KENDALL JENNER PAYS $90,000 TO SETTLE BANKRUPTCY CLAIM OVER FYRE FESTIVAL POST

Influencers and celebrity endorsers have a duty to disclose their material connections with the brands they tout on social media. Failure to do so could result in an enforcement action by the Federal Trade Commission (FTC). See another recent example of these issues in a previous alert.

Recent developments in the highly publicized bankruptcy of the ill-fated Fyre Festival serve as a reminder that, in the worst case scenarios, influencers and endorsers can also be forced to return fees received for their social media services.

THE BOTTOM LINE

Kendall Jenner agreed to pay $90,000 to settle claims in a bankruptcy proceeding arising out of her now-deleted Instagram post that promoted the ill-fated Fyre Festival. This settlement is a potent reminder of the breadth of risks that influencers and celebrities may face when failing to disclose the material connections between themselves and the brands they endorse on social media.

THE FYRE FESTIVAL

The now-infamous Fyre Festival, the brainchild of Billy McFarland and rapper Ja Rule, was billed as a luxury music festival that would take place on a private Bahamas island during the spring of 2017. Tickets were sold for up to $100,000, and promotional material for the Festival promised a star lineup of top artists, bands and talent.

However, when attendees arrived at the event, they quickly realized that the festival could not deliver on what had been promised, because all of the artists had pulled out, and the event had to be cancelled, making headlines around the world. In 2019, a bankruptcy trustee brought several lawsuits attempting to recover funds for Fyre Festival creditors who lost money in the event.

KENDALL JENNER'S POST

According to the complaint filed in the bankruptcy proceeding, Kendall Jenner was paid at least $275,000 to make a single Instagram post as part of the Fyre Festival's social media strategy. Jenner was one of several models and influencers who posted about the then-upcoming Fyre Festival on their personal social media handles to hype up the event, without disclosing the payments they received to make such posts.

The complaint alleged that Jenner successfully promoted that the festival would be populated with models and beautiful people and that fans would be missing out if they did not attend it. In addition, Jenner's post "announce[d] my G.O.O.D. Music Family as the first headliners" for the festival, implying that her brother-in-law Kanye West was slated to perform at the event.

However, Jenner's post did not disclose that Jenner was paid by Fyre LLC to promote the festival, such as by including #ad.

THE SETTLEMENT

Gregory Messer, who serves as Fyre LLC's Chapter 7 trustee, claimed that the payments to Jenner were fraudulent and avoidable under the Bankruptcy Code and New York bankruptcy law, and therefore Jenner's company, Kendall Jenner Inc., should be required to repay those amounts as part of the discharge of Fyre LLC's outstanding debts.

The trustee alleged that because Kanye West was never scheduled to perform, Jenner's post therefore was made as part of a wider scheme to defraud investors and dupe customers by insinuating that the festival would

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be more successful than it could ever be in reality.

Accordingly, such amounts should not be retained by Jenner but instead should be redistributed to the festival's defrauded investors.

As part of the settlement, Kendall Jenner agreed to pay $90,000 in exchange for waiving any other claims against her company.

DISCLOSURE REQUIREMENTS

The settlement should remind celebrities and influencers that their liability is not limited to FTC action. Individuals (and their loan-out companies) need to be mindful that they are not exempt from the legal liability that exists for corporate entities when entering into paid relationships with partners, customers, suppliers and clients.In this case, Jenner was forced to return the fee because the fee was paid as part of an allegedly fraudulent scheme by an unscrupulous business partner.

The trustee's complaint against Jenner also relied heavily on FTC disclosure obligations to make its case. The trustee pointed to the lack of disclosure of the material financial connection between Jenner and the festival to support its position that the social media campaign promoting the festival generally was not above board and had the intention of misleading customers.

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