

## DIGITAL MEDIA BOOTCAMP:

### “Legal & Business Considerations for “Influencers”

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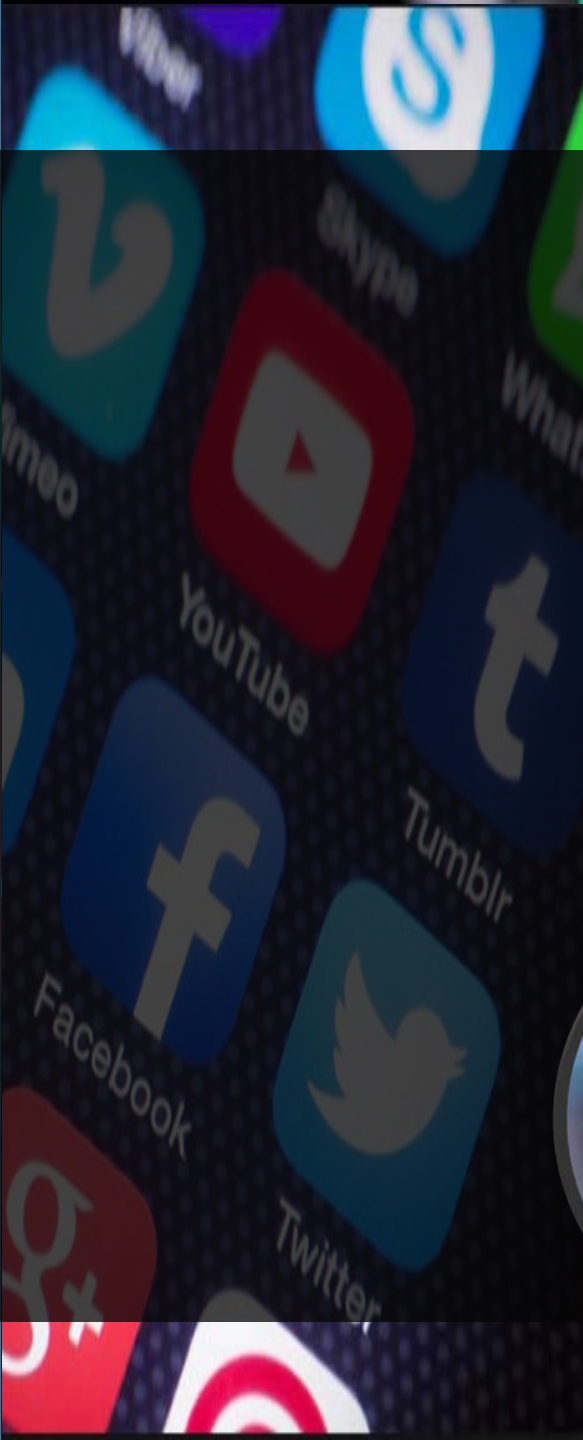
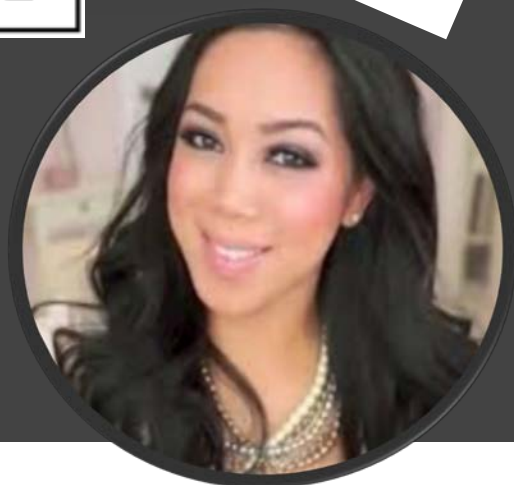
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SHARMA LAW PLLC



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IG: 1.2m

**Judy Travis**  
(ItsJudysLife):  
YT: 1,69m



# CONSIDERATIONS

- Legal: Loan Out Companies
- Brand & Endorsement Deals
- FTC Compliance
- Protecting Influencer IP



# LOAN-OUT

- WHY?

