told** me about Ethereum Max token."
- Ethereum **paid her \$250,000 to promote the new token.**
- Kardashian labeled her story as an "ad," but that did not satisfy **the SEC's anti-touting laws**, which required that she disclose the nature, source, and amount of compensation she received – directly or indirectly – in exchange for the promotion.

Pop v. Lulifama.com LLC, (M.D. Fla. July 20, 2023)

- Influencers allegedly **failed to disclose material connections**, for example failing to include any hashtags when advertising the brand.
- **Court dismissed the Florida UDAP** claims because plaintiff did not allege with particularity that he was induced by any misleading statements by any Defendant.
 - In other words, Plaintiff failed to allege “whether [he] viewed [the alleged misrepresentations] at all before purchasing the allegedly defective products.”
 - The court also dismissed the Florida UDAP claim because he failed to explain how the Defendants’ alleged failure to disclose an advertising relationship led to him receiving a Luli Fama product that he perceived to be inferior.
- **Ruling was on a motion to dismiss.** Plaintiff unsuccessfully appealed the decision.

Sava v. 21st Century Spirits, LLC (N.D. Ill. June 25, 2024)

- **Class action lawsuit** alleging social media influencers misrepresented vodka brand products as “handcrafted,” “fit-friendly,” and offering health benefits.
 - Plaintiffs also alleged that the influencers failed to disclose material connections to the brand.
- Claims were brought under the **FTC Act, and California, Florida, and Illinois UDAP laws**.
- The Court rejected Defendants’ arguments that there were no misrepresentations as a matter of law, as these are factual determinations.
- The Court ruled that while FTC guide violations are not per se state law violations, the influencers still should have disclosed their paid relationships under state UDAP laws, giving significant weight to the FTC guidance.
- **Ruling was on a motion to dismiss**, granted in part and denied in part. The case was voluntarily dismissed.

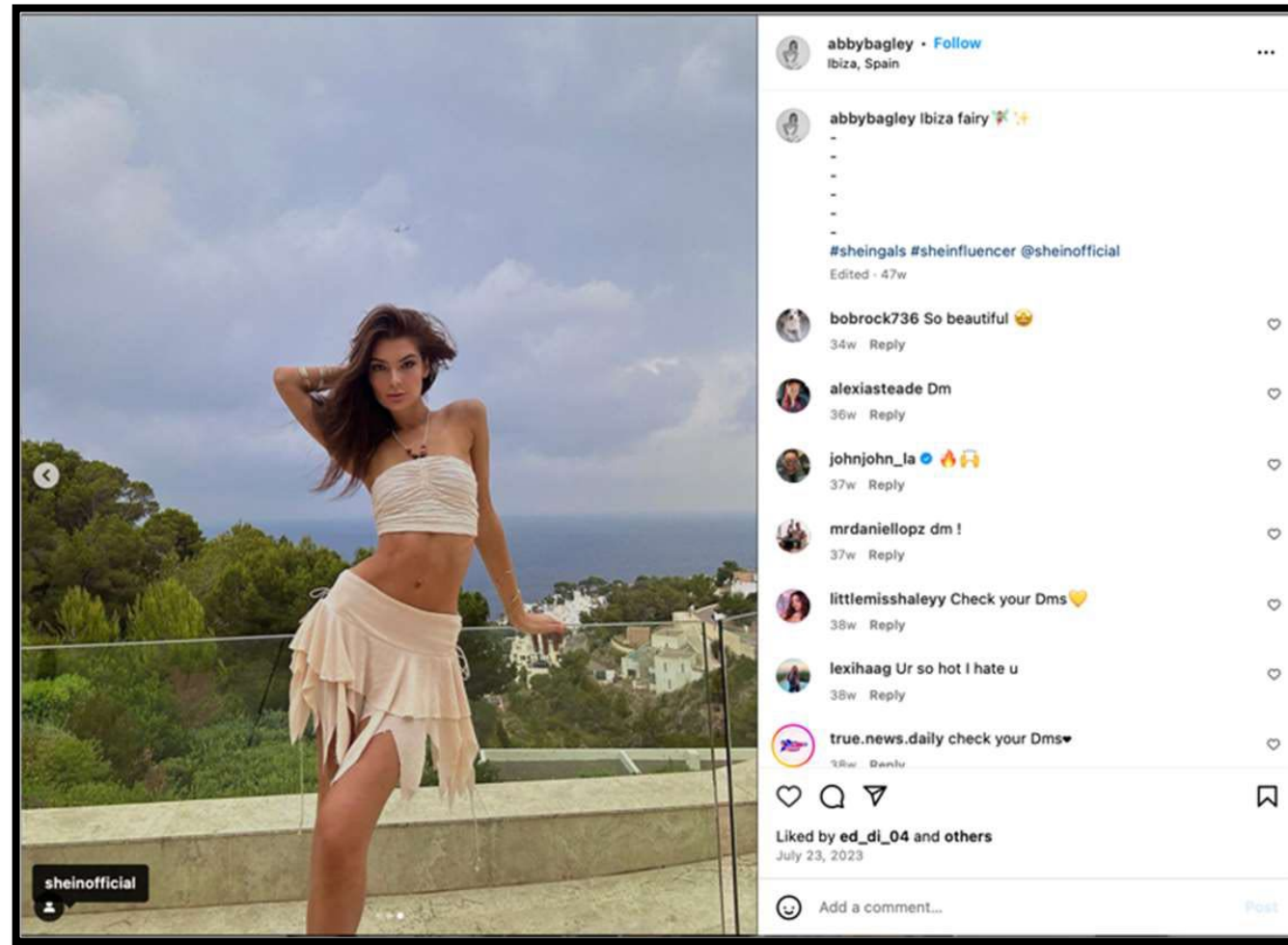
Recent Influencer Disclosure Class Actions

