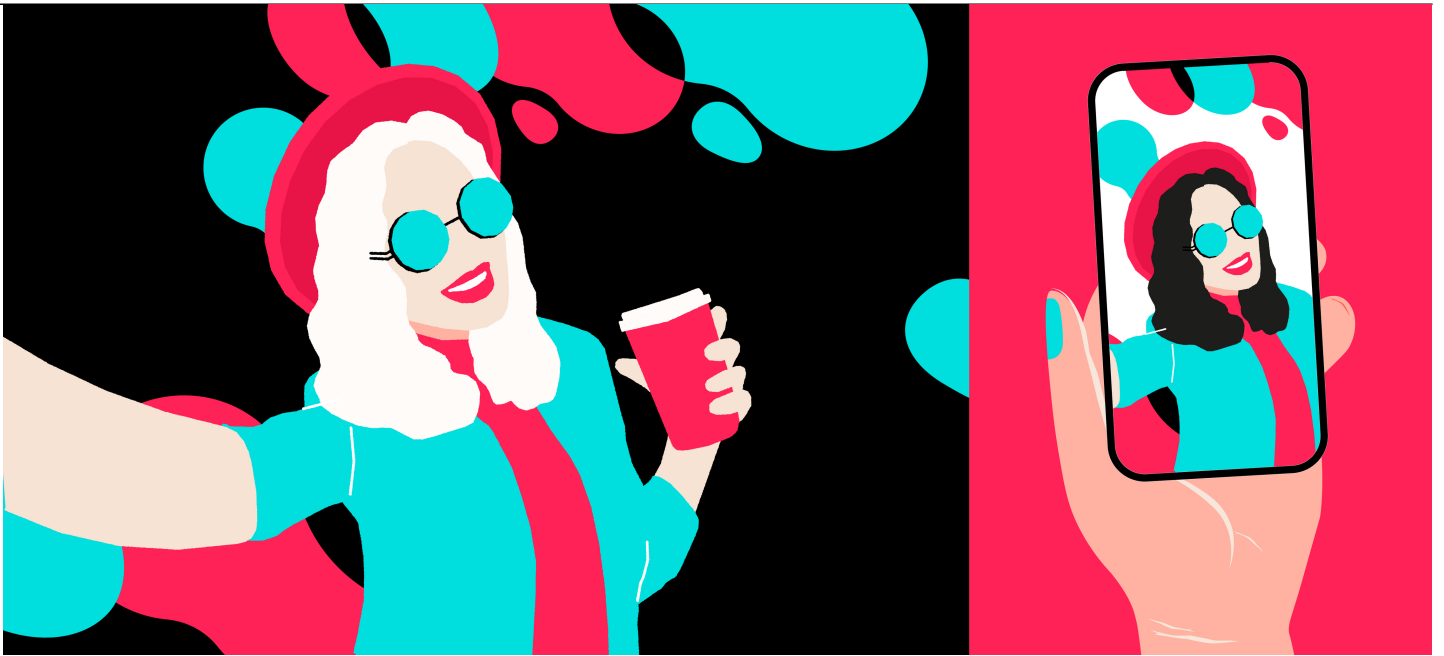




## **Contracts Corner: 4 Key Aspects for Social Media Influencer Agreements**

**Commercial and Contracts**



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*In this first installment of her **Contracts Corner** column, Billie Munro Audia taps her 20 years of corporate lawyering to offer advice and actionable tips to help you navigate the increasingly complex world of commercial contracts.*



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Social media influencers endorse and promote products on their platforms to affect the buying habits of their followers. In its decision in *Jianming Jyu v. Ruhn Holdings Ltd.*, the New York Supreme Court asserted that “social media influencer” is now recognized as a profession, described as “individuals who create content on social media platforms such as Facebook, YouTube, TikTok, and Instagram with the hope of gathering a large public following [and] who are paid to promote, market, and advertise products and services to their fans and followers.” If your company hires influencers, you should consider including the following key aspects in your company’s influencer agreements.

