

Recognisability of influencer marketing communications



There are a number of different types of ads that can appear social media, including affiliate or advertorial ads that have been published by an influencer. This Guidance Note focuses on these social media influencer marketing communications.

This Guidance is given by the Executive of the Advertising Standards Authority for Ireland (ASAI). It does not bind the Advertising Standards Authority for Ireland nor the ASAI Complaints Committee.

The ASAI's Code of Standards for Advertising and Marketing Communications applies to all commercial marketing communications, regardless of the medium in which they appear. Advertisers seek new opportunities to engage with consumers and in some cases, although material may not resemble traditional marketing communications, because the advertisers have paid for and controlled the content, it will in fact be marketing communications.

It is and has always been an important principle of the ASAI Code that consumers can easily recognise when they are being addressed by a marketing communication so that they can make an informed decision about their engagement with the content. With a variety of advertising techniques now available, the question is asked; what is a marketing communication and how can it be flagged as such?

The Code areas that are primarily relevant to marketing communications being identifiable as such are Recognisability, Truthfulness and Honesty (see Appendix I)

Social media

The default position is that advertiser's own posts or tweets are, when related to their own brand or products, marketing communications.

Where celebrities are sponsored by brands or paid directly to promote a brand's products, it must be clear that their posts are marketing communications or others.

The context of the post or accompanying # may make it clear that it is a marketing communication. However, where the context or accompanying # does not make it clear, it is incumbent on the advertiser to ensure that clear guidance is given so that clear 'flags' are used, for example #ad, #sponsor. Such disclosures must be immediately apparent before consumers engage with the content.

Determining what is marketing communication

Generally, material created by individuals, User Generated Content (UGC), is not considered to be marketing communication, even where it is referencing or reviewing advertisers' products or services.

Where the influencer has not been paid or otherwise induced to write a review, then the material is not marketing communication. If, however, an advertiser has paid the influencer (directly or in kind) and where the advertiser has significant control over the content of the review, then it is likely that the material would be considered a marketing communication.

When an influencer enters into a commercial arrangement with an advertiser to promote the company's products or services through their own social media channels, they are effectively acting as a publisher and they have a responsibility to indicate to their followers/audience what material is marketing communications material.

When influencers create content for their own brands or services, or use affiliate links in their content, such content is marketing communications, and this must be clear from the context or the content.

Responsibility

While advertisers have primary responsibility for the content they cause to be created, others involved in the creation of marketing communication content, such as an influencer, have a responsibility to comply with the Code.

Key watchouts

Clear, legible and visible

Ensure that the fact that the material is marcom is clear from the beginning. Disclosures should be clear and legible, and visible for consumers to see before they interact with/read the relevant material. A disclosure below-the-fold on websites, in terms and conditions at the end of a piece of content, or in the 'see more' section is not sufficient. Disclosures should not be obscured by other content.

When videos are involved care should be taken to ensure that it is clear to viewers before they engage with the content and immediately on engaging with the content that it is marketing communication material.

If some of the material is an independent review and some is marketing communications, clearly flag when/where the marketing communications material is.

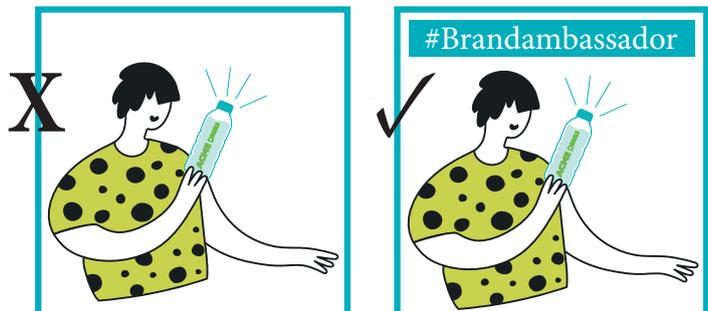
Free products

If an advertiser provides free products to an influencer with a requirement that a positive review would result, then this review would be considered to be a marketing communication and should be identified as such.