## Options:

- Sole Proprietorship
- Limited Liability Company (LLC)
- Corporation



## Why Influencers?

- Called Influencers for a reason: authenticity results in engagement and allows for conversations which is invaluable
- Allows brand to highly target a certain demo & see the metrics
- whole landscape of media, advertising, promotion & consumption has been turned on its head
- The Influencer owns and controls the distribution channel - this is huge
- It gives them CONTROL over their content and what products they are integrating into their content; they do the scripting, the shooting, editing, etc.
- They have to remain authentic in voice, style and tone



# Influencer Brand Deals: The Stats

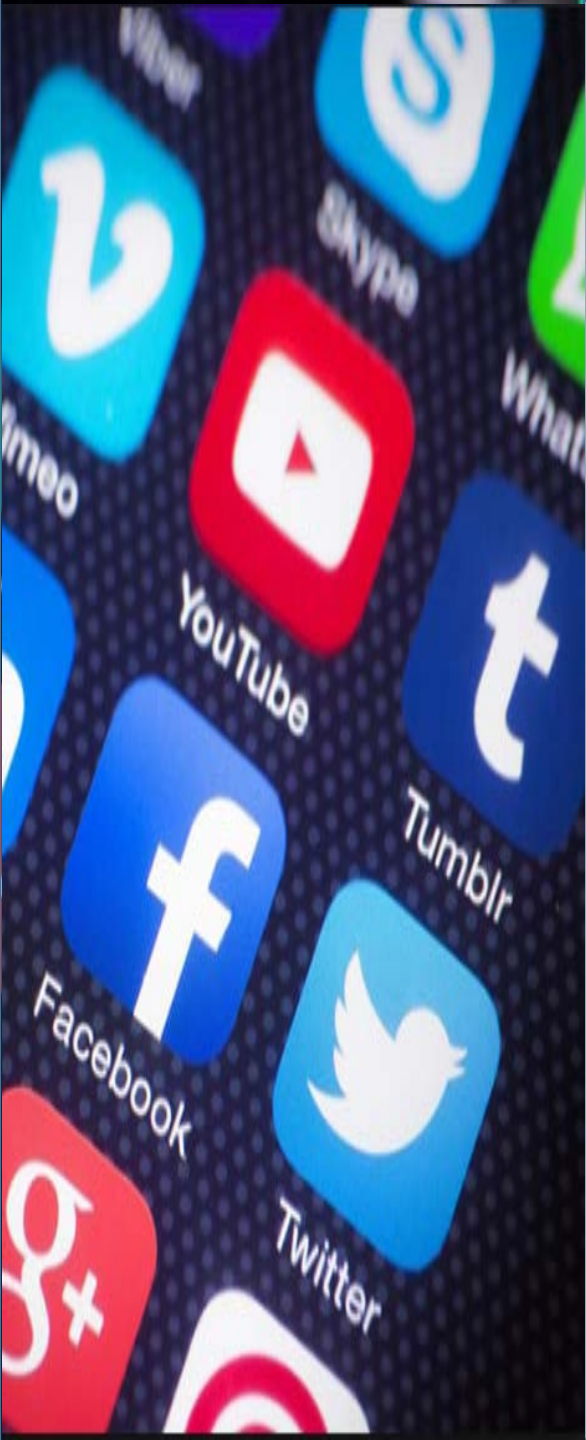
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<https://streamline-marketing.com/influencer-marketing-statistics/>

- The influencer marketing industry will reach between \$5 and \$10 billion by 2022
- 65% of people discover a new brand or product through an influencer at least once a week (24% say they find one daily!)
- 87% of shoppers were inspired by an influencer to make a purchase
- 56% of women that follow influencers follow beauty influencers, followed by entertainers, celebrity influencers, and fashion influencers
- 54% of men that follow influencers follow gaming influencers, followed by tech influencers and entertainers
- 70% of women prefer Instagram influencers; 64% of men prefer YouTube as their influencing platform
- 53% of people find new influencers through social media recommendations
- 31% of consumers recommend an influencer to friends and family at least once a week

## Overview

- Influencer Brand Deals: Key Contract Provisions
- FTC Guidelines
- FTC Cases



# Influencer Brand Deals: Key Contract Provisions





# Influencer Brand Deals: Key Contract Provisions

- Contracting Party – Loan Out
- Services/Deliverables
- Revisions/Edits/Creative Approvals
- Content Ownership
- Fee
- Brand Usage
- Exclusivity
- Morals Clauses
- FTC Disclosure

## Service/Deliverables

What is the Influencer responsible for delivering?

