ADVERTISEMENT & MARKETING – INFLUENCER POSTS

The necessary disclosure of the commercial nature of influencer posts

On June 14, 2017, INSTAGRAM application introduced a new tool enabling influencers to identify their content as being part of a paid partnership, thanks to the tag "paid partner with… ".

This novelty follows numerous controls carried out by the Federal Trade Commission (FTC) in the United-States at the beginning of the year, to the finding that 90% of the top 50 American influencers on INSTAGRAM did not respect itsEndorsement Guidelines (source Mediakix).

In France, the DGCCRF has also multiplied its controls of influencer posts, and in particular of certain "YouTubers", on the basis of unfair commercial practices (article L.121-1 of the French Consumer Code) and article 20 of the "Loi de confiance dans l'économie numérique" which imposes to identify all online advertisements as such and to make sure that the advertiser can be clearly identified.

The French Advertisement Authority (Autorité de Régulation Professionnelle de la Publicité - ARPP) has also taken up this issue by completing, last April, the annex to its recommendation relating to "digital advertising communication" with specific guidelines dedicated to "influencers and brand communications".

The ARPP distinguishes between influencers posting in the frame of a collaboration with a brand, who must inform the consumers of the existence of this collaboration, and those posting in the frame of real partnerships organizing the conditions of creation and publishing of a promotional content by the influencer, under the control and after the approval of the brand, in return for a financial or material retribution. In this second case, particular care should be exercised as the ARPP qualifies such posts as « advertisements » with all the consequences this entails, and in particular the application of all of the ethical rules of the ARPP and, without doubt, of the legal provisions regulating commercial communications.