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### Stay at Home Marketing: Influencers in a Marketplace Grappling with COVID-19

In the wake of widespread quarantines, shelter-in-place, or stay-at-home orders, influencer marketing may seem well positioned to continue to circulate brand messages. Influencers can create branded content in the safety of their own homes and can post without the need for in-person meetings or shoots. In fact, the Surgeon General recognized the impact of influencer marketing by asking Kylie Jenner and other influencers to tell their fans to stay home. (Jenner then took to Instagram to provide a reminder of the importance of social distancing.)

Nonetheless, the quick pace of influencer marketing calendars and the inability for brands to directly control some influencer pieces mean that sometimes influencer messages may be untimely or inappropriate under the circumstances. Brand managers should closely review their contracts with influencers to determine whether posts can be delayed in light of current coronavirus concerns, or can be pre-approved by the brand to confirm that they are appropriately sensitive.

In addition to PR concerns regarding whether it's appropriate to post about a brand's wares in the current climate, decision makers also need to ensure that the influencers working on their behalf aren't making unsubstantiated claims. The FTC and FDA have already jointly issued warning letters to sellers of unapproved and misbranded products that claimed they could treat

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or prevent the coronavirus. In earlier, unrelated actions, the FTC and FDA have also previously warned businesses that companies are ultimately responsible for keeping their influencers' posts compliant with applicable laws. Thus, companies should work to ensure that the influencers they work with understand the importance of substantiating any claims they make about the company's products. In particular, influencers may need to be warned not to go "off-script" to indicate that the product has abilities beyond what the company can back up, especially as it relates to coronavirus.

If you have any questions regarding influencer marketing or your intellectual property portfolio, please do not hesitate to contact Kate Nye or your Neal Gerber Eisenberg attorney.

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