PLATFORMS:

YouTube, Twitter, IG, Facebook, Tiktok etc.



## Service/Deliverables Cont...

**Image specifications?** "Influencer must include five or more original lifestyle photos (no stock photography) in sponsored post".

**Copy Points? How will copy be incorporated?** Brand will provide messaging/copy points for the influencer to put in their own words, style, tone and incorporate into the campaign.

**Will tracking links/codes/hashtags be provided?** Brands will provide tracking links and coupons/promo codes for the influencer to incorporate into sponsored content.



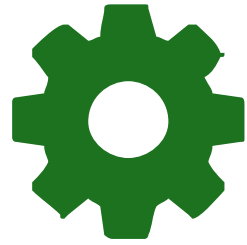
## Service/Deliverables Cont...

**Dedicated vs. Non-dedicated?** Campaign should differentiate between "dedicated" and "non-dedicated" sponsorship—if dedicated, no other brand name mentions must appear in the sponsored post. For a dedicated YouTube video, influencer will guarantee that sponsoring brand is the only brand mentioned in the video.

**Will content created by influencer be promoted across other social channels?** Both brand and influencer should clarify expectations regarding social media promotions on other platforms.

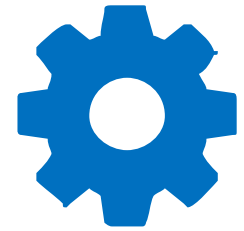
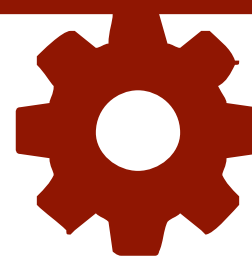
**Will a preview be made available prior to posting?** Brand should set preview expectations, deadlines, and schedules to review/approve subsequent posting.





Revisions/Edits/Creative Approvals

“Client shall have the right to review and approve (such approval not to be unreasonably withheld) the Video for compliance with copy points, links and key messaging only and give one round of notes. Under no circumstances will Consultant be required to reshoot the Video”.



No removing of social media posts unless in material breach – affects metrics/numbers

## *Creative Control:*



.....  
Influencer has full creative control over the Video, including but not limited to the title, what she wears in the Video, and the verbiage of the product descriptions



.....  
For further clarification, such creative control is subject to the terms of this Agreement, including but not limited to product descriptions as outlined in the Agreement and description links such as brand.com.

