

Comments

#FilterDrop It Like It's Hot: Why the FTC Should Explicitly Ban Filter Usage in Social Media Beauty Advertisements

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ABSTRACT

Social media filters are so engrained in society—virtually everyone filters their photos and videos without a second thought. As a result, filters are everywhere, from posts of friends and family to those of celebrities and social media influencers. Yet beneath their fun façade, filters come with serious mental health consequences. Because social media powerfully influences idealized beauty standards, filter usage leads to unrealistic expectations about how social media users should look in real life. Also concerning, filter usage in social media beauty advertisements promotes unrealistic expectations for how a beauty product should perform and misleads consumers.

While the Federal Trade Commission (FTC) regulates online advertising by brands and social media influencers, FTC guidelines are silent as to the problems filters cause. Currently, the FTC does not explicitly require brands and social media influencers to disclose their use of filters in social media advertising, nor does the FTC ban filter usage generally.

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This Comment argues that the FTC should explicitly ban filters in social media beauty advertisements. Until the FTC addresses the problem that filters “mislead” consumers and contribute to unhealthy notions about body image, beauty brands and influencers alike will continue to use filters. This Comment addresses the purpose of filters and their negative repercussions on society, the regulatory authority of the FTC, and the current landscape of social media beauty advertising to argue that the FTC must explicitly ban filter usage in social media beauty advertisements.

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I. INTRODUCTION

Sixteen-year-old Josephine explains that she and her friends use beauty filters on their social media posts frequently.¹ Josephine acknowledges that heavy filter usage and photo alterations have caused all her friends to “grappl[e] with keeping up with their online personas in person.”² However, Josephine also knows that people use filters to feel confident in their appearance.³ Unfortunately, this confidence does not transcend into reality, and many people still struggle with beauty insecurity in-person.⁴

Mia, a woman in her late 20s, has felt insecure due to filter usage.⁵ She recounts that, although social media filters “seemed harmless” at first, she soon “reali[z]ed, to her horror, [that] she no longer recogni[z]ed her own face.”⁶ Beauty filters lead the user to believe that what the filter portrays is what they should look like in real life, causing users to “disassociate from th[eir] image in the mirror.”⁷ To Mia, filters are frightening because filters convinced her that her real-life appearance was “ugly and disgusting.”⁸

Josephine and Mia are just two examples of the millions of people who have used social media filters.⁹ In a Consumer Reports survey, one in five Americans who have or have had a social media account use filters.¹⁰ Despite filters’ prevalence on social media, a whopping 59% of Americans familiar with beauty filters find them concerning.¹¹ Troubling consequences of continued beauty filter usage include anxiety, an increase in “body image issues,” and a “strain on mental health.”¹²

1. See Tonya Russel, *Social Media Filters Are Changing How Young People See Themselves*, TEEN VOGUE (Jan. 25, 2022), <https://perma.cc/3U69-66HK>.

2. *Id.*

3. *See id.*

4. *See id.*

5. See Matilda Boseley, *Is That Really Me? The Ugly Truth About Beauty Filters*, GUARDIAN (Jan. 1, 2022, 2:00 PM), <https://perma.cc/B4YT-EG2C>.

6. *Id.*

7. *Id.*

8. *Id.*

9. See Tate Ryan-Mosley, *Beauty Filters Are Changing the Way Young Girls See Themselves*, MIT TECH. REV. (Apr. 2, 2021), <https://perma.cc/2YJC-928Y>.

10. See Perry Santanachote, *Majority of Americans Who Know of Social Media Beauty Filters Find Them Troubling*, CONSUMER REPS. (Oct. 13, 2021), <https://perma.cc/B6RA-VR7V>.

11. *Id.*

12. Jesa Marie Calaor, *We Know Beauty Filters Are Bad For Us, But Is Anything Changing?*, BYRDIE (Feb. 25, 2022, 12:23 PM), <https://perma.cc/QW65-G7DB>.

Still, brands and social media influencers use filters when advertising beauty products on social media, often without disclosing filter usage.¹³ Not only does filter usage obscure the truth about the color or performance of a beauty product,¹⁴ filter usage promotes “unrealistic or unattainable standards of beauty” that social media users strive for.¹⁵ Thus, the problem with beauty filters is twofold: advertisements using filters “mislead[]” consumers about beauty products and leave them with a “warped view” of beauty” that affects mental health.¹⁶

Because the Federal Trade Commission (FTC) “is the primary federal consumer protection agency” in the United States,¹⁷ it is imperative that the FTC puts an end to filter usage in social media beauty advertisements. To understand fully why the FTC should explicitly ban filter usage in social media beauty advertisements, it is essential to first explain what filters are and how they work.¹⁸ Additionally, an analysis of how filters are used in social media advertising is necessary before addressing the FTC’s current policies and practices related to online advertising for social media influencers.¹⁹ Finally, a discussion of the FTC’s current stance on deceptive advertising practices in the beauty industry is important to illuminate why banning filters is crucial for consumer protection.²⁰

II. BACKGROUND

Filter usage is the norm in social media today.²¹ “[M]ore than 200 million people” use filters on Snapchat, a popular social media platform,

13. See Rachel Brown, *When Is An Image A Harmful Lie? Beauty Brands Weigh In On The Great Debate Over Social Media Filters*, BEAUTY INDEP. (Apr. 4, 2021), <https://perma.cc/GUF6-TQ2R>.

14. See *id.*

15. Calaor, *supra* note 12.

16. Chloe Laws & Laura Hampson, *Influencers Can No Longer Use “Misleading” Filters on Beauty Ads*, ASA RULES, GLAMOUR (Feb. 3, 2021), <https://perma.cc/4HY2-DVF7>.

17. Mary L. Azcuenaga, *The Role of Advertising and Advertising Regulation in the Free Market*, FED. TRADE COMM’N (Apr. 8, 1997), <https://perma.cc/T4S2-ESHB>.

18. See Katie Doll, *How Social Media Filters Create Toxic Beauty Standards*, SHORTFORM (June 27, 2022), <https://perma.cc/269S-PDCY> (conveying that “[t]o understand the controversy behind filters on social media,” one must consider how filters gained popularity and how filters have become “normalized” before considering filters’ effects on beauty standards).

19. See FED. TRADE COMM’N, DISCLOSURES 101 FOR SOCIAL MEDIA INFLUENCERS 2–6 (2019), <https://perma.cc/4ZFH-S5XZ>.

20. See Genesis Rivas, *The Mental Health Impacts of Beauty Filters on Social Media Shouldn’t Be Ignored*, INSTYLE, <https://perma.cc/4WCN-YWED> (Sept. 14, 2022) (explaining that obsession with filters has led to “higher cases of body dysmorphia” and that people are compelled to achieve the look that filters can give their appearance in real-life).

21. See Ryan-Mosley, *supra* note 9.

daily.²² Likewise, Facebook and Instagram “claim that over 600 million people have used at least one” of the filters they offer.²³ Further, City, University of London conducted a study and found that 90% of the women surveyed “us[ed] a filter or edit[ed] their photos before posting.”²⁴ Because of their popularity, filters are inescapable in the modern world.²⁵

A. *What are Beauty Filters?*

Beauty filters help the user look like their “dream self” by changing the appearance of the user’s eyebrows, eyelashes, hair, skin, or makeup.²⁶ People use beauty filters to create an idealized version of themselves as if “[they] w[ere] meeting [their] expectations of [their] own appearance.”²⁷ Thus, filters create an illusion of what the user would look like if they had, for example, “whiter teeth” or “slightly longer eyelashes.”²⁸ With just a tap of their phone screen, users can change their facial features, such as by making their “eyes look bigger” or their “nose look pointy.”²⁹

Beauty filter usage is widespread,³⁰ and filters may serve different functions depending on the social media platform used.³¹ Although filters are often used for video content,³² photographs are not spared from the filter takeover.³³ For example, users on Instagram can use filters to alter a photo’s coloration before sharing.³⁴ Additionally, photo-editing apps like

22. Ana Javornik et al., *Research: How AR Filters Impact People’s Self-Image*, HARV. BUS. REV. (Dec. 22, 2021), <https://perma.cc/Q67J-KZ2F>.

23. Ryan-Mosley, *supra* note 9.

24. ROSALIND GILL, CITY, UNIV. OF LONDON, CHANGING THE PERFECT PICTURE: SMARTPHONES, SOCIAL MEDIA AND APPEARANCE PRESSURES 5 (2021), <https://perma.cc/LS3G-SY9M>.

25. See Joe Smith, *Instagram Filters: Why Are They So Popular and What Does It Mean For Brands?*, DRUM (Feb. 6, 2020), <https://perma.cc/S7PT-S8WM>; see also Santanachote, *supra* note 10 (conveying that in a Consumer Reports survey, 47% of social media users between the ages of 18 and 29 have altered their appearance on social media by using a filter).

26. Jenny Singer, *Let’s Talk About Our Love-Hate Relationship with Beauty Filters*, GLAMOUR (Apr. 14, 2022), <https://perma.cc/XDQ7-77ZU>.

27. *Id.*

28. *Id.*

29. Kavya Nambiar, *How Do Snapchat and Instagram Filters Work?*, SCIENCE ABC (Feb. 17, 2022), <https://perma.cc/K48H-GMYW>.

30. See Santanachote, *supra* note 10 (explaining that “[one] out of [five] Americans” on social media “used a beauty filter before posting pictures on social media”).

31. See Ryan-Mosley, *supra* note 9.

32. See Josh Rogers, *Social Media Basics: Filters*, PARENT LIFE, <https://perma.cc/VU6J-FU7M> (last visited Aug. 28, 2023).

33. See Stefan Pettersson, *Statistics: How Filters Are Used by Instagram’s Most Successful Users*, MEDIUM (Oct. 20, 2017), <https://perma.cc/KPV6-XP4M> (explaining that 18% of 40 million Instagram posts used a filter).

34. See William Antonelli, *How to Use Instagram Filters and Effects on Your Photos or Videos*, INSIDER (June 23, 2022), <https://perma.cc/WS6B-REVU>.

Canva allow users to swipe through a variety of filters and change the color and tint of their photograph depending on the user's preferred saturation.³⁵

Regardless of the platform, the type of filter, or the content being edited, filters change their user's image and help the user "sift through different identities."³⁶ Some users may seek to change their image because of "low self-esteem and poor body image."³⁷ Therefore, filters allow users to gain confidence in their appearance, motivating more users to share their edited appearance with all of society on social media.³⁸ After all, the purpose of social media is to share one's life with others.³⁹ Filters are an "instant self-esteem boost," encouraging users to post their filtered image on social media and await validation in the form of "comments and likes" from peers.⁴⁰ Brands have capitalized on the filter takeover, recognizing that consumers use filters to "manipulate the world around them."⁴¹

B. How are Filters Used in Social Media Advertisements?

Brands often use filters to interact with consumers.⁴² Advertising via brand-made filters focuses solely on the consumer—the filter-user—to cultivate brand loyalty.⁴³ Because people only need a smartphone to access social media, filters are accessible to a large audience.⁴⁴

Additionally, online tools exist that allow anyone to create their own filter and share it with others by "upload[ing]" the filter to a social media

35. *Photo Effects*, CANVA, <https://perma.cc/TG7L-F63J> (last visited Oct. 5, 2022). While not a filter, the popular photo-editing app Facetune allows users to alter the shape of their body or face, smooth their skin, erase any blemishes, and even "whiten [their] eyes, teeth, or . . . skin." Haley Zapal, *How Facetune May Be Harmful to Kids*, BARK (Mar. 18, 2022), <https://perma.cc/H2KX-KC64>.

