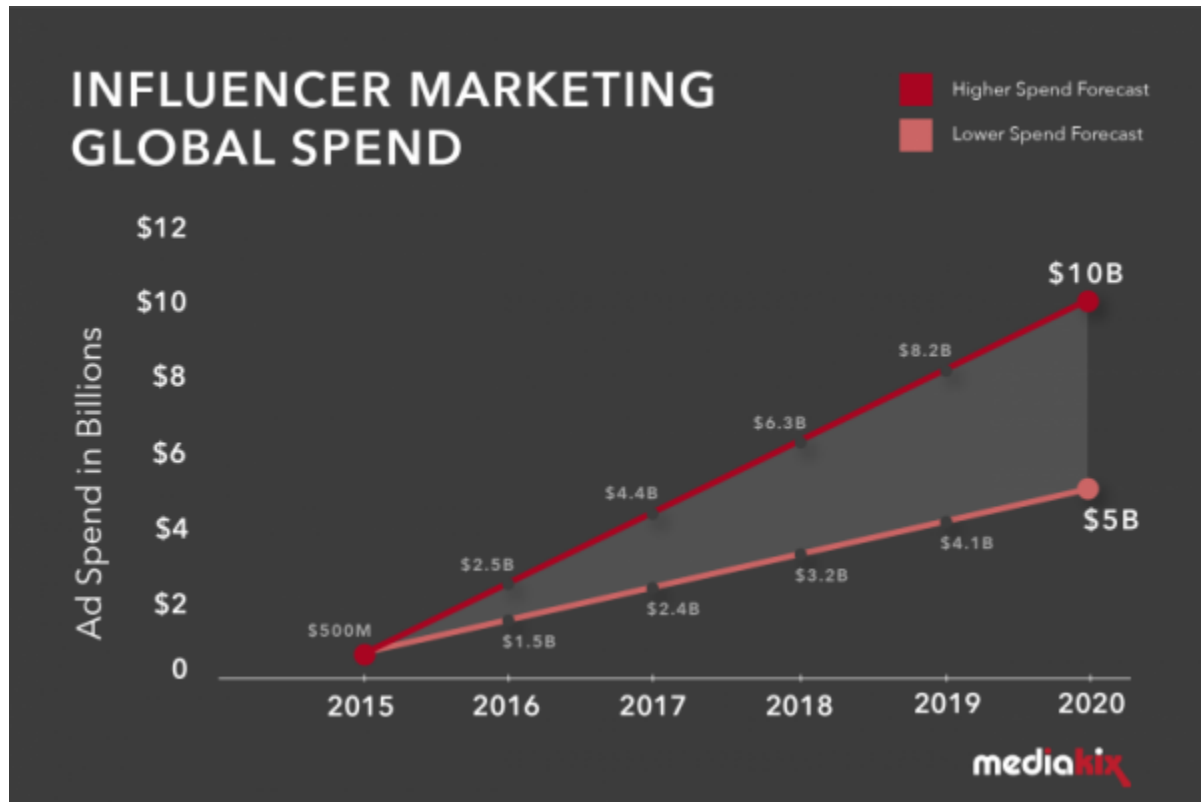


The Social Media Influencer Micro-Niche



For some time now I have been writing a series of articles (<https://www.legalexecutiveinstitute.com/author/patrick-j-mckenna/>) on what I've categorized as lucrative (and most often, unrecognized) "micro-niche" practices – everything from esports and synthetic biology to digital transformation and anti-aging medicine.

Among a number of micro-niches that I have been monitoring is one that received high-profile attention on June 30th by way of the forming of their own lobbying group. Apparently, a collection of "TikTok tastemakers and IG mavens banded together to launch a trade group, the *American Influencer Council*." Part of their stated goal is to legitimize influencing as an industry, fund market research into the influencer economy, and build a mentoring program for rising stars.

What is that all about, you ask? Social Media Influencers!

If you were to search for "influencer marketing" you would find over 9 million Google results, a huge increase from the start of 2016 when I first looked, meaning that interest in influencer marketing continues to grow at a rapid pace. You see, many of today's companies are investing significant sums to reach the loyal followers of "social media influencers." This could include sending one of your products, complimentary, to some acknowledged influencer asking that the

individual post a video review on YouTube; or paying some influencer to post photographs of your product on their Instagram account. These companies often pay to tap into the perceived authenticity, credibility and social network of their chosen influencer. In fact, companies are now expected to spend a total of \$8 billion on influencer marketing campaigns, a figure that should swell to \$15 billion by 2022, according to data collected by Mediakix, an influencer marketing agency (see graph above).

Influencers are usually small businesses and if you think about all the things that small businesses need these days to succeed, experienced legal counsel will be paramount. These various influencers are forging a path from content creation to full-fledged enterprises, with multiple revenue streams via podcasts, licensing deals, branded merchandise and even software products. Meanwhile, tech entrepreneurs, quick to pounce on any emerging area of opportunity, are building services for influencers from marketplaces that connect individuals with brands, financial solutions that help capitalize burgeoning influencer-led businesses, tailored monetization platforms and even a “LinkedIn for Influencers” intended to foster connections between influencers and brands.

As venture capitalists wake up to the business opportunity, they’re seeding startups that help influencers go from hobbyists to professionals. According to Bain Capital we are now witnessing the third phase of the emergence of influencers. *“The first phase was the rise of the media platforms: YouTube, Instagram, etcetera, that allowed creatives to build audiences. The second phase was the emergence of influencer marketing or connecting those influencers to brands to leverage their audiences. Now that influencer marketing has become an established part of the marketing playbook, we are in phase three: tools to help influencers further monetize their influence and then manage their lives.”*

Banks won’t underwrite an individual based on qualifications like their Instagram following and given that influencers don’t typically have a consistent income or a W2 statement to showcase their earnings, they may not be able to receive a bank loan to invest in their own brand. So specialist providers like Karat (<https://www.somacap.com/portfolio/karat/>) and other new startups focused on monetization, give influencers more independence by allowing them access to funding from a team well-versed in their unique capital needs.