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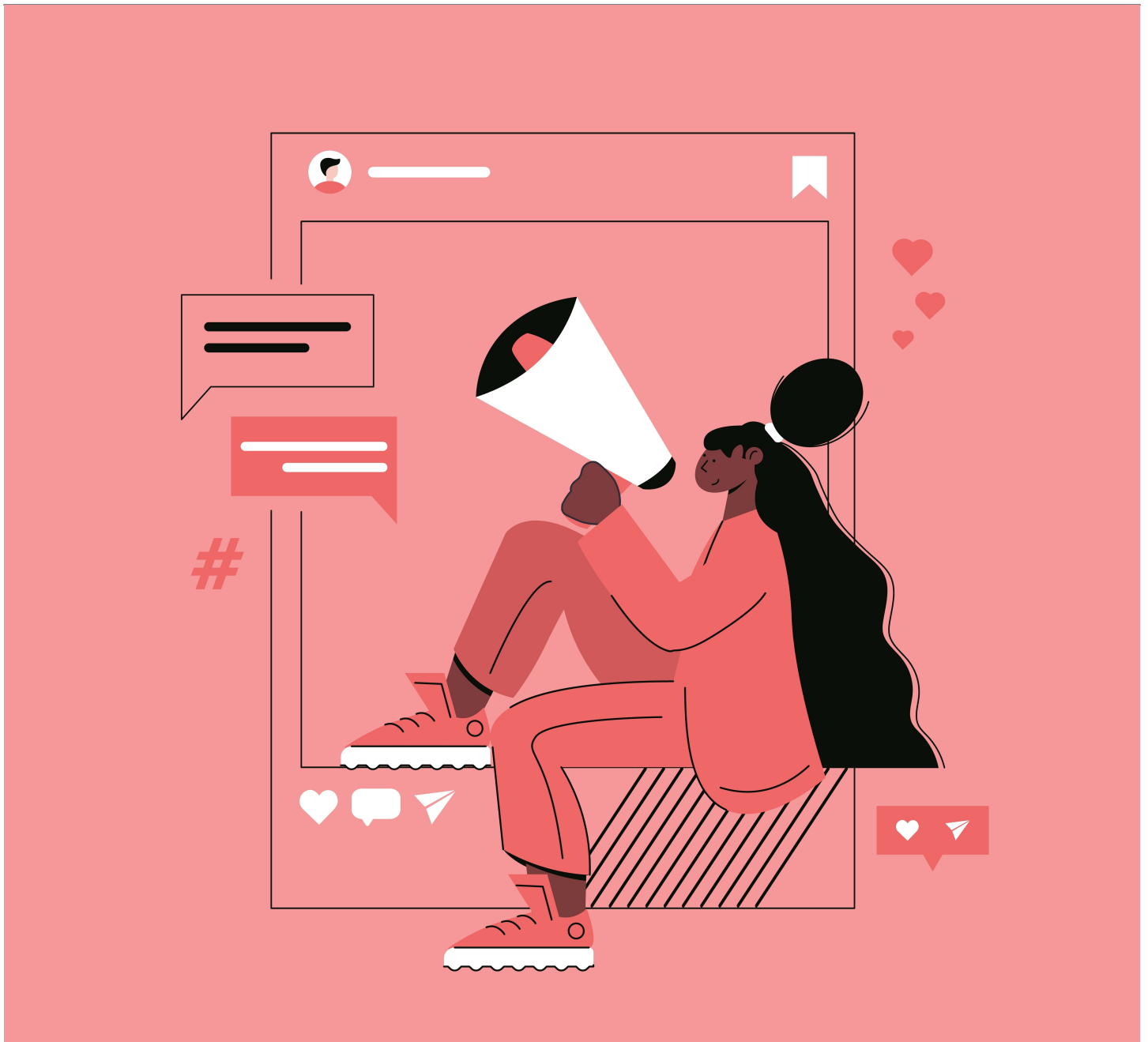
New York Supreme Court in *Jianming Jyu v. Ruhn Holdings Ltd.*

## 1. Promotional services

Influencer agreements set out the terms and conditions under which influencers provide promotional services. As in any services agreement, the promotional services and deliverables should be specified, ideally with performance metrics. For example, the services section in the influencer agreement should specify:

- Products the influencer will be endorsing;
- The frequency of the posts (e.g., 4x/weekly during product launch period);
- Social media channels on which the posts will appear;
- How the product (and possibly its packaging) will be showcased and displayed in the posts;
- Hashtags to be included in the post;
- Whether the influencer's image, likeness, and name will appear in the posts; and
- Reporting metrics (e.g., target audience analysis extracts).

