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# GNOSIS

*Victoriam Legalis - Advocates & Solicitors | Newsletter*



## *In this Month's Issue:*

<b>Media &amp; Entertainment</b>	<b>1</b>
<b>Technology &amp; E-Commerce</b>	<b>2</b>
<b>Fashion &amp; Sports Law</b>	<b>3</b>
<b>Corporate &amp; Commercial Law</b>	<b>5</b>
Hospitality & Real Estate	6
Litigation & Dispute Resolution	7
Start-Up, Advisory & Consultancy	9
Social Media Influencers these days!	10
<b>Get in Touch</b>	<b>13</b>

We here, at Victoriam Legalis, believe in continuous learning and growth, and agree that one way to do the same is to keep up with the developments and changes taking place around us.

We live in an Information Age, and while there is no dearth of knowledge and information, we, through this newsletter, hope to give you a consolidated account of relevant updates and developments.

In light of the same, we present to you the first issue of our newsletter, which we hope, you find beneficial!

Happy Reading!



# Media and Entertainment

## 1. **Bhaktivedanta Book Trust India v. friendwithbooks.co: Delhi HC grants ex parte injunction in favour of the Plaintiff in copyright infringement suit**

In the case of *The Bhaktivedanta Book Trust India v. www.friendwithbook.co*, the Defendant was allegedly infringing the copyright in the Plaintiff's artworks and books through its website which unauthorisedly contained several books in electronic format for download and communication to the public. In view of this, the Hon'ble Delhi HC, granted an ex parte ad interim injunction in favour of the Plaintiff restraining the Defendant continuing the acts amounting to infringement of the Plaintiff's copyright.

*The Bhaktivedanta Book Trust India v. www.friendwithbook.co* CS (COMM) 88/2011

## 2. **Shemaroo Entertainment v. TV9 Media Maharashtra: Bombay HC grants temporary injunction restraining broadcasting and communication to the public of parts of the Plaintiff's films**

In the case of *Shemaroo Entertainment Ltd. v. TV9 Media Maharashtra Pvt. Ltd.*, wherein the Defendant was, allegedly, broadcasting or communicating to the public audio visual songs, clips or scenes contained in the Plaintiff's films on its TV channels or otherwise, Hon'ble Bombay High Court passed a temporary injunction in favour of the Plaintiff, restraining such broadcasting and communication to the public of parts of the Plaintiff's films.

*Shemaroo Entertainment Ltd. v. TV9 Media Maharashtra Pvt. Ltd.* COMM IP Suit No. 595/2017

## 3. **Himalayan Pink Salt: Pakistan to register for GI**

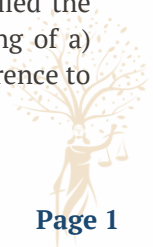
Extracted from the Salt Range in Punjab along the southern Potohar Plateau and the north of the Jhelum River, Himalayan pink salt is said to be rich in minerals. Reportedly, Pakistan's call to register Himalayan Pink Salt as Geographical Indication is aimed at preventing unauthorized use of the tag by other countries.

## 4. **Big Basket and Daily Basket in a spat over the use of 'Basket'**

The Bengaluru based startup namely Big Basket recently sent a cease and desist letter to another enterprise namely Daily Basket alleging unauthorized use of the term 'Basket' to be in violation of Big Basket's rights. On receipt of this notice, Daily Basket claiming to be a tiny online/offline grocery start up serving currently only in Coimbatore took the dispute online and went public through <https://bbisabully.com/> alleging that Big Basket is bullying it with its cease and desist letter.

## 5. **Govt. unveils new regulations governing social media platforms and OTT platforms**

The central government has released new set of regulations governing content on social media platforms and OTT platforms. Under Section 87 of the Information Technology Act, 2000, the government has unveiled the Information Technology Rules, 2021. The Govt. has, inter alia, mandated a three tier system consisting of a) grievance redressal officer b) a retired SC or HC judge and c) inter-ministerial committee, to ensure adherence to the rules and regulations.





# Technology and E-Commerce Updates

## 1. India's draft e-commerce policy calls for equal treatment of sellers

India will require e-commerce firms to treat sellers equally on their platforms and ensure transparency, according to a draft policy that follows criticism against business practices of big online companies. India has been deliberating a new e-commerce policy for months amid complaints from brick-and-mortar retailers who allege online giants like Amazon and Walmart's Flipkart flout federal regulations. The companies have denied the allegations.

