LEGAL KITTY™ CHEAT SHEET

#Ad: FTC Disclosure Rules

When a post is an ad, and how to say so where people will see it.

KEY PRINCIPLES

1 **Disclose any unexpected material connection.**
Payment, free or discounted products (even unrelated ones), family or business ties, whether or not the brand asked for a post (16 C.F.R. §255.5).

2 **"Clear and conspicuous" means hard to miss.**
"Difficult to miss" and "easily understandable" (§255.0(f)). Online, "unavoidable." Not behind "more," not buried in hashtags.

3 **Influencers can be liable too.**
Endorsers may be liable for statements they make, like falsely claiming they used a product (§255.1(e)). Brands are liable as well.

4 **Tags count, and so can posts from abroad.**
FTC staff: tags and likes can be endorsements, and U.S. law applies if it's "reasonably foreseeable" a post will affect U.S. consumers.

KEY EXAMPLES

Real FTC actions, from ftc.gov

Lord & Taylor
FTC, 2016

50 influencers got a free dress and $1,000–$4,000 to post it. None disclosed. 11.4 million users reached.

FOR YOU **The brand's contract should require disclosure.**

CSGO Lotto
FTC, 2017

The FTC's first case against individual influencers: two YouTubers promoted a site they owned without saying so.

FOR YOU **Owning the brand is a connection too.**

Teami
FTC, 2020

Paid celebrity posts disclosed only after "more." A $15.2M judgment, suspended on payment of $1M; ten influencers warned.

FOR YOU **Put the disclosure up front, in the post.**

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KEY CLAUSES

Red flag, green flag

Push back on the red. Ask for the green.

	RED FLAG · PUSH BACK	GREEN FLAG · ASK FOR
DISCLOSURE	“Keep it organic,” no #ad	Clear disclosure required in every post
PLACEMENT	Behind “more” or in a hashtag pile	Up front, and inside the video
CLAIMS	Scripted health or results claims	Only claims the brand can substantiate
OPINION	Nothing negative allowed	Your honest opinion and experience
USE	“Say you use it daily”	Only experiences you actually had
EDITS	Brand can cut your disclosure	Required disclosures can’t be removed

Built from 16 C.F.R. Part 255 and FTC staff guidance. Sources: see the source map. Teaching examples, not forms.

GO DEEPER

UNRECOGNIZABLE, the free guide to usage rights in brand deals.
Free at legalkitty.com/guides

Related guide: DM **UNRECOGNIZABLE**

This sheet: DM **SPONSORED**

Don’t sign it till you read it.

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