36. Ryan-Mosley, *supra* note 9.

37. *Do You Use a Filter Every Time You Post?*, NEWPORT INST., <https://perma.cc/S8T7-RXSS> (last visited Aug. 28, 2023).

38. *See* Russel, *supra* note 1.

39. *See* Samantha Kemp-Jackson, *How Social Media Filters Are Causing Anxiety*, MEDIUM: THE STARTUP (June 25, 2019), <https://perma.cc/DKJ3-N76B> ("Social media by definition is all about sharing.").

40. Holly Turner, *How Do Beauty Filters Affect Self-Esteem?*, MIX (Mar. 23, 2022), <https://perma.cc/MF3J-G8B3>.

41. *How to Run Brand AR Filter Campaigns*, GRIN, <https://perma.cc/G7G9-VUPF> (last visited Aug. 28, 2023).

42. *See Why Brands Use Social Media Filters to Reach Consumers*, CAMPAIGN (Jan. 18, 2019), <https://perma.cc/3EYT-26PV>.

43. *See id.*; *see also* *Why Brands Should Use an Augmented Reality Filter*, DIGITALFREN: BLOG (Mar. 23, 2022), <https://perma.cc/8TQL-B6EL> ("Users tend to spend a longer time with an [augmented reality] filter.").

44. *See Why Brands Use Social Media Filters to Reach Consumers*, *supra* note 42; *see also* Brian Dean, *Social Network Usage & Growth Statistics*, BACKLINKO, <https://perma.cc/P4MY-MLEL> (Oct. 10, 2021) (noting that almost 4.5 billion people "use social media worldwide" and that "[t]he average social media user engages with" around six social media platforms).

platform.⁴⁵ Thus, filters' shareability and virality on social media means that the masses are exposed to filters and will use them.⁴⁶ In sum, because filters are cheap to create and easy to use and maintain, they are a desirable marketing tool.⁴⁷

Further, the advent of filters has devised an array of "shopping tools" that millions of social media users utilized in 2021.⁴⁸ Brands create "augmented reality" filters to encourage consumers "to make impulse purchases" by "virtually try[ing] on a product" before they buy it.⁴⁹ Virtual try-ons let consumers try on shoes, a new outfit, or even different hairstyles, all without ever leaving their couches.⁵⁰ Likewise, in the beauty industry, TikTok has allowed makeup and skincare brands to create filters for social media users to try-on their products.⁵¹ For example, the skincare brand Laneige created a filter that allowed consumers to see a virtual difference in their skin with and without the use of Laneige's moisturizer.⁵² From lipsticks, to hair dye, to nail polish, consumers can try on beauty products without the mess of physical testers.⁵³ Virtual try-on filters are appealing because they allow the consumer to test many different products "in a few moments."⁵⁴

Even though filters allowing virtual window-shopping seem harmless, filters on social media product advertisements are problematic.⁵⁵ "[I]nfluencers, celebrities[,] and companies advertising products and their

45. Grayson Blackmon, *How to Make and Share Your Own Instagram Face Filters*, VERGE (Aug. 16, 2019, 4:25 PM), <https://perma.cc/93A5-VHYB> (explaining that people can use the "Spark AR Studio" tool to create their desired filter, use their filter on their own photos and videos, and publish their filter for others to use on either Facebook or Instagram).

46. *Why Brands Use Social Media Filters to Reach Consumers*, *supra* note 42.

47. *See Why Brands Should Use an Augmented Reality Filter*, *supra* note 43.

48. Javornik et al., *supra* note 22.

49. Thomas Griffin, *How Augmented Reality Can Boost Social Media Marketing*, FORBES: TECH. COUNCIL (Jan. 8, 2020, 7:00 AM), <https://perma.cc/7734-K9R6>.

50. *See* Javornik et al., *supra* note 22.

51. *See Branded Effect: Place Your Brand Center Stage*, TIKTOK FOR BUS. (July 13, 2021), <https://perma.cc/6SNW-3BZC>; *see also* Lela London, *Virtual Try-On Is More Than A Pandemic Trend And These Brands Are Reaping The Rewards*, FORBES (May 20, 2021, 1:55 PM), <https://perma.cc/EGH2-ZQ33> ("[B]rands like NYX Cosmetics have been able to drive over 60 million try-ons of their beauty experiences in a single day.").

52. *See Branded Effect: Place Your Brand Center Stage*, *supra* note 51; *see also* Liz Flora, *Ulta Beauty Introduces Shoppable Snapchat AR Lens*, GLOSSY (Jan. 26, 2022), <https://perma.cc/8YCS-REDP> (explaining that Ulta Beauty and MAC Cosmetics have launched "shoppable AR lenses" on Snapchat that allow consumers to virtually try on products that are linked to a product catalogue providing information about pricing and available color options).

53. *See* Leah Prinzivalli, *11 Hair, Makeup, and Nail Brands That Offer Virtual Try-On*, ALLURE (July 21, 2020), <https://perma.cc/99MX-HU59>.

54. *Id.*

55. *See* Maria Coole, *#FilterDrop Sasha Pallari on Being Happy with the Skin You're In*, MARIE CLAIRE (Apr. 27, 2021, 11:00 AM), <https://perma.cc/9YAQ-E7EY>.

supposed effectiveness” have increased filter usage, which raises a specific concern.⁵⁶ When social media influencers use filters, they dishonestly use “lighting, special effects[,] [and] make-up” in the promotion of a product, which “glorifie[s] the product.”⁵⁷ The detrimental effect of influencers’ filter use is misleading social media advertisements.⁵⁸ When consumers are inundated with these misleading social media advertisements, they cannot truly assess whether the advertised product is a rational purchase.⁵⁹ Instead, the filter gives the consumer a “false sense of the [product’s] performance.”⁶⁰

Further, there is a growing belief amongst social media users that people should not “compare themselves to an advert[isement] that isn’t achievable without a filter.”⁶¹ When brands use filters to sell cosmetic products, they sell the consumer unattainable results.⁶² Filters on cosmetic products falsely lure the consumer into believing that the cosmetic product will help them attain perfection.⁶³ In reality, people have imperfections that comprise their “own natural, unique beauty.”⁶⁴ Thus, filters on cosmetic advertisements promote an “impossible standard of perfection.”⁶⁵ In sum, filter-usage is a dangerous advertising tactic because filters mislead consumers, hurting their purses and their confidence.⁶⁶

Because filters mislead consumers, proponents of filter usage disclosure on social media advertisements believe that disclosure could help consumers “make an informed decision” before purchasing beauty products.⁶⁷ Alternatively, this Comment argues that filters should be explicitly banned from social media advertisements for beauty products.⁶⁸

56. *Id.*

57. Emma Hallett, *Influencers Told Me Not to Use ‘Misleading’ Beauty Filters*, BBC NEWS (Feb. 3, 2021), <https://perma.cc/R4XP-H9W8>.

58. *See id.*

59. *See* Brown, *supra* note 13.

60. *Id.*

61. *See* Sasha Pallari (@sashapallari), INSTAGRAM, <https://perma.cc/PQB2-A5U4> (last visited Oct. 8, 2022).

62. *See id.*

63. Brown, *supra* note 13.

64. *Id.*

65. *Id.*

66. *See id.*; *see also* Katie Mather, *Popular Makeup Brand Accused of Allegedly Using Blur Filter in Instagram Ad*, YAHOO! FIN. (July 14, 2021), <https://perma.cc/H68R-P8NP> (explaining that the beauty brand Tarte faced backlash for “allegedly using [a] blur filter” in an advertisement for their “Timeless Smoothing Primer” after Instagram users slowed down the advertisement video to show what appeared to be a “blur filter activate and deactivate” mid-ad).

67. Brown, *supra* note 13.

68. *See This Is Why I’m Campaigning Against Distorting Our Faces with Filters*, STYLIST, <https://perma.cc/ZM9M-X7XD> (last visited Aug. 28, 2023) (explaining that, in the U.K., filters “were banned from beauty ads on social media” as a response to Sasha Pallari’s #FilterDrop campaign that aimed to raise awareness about the dangers of filters).

But who will ensure that filters are not used by brands and social media influencers alike?

C. *What is the Federal Trade Commission?*

The FTC is a general agency tasked with the mission of “protect[ing] consumers.”⁶⁹ Thus, the FTC is the perfect entity to ensure that influencers and brands are not using filters in social media advertisements.

1. General Overview

In 1914, the Federal Trade Commission Act was “signed . . . into law” by President Woodrow Wilson.⁷⁰ The FTC was created to “protect consumers and promote competition.”⁷¹ Since the FTC’s creation, Congress has granted the FTC a “greater authority to police anticompetitive practices.”⁷² Anticompetitive practices decrease competition amongst brands and raise prices for consumers.⁷³ Examples of anticompetitive practices include “price fixing, group boycotts, and exclusionary exclusive dealing contracts or trade association rules.”⁷⁴

Under their police authority, the FTC “administer[s]” various laws to protect consumers.⁷⁵ In that vein, the FTC has three main “strategic goals,” two of which relate to the marketplace and the discussion of social media advertising: (1) to prevent “unfair or deceptive acts or practices” and (2) to prevent “unfair methods of competition.”⁷⁶ The FTC achieves its goals through various agency divisions, including the Division of Financial Practices, the Division of Enforcement, the Division of Consumer Response and Operations, and others.⁷⁷ The Division of Consumer and Business Education (the “DCBE”) and the Division of Advertising

69. *Our History*, FED. TRADE COMM’N, <https://perma.cc/4U8M-H9WY> (last visited Oct. 9, 2022).

70. *Id.*

71. *Id.*

72. *About the FTC*, FED. TRADE COMM’N, <https://perma.cc/3E6X-LS47> (last visited Jan. 5, 2023).

73. *See Anticompetitive Practices*, FED. TRADE COMM’N, <https://perma.cc/8H49-V3Z6> (last visited Nov. 13, 2022).

74. *Id.*

75. *About the FTC*, *supra* note 72.

76. *Id.* The final strategic goal relays the FTC’s desire to advance its own performance, which this Comment does not address. *See id.*

77. *See Our Divisions*, FED. TRADE COMM’N, <https://perma.cc/5ULK-QRTX> (last visited Oct. 9, 2022). The FTC is divided into different Bureaus, although this Comment focuses only on the Bureau of Consumer Protection. *See Bureaus and Offices*, FED. TRADE COMM’N, <https://perma.cc/3XEZ-V5FC> (last visited Jan. 5, 2023). The divisions noted above fall within the Bureau of Consumer Protection and focus on “stop[ping] unfair, deceptive[,] and fraudulent business practices.” *About the Bureau of Consumer Protection*, FED. TRADE COMM’N, <https://perma.cc/W86K-UWQG> (last visited Aug. 28, 2023).

