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A CONCEPT BORN WITH THE NEW MEDIA: INFLUENCER ADVERTISING



Commercial Electronic Message Management System: IYS

A CONCEPT BORN WITH THE NEW MEDIA: INFLUENCER ADVERTISING

Influencer, as the name implies, means “the one who influences”. However today, influencer can be defined as people who have certain number of followers and popularity in the world of social media, in other words the new media, and have an impact on the audience that they address. Influencer, who generally has loyal followers, shares many experiences and thoughts of herself/himself with her/his followers on various social media channels.

From this point of view, “Influencer Advertising”, which has been frequently mentioned recently, is a marketing strategy that carried out to influence the purchasing behavior of the audience that influencers who are accepted as reliable persons by their followers have the potential to make an impact on them in digital media channels.

Why and How Did It Emerge?

Just as any advertising method, the point of origin of the influencer advertising is Word of Mouth Marketing or “Buzz Marketing” (WOMM), which has a history as old as human history. This method is based on transferring people’s opinions on services and products, which they experienced, to the people around them.

Researches examining the impact of marketing activities on people’s purchasing behaviors reveal that it is much more effective for people to obtain information about a product or service from people they know rather than the same information obtained from an unknown source. Again, according to researches, before consumers purchase a product or service, receiving advices from others who experienced the same product or service has an important role in their decision process. The WOMM method is based on this principle and thus aims to influence the decisions of the masses.

Today, one of the reflections of WOMM method on digital world and social media is influencer advertising and it aims to influence consumers in a similar way to WOMM method. An average follower has reliance on the influencer s/he follows just as people s/he knows and trusts the choices the influencers make and wants to simulate these choices.

Thus, the significant development of the social media in recent years has attracted the competing companies, and conventional marketing activities have gradually started to be replaced by influencer marketing. One of the main reasons for conventional marketing which is carried out through television, radio, newspaper or banners is kept in the background, is that the influencer marketing is able to be carried out on the consumers who are more likely to be interested in the product to be marketed. On the contrary to the conventional marketing methods this method is not aimed at the whole society, but it targets the followers of the influencer whose only popularity and effectiveness are utilized. This enables firms to use their marketing activities more efficiently and to identify people who are more likely to purchase products or services as their target audience by spending similar costs and effort.

As a result, companies have two advantages over conventional marketing methods by using influencer advertising method: Due to a sense of trust, having a greater impact on the consumers’ decisions and choosing a target audience that can be determined and narrowed.

It's Place in the Field of Law and Problems It Can Create

What about the questions that this method creates in the legal world? Since the spread of influencer advertising and its frequent use by companies is the subject of a recent past and there is no specific regulation covering this directly, problems regarding influencer advertising can be determined by interpreting and comparing the existing regulations. However, the absence of specific regulation on this issue makes difficult for finding a definite solution to the problems that may arise.

Considering the regulations which might be relevant, the Regulation on Commercial Advertising and Unfair Commercial Practices (**Advertisement Regulation**) which is the fundamental regulation regarding advertisements in Turkish law, may include this structure in the scope of the framework of its logic even if it does not regulate this structure specifically. The relevant regulation contains general provisions regarding commercial advertisements and sets the limits of advertisement, and determines rules and principles to be followed, but the issue of which provisions of the Advertisement Regulation covers the advertisement activities within the scope of influencer advertising still creates a question mark.

The content shared by influencers from their social media accounts is controversial lately, under the Advertisement Regulation. One of the main contents is the advertisement activities; "Comparative Advertisements" regulated under Article 8 of the Advertisement Regulation and products forbidden to be advertised. Contradiction to law can arise in the content created by influencer on social media either by comparing with the product of another brand or by publishing advertisement content about tobacco products and alcoholic beverages.

Another legally significant topic is the implementation of the Law numbered 5651 on the Regulation of Publications Made on the Internet and Suppression of Crimes Committed by Means of Such Publications, which provides regulations regarding publications made on the internet, in terms of the content shared by the influencers. In accordance with this law, in principle, the person who shares content on the internet is responsible for the content that s/he shares. Within this scope, there is no explicit regulation regarding the relationship between the influencer and companies and responsibility of the companies and what kind of sanctions will be applied for these subjects in case of contradiction to Law and what kind of restriction companies will be subject to is an enigma.

Another legislation that influencers may be subject to in terms of the content they share is the Law on Intellectual and Artistic Works (FSEK). In this context, problems such as whether the content has the characteristics of work within the scope of FSEK and the application of sanctions on the works used without permission in the content, might be raised. While the right to use the works in conventional advertisements are taken over and a budget is allocated for this in conventional marketing, it can be said that this method is not always applied for the contents shared by influencers and therefore there may be contradictions to law.

It is an enigma that whether influencer advertising method which is frequently mentioned with these questions will gain a more prominent place in the world of law in the near future.

Commercial Electronic Message Management System: IYS

Commercial electronic messages are regulated in our legislation in the Law on the Regulation of Electronic Commerce (**Law**) and the Regulation on Commercial Communication and Electronic Commercial Messages (**Regulation**). Fundamental amendments and regulations have been made to the Regulation which has been in force since 2015, with the Regulation on the Amendment of the Regulation on Commercial Communication and Commercial Electronic Messages (**Amendment Regulation**) published in the Official Gazette on 04.01.2020. The most important of these amendments is Commercial Electronic Message Management System; IYS for short, established by Turkish Union of Chambers and Commodity Exchanges (**TOBB**).

One of the most significant regulations in the Amendment Regulation is the obligation of real and legal persons who wants to send commercial messages, to be registered with the IYS. Thus, service providers may obtain consent from the recipient through IYS in addition to methods determined in the Regulation, and will record consents not obtained through IYS and rejection notices of the recipients to IYS within three workdays. Consents that are not recorded to the IYS will be deemed invalid and commercial electronic messages will not be sent to the recipients whose consent does not exist in IYS.

For the recipients, the significance of the IYS is that the recipients can now exercise their right to reject to receive commercial electronic messages over the IYS as well as the methods listed in the Regulation. Besides, remarkable amendments are that the applications for complaints of the recipients are subjected a preliminary examination through IYS and service providers do not have the burden of proof regarding the consents obtained through IYS.

Consents obtained within the scope of the amendment will transferred to the IYS by the service providers until 01.06.2020. Also, the recipients will check the consents recorded in IYS until 01.09.2020 and be deemed consented to the commercial electronic messages to be sent to them after this date.

For more detailed information on Amendment Regulation and IYS you can review the [publication here](#).

Answers. Not theories.

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