- *Dubreu v. SHEIN* (N.D. Ill. Jan. 2025); *Bengoechea v. Celsius* (C.D. Cal. Feb. 2025)
- **Nationwide class actions** brought against both the company and the involved influencers.
- Both complaints alleged that when posting on social media, the influencers **failed to disclose** their material connections to the partner companies and that consumers were unable to discern whether the posts were part of a paid partnership.
 - “Some of the Influencers provide a buried small disclosure so it would be almost impossible for a social media user to discern the fact that the post was sponsored, including a long hashtag in a list of hashtags that only appear if the reader decides to press the ‘More’ button.”
- Plaintiffs complained that “**but for the false endorsements** by the Influencers and the misleading advertising claims, Plaintiff and the Class Members **would not have purchased** [the] products at the price they purchased it for.”
- The complaints cited extensively to **the FTC Endorsement Guides**, which plaintiffs relied on to support their claims of violations of the FTC Act, state consumer protection laws, and state common laws (unjust enrichment, negligent misrepresentation).

Bengoechea v. Celsius (C.D. Cal. Feb. 2025)



Dubreu v. SHEIN (N.D. Ill. Jan. 2025)



Disclosures Gone Wrong

[Bloomberg the Company & Its Products](#) | [Bloomberg Terminal Demo Request](#) | [Bloomberg Anywhere Remote Login](#) | [Bloomberg Customer Support](#)


