

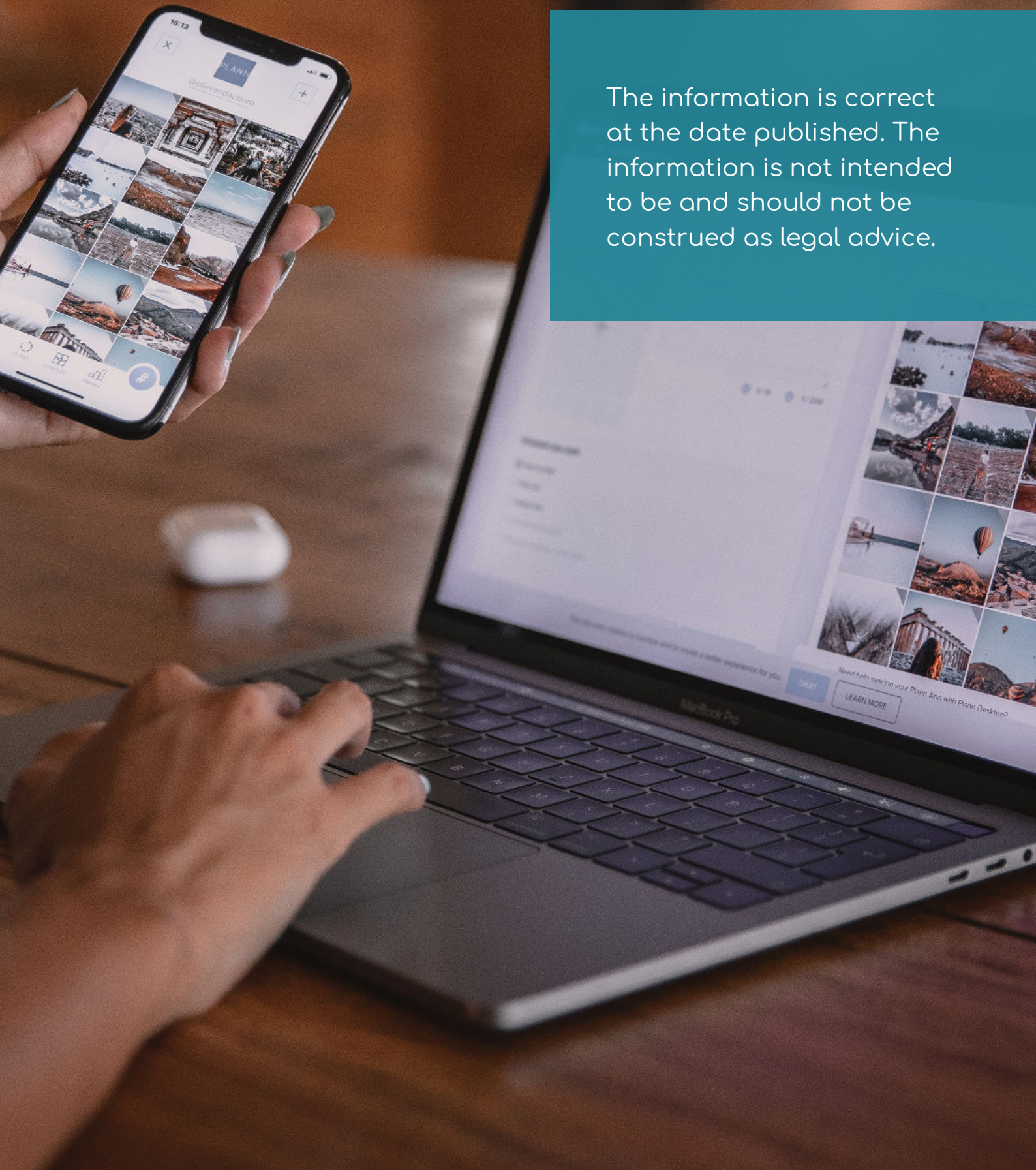
FOR INFLUENCERS: HAVE YOU CONSIDERED THE 4 POTENTIAL LEGAL PITFALLS?