If the promotional activities include live streaming, the company may want to provide talking points to ensure the influencer mentions, for example, key attributes of the product using appropriate branding terminology and displays marketing collateral. If the influencer's services will include their attendance at events, like product launch parties or galas, the company should ensure their cooperation with pre-promotion media training, which may be at the company's expense. If a company wants the influencer to promote the product on all their social media platforms and channels simultaneously, the contract should name the platforms, list the date(s), and require the influencer to adhere to the company's branding guidelines to ensure consistency across platforms.



Influencer partnerships are an increasingly popular method for companies to market themselves. Artwork by OlyaOK / Shutterstock.com

Some companies may prefer their influencers to engage with a range of quality products (not only their products) to convey a more authentic, reviewer-style approach. If, however, the company prefers that the influencer only promote their brand or products, then counsel is advised to include an exclusivity provision that does not adversely impact the influencer's status as an independent contractor vis-à-vis the company. If a company plans to hire many influencers or establish an influencers program, then developing a policy may be advisable (*see side bar below*) with a contract provision that requires the influencer to read and comply with that policy's terms, which may be updated from time to time. Given the significant role some influencers play, the company likely will want to prohibit influencers from assigning their responsibilities or obligations to another person, entity, or AI application.

## 2. Compliance requirements

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Services agreements generally require the service provider to comply with all applicable laws; influencer agreements are no exception. In addition, an influencer agreement should require the influencer to comply with Federal Trade Commission (FTC) regulations and guidelines concerning disclosure responsibilities. Specifically, the influencer must disclose their relationship with the brand they are endorsing and keep their recommendations “honest and truthful.” Companies may want to include the link to the FTC’s disclosure guidelines in the influencer contract and require that the influencer confirm they have read them and will comply. In addition, there must be compliance with any influencer regulations imposed in countries where the influencer has followers; advertising regulators in other countries may impose certain [additional “fair advertising” rules](#).

### **3. Intellectual property rights and repost rights**

The influencer agreement should address intellectual property rights, specifically the rights that the influencer has regarding use of the company’s intellectual property in posts and the rights the company has regarding ownership of materials that the influencer creates or develops while performing the endorsement services, which should include all rights of attribution, paternity, integrity, and modification. The influencer’s right to use the company trademarks, logos, and brand names should be strictly limited to promotional purposes directly related to the social media endorsements and in accordance with the company’s trademark usage guidelines. The guidelines should include visual examples of how the trademark must be displayed, including specific colors, fonts, logos, and placement of the trademark registration notice symbol. The company should also have the right to repost, in any format, on any platform or channel, the influencer’s posts that endorse the company’s brands and products.

The influencer's right to use the company trademarks, logos, and brand names should be strictly limited to promotional purposes directly related to the social media endorsements and in accordance with the company's trademark usage guidelines.

In addition, the agreement should include the influencer’s acknowledgement that their posted content and image/likeness may be shared, re-posted, and disseminated by the company, viewers, followers, consumers, and other third parties without notice or additional compensation to the influencer. Specifically, the agreement should include the influencer’s approval of viral dissemination of their posts while absolving the company of any liability concerning such re-posting of their endorsements. The influencer should grant to the company the right to use his image, name, likeness, photograph, and the like in company advertising, reposts, and marketing collateral as the company sees fit.