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June 26, 2024, 12:34 PM CDT

Blue Ice Vodka, Influencers Can't Shed Consumers' Deception Suit

 **Shweta Watwe**
Reporter

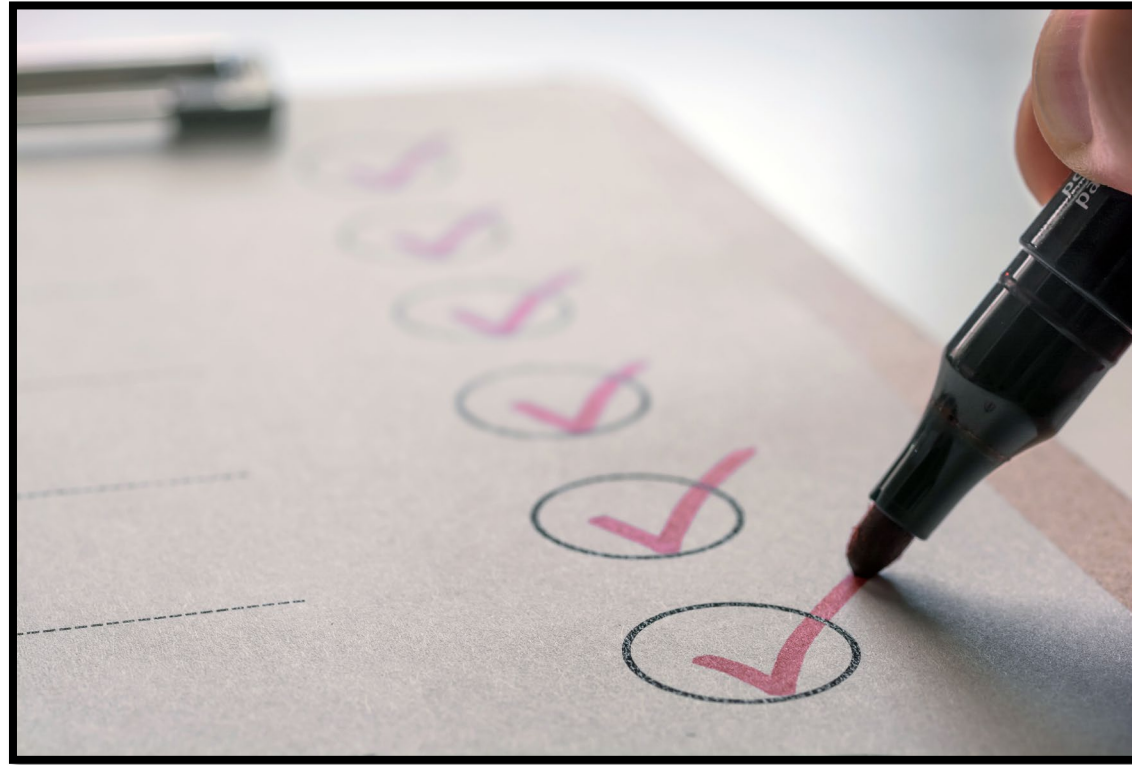
- Claims over 'handcrafted,' healthfulness can proceed
- Influencers' social media posts more than mere brand mentions

The maker of Blue Ice Vodka, 21st Century Spirits LLC, and several social media influencers failed to convince a federal judge to dismiss a proposed consumer class action alleging they made several misleading health and fitness claims to market the vodka.

<https://news.bloomberglaw.com/litigation/blue-ice-vodka-influencers-cant-shed-consumers-deception-suit>

Disclosures Done Well

- **Disclosure - What Does It Look Like When it is Done Well?**



Best Practices for Managing Social Media Influencers

- Provide your influencer with **brand messaging** and guidelines:
 - **Do:** Stick to your **personal experience** with the product and use claims the brand has approved. Be honest and use qualifiers.
 - **Don't:** Make **extreme** or absolute claims.
 - **Do:** Use the **proper disclosures**, so it's clear there is a paid partnership.
 - **Don't:** **Exaggerate** results or share statistics that haven't been verified.
- Create a **social media influencer training program**.
 - **Don't assume** every influencer knows the rules.
 - **Explain why the rules matter** (ex: "We don't want to mislead our customers or face implications with regulators").
 - Sometimes giving the **context will help** influencers understand the seriousness.
- Standard **contract terms**.
 - Ensure you have a **strong influencer agreement**. Any contract with an influencer or their agent should include clauses that protect your brand from false claims.