Practices (the “DAP”)—both under the FTC’s Bureau of Consumer Protection—protect beauty consumers.⁷⁸

2. Relevant FTC Divisions

Importantly, consumer protection is not the mission of any other federal agency; rather, the FTC alone seeks to “[a]dvance consumers’ interests.”⁷⁹ The FTC advances this interest by creating pro-consumer policies, working with various state and federal legislatures and agencies, and educating consumers and brands directly.⁸⁰ The FTC’s DCBE provides consumers and brands with pertinent information on consumer protection laws.⁸¹ Ultimately, the DCBE’s goals are to help consumers “make informed decisions” and to ensure that brands “comply with the law.”⁸²

Similarly, the FTC’s DAP “enforces the nation’s ‘truth-in-advertising’ laws.”⁸³ “Truth-in-advertising” laws require that brands are honest in the statements made in their public advertisements.⁸⁴ These laws require that advertisement claims are substantiated with “reliable, objective evidence.”⁸⁵ The DAP closely scrutinizes “claims that can affect consumers’ health or their pocketbooks.”⁸⁶ Such claims may need to be “backed by scientific evidence.”⁸⁷ While the DAP provides relevant guidance to brands and ultimately encourages brands to self-regulate their compliance with the law, the DAP still issues warnings to brands that mislead consumers.⁸⁸ When warnings are ineffective, the DAP may also

78. *See Our Divisions*, *supra* note 77.

79. *Mission*, FED. TRADE COMM’N, <https://perma.cc/A8FU-DT9G> (last visited Oct. 9, 2022).

80. *See id.*

81. *Division of Consumer & Business Education*, FED. TRADE COMM’N, <https://perma.cc/UD2S-JEJB> (last visited Oct. 9, 2022). On the DCBE’s page, the FTC has information tailored to consumers or businesses. *Id.* For example, consumers are encouraged to follow a link to a “consumer advice” page, featuring articles related to shopping, identity theft, and other topics. *The Latest in Consumer Advice*, FED. TRADE COMM’N, <https://perma.cc/9HN8-MTYH> (last visited Nov. 14, 2022).

82. *Division of Consumer & Business Education*, *supra* note 81.

83. *Division of Advertising Practices*, FED. TRADE COMM’N, <https://perma.cc/NGQ8-68CR> (last visited Oct. 9, 2022).

84. *Id.*

85. *Id.*

86. *Truth in Advertising*, FED. TRADE COMM’N, <https://perma.cc/EHT2-PVYB> (last visited Aug. 28, 2023).

87. *Id.* While a full examination of claims made in advertisements is beyond the scope of this Comment, it is important to note that any health and safety claims made in advertisements must have “competent and reliable scientific evidence” to back up the claim, such as “tests, analyses, research, studies, or other evidence.” FED. TRADE COMM’N, ADVERTISING SUBSTANTIATION PRINCIPLES 17–18, <https://perma.cc/467K-3RLQ>.

88. *Division of Advertising Practices*, *supra* note 83; *see also* Allison Schiff, *The FTC Supports Self-Regulation, But It’s Got Concerns*, AD EXCHANGER (Sept. 20, 2022),

bring an action against a brand in court.⁸⁹ Thus, the DAP may stop fraudulent practices via “immediate and permanent orders.”⁹⁰

Furthermore, the DAP oversees a variety of industries and the “products and practices” they generate.⁹¹ Online advertising is a “practice” within the DAP’s breadth.⁹² With the ever-changing digital landscape, the DAP is now tasked with the job of monitoring social media advertising.⁹³ Specifically, it monitors social media influencers who promote products to followers online and so-called “fake . . . reviews” of products.⁹⁴

3. The Federal Trade Commission Act

Because consumer protection is the FTC’s main mission, section 5 of the Federal Trade Commission Act (hereinafter the “FTC Act”) is instructive.⁹⁵ Section 5 grants the FTC the power to investigate brands for any practices that are “unfair or deceptive” and grants it the authority to prevent these practices.⁹⁶ The FTC may prevent deceptive practices by (1) issuing a court-enforced order to advertisers to “halt their false or deceptive advertising” or (2) issuing a cease and desist order requiring an advertiser to correct their advertisements.⁹⁷ Section 5(a)(1) of the FTC Act explicitly states that “unfair or deceptive acts or practices in or affecting commerce” are unlawful.⁹⁸ Deception is defined as “a representation, omission or practice [by the brand] that is likely to mislead” a reasonable consumer “to the consumer’s detriment.”⁹⁹ Further, a brand’s deceptive “representation, omission[,], or practice must be . . . ‘material.’”¹⁰⁰ “Material” means that the brand’s action, or lack thereof, swayed the

11:42 AM), <https://perma.cc/44XE-4NMX> (explaining that “self-regulation” means that the advertising industry “govern[s] itself,” with the independently operated National Advertising Division dealing with cases of deceptive advertising “without the FTC getting involved”). For an example of a warning letter for a fictitious mortgage advertisement, see FED. TRADE COMM’N, SAMPLE ADVERTISING WARNING LETTER 1–2 (2007), <https://perma.cc/Z3GE-CBFR>.

89. See *Division of Advertising Practices*, *supra* note 83.

90. *Truth in Advertising*, *supra* note 86.

91. *Division of Advertising Practices*, *supra* note 83.

92. See *id.*

93. See *id.*

94. *Id.*

95. See *A Brief Overview of the Federal Trade Commission’s Investigative, Law Enforcement, and Rulemaking Authority*, FED. TRADE COMM’N (May 2021), <https://perma.cc/RUD4-WR4K>.

96. *What the FTC Does*, FED. TRADE COMM’N, <https://perma.cc/N48D-XZ7R> (last visited Oct. 9, 2022).

97. Azcuenaga, *supra* note 17.

98. 15 U.S.C. § 45(a)(1).

99. FED. TRADE COMM’N, POLICY STATEMENT ON DECEPTION 2 (1983), <https://perma.cc/2Z2Y-PUNG>.

100. *Id.* at 1.

consumer to make a decision, such as to purchase a product.¹⁰¹ The FTC's finding that a brand's practice was "material" conveys that "consumer injury is likely" to result because of the practice.¹⁰² The FTC may not declare a practice unlawful unless a brand's action "causes or is likely to cause substantial injury to consumers."¹⁰³

Moreover, the FTC Act explicitly prohibits false advertising.¹⁰⁴ Importantly, section 12 of the FTC Act, which deals with the "dissemination" of "false advertisement[s]," uses the same definition of "deceptive" as is used in section 5.¹⁰⁵ Simply put, a false advertisement is an advertisement that is "misleading in a material respect."¹⁰⁶

To determine whether an advertisement is misleading, the FTC analyzes "representations" or "statements" made and the "word[s], design, device[s], [and] sound[s]" used in the advertisement.¹⁰⁷ However, the FTC must also consider what the advertisement omits.¹⁰⁸ An advertisement is misleading when it "fail[s] to include" any material facts that the consumer should know in order to make an informed purchase.¹⁰⁹ Material facts include information "about a product's performance, features, safety, price, or effectiveness."¹¹⁰

Further, section 12 of the FTC Act conveys that it is unlawful for a false advertisement to "induce the purchase of food, drugs, devices[,] or cosmetics."¹¹¹ Thus, cosmetics advertising is held to the same "unfair or deceptive act" standard articulated in section 5 of the FTC Act.¹¹² Cosmetics are defined broadly in the FTC Act as articles that may be applied externally in various manners or that are "introduced into" the

101. *Id.*

102. *Id.* In its Policy Statement on Unfairness, the FTC explains that a consumer's injury must be "substantial" and cannot be a "subjective" type of harm, such as the "emotional impact" on the consumer. *FTC Policy Statement on Unfairness*, FED. TRADE COMM'N (Dec. 17, 1980), <https://perma.cc/Y2S8-KU9R>. Rather, "monetary harm" or "[u]nwarranted health and safety risks" are consumer injuries. *Id.*

103. 15 U.S.C. § 45(n). As long as the injury was "not reasonably avoidable by [the] consumers themselves and not outweighed by countervailing benefits to consumers or to competition," the FTC may declare the practice unlawful. *Id.*

104. *See id.* § 52.

105. *Id.* § 52(b).

106. *Id.* § 55(a)(1).

107. *Id.*

108. *See id.*; *see also Advertising FAQs: A Guide for Small Business*, FED. TRADE COMM'N, <https://perma.cc/X24E-CV44> (last visited Oct. 9, 2022) ("The FTC looks at what the ad does not say—that is, if the failure to include information leaves consumers with a misimpression about the product.").

109. *Advertising FAQs: A Guide for Small Business*, *supra* note 108; *see also* 15 U.S.C. § 55(a)(1).

110. *Advertising FAQs: A Guide for Small Business*, *supra* note 108.

111. POLICY STATEMENT ON DECEPTION, *supra* note 99, at 1; *see also* 15 U.S.C. § 52(a)(2).

112. 15 U.S.C. § 52(b).

body.¹¹³ Cosmetics are used for “beautifying” and “altering the appearance.”¹¹⁴ Because the FTC Act makes clear that cosmetics are held to the “unfair or deceptive act” standard,¹¹⁵ cosmetics advertising is not immune from FTC investigation.¹¹⁶ In fact, the FTC has already made efforts to “crack[] down” on “bogus” testimonials and celebrity endorsements of beauty products online.¹¹⁷

D. What is the FTC’s Role in Regulating Social Media Advertising and Influencers?

The internet has grown in popularity as an avenue to reach consumers all around the world, prompting the FTC to institute rules to protect brands and consumers alike.¹¹⁸ These rules address, among other things, online advertising, endorsements, and social media influencer marketing.¹¹⁹

1. Advertising Online

In 2000, the FTC released guidance on internet advertising.¹²⁰ The FTC acknowledged that “fraud and deception may dampen consumer confidence in the e-marketplace,” so the FTC Act applies to online marketing activities.¹²¹ Initially, the FTC’s internet marketing and advertising guidelines were limited, only covering specific areas like “credit and financial issues,” “environmental claims,” “free products,” and some items for sale.¹²² While this initial guidance was the FTC’s first effort

113. *Id.* § 55(e). External application of cosmetics includes “rubbing, pouring, sprinkling, or spraying” the cosmetic onto the body. *Id.* In 2020, some of the most commonly purchased cosmetics around the world included Mac Cosmetic’s lipstick in the shade “Velvet Teddy” and Maybelline’s “The Hyper Precise All Day Liner.” Louise Lethiec, *These Are the 10 Most Popular Beauty Products in the World*, VOGUE (Feb. 19, 2021), <https://perma.cc/K7BY-HZLK>.

114. 15 U.S.C. § 55(e). Interestingly, while “cleansing” is noted as an intended purpose for cosmetics, the FTC Act explicitly states that soap is not an article encompassed by the term “cosmetic.” *Id.*

115. *Id.* § 52(b).

116. See *What the FTC Does*, *supra* note 96; Lesley Fair, *FTC to L’Oréal: Scientific Claims Need Proof That’s More Than Just Skin Deep*, FED. TRADE COMM’N: BUS. BLOG (June 30, 2014), <https://perma.cc/H33N-GGVG> (“Last time we checked, there’s no ‘cosmetic’s exception’ to the FTC Act.”).

117. Macaela Mackenzie, *FTC Cracks Down on Celeb Endorsements and Fake Skin-Care Ads*, ALLURE (Dec. 4, 2017), <https://perma.cc/K76P-MLUP>.

118. See FED. TRADE COMM’N, *ADVERTISING AND MARKETING ON THE INTERNET 1* (2000), <https://perma.cc/43DR-8XBP>.

119. See *infra* Sections II.D.1–3.

120. See FED. TRADE COMM’N, *DOT COM DISCLOSURES: INFORMATION ABOUT ONLINE ADVERTISING 1* (2000), <https://perma.cc/W8BC-CH4C>.

