

*Abstract of YouTube Marketing: Legality of Sponsorship and Endorsements in Advertising*

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YouTube marketing, sometimes referred to as native advertising, is a form of marketing where advertisements are seamlessly incorporated into the video content unlike traditional commercials. This paper categorizes YouTube endorsement marketing into three forms: (1) direct sponsorship where the content creator partners with the sponsor to create videos, (2) affiliated links where the content creator gets a commission resulting from purchases attributable to the content creator, and (3) free product sampling where products are sent to content creators for free to be featured in a video.

Examples in each of the three forms of YouTube marketing can be observed across virtually all genres of video, such as beauty/fashion, gaming, culinary, and comedy. There are four major stakeholder interests at play—the YouTube content creators, viewers, YouTube, and the companies—and a close examination upon the interplay of these interests supports this paper's argument that YouTube marketing is trending and effective but urgently needs transparency. The effectiveness of YouTube marketing is demonstrated through a hypothetical example in the paper involving a cosmetics company providing free product sampling for a YouTube content creator. Calculations in the hypothetical example show impressive return on investment for such marketing maneuver.

Companies and YouTube content creators are subject to disclosure requirements under Federal law if the content is an endorsement as defined by the Federal Trade Commission ("FTC"). This paper applies the FTC Guide to the YouTube context and identifies disclosure practices that may be problematic under the FTC guidelines. Pervasive issues with disclosure on YouTube include inconsistency as to how content creators disclose as well as the lack of conspicuousness for disclosures buried in description boxes. This paper proposes that there is an urgent need to increase transparency for YouTube endorsement marketing and that YouTube should promote a uniform standard of disclosure. Contrary to the argument that disclosures would undermine the effectiveness of marketing, this paper argues that proper disclosure will not only foster viewers' trust in content creators but will also promote consumer goodwill.