The Brand

- **What Is The Brand**

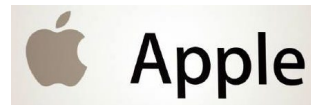
- Trademarks
- Vision/Mission
- Priorities
- Content
- Advertising



The Brand

- The Brand Owner Controls

- Standards
- Images
- Slogans
- Sounds
- Colors



L'ORÉAL
PARIS

"Because You're Worth It"

Etsy



"Just Do It"



1878 Tiffany Blue Box® notes the grand prize win at the Paris World's Fair. © Tiffany & Co. Courtesy of the Tiffany & Co. Archives.

Tiffany Pantone 1837

The Brand

- The Brand
 - Franchisor Perspective
 - Franchisee Perspective

Snap-on.



BELLA
BRIDESMAIDS



The Brand

- **The Brand**

- The Influencer wants to say things in their own words (and are legally required to do so)
- What Could Go Wrong?



Crisis Management

- **When it Doesn't Go To Plan**

- Beyond the Brand
- Examples
- Franchisor Perspective
- Franchisee Perspective

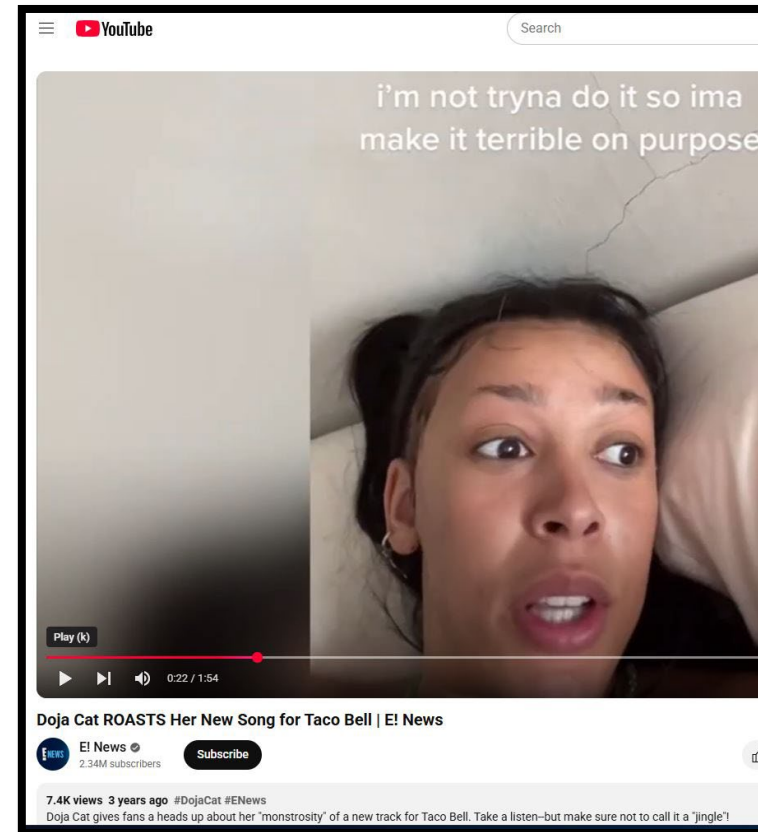


Potential Responses to a Crisis

- **Do Nothing/Apologize**
 - **Silence** may prove to be the brand's greatest asset as the public grows bored with the lack of response and moves on.
 - A well-crafted **apology** can help mend any reputational damage to the influencer and brand and show contrition and accountability.
 - But brands should be mindful that an apology could be challenged as an **admission of guilt** and could create optics issues in any future challenge or reputational battle.
- **Adversarial**
 - Demand letter.
 - Litigation.
 - Shows that brand takes its reputation seriously and is willing to defend itself.
 - But may draw more attention and prolong the situation
- **Back Channel**
 - Directly communicate with influencer or their representative.
 - Come to an agreed-upon response.
 - Influencer and brand may have conflicting motivations and end goals.

...or flip the script!

