



# *Guide to Legal Considerations for Influencers and Content Creators*

**ZVMLaw**

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# Introduction

Instagram, YouTube, TikTok, and Discord: These platforms (as well as others) and the people that utilize them are driving the Influencer Economy. Since the introduction of these platforms, influencers and content creators have created billions of dollars in value for businesses. As influencers and content creators grow their followings and provide services for businesses, it's important for them to have the necessary legal tools and knowledge to lawfully monetize their endeavors. If you are—or are thinking of becoming—a creator or influencer, this guide can help you do so in a legally compliant and ethical manner.

## **About ZVMLaw PLLC**

Headquartered in Ann Arbor, Michigan, with satellite offices in Chicago and New York, ZVMLaw represents national and international clients in business and IP matters, including in complex litigation and disputes. We combine the sophistication and expertise of the country's top firms with innovative fee structures and a focus on the client experience. Our team has helped influencers and content creators establish and maintain solid legal foundations on which to build their businesses.

# Topics

- What Business Entity Should I Set Up?
- What Is IP & How Does It Provide Value?
- Marketing Compliance and the FTC
- What Should I Know About Data & Privacy?
- What Are The Most Relevant Contracts?





# What Business Entity Should I Set Up?

Most creators and influencers will want to operate their business as a **limited liability company (LLC)** or **corporation** because such entities offer the benefit of limited liability. If a limited liability entity is sued, only the company's assets are potentially subject to collection to satisfy the claim, not the personal assets of the owner(s). This is partly because these entities are seen as separate legal persons distinct from their owners.

Limited liability does have its limits. If the owner(s) of the business perpetuate fraud through the LLC or corporation, a judge can order that the business's limited liability status be disregarded.



# *What Business Entity Should I Set Up?*

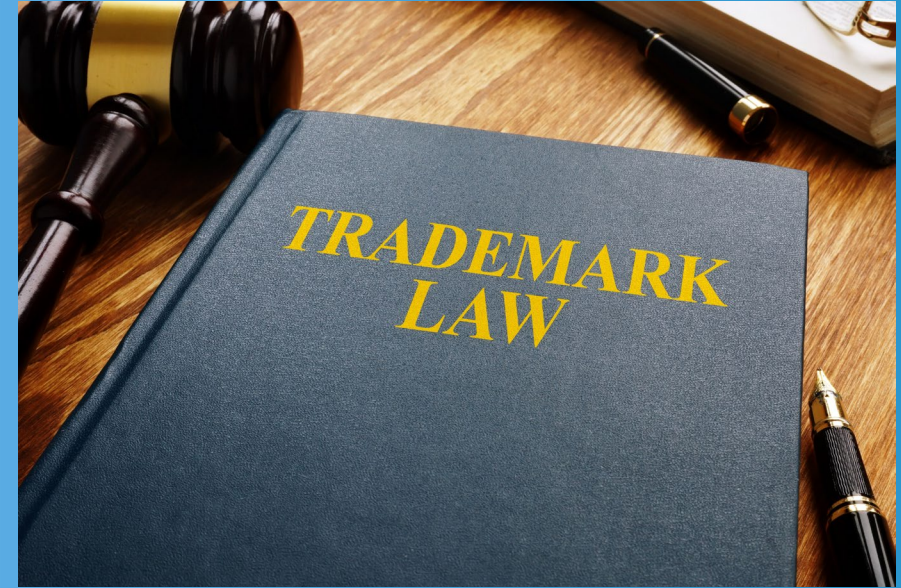
- LLC: Relatively inexpensive to form and easy to operate, an LLC is generally the go-to business structure for small operations since LLCs offer flexibility with respect to ownership structure.
- Corporation: Corporations are generally preferred for larger ventures or businesses raising a substantial amount of money as a corporation requires more corporate maintenance and has more formal and rigid requirements for staying in good standing.



# What Is IP & How Does It Provide Value?

Intellectual Property (IP) is essentially any product or creation by a human that the law protects from unauthorized use by others. An owner of IP effectively has a limited monopoly in the protected property. The most relevant categories of IP for creators and influencers are **trademarks** and **copyrights**.

- Trademark: A trademark can be any word, phrase, symbol, design—or a combination of these things—that identifies a brand's goods or services. Trademarks are important for creators and influencers to protect their brand from illegitimate knock-offs, as well as to prevent the unauthorized use of the creator's image or likeness. For a mark to have federal protection, it must be registered with the United States Patent and Trademark Office (USPTO). The USPTO offers resources and [videos](#) on its website that help explain the application process. However, we recommend talking to a trademark attorney before applying for a trademark.



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# *What Is IP & How Does It Provide Value?*

- Copyright: Copyright protects an original work of authorship when it is fixed in a tangible form of expression. This applies to influencers and creators because it protects the content they create! While a work will be copyright protected as soon as it's fixed to that tangible medium, registering the work with the [United States Copyright Office](#) will afford the owner even more expansive rights.

**Important to Note**: Influencers and content creators must be cognizant of any IP they utilize in their content. Copyright is the form of IP creators are most likely to infringe on. Videos, art, literature, and music are all copyright protected, and without the copyright owner's authorization/licensing, use of that work may lead to a copyright infringement claim and/or removal of the creator's account from the social media platform. Disclaimers saying "no infringement intended" will not protect otherwise infringing conduct.



# Marketing Compliance & the FTC

**The Federal Trade Commission (FTC)** is the federal agency tasked with promoting consumer protection that creates regulations and guidelines on deceptive, misleading, and unfair advertising. This includes advertising with false promises, misrepresentations, and failures to comply with the representations made to consumers. Because the FTC is known to take action against influencers for deceptive practices, influencers who are promoting their own products (or the products of another business) will want to make sure they aren't engaging in any deceptive practices. The FTC's website contains several [resources](#), [guides](#), and [videos](#) that provide compliance guidance to influencers.