### **4. Takedown and termination**

The company should have the right to request and enforce an immediate takedown of any of the influencer’s posts that the company — in its sole discretion — considers to be offensive, damaging to the brand, not aligning with company policies, not complying with applicable laws and guidelines, advocating illicit activities, inciting violence, or endorsing a political viewpoint. Furthermore, the company should have a right to terminate the agreement for any or no reason. Upon termination, the company should have the right to enforce a takedown of any of the influencer’s posts that were made while the agreement was in effect, and all rights granted to the influencer concerning the use or display of the company’s brand, products, name, hashtags should immediately cease.



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**Standard provisions:**

Services agreements should include standard contractual provisions such as dispute resolution, payment terms, confidentiality, notice requirements, reps and warranties, and indemnification and governing law.



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**A company-wide influencer endorsement policy should include:**

1. Requirement that all posts be “socially responsible” (e.g., lawful, with no offensive language)
2. Specific requirements for disclosures for each platform (e.g., “When posting on Instagram, disclose your material connection before the ‘More’ button). At the same time, do not rely solely on a platform’s disclosure tools. Instead, create your own statements on “disclosure hashtags” and other elements.
3. Statement of the company’s right to take down any of the influencer’s posts that it considers offensive, tarnishes the brand, etc., noting that this requires that company have a contractual right and technological capability to do so.



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4. Expectation that compensation disclosures will be prominent, simple, and clear, like “Thanks to Beats for the free wireless headphones,” and if the endorsement is in a livestream, the disclosure will be repeated periodically so viewers who only watch part of the stream hear it.
  5. Influencer’s acknowledgement of responsibility to know and comply with FTC regulations.
  6. Examples of the company’s trademarks, logos, and names with specific reference to font, colors, placement of the trademark registration notice, etc.

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[Need a contract template? Click here for a Promotional Services sample contract from ACC's Resource Library.](#)

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## **The aegis of an influencer agreement**

The New York State Supreme Court case between PR Consulting, Inc. and Luka Sabbat illustrates the importance of detailing the influencer’s specific obligations in the agreement — even if the requirements for their content creation and social media posting seem easy and simple.

Briefly, PR Consulting and Sabbat entered into an influencer agreement in 2018 under which Sabbat was to create and post certain content on social media in connection with a spectacles marketing campaign on behalf of PR Consulting’s client, Snap, Inc. Specifically, Sabbat was supposed to make four social media posts on Instagram from NYC and Milan fashion shows that would feature him wearing Snap-branded spectacles. [According to the complaint](#), he was to submit each post to PR Consulting, for their prior review, and provide post-related analytics (e.g., reach, comments, likes, views) to PR Consulting within 24 hours of the post. Sabbat was paid US\$60,000 upfront. Sabbat only made two posts, failed to include specified swipe-up links, did not submit them to PR Consulting prior to posting, and did not provide the analytics. PR Consulting sued him for breach of contract and unjust enrichment and demanded that he return US\$45,000.

The parties settled out of court, and he agreed to return a portion of the payment. Had Snap, Inc. — via PR Consulting — not had an influencer agreement that detailed specific obligations regarding Sabbat’s social media posts, they would not have had such a solid legal case to bring to court after he failed to meet his content and posting commitments.

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[Amy Keroes](#)



## General Counsel

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Amy Keroes is General Counsel for Serena & Lily, Inc., a design driven home furnishings brand. Amy is an experienced general counsel with deep roots in the retail and digital media industries.

Throughout her career, Amy has focused on intellectual property litigation and advisory work as well as marketing and entertainment related agreements, including agency, production, talent, music licensing, sponsorship &

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influencer agreements.

Amy serves on the Board of Directors for the UCLA Law Women LEAD Network and the Mill Valley Film Festival.

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*Docket.* She is a partner with Outside GC, the provider of choice for on-demand general counsel services, and she leads the firm's Retail, Marketing & Media Practice. Billie has 20+ years of commercial legal experience in the retail, media, and technology sectors, including 7 years in London as European General Counsel for two Silicon Valley technology companies and 4 years in San Francisco as the Director of Commercial Transactions for Gap, Inc. At the beginning of her career, she was an associate with Covington & Burling.