121. *Id.*

122. *ADVERTISING AND MARKETING ON THE INTERNET*, *supra* note 118, at 6–10.

to clarify online advertising issues,¹²³ the rapid advancement of technology and the changing digital marketplace necessitated new guidance.¹²⁴

In 2013, the FTC updated its guidance on internet disclosures, which shares some key similarities with its predecessor.¹²⁵ First, the 2013 update reiterates that the FTC's prohibition of "unfair or deceptive" marketing applies to online advertising.¹²⁶ Because prior FTC guidelines addressed advertising and product claims generally, an advertiser should understand that past guidelines also apply to internet advertising.¹²⁷

Second, the updated version conveys a "clear and conspicuous disclosures" standard to be used in online advertising.¹²⁸ Simply, "clear and conspicuous disclosures" means that the consumer should not need to search for pertinent information to avoid being misled by the advertisement.¹²⁹ Rather, an advertisement that passes the "clear and conspicuous disclosures" standard ensures that consumers "notice . . . , read . . . , and understand [the disclosure]."¹³⁰ While there is "no set formula" for information disclosures,¹³¹ the FTC provides factors that an advertiser should contemplate when designing their advertisement.¹³²

Both the 2000 and 2013 guidance contain the same factors to ensure "clear and conspicuous disclosures," but the 2013 guidance factors reflect technological advancements.¹³³ Specifically, the 2013 guidance considers that both the internet's accessibility and mobile technology expose consumers to advertising virtually anywhere.¹³⁴ Additionally, the 2013 guidance conveys that advertisers must consider "space-constrained

123. See generally DOT COM DISCLOSURES, *supra* note 120.

124. See Lesley Fair, *FTC Calls for a Reboot on Business Guidance About Digital Advertising*, FED. TRADE COMM'N: BUS. BLOG (June 3, 2022), <https://perma.cc/ZGN9-2Y44>.

125. See FED. TRADE COMM'N, .COM DISCLOSURES: HOW TO MAKE EFFECTIVE DISCLOSURES IN DIGITAL ADVERTISING 1 (2013), <https://perma.cc/PGS2-CHPA>.

126. *Id.* at 2; DOT COM DISCLOSURES, *supra* note 120, at 1.

127. See .COM DISCLOSURES, *supra* note 125, at 2; DOT COM DISCLOSURES, *supra* note 120, at 3–4.

128. .COM DISCLOSURES, *supra* note 125, at 4; DOT COM DISCLOSURES, *supra* note 120, at 4.

129. Lesley Fair, *Full Disclosure*, FED. TRADE COMM'N (Sept. 23, 2014), <https://perma.cc/NN66-WVSL>.

130. *Id.*

131. .COM DISCLOSURES, *supra* note 125, at 7; DOT COM DISCLOSURES, *supra* note 120, at 5. There is no set formula because the FTC recognizes that "advertisers' stock in trade is the ability to" use tools like "text" and "sound" to convey a message; thus, the FTC should not need to "dictat[e] the specifics" of how brands design their advertisements. *Fair*, *supra* note 129.

132. See .COM DISCLOSURES, *supra* note 125, at 7; DOT COM DISCLOSURES, *supra* note 120, at 5–6.

133. .COM DISCLOSURES, *supra* note 125, at 8–21; DOT COM DISCLOSURES, *supra* note 120, at 6–14.

134. See .COM DISCLOSURES, *supra* note 125, at i.

screens and social media platforms” when creating advertisements and making disclosures.¹³⁵ Thus, the factors advertisers should consider include the following: the “[p]roximity and [p]lacement” of any disclosures;¹³⁶ the “prominence” of the disclosure;¹³⁷ the possibility of distraction from the disclosure;¹³⁸ the need for repetition of the disclosure;¹³⁹ the use of “[m]ultimedia [m]essages and [c]ampaigns” and their effect on the disclosure;¹⁴⁰ and, finally, the use of “[u]nderstandable [l]anguage” when making a disclosure.¹⁴¹

Overall, the 2013 guidance’s “clear and conspicuous disclosures” standard was updated to ensure that advertisements are truthful and “that consumers get what they pay for” amid technological advancements.¹⁴²

2. Endorsements

Similarly, the FTC recently updated its “Endorsement Guides” in 2023 “to ensure that advertising using reviews or endorsements is truthful.”¹⁴³ While a complete review of the FTC’s “Endorsement Guides” is beyond the scope of this Comment, considering what an endorsement is and how endorsers influence consumer purchasing is important to this discussion.¹⁴⁴ Endorsements are important because brands work with

135. *Id.*

136. *Id.* at 8. To make an effective disclosure, advertisers should strive to place disclosures near any language in the ad that is causing the need for the disclosure, or advertisers should alert the consumer to the location of the disclosure. *See id.* at 8–9.

137. *Id.* at 17. “Prominence” refers to the “responsibility to draw attention to the required disclosures.” *Id.* Advertisers should not “bury” their disclosures, and advertisers should consider how the graphics, the sizing, and the coloring of any text, will appear to the consumer on different devices. *Id.* at 17–18.

138. *See id.* at 19. Visuals and text should not distract the consumer from the disclosure; thus, the advertiser must consider “all the elements in the ad” and how they may “reduce the prominence of a disclosure.” *Id.*

139. *Id.* at 19. Repetition of a disclosure should be used when needed “to convey a non-deceptive message;” however, repetition should be avoided if it would serve to unnecessarily “clutter the ad.” *Id.*

140. *Id.* at 20. The disclosure should match the format of the claim. Therefore, “audio claims” require “audio disclosures,” “written claims” need “written disclosures,” and any “visual disclosures” should appear in a video long enough for a consumer to “notice, read, and understand them.” *Id.* The advertiser should also consider the different technologies the consumer may use to view the advertisement, such as a larger computer screen or smaller cellphone screen. *See id.*

141. *Id.* at 21. Advertisers should use language in their disclosures that is easy for consumers to understand by “avoid[ing] legalese or technical jargon” and avoiding any “[i]cons and abbreviations” that a consumer would not understand the meaning of. *Id.*

142. *Id.*

143. *Federal Trade Commission Announces Updated Advertising Guides to Combat Deceptive Reviews and Endorsements*, FED. TRADE COMM’N (June 29, 2023), <https://perma.cc/332J-397T>.

144. *See Advertisement Endorsements*, FED. TRADE COMM’N, <https://perma.cc/HV46-MB7Y> (last visited Nov. 7, 2022). (“Endorsements are an important tool for advertisers[,] and they can be persuasive to consumers.”).

social media influencers who then share the brand with their followers.¹⁴⁵ The term “endorsement” means “any advertising . . . message . . . that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of [an endorser] other than the sponsoring advertiser.”¹⁴⁶ Thus, an “endorser” must be truthful about a product or service.¹⁴⁷ Endorsers of a product or service can include “consumers, experts, organizations, and celebrities.”¹⁴⁸

Further, endorsers legitimize a product or service, especially when the endorser is a well-known name.¹⁴⁹ Our brains associate recognizable celebrities with people “who are actually familiar and trustworthy to us in real life” even though we do not know celebrities personally.¹⁵⁰ As a result, a celebrity’s promotion of a product induces consumers to purchase that product because the product itself seems familiar and trustworthy to consumers by association.¹⁵¹ Also, the use of celebrity endorsers makes consumers believe that the product they are purchasing is of a “high quality.”¹⁵² Consumers assume that a celebrity knows more about cosmetic products than fellow consumers do and therefore trusts their opinion.¹⁵³

However, utilizing “real people” as endorsers in advertisements can be as successful as using celebrities.¹⁵⁴ Because brands seek to build “an emotional connection” with consumers, “real people” endorsers “encourage[] more [consumers] to share their stories.”¹⁵⁵ Real-life stories “resonate better” with consumers than any “staged production” will.¹⁵⁶

145. See *Endorsements, Influencers, and Reviews*, FED. TRADE COMM’N, <https://perma.cc/9C2Q-2R8Z> (last visited Aug. 28, 2023).

146. 16 C.F.R. § 255.0(b) (2023).

147. *The FTC’s Endorsement Guides: What People Are Asking*, FED. TRADE COMM’N, <https://perma.cc/A8Q9-J6MU> (last visited Nov. 16, 2022).

148. *FTC Publishes Final Guides Governing Endorsements, Testimonials*, FED. TRADE COMM’N (Oct. 5, 2009), <https://perma.cc/C6C7-WSAR>. Kim Kardashian’s endorsement of Charmin toilet paper and footballer David Beckham’s name and face appearing on a box of fish sticks are two examples of “[b]izarre” celeb endorsements. Sam Cleal, *18 Bizarre Celebrity Endorsements That I Actually Can’t Believe Existed*, BUZZFEED (Nov. 8, 2020), <https://perma.cc/2WZQ-BSWP>.

149. See Steve Olenski, *How Brands Should Use Celebrities for Endorsements*, FORBES (July 20, 2016, 2:43 PM), <https://perma.cc/TT9A-H8HY>.

150. Jeff Stibel, *Brain Science: Here’s Why You Can’t Resist Celebrity Endorsements*, USA TODAY (Nov. 3, 2017, 3:59 PM), <https://perma.cc/VJ7N-KTDQ>.

151. See *id.*

152. *Id.*

153. See *id.*

154. Gabby Del Valle, *“Real People—Not Paid Actors”: Why Companies Love “Authentic” Advertising*, VOX (Oct. 18, 2018, 3:46 PM), <https://perma.cc/BK5C-W365>.

155. Paul D’Arcy, *Why Real People Make for Better Brand Marketing Campaigns*, GUARDIAN (June 20, 2014, 6:30 AM), <https://perma.cc/A6FB-X9JQ>.

156. *Id.*

Furthermore, advertisements using “real people” are more authentic.¹⁵⁷ When the product being advertised is a universal product (e.g., soap), using “real people” as endorsers is particularly effective because everyone has the same, shared experience of using that type of product.¹⁵⁸ Using “real people” in advertisements is empowering, especially when the advertisement forgoes image altering.¹⁵⁹ Image altering presents an unrealistic and “narrow ideal[] of beauty.”¹⁶⁰ Thus, when advertisements showcase “real people” and do not use image-altering techniques, women are empowered to feel more confident in their own appearance.¹⁶¹ Ultimately, advertisements that specifically focus on women’s issues empower women by “prompt[ing] a real conversation” about those issues.¹⁶²

Today, social media is a hub for paid brand endorsements.¹⁶³ Social media is an efficient way for brands to advertise to consumers through endorsements, which easily “reach millions with something as simple as a photograph and a few lines of text.”¹⁶⁴ While social media is no stranger

157. Del Valle, *supra* note 154; see also Kristy Laue, *Real Effective: Authenticity in Advertising*, LAWRENCE & SCHILLER: BLOG (May 8, 2018), <https://perma.cc/H8YL-QBAN> (explaining that consumers want to see people “who look like [them] in the ads, entertainment[,] and content [they] consume” and that relatability is important in building brand loyalty).

158. Del Valle, *supra* note 154 (conveying that “Dove’s ‘real beauty’ commercials,” which feature average people as opposed to celebrities or paid models, is successful in part because soap is a product used by everyone). Dove’s “Real Beauty” campaign was successful because it featured “diverse” women of different races and body types and encouraged “ditching . . . unattainable beauty standards” in favor of women feeling confident in their own appearance. Emily Rogers, *Why Dove’s Real Beauty Campaign Was So Successful*, LIVE OAK COMM’NS (Apr. 19, 2021), <https://perma.cc/BWF3-PV2P>.