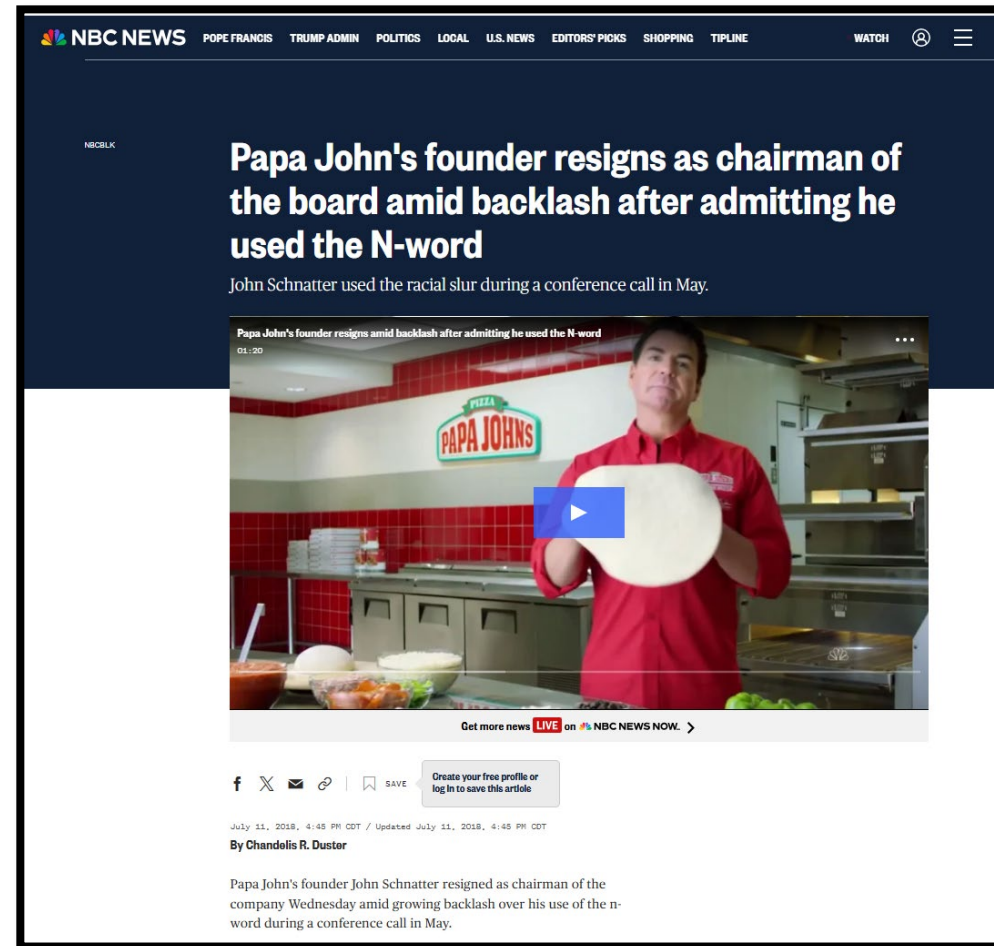
“Doja Cat has fans laughing...as she confessed that she was about to drop a ‘terrible’ jingle as part of an advert for Taco Bell”