## 2. Digital Media Regulation Sparks Fears of Curbs on Press Freedom in India

India's new oversight of digital news platforms is drawing protest from the media industry and activists who fear the rules will curb press freedom in the world's largest democracy. The rules impose a three-tier regulatory mechanism, requiring a grievance officer to resolve complaints and a government panel to have broad oversight. The most senior government official in the information and broadcasting ministry will also have emergency powers to order content be blocked.

## 3. Twitter explores 'undo send' feature for paying users

Twitter Inc is testing an "undo send" function that would give users a short time to withdraw a tweet before it is posted. The feature is being tested as part of the company's exploration of how subscriptions could work on the platform. Twitter would be testing and iterating possible paid-for features over time.

## 4. Myntra partners skin care brand Bath & Body Works to strengthen its beauty portfolio

Fashion Retailer Myntra has partnered American personal care brand Bath & Body Works to strengthen its beauty portfolio driven by the increasing demand for branded skin care across geographies. The Flipkart-owned fashion retailer, which earns two-thirds of its revenue from apparel, launched the personal care vertical about three years ago. According to Myntra, beauty and personal care category registered 80% year-on-year growth which accelerated during the pandemic. The online platform clocked 26% surge in demand, of which 30% came from tier 2 and 3 markets.





# Fashion & Sports Law Updates

## 1. Dior faces pushback in quest to register the design of its saddle bag as a trademark.

Dior's quest to register the shape of its enduringly popular Saddle Bag is facing more pushback. Louis Vuitton-owned brand's application for registration has been preliminary shut down for a second time by the trademark office because the bag design consists of a non-distinctive product design or non-distinctive features of a product design. US Patent and Trademark Office (USPTO) has stated that the product design is ineligible for registration on the USPTO's Principal Register without Dior showing that the bag design has "acquired distinctiveness, or in other words, without proof that as a result of Dior's extensive use and promotion of the bag design, consumers now directly associate the design with Dior.

## 2. EDUN and LVMH Moet Hennessy Louis Vuitton accused of racial discrimination

A \$2 million-plus lawsuit accusing EDUN and LVMH Moet Hennessy Louis Vuitton of racial discrimination and retaliation has landed before the U.S. District Court for the Southern District of New York. The case got its start early this year when former EDUN-Americas sales associate Indigo Brunton filed suit against the now-defunct Ali Hewson and Bono-founded fashion brand and its former minority stakeholder LVMH in a New York state court.

## 3. Dolce & Gabbana seeks over \$600M damages from 2 US bloggers

The Milan fashion house Dolce & Gabbana has filed a defamation suit in an Italian court seeking over \$600 million in damages from two U.S. fashion bloggers who reposted anti-Asian comments attributed to one of the designers that led to a boycott by Asian consumers.

## 4. ABFRL picks up 33.5% stake in Tarun Tahiliani brand to strengthen position in ethnic wear segment

Aditya Birla Style & Retail (ABFRL) has acquired 33.5% stake in Goodview Properties Non-public Restricted, the corporate based by designer Tarun Tahiliani, for Rs 67 crore. The all-cash deal is anticipated to be accomplished in 45-60 days, mentioned in an announcement. Beneath this partnership, ABFRL and Tahiliani may even type a brand-new entity that can launch up to date male ethnic wear.

## 5. Govt gives town of export excellence tag to Noida for apparel goods

The central government has given the tag of 'town of export excellence' to Noida for apparel products, a move that will help promotion of outbound shipments. The recognition entitles the common service providers in the area to avail the Export Promotion Capital Goods scheme, which in turn would enable them to provide advanced technologies and services to the 700 existing apparel industries in Noida.

## 6. Irony Inc. sets up India-based data partnership with Esports Charts

India-based esports agency Irony Inc. has announced a data partnership with Esports Charts. Irony will represent Esports Charts and Streams Charts in India. The data-driven partnership will help Esports Charts deliver analytics in India's rapidly developing esports market.



## **7. ICC Board Meet: BCCI opposes ICC's EOI policy for global meet**

The Indian cricket board has expressed its reservations about ICC's policy of inviting bidders (Expression of Interest) for hosting global tournaments during the next eight-year cycle between 2023-2031. During an ICC board meet, BCCI made it clear that they are completely against the idea of the global body issuing EOI and demanding money from any potential hosting nation.