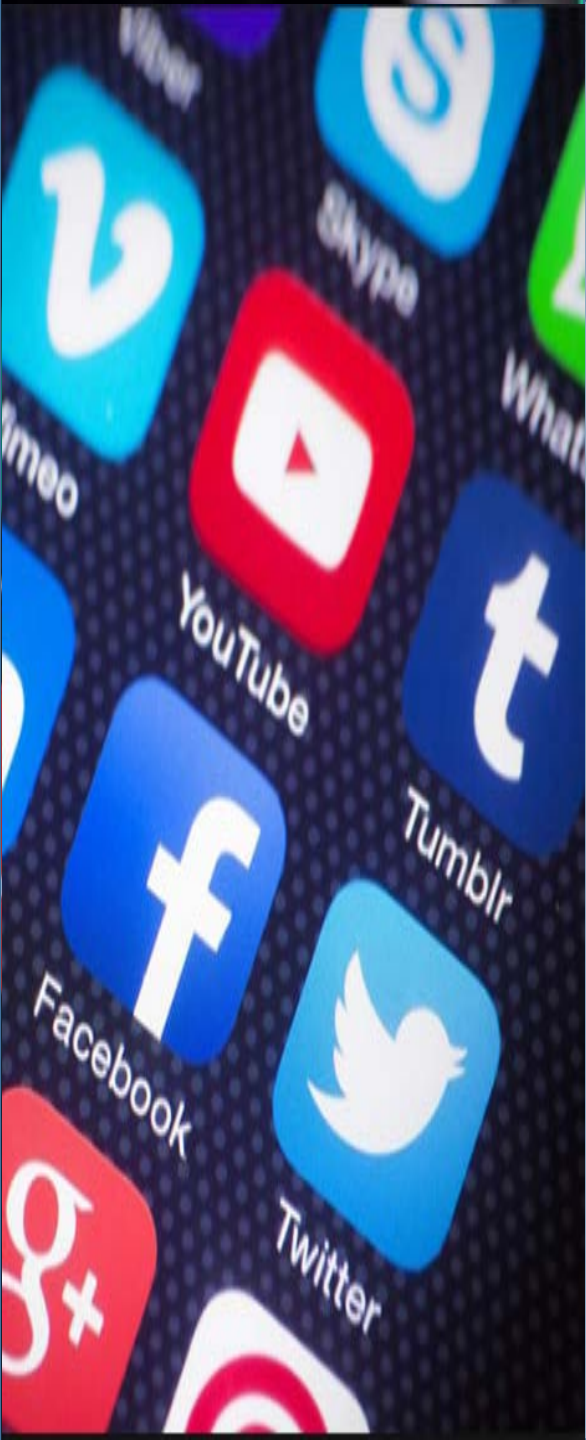
## *Content Ownership:*



Work for Hire vs. License



Influencer owns the distribution channel and the content



# Ownership

## a. Influencer

Influencer shall be deemed the exclusive owner of all rights, title and interest in and to the Content, including the Videos, but excluding any Brand Marks, in any and all media, languages, territories and jurisdictions throughout the world, now known or hereafter devised, including, but not limited to, any and all works of authorship, copyrights and copyright registrations.

## b. Brand

Brand shall retain all right, title and interest in and to all Brand Marks included in the Content








**LICENSE**

# LICENSE GRANT FROM INFLUENCER





Influencer. Influencer hereby grants to Brand, a limited, exclusive, royalty-free, worldwide, transferable, sub licensable right and license to use, reproduce, modify (for formatting and reformatting purposes only; there may be no modification/editing of the actual Content), publicly perform and display, distribute (either directly or through third party distributors), and otherwise publish the Content, including Influencer's name, likeness, image, approved biography/resume, voice/sound, or approved photograph, solely in connection with the marketing and promotion of the Brand in connection with this Brand campaign, its products and services, on Brand's designated social media channels: YouTube, Facebook, Twitter and Instagram, for a period of 3 months from Influencer's publication of the Content.

## *License Grant From Brand:*




Brand. Brand hereby grants to Contractor, a limited, royalty-free, worldwide, sub licensable, right and license to use, reproduce, publicly perform and display, distribute (either directly or through third party distributors), and otherwise publish the Brand Marks during the Display Period solely in connection with the marketing and promotion of the Brand, its products and services, solely as set forth in Section \_\_\_ above