WE'LL TAKE IT FROM HERE

DISCLAIMER

The information is correct at the date published. The information is not intended to be and should not be construed as legal advice.



INTRODUCTION

As with all new professions emerging from the digital economy, the law often does not keep up, leaving existing legislation to regulate this area.

In many ways, influencers are almost media companies in the various areas of law they touch, including contract law, intellectual property, advertising and consumer regulation.

As an influencer or management of an influencer, it is advisable to have awareness of the different legislation that could be brought into play.

Influencers interact with consumers, enter into contractual agreements with brands and have the same responsibilities as broadcasters in adhering to advertising and avoid making defamatory statements.

This guide is designed to outline each of these areas to provide a top level overview, as well as potential issues of which you need to be aware.

Why we have written this guide

There is very little by way of literature that brings together the laws that affect this social media driven profession.

Our aim at Carter Bond is to give you the information needed to make an informed decision and highlight areas where it would be advisable to seek legal advice and support.

In this guide we cover:

- Consumer protection and advertising
- Intellectual property
- Contractual agreements
- Defamation

Of course, this isn't an exhaustive list of all potential legal issues thrown up by influencer marketing and there are many situations that are likely to give rise to legal issues that may not have arisen before. In all instances, it is advised to seek legal support from a specialist as soon as issues arise.

Social media influencers and content creators are subject to the same rules and regulations with which all advertisers must comply.

Influencers must not mislead their audiences through 'hidden ads' otherwise they will be in breach of consumer protection law.

Lack of awareness of this need is no protection and widespread non-compliance has led to a huge rise in complaints against influencers by the authorities who develop and enforce advertising rules – the Advertising Standards Authority (ASA) and Competitions and Market Authority (CMA).

According to the CMA, influencers who are incentivised in any way to promote a brand or product in social media content need to ensure the content is clearly identifiable as advertising. This also includes posting content about their own business and products.

This applies to both formal contractual agreements, as well as informal agreements, such as brands sending items to review, regardless of any expectation in return.

Advertising in this context includes:

- Ads and endorsements
- Sponsorships
- Competitions and giveaways
- Affiliate links and partner programmes
- Offering voucher codes or discounts
- Partnerships
- Product placements
- Reviews
- 'Free' gifts

In each of these situations the content must be clearly labelled and obvious that it is an advert from the very first interaction. In some cases, simply using a hashtag like "#Ad" may not be sufficient and clearer labelling will be necessary to avoid misleading the viewer, reader or listener.

The ASA and CMA provide more detailed guidance on the [gov.uk](https://www.gov.uk) website.

One of the most concerning areas of law impacted by the rise in influencer marketing has been infringement of other people's intellectual property (IP). Again, lack of awareness among influencers and content creators has led to widespread infringement of trademarks and copyrighted works with subsequent enforcement from rights holders leaving individuals subject to unexpected legal action and costs.

Ensuring compliance with copyright and trademark laws is essential, otherwise the influencer or content creator will likely be subject to enforcement action which often goes beyond removing the infringing work, with costly court proceedings being issued and a liability to pay hefty damages arising.

Copyright

Copyright law protects original works in a number of areas to stop others using the content without permission. Copyright protection is automatic, and the rights holder doesn't need to register or seek protection. This includes original written work, illustrations, photography, music, film and TV recordings and broadcasts and software.

When a work is protected by copyright, you may not copy it, distribute copies of it, rent it or lend it, perform it in public, adapt it or use it in any way online, without the permission of the copyright owner.

There are some defences against copyright infringement, such as 'fair dealing' for criticism, review or quotation.

Trademark

A trademark can be a name, symbol or collection of words, numbers and colours to create a badge of origin that can be registered to give the owner exclusive rights to use the registered trademark on their products.

It is used to distinguish against other businesses and brands and must follow rules of distinctiveness and apply in different classes, depending on the sector in which the rights holder operates.