159. Laue, *supra* note 157 (explaining that CVS’s “‘Beauty in Real Life’ campaign” confronted the notion that beauty ads can often make “women feel inadequate or even ugly” by using “real women” who are wearing the cosmetics and not altering the photographs used in the campaign); see also Shelley E. Kohan, *AEO’s Aerie Brand, Built on Body Positivity and Inclusion, is Slowly Edging Out Supermodel Juggernaut Victoria’s Secret*, FORBES (June 28, 2020, 12:45 PM), <https://perma.cc/2B56-E9EQ> (noting that fashion brand Aerie’s “‘Real’ marketing campaign” has found success by ditching airbrushing and “encouraging young women to love their own bodies”).

160. Aishee Das, *Beauty Without Photoshop: Aerie’s Ad Campaign Continues to Empower Girls*, SWORD & SHIELD (Dec. 3, 2014), <https://perma.cc/VBG6-9CRY>.

161. *Id.*

162. Brielle Jaekel, *Social Media Users Cannot Get Enough of Empowerment Ads*, MKTG. DIVE, <https://perma.cc/24LG-AAAYR> (last visited Nov. 12, 2022). For example, the feminine hygiene product brand Always launched the #LikeAGirl campaign in 2014 with the mission of encouraging girls to break free of societal expectations and confidently take on anything they set their mind to. See *Our Epic Battle #LikeAGirl*, ALWAYS, <https://perma.cc/3384-UMAT> (last visited Aug. 28, 2023).

163. See Americus Reed et al., *Social Media Endorsements: Where Will Marketers Draw the Line?*, KNOWLEDGE WHARTON (May 23, 2017), <https://perma.cc/C9LM-HFVN>.

164. Torie Levine, *Disclosing Endorsements on Social Media: General Considerations for FTC Compliance by Brands and Influencers*, FOSTER GARVEY (Apr. 9, 2019), <https://perma.cc/H52K-BNA7>.

to endorsements, one question remains: where do social media influencers fit in this puzzle?

3. Social Media Influencers

Because of the popularity of social media influencers, the FTC released disclosure guidelines for social media influencers who work with brands in order to regulate influencer-made endorsements.¹⁶⁵ But who are social media influencers, and why are they so coveted by brands? While household celebrities commonly influence others on social media, “social media influencers” are not necessarily celebrities.¹⁶⁶ Social media influencers are “a new type of independent third[-]party endorser.”¹⁶⁷ Because social media allows people to share their lives with others through “posts, photos, and videos” and amass a following, anyone can be a social media influencer.¹⁶⁸ So, an ordinary person can gain “hundreds, thousands[,] or even millions of followers due to their charisma, savvy[,] and expertise on a given subject” and, thus, turn into a social media influencer.¹⁶⁹ Social media influencers, in turn, gain more credibility online by amassing an even “large[r] audience[] of followers,” making their product or service endorsements feel “particularly authentic and trustworthy.”¹⁷⁰

Influencers who discuss beauty products, specifically, are known as “beauty influencers.”¹⁷¹ Beauty influencers review products and provide general beauty advice to followers, “which increases their image as an expert” and adds to their credibility.¹⁷² Significantly, beauty influencers

165. See DISCLOSURES 101 FOR SOCIAL MEDIA INFLUENCERS, *supra* note 19, at 2.

166. Dennis Kirwan, *Are Social Media Influencers Worth the Investment?*, FORBES (Aug. 21, 2018, 9:00 AM), <https://perma.cc/86RA-4G9X>.

167. KAREN FREBURG ET AL., WHO ARE THE SOCIAL MEDIA INFLUENCERS? A STUDY OF PUBLIC PERCEPTIONS OF PERSONALITY, PUB. REL.’S REV. 1 (2010), <https://perma.cc/62QY-PCAS>.

168. LU ZHANG & WEI WEI, INFLUENCER MARKETING: A COMPARISON OF TRADITIONAL CELEBRITY, SOCIAL MEDIA INFLUENCER, AND AI INFLUENCER, BOS. HOSP. REV. 4 (2021), <https://perma.cc/V3TP-4X6V> (citing Ganga S. Dhanesh & Gaelle Duthler, *Relationship Management Through Social Media Influencers: Effects of Followers’ Awareness of Paid Endorsement*, 45 PUB. REL.’S REV. 1, 1–13 (2019)).

169. Kirwan, *supra* note 166.

170. *Id.* Brands are incentivized to work with social media influencers because influencers can “start a conversation” with their followers about the brand and can expose the brand to new audiences who may not otherwise be reached. *10 Reasons Why Your Brand Must Work with Influencers*, UNBOX SOC., <https://perma.cc/38XV-Y53J> (last visited Jan. 16, 2023).

171. Werner Geyser, *The State of Influencer Marketing in the Beauty Industry*, INFLUENCER MKTG. HUB (Oct. 25, 2022), <https://perma.cc/ZN92-ET7F>. Notably, beauty influencers on TikTok average the most followers—767,651 to be exact—even though more influencers appear on other platforms. See *id.*

172. *Have Beauty Influencers Changed How Companies Market to You?*, DERM REV. (July 27, 2021), <https://perma.cc/TN22-RLAT>.

are most prevalent on Instagram and Youtube.¹⁷³ Both Instagram and YouTube host over 1,000 beauty influencers, with some influencers using both platforms.¹⁷⁴ Relatedly, the United States is the largest audience for beauty influencers, with about one-third of beauty followers on Instagram.¹⁷⁵

Beauty influencers have “attract[ed] cult-like followings” because consumers are beginning to shun television and magazine ads in favor of the “pretty packages of photos and videos” that beauty influencers post on social media.¹⁷⁶ In response, the beauty industry has grown into a multi-billion-dollar industry.¹⁷⁷ Because of beauty influencers’ power to sway consumers to buy products they recommend, consumers purchase “stockpiles of products, many of which they may not ever use.”¹⁷⁸ Also, because of influencers’ promotions, consumers rush to buy the latest makeup product on its launch day.¹⁷⁹ Further, consumers can communicate with influencers on social media and ask influencers questions directly.¹⁸⁰ Consumers no longer have to rely on passive “TV commercials and magazine ads” for information about beauty products.¹⁸¹ Rather, consumers can go right to the source.¹⁸² Because consumers can interact directly with influencers online, consumers may feel that influencers are their friends.¹⁸³ Furthermore, consumers trust an influencer’s judgement, so consumers may find themselves putting more expensive items in their cart simply because an influencer endorsed those products.¹⁸⁴

Because influencers are prevalent on social media, the FTC issued specific guidance for influencers who “work with brands to recommend or

173. See Geysler, *supra* note 171.

174. See *id.*

175. See *id.* On Instagram, the majority of followers for beauty influencers are between the ages of 25 and 34, and the vast majority of followers are female. See *id.*

176. Dina Gerdeman, *How Influencers Are Making Over Beauty Marketing*, FORBES (Dec. 13, 2019, 8:30 AM), <https://perma.cc/J6SZ-2ADM>.

177. See Amanda Krause, *Inside the YouTube Beauty Community That’s Turning Makeup Artists into Millionaires*, INSIDER (Mar. 21, 2020, 10:44 AM), <https://perma.cc/8ENJ-D8A3>.

178. *Id.*

179. See *id.*; see also Seren Morris, *20 Products That Have Sold Out Because of TikTok Popularity*, NEWSWEEK (Apr. 9, 2021, 7:00AM), <https://perma.cc/RP5X-GP2R> (explaining that beauty products such as the “KVD Good Apple Foundation” and “Elf Camo Concealer” quickly sold out on retailer sites due to the popularity the products gained on TikTok).

180. See Gerdeman, *supra* note 176.

181. *Id.*

182. See *id.*

183. See Jessica Grose, *When Grown-Ups Have Imaginary Friends*, N.Y. TIMES (May 5, 2021), <https://perma.cc/T3S5-ASYL>. These relationships are often referred to as “parasocial relationships,” or “emotional relationship[s] with a media figure.” *Id.*

184. See Adenike Fapohunda, *The Problem with Influencers*, CURRENT AFFS. (Feb. 21, 2021), <https://perma.cc/5XJB-JKMA>.

endorse products” in 2019.¹⁸⁵ The FTC works to prevent deceptive marketing; therefore, the FTC’s “Disclosures 101 for Social Media Influencers” guides social media influencers about how and when to disclose to their followers that they are working with a brand.¹⁸⁶

Influencers are powerful because they “[are] in control of the brand’s message.”¹⁸⁷ Because of their widespread following, brands pay influencers top-dollar to promote products and services to the influencers’ followers.¹⁸⁸ Typically, the amount a brand pays an influencer depends on the size of the following the influencer has,¹⁸⁹ and brand deals are directly correlated with the size of an influencer’s following.¹⁹⁰ Because brands pay influencers to promote products and services, the FTC requires influencers to disclose this financial relationship to their followers.¹⁹¹

Furthermore, the FTC explains that “[f]inancial relationships [are not] limited to money.”¹⁹² Thus, when an influencer receives “anything of value” from the brand, the influencer must disclose their relationship with that brand to their followers.¹⁹³ Disclosure of a brand-influencer relationship prevents deceptive advertising because disclosure “allows people to weigh the value of [the influencer’s] endorsements.”¹⁹⁴ When a consumer is properly informed of a brand relationship, the consumer can ultimately evaluate the usefulness of any recommendations the influencer makes.¹⁹⁵

Influencers must ensure that each disclosure is adequate by making the disclosure along with the endorsement, such as by including both audio and “superimposed words” that mention the sponsored nature of the endorsement during a video.¹⁹⁶ Influencers must “[u]se simple and clear language” when making a disclosure, and they should avoid vague

185. See DISCLOSURES 101 FOR SOCIAL MEDIA INFLUENCERS, *supra* note 19, at 2.

186. See *id.* at 2–5.

187. Joel Mathew, *Understanding Influencer Marketing and Why It Is So Effective*, FORBES (July 30, 2018, 8:00 AM), <https://perma.cc/C5M5-BT7W>.

188. See *id.*

189. See *id.*; see also Sydney Bradley, *How Much Money Instagram Influencers Make*, BUS. INSIDER (June 28, 2023, 7:53 AM), <https://perma.cc/5QF2-9SPK> (noting that an influencer who made \$700,000 for six months’ worth of brand partnerships has a follower count of 275,000 followers); Dawn Alcott, *Leak Reveals Which Brands Pay Influencers Most to Drive Instagram Sales*, YAHOO (Oct. 7, 2021), <https://perma.cc/XM3P-9E8A> (stating that the beauty brands Elaluz and Kopari Beauty have two of the highest commission rates for Instagram’s affiliate marketing program because both brands offer influencers a 20% commission rate).

190. See Mathew, *supra* note 187.

191. See DISCLOSURES 101 FOR SOCIAL MEDIA INFLUENCERS, *supra* note 19, at 3.

192. *Id.*

193. *Id.* For example, “free or discounted products” count as a valuable exchange between the brand and influencer that would warrant disclosure of the relationship. *Id.*

194. *Id.* at 2.