## **8. Hockey Teams to get 50K allowance**

The core group players of both Indian men's and women's hockey will be entitled to a monthly allowance of Rs. 50,000 under the government's Target Olympic Podium scheme till the Tokyo Games in July-August this year.







# Corporate & Commercial Law Updates

## 1. SEBI extends CKYCR to legal entities

Market regulator SEBI has asked regulated entities to upload 'Know Your Customer' data pertaining to accounts of legal entities opened on or after April 1, onto the Central KYC Registry (CKYCR). Regulated entities have already been uploading the KYC data pertaining to all individual accounts opened on or after August 1, 2016, onto CKYCR.

## 2. SC: NCLT not to interfere with commercial wisdom of CoC

The Supreme Court has reiterated that the National Company Law Tribunal or the National Company Law Appellate Tribunal cannot interfere with the 'commercial wisdom' of the Committee of Creditors, except within the limited scope under section 30 and 31 of the Insolvency and Bankruptcy Code.

## 3. GST e-invoicing turnover limit reduced to fifty crores

The Government, on the recommendations of the Council, made amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) dated 21st March 2020. The amendment modifies the turnover limit from one hundred crore to fifty crore rupees effective from April 01, 2021.

## 4. Commercial Matters Involving Arbitration Disputes Can Only Be Heard by Commercial Court of Status of District Judge/Addl. District Judge: Madhya Pradesh

The Madhya Pradesh High Court has held that Commercial matters involving Arbitration disputes can only be heard by Commercial Court of the status of District Judge or Additional District Judge. It held that a Civil Judge would not be competent authority to entertain cases under Sections 9, 14, 34 & 36 of Arbitration & Conciliation Act, 1996.

## 5. NCLT applies certain sections of Companies Act 2013 to LLPs

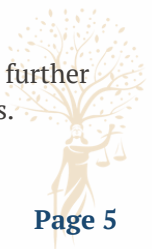
Ministry of corporate affairs has decided to extend certain sections of the Companies Act to the Limited Liability Partnerships to improve the compliance structure. A total of eight sections relating to register of significant beneficial owners, disqualifications of directors, conduct of inquiries and inspections and non-cognizable offences will soon be applicable to LLPs.

## 6. NCLAT: Need to introduce legal framework to give us supervisory jurisdiction over NCLTs

In the case of Surinder Kaur vs International Recreation and Amusement Ltd., The National Company Law Appellate Tribunal opined that there is a need to vest in it the power of superintendence and control over the National Company Law Tribunals.

## 7. SEBI issues guidelines for votes cast by Mutual Funds

The Securities Exchange Board of India has issued guidelines for votes cast by Mutual Funds in order to further improve transparency as well as to encourage Mutual Funds/AMCs to diligently exercise their voting rights.





## Hospitality & Real Estate

### **1. The PHD Chamber of Commerce and Industry and Travel XP collaborate to release film titled ‘Uttarakhand Travel Diary’**

Aimed at showcasing the beautiful unseen places of Uttarakhand, the film Uttarakhand Travel Diary seeks to promote tourism in the state. Made in Hindi, English, Tamil as well as Bengali, the film is speculated to have a positive impact on the influx of tourists in Uttarakhand which will lead to opening up of employment opportunities for travellers, taxi drivers and local youth of the state.

### **2. Zostel and Oyo making statements regarding the conclusion of arbitration proceedings against each other**

Zostel and Oyo have been in a legal spat for the around three years pursuant to Zostel’s accusation of breach of a binding agreement on part of OYO pursuant to merger talk between Zostel Hospitality and Oravel Stays. While Zostel claims that the arbitral award is a victory for Zostel in the said legal battle, Oyo claims that the Arbitration Tribunal has not granted any specific relief to Zostel in terms of receiving ownership. Nevertheless, as OYO contemplates evaluation of legal remedies for challenging the award in as much as the award seeks to allegedly treat a non-binding term as a binding document, an interesting and significant legal battle in the hospitality industry awaits further developments.