Meanwhile, Influence, the “LinkedIn for influencers,” provides a central meeting point for influencers to land gigs, learn about production, gain insights into brand deals and communicate with or befriend other influencers. I am told that 175,000 people are using this venue, 30,000 of which are businesses, which pay between \$229 and \$600 in annual fees to reach influencers on the platform. Individual Influencers pay \$48 annually to access the company’s premium features. For example, you can find a group to collaborate with to put your products in their Amazon influencer shops. Or you can even explore their list of “**Top Ranked Law School Social Media Influencers**” hailing from New York City to Sydney Australia. Among the top three is Harry Clark, a 22-year old from London, UK who is a law blogger (harryclarklaw) with a 3.4k reach and claims to be a “*future trainee solicitor (2020) at Baker McKenzie*”

One could also look to target specific industries, identify who some of the leading influencers were in those industries and then hire those individuals to help position your law firm’s industry

group. So for example in Biotech, you might want to connect with George Ochieng in Texas; in esports there are 129 listings with Janessa, an on-camera host for GameStop TV in San Diego as your top influencer; and there are 79 various Influencers for Cannabis Products with Bobbie Gross in Michigan who claims 183k reach.

Influencer co-founder and CEO Ben Jeffries commented in one interview that I found interesting, *“What we always say to investors is ‘I guarantee if you ask your kids about influencers, that will spark a conversation and help you understand the industry and how crazy it’s going to become. When I was younger, everyone wanted to become a famous sports star. Now, everyone wants to become an influencer.’”*

Who is Currently Serving This Micro-Niche:

A handful of eagle-eyed lawyers have identified this micro-niche as a worthwhile market to specialize in serving. In addition to a couple of individual practitioners in California, the few prominent Social Media Influencer attorneys hail from one smaller firm to an industry group in one larger firm. These are amongst the earliest players to establish a presence in this micro niche:

- Enrico Schaefer, Traverse Legal in Detroit (8 attorneys)

Whether you are a social media influencer, an advertiser looking to hire a social media star to sponsor or advertise your brand, agencies representing influencers or a software platform provider helping measure social media and influencer success, you need a technology attorney who understands the unique issues presented by this new and emerging opportunity. Whether an Instagram post, YouTube star, Twitter tweet or Facebook post, each social media channel creates distinct issues. Enrico calls himself a “social media attorney” and conducts his own Tech Law Radio broadcasts (<https://www.traverselegal.com/blog/influencer-brand-and-agency/>) discussing issues relevant to influencing and influencers. The firm claims to handle the following issues for influencer and brand clients:

- Drafting and negotiating influencer contracts and agreements
- Trademark infringement, copyright infringement, DMCA take-down notices, infringement threat letters and IP protection.
- FTC compliance
- Business planning and brand strategy
- Co-marketing agreements and contracts.
- Right of Publicity – Name, Image and Likeness
- Complex Litigation

- Buchalter’s “Social Media Influencers Industry Group” (5 attorneys in LA office / 1 in Portland)

Our attorneys understand the unique challenges that arise as a result of the increasing popularity of social networks including YouTube, Instagram, Twitter, Snapchat, and Facebook. This group advises our clients on how to skillfully maximize the impact this emerging industry has on their business goals. Our clients include individuals such as influencers and celebrities, as well as product manufacturers, and corporations spanning a wide range of industries. Our attorneys are

particularly well-versed in counseling clients at every stage of these partnerships including negotiations, business creation, development, regulation compliance, and market penetration.

What we do:

- Trademark, copyright, patents, and other forms of intellectual property
- Drafting and negotiating influencer agreements
- Business transactions
- FTC Compliance
- Financial planning and restructuring
- Joint ventures and other strategic business relations, transactions and alliances
- Equity transactions
- Products liability

- Foley & Lardner (2 attorneys working without firm recognition)

The firm has two attorneys, Laura Ganoza a Miami partner and Katherine Califa a Washington, D.C., senior counsel who have authored articles on Law.com and conducted webinars on the subject of social media and influencer issues – BUT the law firm does not list the area anywhere on the website or amongst its industries served.

- Fridman Law Firm (4 attorneys in NYC)

While this firm does not specifically identify themselves as serving Social Media Influencers, Neil Fridman was recently named as Chief Counsel for the newly formed American Influencers Council (AIC).

Returning to where I started, the arrival of the AIC is well timed as the FTC is currently reviewing a topic near and dear to the hearts (and wallets) of these influencers – the issue of advertising disclosure. The FTC’s Endorsement Guide clearly states that any connection between an endorser and seller of a product must be “*clearly and conspicuously disclosed.*” But . . . it is just a guide, nonbinding and therefore, incurs no penalty for violations. For example, the national retailer Lord & Taylor was known to have gotten into trouble in 2015, when it failed to disclose that it paid dozens of influencers to post wearing a paisley dress on Instagram. An FTC commissioner later pointed out that the company did not have to apologize, provide refunds or even acknowledge their actions to their customers. Now the FTC wants to start levying fines against those not compliant with their guide.

The members of AIC include Instagrammers, TikTokers, YouTubers, bloggers, podcasters, photographers, illustrators, online personalities, creatives, and custom content thought leaders. Admission to the AIC is by invite-only. More information about AIC and its position on a number of influencer issues may be accessed -

<https://www.regulations.gov/document?D=FTC-2020-0017-0078>