https://www.youtube.com/watch?v=m_CPeWmWQzc

Crisis Management

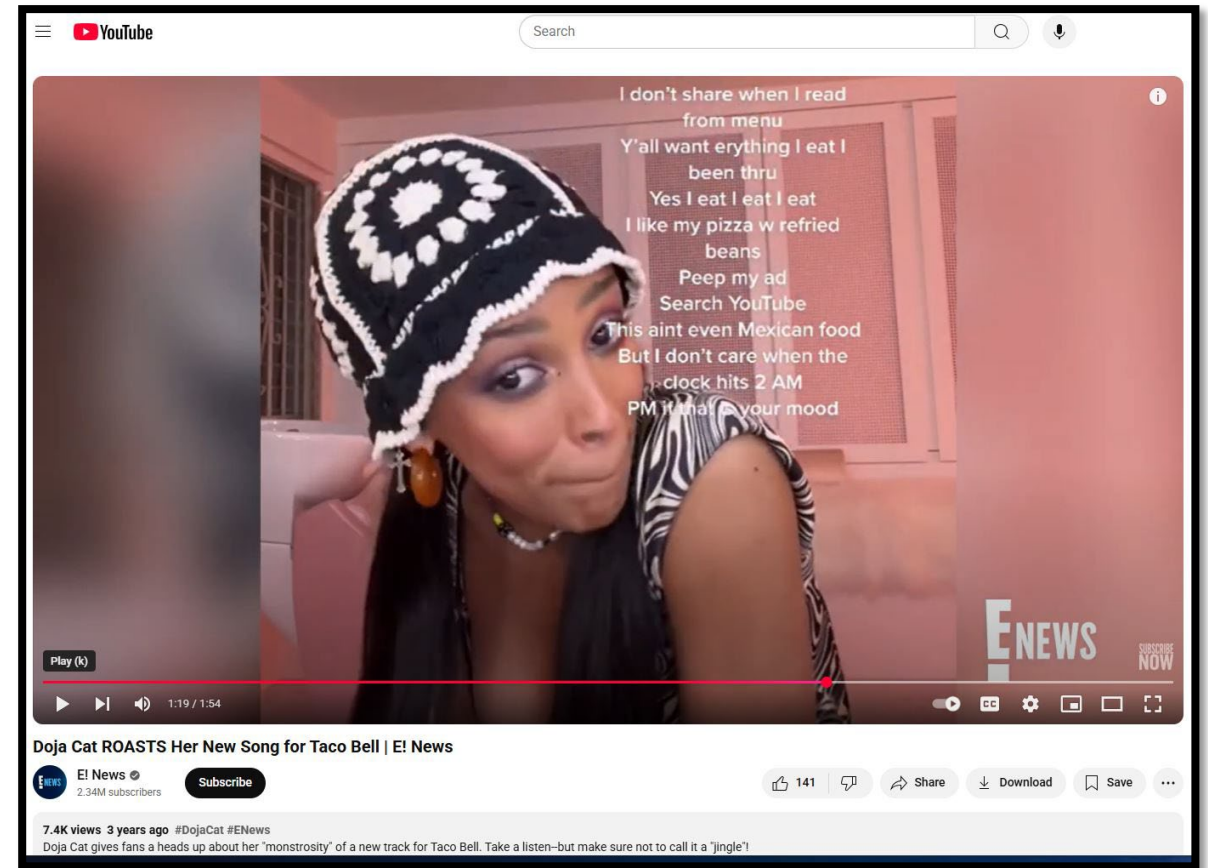
- Poll: what would you do?
 1. Do nothing.
 2. Apologize.
 3. Adversarial.
 4. Back Chanel.



<https://www.nbcnews.com/news/nbcblk/papa-john-s-founder-apologizes-using-n-word-conference-call-n890681>