The Do's and Don'ts for Social Media Influencers	
FTC RECOMMENDATIONS	PRACTICES TO AVOID
 Clearly <b>DISCLOSE</b> when you have a financial or family relationship with a brand	 <b>DON'T ASSUME</b> followers know about all your brand relationships
 Ensure your sponsorship disclosure is <b>HARD TO MISS</b>	 Don't assume disclosures <b>BUILT INTO</b> social media platforms are sufficient
 Treat sponsored tags, including tags in pictures, <b>LIKE ANY OTHER</b> endorsement	 Don't use <b>AMBIGUOUS DISCLOSURES</b> like "Thanks," #collab, #sp, #spon, or #ambassador
 On image-only platforms like Snapchat, <b>SUPERIMPOSE DISCLOSURES</b> over the images	 Don't rely on disclosures that people will see only if they <b>CLICK "MORE"</b>

Source: Federal Trade Commission



# Marketing Compliance and the FTC

**Disclosures** are one of the main marketing compliance requirements influencers should be aware of.

Influencers and creators are required to disclose their material connection to a company—including whether they're getting paid to promote something—clearly and conspicuously.

- A clear disclosure is written so that consumers can (1) easily understand it; and (2) obtain information they need to assess the claim or endorsement it modifies.
- A conspicuous disclosure is: (1) well-placed so it can be easily noticed; (2) prominent so it can be easily read; and (3) proximate to the claim or endorsement (and not buried in hashtags, legalese, links, or a person's biography)



- ▶ Use **simple and clear** language.
  - » Simple explanations like “Thanks to Acme brand for the free product” are often enough if placed in a way that is hard to miss.
  - » So are terms like “advertisement,” “ad,” and “sponsored.”
  - » On a space-limited platform like Twitter, the terms “AcmePartner” or “Acme Ambassador” (where Acme is the brand name) are also options.
  - » It's fine (but not necessary) to include a hashtag with the disclosure, such as #ad or #sponsored.
  - » Don't use vague or confusing terms like “sp,” “spon,” or “collab,” or stand-alone terms like “thanks” or “ambassador,” and stay away from other abbreviations and shorthand when possible.
- ▶ The disclosure should be in the same language as the endorsement itself.
- ▶ Don't assume that a platform's disclosure tool is good enough, but consider using it in addition to your own, good disclosure.

# *What Should I Know About Data & Privacy?*

## **Privacy Policy**

Websites that collect user data should have a privacy policy to disclose their practices. A privacy policy notifies the website/app user about the operator's practices regarding the collection, storage, use, and disclosure of information (data). What a privacy policy will cover depends on the type of data being collected as well as from whom and where the website is collecting data. There are several laws that website policies must comply with if the context dictates it, such as the Children's Online Privacy Protection Act (COPPA), the Gramm-Leah-Bliley Act (GLBA), and—for companies doing business in Europe—the General Data Protection Regulation (GDPR). Misrepresentations by the website operator of its data practices may subject the operator to scrutiny from the FTC.

## **Terms of Use**

If your business has its own website/app, it would be wise to consider having terms of use in place. Even if you just operate solely from an already existing platform like TikTok or Instagram, you will want to be familiar with the platforms' terms of use. The terms of use, which explain what the user can and can't use the platform for, constitute a contract that the website/app user must enter into and abide by in order to use the platform. Failure to abide by the terms can lead to an account's suspension or cancellation.



# What Are the Most Relevant Contracts?

Below are three **contracts** that influencers and content creators will likely come across:

- Promotion and Marketing Agreement (Influencer Agreement) – This agreement specifies what you will be doing in relation to promoting a particular brand and how much you will be paid. Make sure to understand what you are promoting and make sure it isn't illegal. Many influencers have come under scrutiny by the SEC for promoting cryptocurrencies that were a means of perpetuating fraud.
- Licensing Agreement – If someone wants to use your brand, name, image or likeness, a licensing agreement may be necessary to specify the rights and obligations the person has in relation to your IP. Always ensure you understand what the licensee can do with your IP; you don't want to license your name or image only to discover you did so for an advertisement portraying you in an unsavory light.
- Purchase Agreement/Services Agreement – This may be necessary to help insulate you from liability if you are providing a good or service to your followers. The content and provisions of these contracts will depend on the nature of the goods or services the business is providing.



# ZVMLaw Contact Information

[connect@zvmllaw.com](mailto:connect@zvmllaw.com)  
(734) 794-3070



## Ann Arbor

777 E Eisenhower Parkway,  
Suite 910

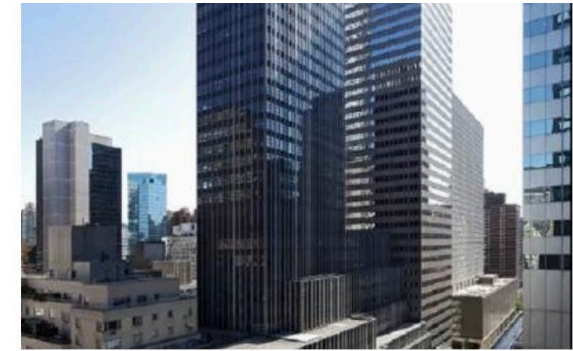
Ann Arbor, MI 48108



## Chicago

150 South Wacker Drive,  
Suite 2600

Chicago, IL 60606



## New York

641 Lexington Avenue, 13th  
Floor

New York, NY 10022