### **3. Taj Safaris to recommit to its collaboration with local communities to offer immersive experiences to travellers**

Aimed at providing and facilitating livelihoods for communities with historic ties to forests through a collaboration enabling, Taj Safaris plans to offer wildlife experiences to its guests at wildlife luxury lodges in several national parks in India and Nepal. Taj Safaris’ sustainable tourism model will allow travellers visiting such national parks to benefit from a deeper understanding of forest life through its program in which the travellers will be accompanied by a member of a nomadic hunting tribe or other local communities, whose knowledge of the land is said be immense and as ancient as time.

### **4. FHRAI request Government to nominate hospitality workers for priority vaccination**

FHRAI in its letter to the Home Minister and the Minister of Health and Family Welfare has requested the Government to recognize hospitality workers as “Frontline Corona Warriors” and has also requested the Government to nominate hospitality workers for priority vaccination.





# Litigation & Dispute Resolution

## **1. Amazon vs Future: Delhi High Court prima facie finds Emergency Award enforceable, orders status quo on FRL-Reliance deal**

The Delhi High Court in Amazon vs Reliance future Group has granted an interim injunction on the ₹25,000-crore deal between Future Retail Ltd (FRL) and Reliance Industries Ltd. Justice JR Midha further directed the Respondent FRL to file the affidavit placing on record action taken by the respondent FRL from October 25, 2020, along with the current status of those actions.

## **2. Delhi Riots Committee formed by Delhi Assembly to probe social media giants' omissions unconstitutional: Centre, Facebook tell Supreme Court**

In a plea before Supreme Court, Facebook India and Central Government submitted that Peace and Harmony Committee constituted by the Delhi Legislative Assembly to probe the Delhi riot is unconstitutional. Mr Mehta, Counsel appearing for Centre argued that the committee if not held unconstitutional, then other states shall also interfere with the matter not under their domain, under the grab of cooperative federalism.

## **3. Sushant Singh Rajput case: Bombay HC quashes FIR against Meetu Singh; no relief for Priyanka Singh**

In an application under section 482 of CrPC filed before Hon'ble Bombay High Court for quashing of FIR against Priyanka and Neetu Singh in connection with SSR murder case, the High Court has quashed FIR registered against Meetu Singh but no reliefs were granted for Priyanka Singh and further observed that there is prima facie case made out against Priyanka Singh by the Mumbai Police.

## **4. Jet Airways resolution process: MoCA, DGCA say no deemed approvals for slots**

Ministry of Civil Aviation and Directorate General of Civil Aviation has made submissions in an affidavit in reply stating that the Government and regulatory authority are hoping for the revival of the Airlines however there shall be no deemed approval of slots under the Civil Aviation Act 1932 & Aircraft Rules 1937 and the Resolution Applicant shall have to apply for slots afresh.

## **5. Budget 2021 proposes Setting up the Dispute Resolution Committee**

The 2021 Union budget has proposed setting up a dispute resolution committee to reduce the tax litigation pending before various Appellate tribunals. The provision is made available for taxpayer having a taxable income upto Rs. 50 lakh and disputed income up to Rs. 10 lakhs.

## **6. France launches the ratification process of the agreement for the termination of bilateral investment treaties between the EU Member States**

France is all set to terminate Intra European bilateral investment treaties as consequences of a landmark ruling in Achmea v Slovak Republic by the European Court observing that arbitration clauses contained in bilateral treaties are unconstitutional in lights of European Laws.





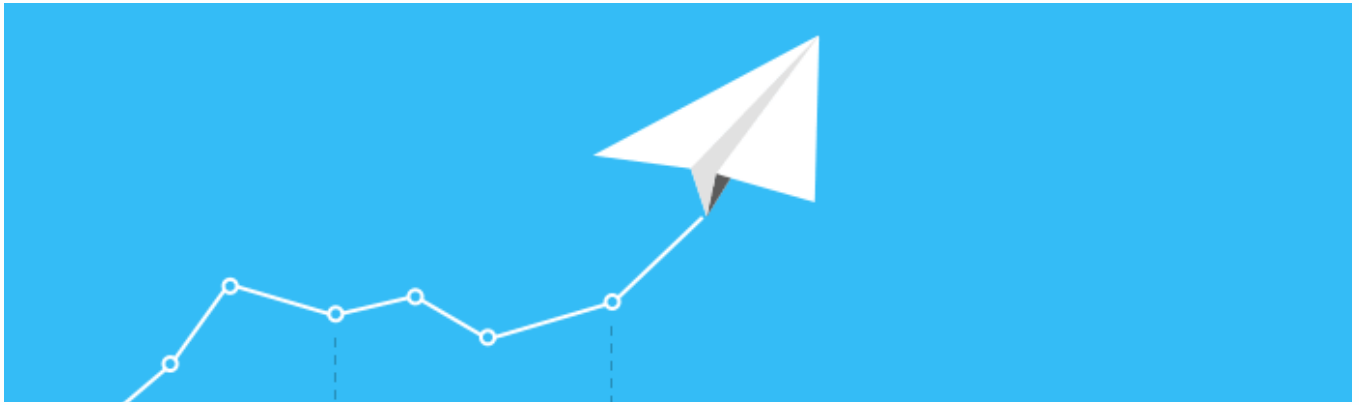
## **7. CAM-CCBC Arbitration Center established Emergency Arbitrator and Expedited Procedure**

The Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC), has passed a resolution no. 46/2020 on emergency arbitration and Resolution 46/2021 on the expedited procedure. As per procedure prescribed by said resolutions, the President CAM-CCBC shall assess the application made by parties and shall appoint an emergency arbitrator who shall present his statement of independence and availability. The parties opting for such a procedure will only have 2 days to challenge the appointment of an emergency arbitrator.

## **8. Is CAS arbitration clause improper under EU law? The General Court of the EU disagrees**

The General Court of the European Union in International Skating Union (“ISU”) and the European Commission (“EC”), observed that EC has no power to oblige ISU to change arbitration rules on the grounds that EU has limited power stipulated under guidelines for infringement of EC laws. The Court also opined that ISU arbitration eligibility rules do not exclude the jurisdiction of national courts in cases concerning claims for damages for breach of the EU competition laws.





## Start-Up, Advisory & Consultancy

### 1. Adar Poonawalla owned firm to buy controlling stake in non-bank lender Magma Fincorp

Adhar Ponnawal owned Rising Sun Holding infused stakes worth Rs 3,456 Crore in Magma Fintech Ltd, a non-banking financial lender. Rising Sun Holding shall nominate Addhar Ponnawala as the chairman of the board and Abhay Bhutada as managing director of the new entity.

### 2. Startup India: Modi govt's Rs 945-cr Seed Fund to back 3,600 entrepreneurs through this many incubators

The Government of India under the Startup India Seed Fund has announced a package of Rs 945 Crore which shall be disbursed over 5 years to early-stage startup. That the said seed fund shall be made available to support proof of concept, prototype development, product trials, market-entry, and commercialization. The said scheme is likely to implement on or after 21st April 2021.

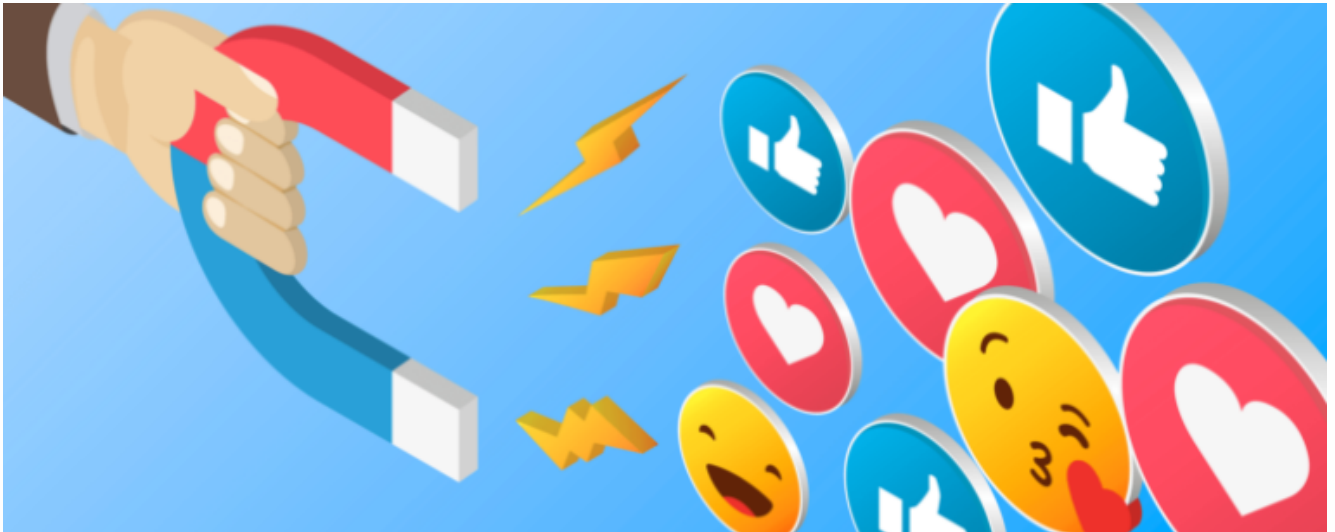
### 3. BharatPe close to become a unicorn after raising \$108 million from Coatue Management