Crisis Management

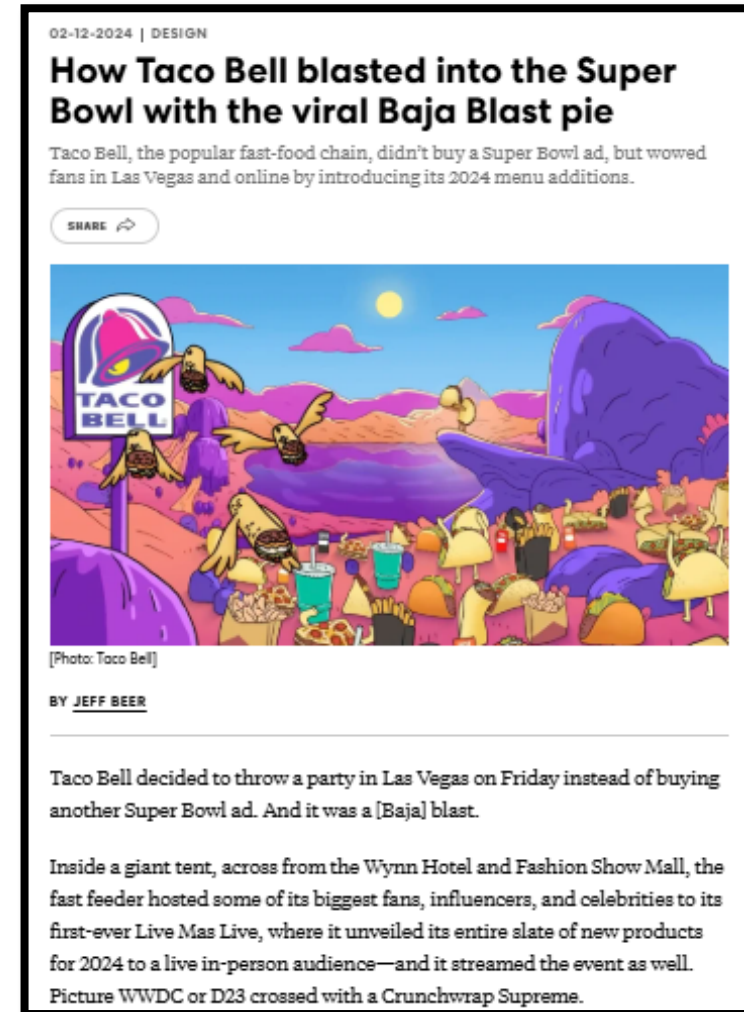
- **Poll: what would you do?**
 1. Do nothing.
 2. Apologize.
 3. Adversarial.
 4. Back Chanel.



https://www.youtube.com/watch?v=m_CPeWmWQzc

Successful Engagement

- **When it Does Go Well!**
 - Compliance
 - Examples
 - Franchisor Perspective
 - Franchisee Perspective



<https://www.fastcompany.com/91026515/how-taco-bell-blasted-into-the-super-bowl-with-the-viral-baja-blast-pie>

Successful Engagement



The video shows a Travis Scott action figure standing on a red McDonald's tray. The tray contains a large burger, a box of fries, and a cup of soda. The background is a blurred McDonald's restaurant interior.

The One Club for Creativity
October 14, 2021 · 🌐

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It started with a simple insight "No matter how big or famous you are, everyone has a McDonald's order". And then Travis Scott's infamous photo/music promo with him eating McDonald's on the wing of his Bugatti came into the picture. So, McDonald's teamed up with Travis Scott and the creative team at Wieden+Kennedy to create Travis' signature meal, leveraging his distinct sound, iconography, action figure and creating limited-edition keepsakes for fans.

The partnership earned them a Silver Pencil at The One Show 2021 awards. Find out how to enter this year's awards here: <https://bit.ly/3ihs1B5>

[See less](#)

Be the first to leave a comment.

Successful Engagement



McDonald's and Iconic Global Artist Travis Scott Embark on an Unprecedented Collaborative Partnership Across Food, Fashion and Community Efforts, Launching with his Signature Order on Menus Across the U.S.

September 03, 2020

<https://corporate.mcdonalds.com/corpmcd/our-stories/article/travis-scott-embark.html>

Successful Engagement



<https://www.yahoo.com/entertainment/doja-cat-ad-taco-bell-182800242.html>

Best Practices for Managing Social Practices Media Influencers

- **Discuss corrective action plans:** If an influencer does post a misleading claim, **have a plan**. For example, you might ask them to edit the caption, rephrase the claim, or post a corrective follow-up.
- **Follow Influencer Content:** An obvious but important step – someone on your team should be following all of the influencers on every platform they're active on. **Check each sponsored post** when it goes live.
- **Have a checklist:**
 - Did they use the disclosure?
 - Did they stick to the approved claims?
 - Is anything phrased in a potentially misleading way?



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