Archival use allowed

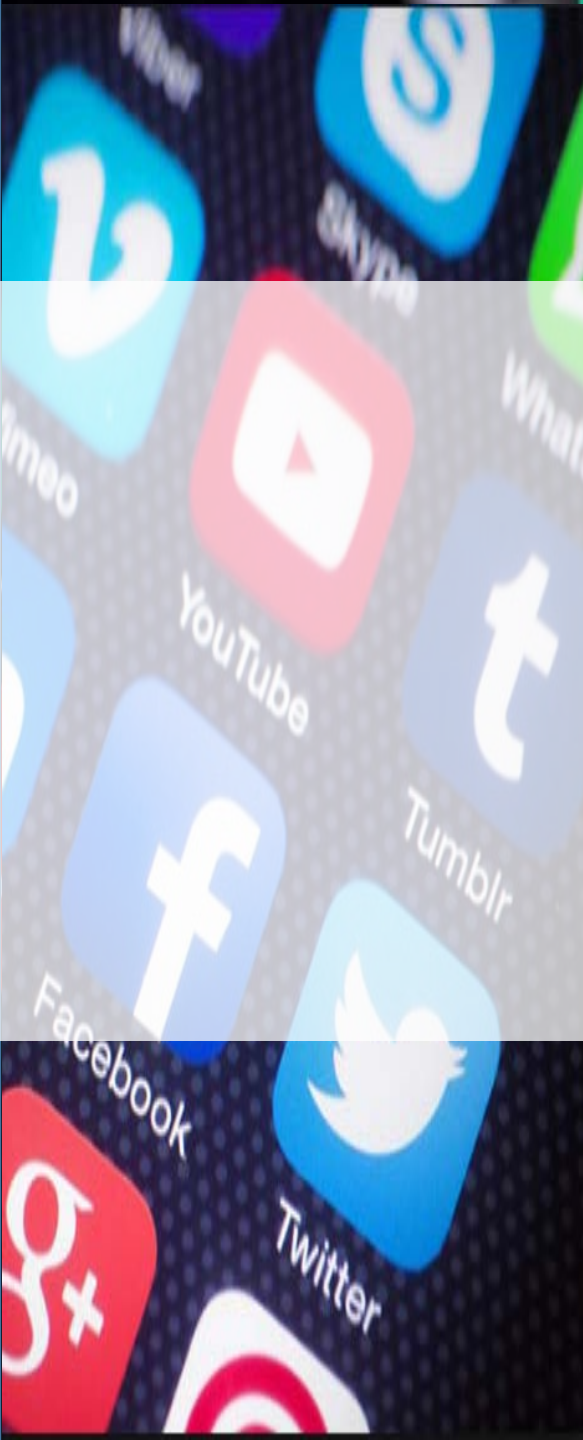
## Fee



Brand: Payment depends on Influencer fulfilling all obligations under the contract



Influencer: Pay or play



# USAGE

How does the brand get to use the Deliverable(s)?

Sample: Talent grants Client the right to post Video link to the following Client-owned and branded websites and social platforms: [www.brand.com](http://www.brand.com) and Brand Facebook, twice during the Term only.

# EXCLUSIVITY


Very important!

-brands do not want the Influencer working with competitive brands

-Sample:

**Exclusivity period:** Influencer to withhold posting about, sponsoring, or promoting other hospitality brands (including but not limited to resorts, hotels, time-shares, temporary lodging like Airbnb, VRBO, or similar business models) for 14 days after publishing of sponsored videos for each trip.





“Neither Lender nor Influencer shall authorize or permit the use of Influencer’s name, image, voice, quote or other likeness, nor will Influencer render services or participate in any other activity for the purpose of endorsing, promoting, advertising, or publicizing any other drugstore skincare products, including without limitation those made by Olay, Neutrogena, Aveeno, L’Oreal, CeraVe (“Competitive Products”) during the period from three (3) days before through three (3) days after the posting of the Video. Should there be a question whether or not a new opportunity is in competition with Ponds, please contact Agency with any questions or concerns”.

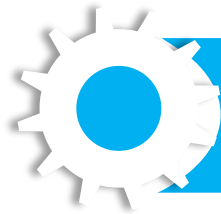
## Don't Forget:

- Standard contract clauses: indemnity, no disparagement, reps & warranties, governing law, assignment, notices, etc.



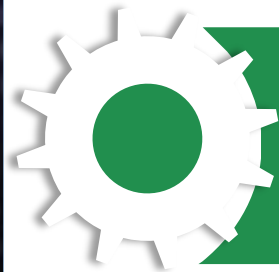


# MORALS CLAUSES




Brands often push for a broad morals clause

So they have flexibility in terminating their relationship with the celebrity or influencer



On the other hand, celebrities and influencers will want to negotiate a narrow and specific definition of what is considered a violation of the morals clause





Sample: “If Talent commits any act which brings Client into public disrepute, contempt, scandal, or ridicule, (the foregoing are referred to as “**Defaults**”), then at the time of any such Default(s) or at any time after Client learns of any such Default(s), Client shall have the right to immediately terminate this Agreement by written notice to Talent to that effect and Client will not be liable for payment for any Services affected by such Default.

Sample 2: Professional Behavior. If Talent is charged with, or indicted or convicted of a felony or other crime of moral turpitude (meaning an act or behavior that gravely violates the sentiment or accepted standard of the community), COMPANY or Agency shall have the right to immediately terminate this Agreement. COMPANY's or Agency's decision on all matters arising under this section will be conclusive, provided that COMPANY's or Agency's decision to terminate hereunder must be exercised, if at all, not later than thirty (30) days after the facts giving rise to such right under this section are brought to our attention.