These areas are very clearly defined and seeking the support of a legal specialist is advised to ensure compliance and protection from costly enforcement action.

CONTRACTUAL AGREEMENT

Aside from informal arrangements to promote or endorse brands or products – which are, of course, still subject to consumer protection laws (see above) – influencers and content creators often enter into agreements with businesses and brands in exchange for promoting their products.

The terms of this agreement will usually be contained within a contract; therefore, the influencer will be subject to contract law and will have rights and obligations under the contract they will have to execute.

An understanding of what may be included in a contract is helpful to protect an influencers' interests should the need arise.

An agreement will define the legal basis of the contract between the influencer and the brand, including the terms on which the influencer agrees to provide marketing services. These set out the obligations and rights of both parties.

This will include the details of each party involved, the time period, what has been promised by the influencer or content creator in terms of deliverables, the agreed fee and payment schedule, and the jurisdiction.

The purpose of this agreement is to make clear who is responsible for activity and what happens if things

go wrong. Brands will likely include terms designed to protect their brand, including obligations on the part of the influencer to adhere to relevant consumer protection legislation, as well as defining the situations and process for terminating the contract.

Worth noting is the issue of intellectual property and who owns the rights to the content created under the agreement. There may be assignment of rights contained within the contract and so it is essential to understand what this entails.

As with all contractual agreements, we advise seeking legal support to fully understand what is being proposed and the legal obligations on both sides and to protect your interests as an influencer.



DEFAMATION

One of the darker sides of the rise of social media has been the increase in misinformation or “fake news”, as well as an increase in reported bullying and “trolling”. Although anonymity prevents action against much of the reported negative activity, influencers and content creators must be wary of making assertions, comments and / or creating and publishing content about others that is untrue or damaging to others’ reputations.

Doing so, can result in influencers or content creators being held liable for defamation. Even publishing on platforms where the content is time-limited, such as Instagram Stories or Snapchat, can give rise to defamation action.

High profile individuals, celebrities, actors, politicians and even other influencers who are usually the most targeted of all groups are more willing than ever to take legal action to stop others publishing defamatory content.

Care should be taken in making any form of statements or assertions about other companies or individuals to ensure there is no liability for defamation. Should an influencer or content creator wish to make statements, these should be based upon fact with relevant evidence to support the statement. In any case, we would suggest seeking legal advice from a social media specialist before publication.



HOW CARTER BOND CAN HELP

For influencers and content creators looking for practical advice on navigating the relevant areas of law that affect social media marketing, Carter Bond have experienced and knowledgeable solicitors who can provide tailored advice.

At Carter Bond, our approach is based on the realities and practicalities of the social media landscape, and we take a pragmatic view rather than a strict legalistic perspective that could stifle creativity.



We're professional and confident in our ability to deliver nothing less than the highest service. Not in an intimidating, know-it-all kind of way but within a friendly environment where you can ask any question you have, at any time and without judgement.

The truth is, what makes us different isn't entirely different at all. It's the small things that matter.

We do what we say we will. We're responsive and we're there for you when you need us. We return your calls. We don't take days and weeks to respond to you, and we don't expect you to "clock watch" every time you need to speak with us about your business.

Being small is an advantage. Unlike larger firms, you're not just a number. You won't get lost and, at every level, you'll know exactly who is working on your business. Our entire team is equipped with the experience and knowledge to handle any matter.

For us, this isn't short-term. We're here for as long as you need us to be. So, whether you're looking to move from your current solicitor or it's your first time engaging with a firm, let's talk.

NEXT STEPS

If you need advice on any legal aspect of social media, our experienced social media team can help.

We have helped hundreds of creatives navigate the legal landscape to protect their works and their interests. The first step is a call with one of our social media and media law specialists who will be able to help.

For enquiries or to arrange a face-to-face appointment

t: 020 3475 6751

e: info@carterbond.co.uk

Carter Bond Solicitors
1 Bradburys Court
Lyon Road
Harrow
HA1 2BY

Find out more about our other services at www.carterbond.co.uk