195. See *id.*

196. See *id.* at 4.

hashtags to explain that their content is sponsored by a brand.¹⁹⁷ To promote honesty, influencers are not allowed to lie; for example, an influencer cannot post that a product is “terrific” when the influencer really thought the product was “terrible” simply because of the brand relationship.¹⁹⁸ Further, an influencer may not make false claims “that would require proof the advertiser [does not] have.”¹⁹⁹ For example, an influencer cannot state that a product “can treat a health condition” if the brand cannot provide subsequent proof.²⁰⁰ Because beauty influencers can potentially engage in deception, the FTC watches the online beauty advertising space closely.²⁰¹

E. What Role Has the FTC Played in Beauty Advertising and Influencing on Social Media?

The competitive nature of the beauty industry has left the industry vulnerable to “all sorts of fakery,” including fake reviews on products and “shady” influencer practices.²⁰² Thus, the FTC has worked to end beauty brands’ deceptive conduct.²⁰³

1. Fake Reviews

Ninety-five percent of consumers consult other consumers’ reviews of a product before making a purchase.²⁰⁴ In the highly competitive cosmetics industry, beauty brands rely on high ratings and positive reviews to increase product sales.²⁰⁵ Thus, beauty brands are greatly incentivized to solicit and/or create their own fraudulent reviews praising their products.²⁰⁶ These fake reviews can consist of reviews by consumers who

197. *See id.* at 5. For example, using the phrase “spon” to indicate that the content is sponsored by a brand is unacceptable. *Id.*

198. *Id.* at 3–6. Not specifically addressed by the guidelines is the notion of influencers making comments about a brand’s competitors at the partner brand’s direction. *See* Cheryl Wischhover, *The Shady World of Beauty Influencers and the Brands That Pay Them, Explained*, VOX (Aug. 31, 2018, 11:01 AM), <https://perma.cc/45ZZ-DMWY> (explaining allegations that some beauty influencers have been asked by brands to “post negative reviews about competitor brands” in exchange for monetary compensation).

199. *See* DISCLOSURES 101 FOR SOCIAL MEDIA INFLUENCERS, *supra* note 19, at 6.

200. *Id.*

201. Wischhover, *supra* note 198.

202. Deanna Pai, *The Shady World of Online Beauty Reviews*, GLAMOUR (Nov. 23, 2018), <https://perma.cc/RV2Y-BL52>.

203. *See* Cristina Miranda, *Cosmetic Company Wrote Fake Reviews*, FED. TRADE COMM’N (Oct. 21, 2019), <https://perma.cc/KZ6C-DMK3> (noting, for example, that the FTC will impose civil penalties on the beauty brand Sunday Riley for any repeat offenses of deceptive conduct).

204. POWERREVIEWS, *THE POWER OF REVIEWS* 13 (2014), <https://perma.cc/C6RM-R7XR>.

205. *See* Edie Meade, *Crossing a Minefield of Fake Beauty Product Reviews*, MEDIUM: THE STARTUP (Jan. 14, 2020), <https://perma.cc/7RE9-BG5G>.

206. *See id.*

“have not [actually] used the product,” reviews that “lie about [the consumer’s] experiences” with the product, and reviews by consumers “who do not exist.”²⁰⁷

The FTC addressed the issue of fake reviews by suing beauty brands that violate the FTC Act.²⁰⁸ The FTC has the authority to issue a complaint against a brand when the FTC has “‘reason to believe’ that the law has been or is being violated” and when “a proceeding is in the public interest.”²⁰⁹ However, the public has criticized the FTC for “settling” with offending brands without imposing financial penalties or significant consequences because, without such consequences, brands will not “curb the[ir] fraudulent activity.”²¹⁰

While it is beyond this Comment’s scope to address the FTC’s recent proposal in detail, it is important to note that the FTC has proposed the creation of a formal rule targeting fake reviews, which could “impose civil penalties” on violating brands.²¹¹ In the meantime, consumers may choose to use websites like Fakespot.com that filter out “suspicious reviews.”²¹² Further, some retailers have opted to prevent fake reviews by specifying which reviews are made by verified purchasers.²¹³

2. Influencer-Brand Partnerships

In addition to fake reviews, the lack of sponsorship disclosures in the beauty industry is garnering attention.²¹⁴ As noted above, the FTC issued

207. *FTC to Explore Rulemaking to Combat Fake Reviews and Other Deceptive Endorsements*, FED. TRADE COMM’N (Oct. 20, 2022), <https://perma.cc/B6SE-LR2K>. For example, managers and employees of the brand Sunday Riley Skincare were found to have created fake profiles on cosmetic retailer Sephora’s website to leave reviews about the company’s products. *See FTC Approves Final Consent Agreement with Sunday Riley Modern Skincare, LLC*, FED. TRADE COMM’N (Nov. 6, 2020), <https://perma.cc/3T2D-UWN2>.

208. *See* Press Release, Fed. Trade Comm’n, Devumi, Owner and CEO Settle FTC Charges They Sold Fake Indicators of Social Media Influence; Cosmetics Firm Sunday Riley, CEO Settle FTC Charges That Employees Posted Fake Online Reviews at CEO’s Direction (Oct. 21, 2019), <https://perma.cc/2FDB-L47A>.

209. *Id.*

210. Meade, *supra* note 205 (noting that skincare brand Sunday Riley was not fined for creating fake reviews on Sephora, nor was the brand forbidden from continuing to sell their products on Sephora’s website); *see also* Elizabeth Segran, *Sunday Riley’s Fake Review Scandal Hurts All Beauty Brands—And All Consumers*, FAST CO. (Oct. 24, 2019), <https://perma.cc/JXU4-8H7H> (explaining that the Sunday Riley settlement is unlikely to act as a deterrent for brands to stop creating fake reviews because of the lack of fine imposed and because Sunday Riley did not have to “admit to wrongdoing”).

211. *FTC to Explore Rulemaking*, *supra* note 207.

212. Meade, *supra* note 205.

213. *See id.* (explaining that retail website Amazon adds a “Verified Purchase” badge when a consumer purchases an item from their website and then chooses to review it).

214. *See* Jacob Shamsian, *Beauty Brands Are Reportedly Paying \$85,000 to Influencers Who Trash Their Competitors on YouTube*, BUS. INSIDER (Aug. 31, 2018, 11:23 AM), <https://perma.cc/Q8FJ-MCTL>.

specific guidance for social media influencers who work with brands to promote products.²¹⁵ However, beauty influencers still often ignore the rules imposed by the FTC.²¹⁶ While beauty influencers are required to disclose when they are working with a brand,²¹⁷ many beauty influencers promote products without informing consumers that their review is being paid for, or sponsored, by the brand.²¹⁸ Furthermore, influencers' failure to disclose the use of affiliate links—links to a product that allow the influencer to earn a portion of the sale—is also an issue.²¹⁹

In response to influencers' lack of transparency, the FTC sends letters to influencers reminding them to “clearly and conspicuously disclose their relationships” with brands.²²⁰ Failure to disclose brand-influencer relationships could result in fines for the offending influencer.²²¹

F. *How Does the Use of Filters on Social Media Negatively Impact Beauty Standards?*

It is no secret that beauty advertising causes women to feel dissatisfied with their appearance so that they will purchase more cosmetics.²²² Society pressures women to “meet an idealized beauty standard,” and advertising presents women with cosmetics as the answer to feelings of insecurity.²²³ Furthermore, advertisements for cosmetics

215. See DISCLOSURES 101 FOR SOCIAL MEDIA INFLUENCERS, *supra* note 19, at 2.

216. See Shamsian, *supra* note 214.

217. See DISCLOSURES 101 FOR SOCIAL MEDIA INFLUENCERS, *supra* note 19, at 2.

218. See Shamsian, *supra* note 214. For example, popular beauty YouTuber James Charles was criticized for not properly disclosing sponsorships after he claimed that he forgot to update disclosure information in the description box of his YouTube videos. See *Ad or Not? James Charles and Various Beauty Brands*, TRUTH ADVERT. (Sept. 25, 2018), <https://perma.cc/X2H8-6AN3>. However, the FTC notes that material disclosures should not be made “below the fold” in description boxes, anyways. *Id.*

219. See Louise Matsakis, *YouTube and Pinterest Influencers Almost Never Disclose Marketing Relationships*, WIRED (Mar. 27, 2018, 4:44 PM), <https://perma.cc/UX3U-YXRU> (conveying that beauty vlogger Olivia Jade did not mention the use of affiliate links on a video reviewing Glossier makeup, even though a viewer could click on a product link for Glossier's Hydrating Moisturizer and purchase it).

220. *FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship*, FED. TRADE COMM'N (Apr. 19, 2017), <https://perma.cc/6S29-PTEF>. Letters have been sent to celebrity endorsers such as Kourtney Kardashian and Zendaya and to brands like Chanel and Puma. See Gillian Fuller, *More Details Have Emerged on the FTC's Warning Letter to Celebs and Social Media Influencers*, ALLURE (May 9, 2017), <https://perma.cc/BZ8S-779Y>.

221. See *FTC Guidelines for Influencers in 2023*, IZEA (Aug. 24, 2023), <https://perma.cc/E3A6-EGRD> (“Kim Kardashian . . . was fined \$1.26 million for not telling her Instagram followers that she was paid to represent a cryptocurrency.”).

222. See Van Thompson, *Influence of Advertisement on Women & the Attitude Toward Cosmetics*, CHRON., <https://perma.cc/RUG4-YTQF> (last visited Aug. 28, 2023).

223. *Id.*

often feature “retouched images” to achieve a look of perfection, creating unachievable real-life beauty standards.²²⁴

Like advertising, “social media culture . . . influenc[es] body image” and idealization.²²⁵ As social media users scroll through photos posted by celebrities and friends, users compare themselves to the images they see.²²⁶ This comparison often causes the user to feel negatively about their own appearance.²²⁷ As a result, women copy what they see on social media with the hope that their “li[ves] w[ill] change for the better.”²²⁸ However, imitating social media has negative implications, especially when the use of filters is involved.²²⁹

Although social media users once only compared themselves to airbrushed models, filters allow users to compare themselves to their “airbrushed peers” and even their “airbrushed selves.”²³⁰ As a result, the use of filters on social media is linked to “lower self-esteem, [lower] self-confidence, and higher cases of body dysmorphia.”²³¹ For instance, the term “Snapchat Dysmorphia” was created in the wake of social media users seeking plastic surgery to look like their filtered online personas.²³² Social media users obsess over achieving their filtered appearance in real life, leading to feelings of anxiety.²³³

Furthermore, filters “reflect and perpetuate beauty standards,” and filters are especially harmful when they “automatically lighten skin.”²³⁴ Filters often reflect a Eurocentric beauty ideal, with filters “remov[ing]

224. *Id.*

225. Jacqueline Howard, *The History of the “Ideal” Woman and Where That Has Left Us*, CNN: HEALTH, <https://perma.cc/XT99-CR7E> (Mar. 9, 2018, 7:54 AM) (explaining that as ideal beauty standards change, they are reflected through media).

226. See Kelly Oakes, *The Complicated Truth About Social Media and Body Image*, BBC: FUTURE (Mar. 11, 2019), <https://perma.cc/4CWE-QGBR>.

227. *See id.*

228. MAVIS HENRIQUES & DEBASIS PATNAIK, INTECHOPEN, SOCIAL MEDIA AND ITS EFFECTS ON BEAUTY 2 (2020).

229. *See id.* at 3 (noting that image alteration may lead to “increased body dissatisfaction, body modification, and low self-esteem issues”).

230. Anna Haines, *From ‘Instagram Face’ to ‘Snapchat Dysmorphia’: How Beauty Filters Are Changing The Way We See Ourselves*, FORBES (Apr. 27, 2021, 1:19 PM), <https://perma.cc/FH5H-72SH>.

231. Rivas, *supra* note 20. A person with body dysmorphia cannot “stop thinking about one or more perceived defects or flaws in [their] appearance.” *Body Dysmorphic Disorder*, MAYO CLINIC, <https://perma.cc/J3X8-NWX2> (last visited Jan. 5, 2023).