# PREFERRED LANGUAGE

- Personal Conduct: Talent has not and shall not commit during the Term any act that could be prosecuted as a felony or as an assault or battery, nor any act of moral turpitude that offends a reasonable standard of community for people in the United States, nor any act involving the illegal use of weapons, drugs or alcohol or any criminal offense involving a minor or animal mistreatment, nor shall Talent become involved in any situation or occurrence otherwise reasonably tending to bring Talent, Client or Brand into public disrepute, contempt or scandal that offends a reasonable standard of community for people in the United States.



# REVERSE MORALS CLAUSE

- Influencer may terminate this Agreement if [Brand] shall materially breach its terms and fail to cure such breach within ten (10) days following receipt of written notice thereof, provided however that if as a result of an act by [Brand], Influencer is the subject of public disrepute, contempt, scandal or ridicule, or the commission of the act harmfully affects the success of Influencer, then at the time of any such act or at any time after Influencer learns of any such act, Influencer shall have the right, at its sole option, to terminate this Agreement by written notice of [Brand] to that effect.



*FunForLouis example: Did he violate the morals clause?*

VANITY FAIR

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WAG THE VLOG

# YouTube Stars Are Now Being Used for North Korean Propaganda [Updated]

British vlogger Louis Cole just wants to focus on the positive things about one of the world's most oppressive nations.

BY RICHARD LAWSON | AUGUST 16, 2016 9:30 AM

## FTC

Sample clause: Without limiting any other obligations of Consultant to comply with applicable laws and regulations pertaining to the Services, under the guidance and instruction of Client, Consultant agrees to comply with the applicable FTC's Guidelines Concerning the Use of Endorsements and Testimonials in Advertising, including without limitation making any required disclosures or substantiations (e.g., "#Ad", "#Sponsored" etc.) in connection with Consultant's Services. Upon the execution of this Agreement, Talent shall execute and deliver to Brand an FTC Compliance Certificate in the form of Exhibit B attached".

**\*Note:** Talent has the option to paraphrase in Talent's own words provided the sponsorship relationship is clearly stated.





GUIDELINES

# FTC GUIDELINES



## FTC Guidelines: Why?

The prevalence of sponsored posts coupled with the trust consumers place in the recommendations of today's top social media influencers have led the FTC to develop stricter guidelines regarding sponsorship disclosures




# FTC Guidelines

**Ask:**

Would knowing about that gift or incentive affect the weight or credibility your viewers give to your recommendation? If so, it should be disclosed.



- 
- When it comes to online ads, the basic principles of advertising law apply:
    - Advertising must be truthful and not misleading;
    - Advertisers must have evidence to back up their claims (“substantiation”) and
    - Advertisements cannot be unfair.
  - Must be visible on ALL devices – mobile (responsive)

**From:** <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>

## Key Elements to Disclosure: Required disclosures must be clear and conspicuous.

- Clear and unambiguous language;
- proximity to the relevant claim, i.e. as close as possible to the native ads to which they relate
- Display disclosures before consumers make a decision to buy, before the CTA.
- Use plain language and syntax so that consumers understand the disclosures.
- In a font and color that's easy to read, i.e. in a shade that stands out against the background;
- Preferably design advertisements so that “scrolling” is not necessary in order to find a disclosure

## Contd..

- For video ads, on the screen long enough to be noticed, read, and understood;  
and
- For audio disclosures, read at a cadence that's easy for consumers to follow  
and in words consumers will understand

# Cheatsheet: Three Top Tips From the FTC's Guidelines:

- Don't use ambiguous disclosures like "Thanks," #collab, #sp, #spon or #ambassador.
- Don't rely on disclosures that people will see only if they click "more."
- On image-only platforms like Snapchat, superimpose disclosures over the images.



# FTC ENFORCEMENT



# FTC CASES

## Recent Cases:

*FTC v. Teami LLC*

*FTC v. Devumi, LLC*

*FTC v. Sunday Riley Modern Skincare, LLC*

## Past FTC Foundational Cases:

*In the Matter of Sony Computer Entertainment America LLC -*

*In the Matter of Machinima Inc.*

*In the Matter of Lord & Taylor, LLC*

*In the Matter of Warner Bros. Home Entertainment Inc.*





# PROTECTING INFLUENCER IP

- Copyrighted Material - logos, merchandise, etc.
- Trademarks: Name, professional names, handles, product names