Person to merchant payment fintech startup BharatPe has raised 108\$ million in series D round from Coatue Management with a total valuation of 900\$ million. The company has raised 268\$ million following the current round combined in equity and debt funding. The P2M fintech is planning to build a loan book of \$700 million with small merchants by March 2023

### 4. Startups get tax holiday for one more year in Budget 2021

Finance Minister Nirmala Sitaraman has extended the tax holiday for another year for startups under the Union budget 2021-22, providing much-needed relief to the startups post-pandemic. The existing provisions under the company Act 2013 shall stand amended and accordingly shall take effect from 1st of April 2021.





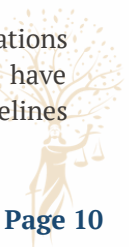
## Sponsored/Paid? - Social Media Influencers these days!

- Ananya Gupta

Social Media has boomed and how? People in 2020 in their free time had no other option but to resort to binge watch shows at various OTT platforms or scrolling through social media to escape from the Covid world. Social Media is now no more taken as a platform just for fun as it was in the initial days but is a source of providing information in fun and entertaining manner. How can any discussion regarding social media be complete without mentioning the Social Media Influencers? For the sake of clarity, influencers are the people who showcase their various creative works, and lifestyle and accordingly “influence people” to buy a certain product/service of a particular brand. Initially, it all started with just reviewing the product/services by a person as per his/her trial and accordingly share the outcome with public but now days these platforms and the content creators are a part of the marketing gimmicks taken up by brands. Brands have now moved on from traditional advertising to such influencer marketing and are adding onto digitalization in India.

Influencers simply share the content they create leaving the consumers in dilemma as to whether they have actually used the product/service. There hardly been any mechanism to keep a check at the works of the influencers. One at times cannot differentiate between sponsored posts and regular posts. There are certain influencers who consciously make sure that their follower/subscriber base is aware about the collaborations that they have taken up. But as I mentioned such efforts limit to “some” and majority of them do not even bother and in the end, it is the consumer who faces trouble because of the irregularity on part of some individuals who hold the power to influence people’s preference. Consumers more than the advertisements by brands are dependent on the reviews by the influencers and its been such an ultimate deal for both brands and influencers. Brands incur such low costs for marketing that has a massive reach and influencers are able to earn their living out of it. There isn’t any issue with such marketing and it is indeed a great way to make people aware of a brand but the catch here is that such great practice may turn into abuse and to stop that we need a mechanism in place, not to restrict the creativity of the influencers but to make people aware as to why a product/service has been specified, because the influencer enjoys using such product/service or has been paid by a brand for this creative collaboration, and ultimately promotion

Recently, the Advertising Standards Council of India (ASCI) has come up with guidelines for all the collaborations and sponsorships, the influencers indulge into. Now it has become a mandate to specify, for example we have seen paid partnership with xyz in a post, right under the username of the influencer on Instagram. The guidelines in brief are as follows:



- There are certain labels that have been approved by the ASCI that help the consumer to differentiate an editorial post from a user generated post, the labels are #ad, #collab, #sponsored, #partnership. Influencer must use the appropriate label from the list of the approved labels and disclose such creative collaboration.
- The label used in the text of the post must be within first two lines and must be prominent for the consumer to identify.
- The disclosure label must be in English or translated into a language of the advertisement for the consumer to understand the nature of the post while viewing the advertisement.
- Blanket disclosure such as posting about the advertisement in bio/about section that requires the consumer visit the other page is not adequate as the consumer might miss the disclosures.
- It is necessary to superimpose disclosures in case of a picture post or video post without any text and during live streams so that the same is clearly visible to the average consumer.
- In case of Audio-Media, the disclosure must be announced in the beginning and at the end of the audio.
- Filters should not be applied to the advertisement if they exaggerate the claims made by the product, for instance shinier hair, whiter teeth.
- The influencer must do due diligence about any technical or performance claims made such 2X better, effects last for month, fastest speed, better claim etc. Evidence of due diligence would include correspondence with the brand owner confirming that the specific claim made in the advertisement is capable of scientific substantiation.
- It is recommended that clauses such as usage of filters, specified disclosure labels are included in the contract between advertiser and influencer.
- Specific reckoner for various media platforms such as Facebook, Instagram, Snapchat, YouTube, Twitter etc. have been provided.

These were some of the basic guidelines issued by council but as we look at social media, the space is exploding with content creators and mere guidelines will not suffice to deal with the influencers issue. It is indeed great to see that initiative has been taken to regulate the digital space but there is a requirement for proper law so as to keep a check and in case of any violation of such law, action can be taken. But India, being this hub of some great influencers can learn from the United Arab Emirates on how to regulate the space. There are mere guidelines but there are countries with proper influencer laws and one of them being the United Arab Emirates.

### **What India can learn from UAE?**

The National Media Council in 2018 announced the Electronic Media Resolution, 2018. The guidelines under the said regulation defines E-media as media movement that is rehearsed through apparatus/tools methods for electronic distribution” which incorporates on online business, online publicists, and influencers. Unlike in India, an individual must obtain a license in order to become web based social media influencer. Influencer services are considered as a business like no other and license is required just like what one would require setting up a business in India. In India, most of the brands prefer to have an informal agreement whereas in UAE proper system is to be followed and it starts from license requirement to become an influencer to disclosing all possible collaborations, sponsorships to make an average consumer understand the difference between user generated content and sponsored content. The law states that if an individual wishes to engage as a free internet influencer then all the mandates are as being followed. In order to regulate and to make sure that the individual, brands have obtained or renewed such licenses, a penalty of AED 5000 is imposed in case the influencer fails to follow the license requirements. The influencer who earns income by promoting a product/service through these social media platforms has to have a license to be able to their activities free from any unnecessary legalities. Such license is required from setting up a blog or vlog, or posting on platforms such as Instagram, Facebook, Snapchat etc.



Disclosures are a must whenever any influencer is planning to post sponsored content otherwise it may attract penalties. Such disclosures can be done by using the right labels that inform the consumer that the said post is a sponsored post.

Moreover, recently the UAE government announced that all the free gifts and sponsored experiences are taxable. The Federal Authority in a bulletin stated that services that are subject to tax include any paid promotional work, such as plugging a product/service. Not only this, but, appearances by the influencers and access to influencer networks on social media is also taxable. The authorities have focused on barter transactions which is a standard practice in the influencer industry where free products are given in return for the services provided by the influencer and the same shall be considered as a consideration for the services and shall be taxable. After such change in tax regime, Experts have stated that influencer activity is not taken as a personal activity or basic content creation but a business. As long as an influencer, artist is promoting someone's work and gaining out of it, such activity shall be subject to tax. In UAE, influencer business is taken like any other business and hence, appropriate laws have been made to regulate it just like other businesses.

In today's world influencers literally hold the power to change a consumer's preferences and is much above traditional advertising which may or may not be successful. As we say, with great power comes great responsibility, it is necessary to regulate this digital space otherwise it can be detrimental to consumer, in some cases it has already caused a stir and has affected the consumers badly. Though, guidelines have been issues but the same are not sufficient to deal with influencer marketing issues. The space is exploding with content creators and accordingly proper laws are required. It is great initiative on India's part to keep a check on influencer content but same should not be the last. Proper laws will keep a check on such activities and in case of any violation, it should provide for an action against the wrongdoer. To avoid people of India from "bad influence" stringent laws are a must so that influencers and brands do it the responsible way. India, being the hub of some great influencers is lagging and certainly can learn from UAE model on how to regulate such space. The impact will only be felt once the final guidelines are imposed on 15th April 2021.



## Get in Touch

We hope you enjoyed reading the newsletter, and we would love to hear your thoughts on what you want to be covered in our next edition!

You can get in touch here:

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