232. Elle Hunt, *Faking It: How Selfie Dysmorphia is Driving People to Seek Surgery*, GUARDIAN (Jan. 23, 2019, 1:00 AM), <https://perma.cc/J36T-JMVS>; see also Haines, *supra* note 230 (“55% of plastic surgeons in 2018 reported their patients’ surgeries were motivated by a desire to look better in selfies.”).

233. Rivas, *supra* note 20.

234. Jessica Wakeman, *Your Favorite Selfie Filter Could Be Contributing to a Mental Health Crisis*, NBC NEWS: THINK (Jan. 15, 2018, 9:05 AM), <https://perma.cc/H5W2-APKY> (noting that Snapchat was “accused of ‘white-washing’ people of color” through filters that “automatically lighten[ed] skin” tones).

traditionally ethnic features” to fit the “Instagram face” aesthetic of a “small nose” and “catlike eyes.”²³⁵ Thus, filters are problematic because they can “eras[e] [one’s] racial identity to fit the mold of the Instagram Face.”²³⁶

Overall, filters promote conformity over individuality.²³⁷ The average social media user is expected to put forth a perfected version of themselves, normalizing and justifying the use of filters.²³⁸ Thus, social media users “[s]triv[e] to fit the accepted norms of beauty” and eliminate their imperfections.²³⁹ Because of the quest to achieve the ideal standard of beauty, some countries have explicitly recognized and addressed the negative influence that filters have on social media users when used in advertising.²⁴⁰

G. How Has the United Kingdom Addressed the Use of Filters in Social Media Advertising of Beauty Products?

In the United Kingdom (U.K.), social media influencer Sasha Pallari started a “#FilterDrop” campaign, which prompted influencers to disclose the use of filters in beauty advertisements on social media.²⁴¹ The #FilterDrop campaign arose from a consideration of the “unrealistic beauty standards” that social media portrays.²⁴² Importantly, Pallari’s campaign is credited with encouraging the U.K.’s Advertising Standards Authority (“ASA”) to ban “misleading” filters in social media beauty advertisements.²⁴³

The ASA is an “independent advertising regulator” within the U.K. that ensures adherence to the “Advertising Codes.”²⁴⁴ The ASA may act on consumer advertisement complaints by issuing sanctions when brands break advertising rules.²⁴⁵ The ASA’s rulings have a cumulative effect on

235. Sara Li, *The Problems with Instagram’s Most Popular Beauty Filters, From Augmentation to Eurocentrism*, NYLON (Oct. 7, 2020), <https://perma.cc/SFV3-XX9M>.

236. *Id.*

237. See Haines, *supra* note 230.

238. Marci Robin, *How Selfie Filters Warp Your Beauty Standards*, TEEN VOGUE (May 25, 2018), <https://perma.cc/B63V-MF4X>.

239. Geetika Sachdev, *Are Instagram Filters Setting Unrealistic Beauty Standards for Women?*, YAHOO! NEWS (Feb. 22, 2021), <https://perma.cc/PZ3C-JAS5>.

240. See Mar Bermúdez i Jiménez, *Norway Bans Influencers from Retouching their Photos*, ARA (Feb. 7, 2021), <https://perma.cc/6FWH-QYF3> (explaining that Norway banned social media influencers from using undisclosed filters on their photos and that the United Kingdom has banned deceptive beauty filters in advertisements).

241. Laws & Hampson, *supra* note 16.

242. *Id.*

243. *Id.*

244. *About the ASA and CAP*, ASA, <https://perma.cc/D576-NBEE> (last visited Jan. 2, 2023).

245. See *id.*

the country's advertising industry.²⁴⁶ Importantly, the ASA recently acknowledged the increasing popularity of filters and their use in advertising content promoted by social media influencers.²⁴⁷

The ASA's original guidance for cosmetics advertising mainly concerned post-production image alteration on television,²⁴⁸ stating that images should "avoid misleading consumers."²⁴⁹ Furthermore, the U.K.'s Advertising Codes require that advertisements not "exaggerat[e] the capability or performance of a product."²⁵⁰ The ASA recently enforced these rules on two companies that make tanning products.²⁵¹ In the social media advertisements for these tanning products, influencers used filters to "mak[e] their skin tone appear darker" and alter their complexion.²⁵² The ASA ruled that the use of filters in such a context "exaggerated the efficacy of the [tanning] products," which was misleading.²⁵³

The ASA also ruled that filters must not be used in social media advertisements when the filter "exaggerate[s] the effect of the product."²⁵⁴ Thus, it is the advertiser's burden to prove that the filter did not change the product's performance and mislead consumers.²⁵⁵ As a consequence of breaking this rule, any advertisement that alters the "shade or texture of the product" will be (1) removed from the social media platform and (2) effectively banned from the platform.²⁵⁶ Thus, the ASA's ruling furthers the #FilterDrop campaign's goal of reducing filter usage and is an effective example of how a government can address filters in beauty advertisements.²⁵⁷

III. ANALYSIS

While beauty filters on social media "seem[] harmless," they ultimately promote unattainable beauty standards.²⁵⁸ This Part first explains how and why filter usage in social media beauty advertising

246. *See id.*

247. *See The (Mis)use of Social Media Beauty Filters When Advertising Cosmetics Products*, ASA: CAP NEWS (Feb. 11, 2021), <https://perma.cc/FUQ8-RU3Z>.

248. *See id.*

249. COMM. OF ADVERT. PRAC., COSMETIC PRODUCTION TECHNIQUES 5 (2011), <https://perma.cc/6G4J-VNRZ>. For example, adding "shine to hair" when the product advertised "claim[s] to produce shiny hair" would be misleading. *Id.*

250. *Id.* at 2–3.

251. *See The (Mis)use of Social Media Beauty Filters*, *supra* note 247 (explaining the rulings against tanning product companies Skinny Tan Ltd. and We Are Luxe Ltd.).

252. *Id.*

253. *Id.*

254. Hallett, *supra* note 57.

255. *See The (Mis)use of Social Media Beauty Filters*, *supra* note 247.

256. Laws & Hampson, *supra* note 16.

257. *See Hannah Coates, Consider Instagram (And Your Skin) A Happier Place Thanks to Sasha Pallari*, BRIT. VOGUE (Feb. 25, 2021), <https://perma.cc/2RPB-9DGR>.

258. *See Boseley, supra* note 5.

creates negative repercussions for consumers. Then, this Part argues that the FTC should explicitly ban filter usage in social media beauty advertisements. Additionally, this Comment provides a temporary solution to end deceptive filter usage that involves (1) the encouragement of self-commitments to not use filters and (2) the encouragement of social media hashtag campaigns to disclose filter usage.

A. The Interplay of Social Media, Filters, and Advertising Negatively Affects Consumers

The interplay of social media, filters, and advertisements creates an endless cycle of unhappiness for consumers that causes serious mental health consequences.²⁵⁹ Social media encourages users to “appear perfect.”²⁶⁰ Social media also idealizes beauty standards based on whatever trends are popular online.²⁶¹ However, these idealized beauty standards are often unattainable because much of social media’s content masks reality through filters.²⁶² Thus, when users scroll through their social media feed and compare themselves to the filtered images of others, they are commonly left with one emotion: dissatisfaction.²⁶³

As a result, users’ obsession with their outward appearance motivates them to turn to social media influencers’ promotion of beauty products online.²⁶⁴ An influencer’s beauty product promotion causes consumers to believe that the advertised beauty product will aid in their achievement of perfection.²⁶⁵ Instead, because the influencer’s endorsement is often filtered and inaccurate, a consumer will be disappointed and stuck with an expensive beauty product that does not perform as portrayed online.²⁶⁶

259. See Sophia Edisi, *Social Media Influence on Beauty Standards*, WILL DOWNTOWN (Mar. 8, 2022), <https://perma.cc/ENY8-6TE4> (explaining that “ideal beauty standards [portrayed] through advertising,” the use of filters, and content posted on social media can contribute to low self-esteem).

260. See Dr. Wendy Rice, “*Perfection*” on Social Media Does Not Make You Perfect, RICE PSYCH. GRP., <https://perma.cc/RP4C-QTQJ> (last visited Sept. 4, 2023).

261. See Annalise Mantz, *How Social Media Can Impact Your Self-Esteem—And Therapist-Approved Ways to Cope*, POPSUGAR: LIVING (May 20, 2022, 3:00 AM), <https://perma.cc/J7V8-L9GN>.

262. See Sachdev, *supra* note 239.

263. See Erin Heger, *The Sneaky Ways Social Media Can Sabotage Your Body Image—And 3 Easy Tips to Help You Break the Cycle*, INSIDER (May 19, 2022, 2:20 PM), <https://perma.cc/VD8E-AKJ7>.

264. See Rafael Schwarz, *Why Social Media Marketing Will Only Become More Popular in the Beauty Industry in 2022*, FORBES: COMMC’NS COUNCIL (Feb. 15, 2022, 7:00 AM), <https://perma.cc/5XXT-M7R7> (stating that “social media has amplified the importance of outer appearance” and that social media influencers, aptly, “influence the beauty industry”).

265. See Brown, *supra* note 13.

266. See *id.*

Thus, the quest to attain the ideal beauty standard continues, with the consumer eagerly seeking the next product that will perfect their flaws.²⁶⁷

Without any formal regulation preventing filter use in social media beauty advertisements, the cycle of filtered advertisements, consumer purchases, and disappointment will continue.²⁶⁸ Inevitably, this cycle will result in serious mental health consequences, like anxiety and body dysmorphia,²⁶⁹ because beauty product consumers will continue to scrutinize their appearance in unhealthy ways, searching for imperfections that beauty products can fix.²⁷⁰

Because of the negative effects that filters in beauty advertisements have on consumers—promoting the false narrative that “perfection is attainable” through misleading content²⁷¹—it is imperative that the law address the use of such filters. Thus, the FTC, in exercising its authority to regulate marketing tactics, should combat the negative impact that filter usage has on consumers through its guidelines for social media influencing.

B. The FTC Should Explicitly Address Filters and Ban Them in Beauty Advertisements

The FTC’s “mission is to protect consumers.”²⁷² Specifically, the FTC must also “[p]rotect the public from unfair or deceptive acts” in marketing.²⁷³ Therefore, the FTC should explicitly address filter usage in social media influencing and ban filter usage in social media beauty advertisements. Like the ASA in the U.K.,²⁷⁴ the FTC must act.

The ASA recognized that brands mislead consumers when a filter in a beauty advertisement “exaggerate[s]” the product’s performance, ruling

267. See Henah Velez, *Why I’m No Longer Listening to Influencer Suggestions*, GOOD TRADE (Aug. 5, 2021), <https://perma.cc/YK69-PWV3> (explaining that in the beauty industry generally, it is easy for consumers to become trapped in a cycle of buying products that are recommended by influencers, trying the products out, and “then be[ing] disappointed by the results”).

268. See Liucija Adomaite & Ilona Baliūnaitė, *Women Join the #FilterDrop Challenge on Instagram, Share 22 Unfiltered Faces to Fight Against Retouched Paid Beauty Ads*, BORED PANDA (Feb. 4, 2021), <https://perma.cc/Y6MY-5U6E> (explaining that influencers are “fighting for stricter guidelines” in beauty product advertising because of the influx of retouched and filtered beauty ads online).

269. See Rivas, *supra* note 20.

270. See Coates, *supra* note 257 (noting that beauty consumers have “become allergic to seeing [thei]r own skin” and will purchase influencer and celebrity-advertised beauty products when those filtered ads sell perfection).

271. Brown, *supra* note 13.

272. *Our History*, *supra* note 69.

273. *About the FTC*, *supra* note 72.

274. See *The (Mis)use of Social Media Beauty Filters When Advertising Cosmetics Products*, *supra* note 247 (noting that the U.K. has taken measures to ensure that advertisers do not mislead consumers with exaggaratingly filtered ads).

that brands must not use filters in that misleading manner.²⁷⁵ Following the ASA's lead, the FTC must explicitly recognize the danger that filtered beauty ads pose to consumers and act accordingly to ban filter usage. Three major justifications support an FTC's filter ban, which consider that both brands and social media influencers alike may use filters in their social media beauty advertisements:²⁷⁶ (1) the FTC is authorized to ban filters because they are unfair and deceptive and false advertising; (2) the FTC already has social media influencer guidelines that could be used to inform influencers about a filter ban; and (3) the FTC's missions support a filter ban.

First, section 5 of the FTC Act allows the FTC to "investigate and prevent" the use of brands' "unfair or deceptive" practices.²⁷⁷ Just as the ASA in the U.K. may remove a brand's beauty advertisement when deceptive filters are used,²⁷⁸ the FTC has the authority to order an advertiser to stop running their advertisement and make the necessary corrections.²⁷⁹ Therefore, the FTC has the power to state the deceptive nature of filters explicitly, investigate their usage, and prevent brands from using misleading tactics in their beauty advertising.

Furthermore, filters are arguably "false advertis[ing]" as defined under section 12 of the FTC Act.²⁸⁰ Because the FTC analyzes an advertisement for any misleading "representations made,"²⁸¹ the use of a filter to change a beauty product's coloring or performance should be considered false advertising because the product is represented to consumers in a deceitful manner.²⁸² Because section 12 also explicitly deems it unlawful for a false advertisement to "induce the purchase of . . . cosmetics,"²⁸³ the FTC must ban the use of filters in beauty advertisements because of their deceptive nature.

Second, the FTC can use its existing social media influencer guidelines to inform influencers about filters' deceptive nature and caution why filters should not be used. In its "Disclosures 101 for Social Media Influencers" guidelines, the FTC informs influencers that they must not

275. Hallett, *supra* note 57.

276. See Roberta Schroeder, *The ASA Has Removed Influencer Posts That Use Misleading Filters*, HARPER'S BAZAAR (Feb. 4, 2021), <https://perma.cc/7DUB-9YQF> (noting that ASA's ruling impacts "brands, celebrities[,] and influencers" alike because any of these advertisers may use a misleading filter when promoting beauty products).

277. *What the FTC Does*, *supra* note 96.

278. See Laws & Hampson, *supra* note 16.

279. See Azcuenaga, *supra* note 17.

280. 15 U.S.C. § 52.

281. *Id.* § 55(a)(1).

282. See Brown, *supra* note 13 ("To use filters would be false advertisement because the customer is given a false sense of the performance of makeup due to the use of filters.").

283. POLICY STATEMENT ON DECEPTION, *supra* note 99, at 1; see also 15 U.S.C. § 52(a)(2).

“make up claims about a product that would require proof the advertiser [does not] have.”²⁸⁴ Because the FTC’s goal is “to protect consumers from misleading claims,”²⁸⁵ these guidelines are the ideal place to ban filters on social media advertisements and warn influencers that filter use is equivalent to inventing false claims about a product. Filters make false claims about a cosmetic product because they can change the product’s appearance and performance.²⁸⁶ While the FTC already explains that social media influencers cannot lie about products, the FTC has not yet made the explicit connection between misleading claims and filters. The influencer guidelines, which serve to explain what online behavior is deceptive, is the perfect place to explicitly make that connection: filters are misleading and should not be used.

While someone may argue that simply making influencers disclose their use of filters in the same way they must disclose when they are working directly with a brand is enough,²⁸⁷ it is not. Giving influencers the discretion to decide whether their filter usage needs to be disclosed leaves consumers vulnerable to an influencer’s inevitable poor and self-interested decision-making.²⁸⁸ Explicitly banning filter usage in the guidelines and informing social media influencers about the ban removes the ambiguity of an influencer guessing whether their filter usage is deceptive. Especially in the beauty sphere, influencers have a powerful ability to create bonds with their followers and earn their trust.²⁸⁹ A clear, concrete ban on filters in beauty advertisements ensures that consumers do not blindly trust the filtered advertisements that their favorite influencer promotes.

Finally, the FTC’s main mission, “protect[ing] consumers,”²⁹⁰ justifies an explicit filter ban. Social media users “struggl[e] to match the beauty standards in real life that they see online,”²⁹¹ and these unrealistic beauty standards lead to anxiety, low self-esteem, and suicidal thoughts.²⁹² By explicitly banning filters in beauty social media advertisements, the FTC will protect consumers from both false advertising and the harmful

284. DISCLOSURES 101 FOR SOCIAL MEDIA INFLUENCERS, *supra* note 19, at 6.

285. *Division of Advertising Practices*, *supra* note 83.

286. *See* Brown, *supra* note 13.

287. *See* DISCLOSURES 101 FOR SOCIAL MEDIA INFLUENCERS, *supra* note 19, at 2.

288. *See generally* FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship, *supra* note 220 (conveying that the FTC has already noted issues with getting celebrities and influencers to disclose when they are promoting products for a brand and that the FTC has sent out warning letters as a result of celebrities’ and influencers’ poor judgment).

289. Gerdeman, *supra* note 176.

290. *Our History*, *supra* note 69.

291. Hallett, *supra* note 57.

292. *See* Chris Foy, *Beauty Standards, Mental Health, and Their Eye-Catching Relationship*, FHE HEALTH (Oct. 13, 2022), <https://perma.cc/3GC8-CNJB>.

effects that filters have on health.²⁹³ Thus, the banning of filters in beauty advertisements will serve a dual purpose: making the marketplace and impressionable consumers safer.

C. *Temporary Solution: Self-Regulation*

Until the FTC explicitly includes filters in its social media influencing guidelines and bans their use in beauty advertisements, a temporary solution is helpful and necessary. While awaiting government action, social media influencers and brands should commit to ending filter usage in beauty advertisements or, at the very least, to conspicuously disclosing filter use. One way to encourage this self-regulation is to use the hashtag function, which is popular across numerous social media platforms,²⁹⁴ on beauty advertisement posts. Hashtags foster “[i]nternet activism” and allow social media users to communicate about important societal issues and “encourage action” quickly.²⁹⁵ Notably, hashtag campaigns have been powerful in spreading awareness about important topics like sexual harassment and gender equality.²⁹⁶ Using hashtags to combat misleading and damaging beauty advertising filters would be similarly effective.

Therefore, bringing U.K.-influencer Sasha Pallari’s #FilterDrop campaign to the United States would be one way to encourage conversations about filters’ negative impact on mental health.²⁹⁷ Pallari’s hashtag campaign encouraged users to post pictures of themselves “filter-free” and use the hashtag “#FilterDrop” in their post.²⁹⁸ After the #FilterDrop campaign gained momentum on Instagram, Pallari voiced her concerns about filter usage in social media beauty advertisements to the U.K.’s ASA.²⁹⁹ Pallari’s activism encouraged the ASA to rule in 2021 that filters could not be used on beauty advertisements when “the effect of a beauty product” was “exaggerate[d]” to consumers.³⁰⁰

293. See Rivas, *supra* note 20 (“[E]xperts say there is a direct link between social media filters and lower self-esteem, self-confidence, and higher cases of body dysmorphia.”).

294. See *The Power of the Hashtag in Social Media*, LUMINOUS PR, <https://perma.cc/YP7P-H8NN> (last visited Jan. 3, 2023). Social media sites like Facebook, Instagram, and LinkedIn utilize hashtags as a way to identify “trending topics” or conversations. *Id.*

295. Val Razo, *Understand the Versatility and Necessity of Hashtag Activism*, G2 (Sept. 1, 2020), <https://perma.cc/C8DU-X5PB>.

296. See *id.*; see also *The Power of the Hashtag in Social Media*, *supra* note 294 (explaining that hashtag campaigns “increase audience engagement,” “increase visibility of content,” and encourage awareness).

297. See Coole, *supra* note 55.

298. *Id.*

299. See *id.*

300. *Id.*; see *supra* Section II.G.

Thus, encouraging a #FilterDrop or similar campaign in the United States would lead to two positive outcomes. First, hashtag use that encourages posting unfiltered videos and photos has the strong potential to instill body positivity and confidence in social media users, giving them a platform to show their true, unfiltered selves online.³⁰¹ A hashtag campaign may encourage social media users to become less dependent on filters, too, and to share their “unfiltered reality” more often.³⁰² A viral, no-filter hashtag campaign can encourage unfiltered photos and videos to become the norm, which, importantly, can change beauty standards. Because social media’s virality helps determine what beauty standards will soon be followed by the masses,³⁰³ if social media users become accustomed to posting and seeing unfiltered versions of themselves and their peers online, those unfiltered versions can inform the new beauty standard—a much more attainable standard based on real-life user images. In turn, users’ perception of their “real life” appearance will improve for the better.³⁰⁴ As a result, cases of anxiety and body dysmorphia, two mental health disorders linked to filter usage,³⁰⁵ may improve or decrease across populations.

Second, a hashtag campaign can incite regulatory change in the United States. Pallari’s U.K. #FilterDrop campaign and her petition to the ASA sparked change in the ASA’s advertising guidelines.³⁰⁶ A similar viral hashtag campaign in the United States may be the push that the FTC needs to address the detrimental effect filters have on social media beauty advertisements and use their regulatory authority to impose a solution.

IV. CONCLUSION

Because the FTC’s mission is to “protect consumers,” the FTC must explicitly ban filters in beauty social media advertisements.³⁰⁷ Beauty filters allow users to alter their appearance on social media, which exacerbates unrealistic beauty standards (i.e., that perfection is attainable)

301. See Coole, *supra* note 55 (noting that with the creation of her #FilterDrop campaign, Pallari received messages from social media users relaying the increased confidence they gained from her movement).

302. L’Oréal Blackett, *The Meaning Behind the #FilterDrop Campaign You’re Seeing on Instagram*, BUSTLE (Sept. 7, 2020), <https://perma.cc/JNZ4-CGMG>.

303. See Mantz, *supra* note 261.

304. See Coole, *supra* note 55 (explaining that the #FilterDrop “campaign is all about self[-]esteem, self[-]acceptance[,] and self[-]love”).

305. See Rivas, *supra* note 20.

306. See Coole, *supra* note 55; *The (Mis)use of Social Media Beauty Filters*, *supra* note 247 (explaining that the ASA ruled that brands and influencers may not use filters on social media beauty advertisements when the filter “exaggerate[s] the effect the product is capable of achieving”).

307. See *supra* Section III.B.

and causes consumers to experience negative mental health effects.³⁰⁸ The U.K. has already taken steps to address the dangerous repercussions of beauty filters by banning their use in social media beauty advertisements.³⁰⁹ Until the FTC explicitly bans filters in the United States, social media users and beauty brands must do their part to stop the filter takeover by vowing to forgo and actively condemn filter usage in social media beauty advertisements.³¹⁰

308. *See supra* Section II.F.

309. *See supra* Section II.G.

310. *See supra* Section III.C.