If the product is offered free, but with no expectation that there be a review or that there be a positive review (i.e., the advertiser has no control over any subsequent content) then the material is not marketing communications. (However, advertisers and others should be aware that the Competition and Consumer Protection Commission require disclosures of gifted products/services under the Consumer Protection Act, 2007).

Ongoing relationship e.g., sponsorship

If a brand sponsors an influencer, there is an ongoing commercial relationship. Part of the agreement might be to publish an agreed number of posts per week or per month, with the brand directing the content of those posts. These are marketing communications. And because there is an ongoing commercial relationship, any other content that contains or references the brand, including photographs, must be tagged appropriately.

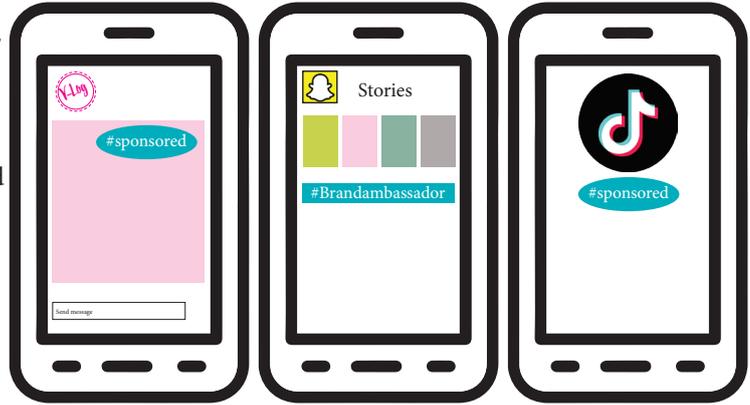


Absence of ongoing relationship

Where an influencer is paid to create content for an advertiser, and where they are not a brand ambassador, if they create additional content that is not within their contracted obligation, then these additional pieces of content are not considered to be marketing communications.

Expiring media

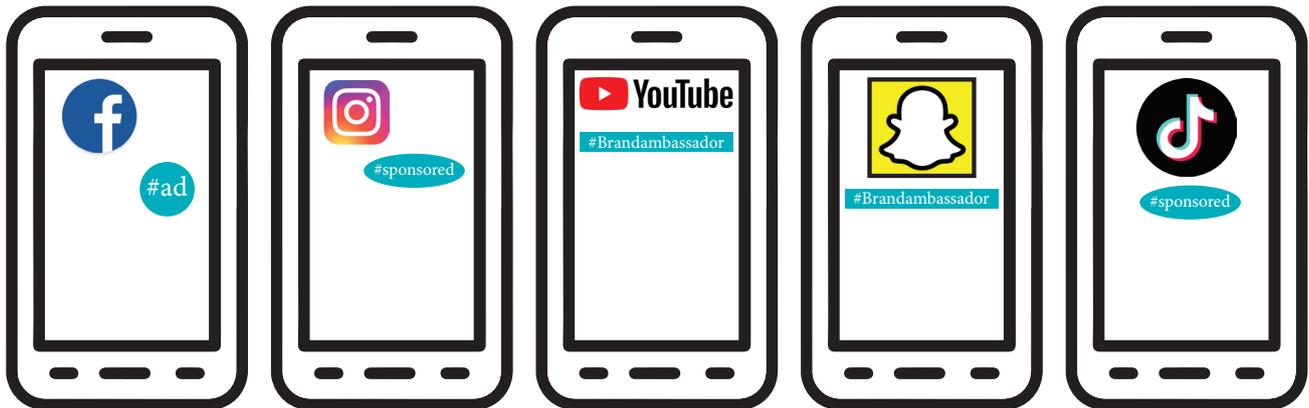
Where expiring media is used for publishing a post/story on behalf of an advertiser, all individual posts should have a relevant disclaimer that the material is marketing communications. This is so that were a consumer to view the content after the first post had expired, they would still be aware that the material was commercial marketing communications.



Multiple posts in campaign

When posting multiple pieces of marketing communications content, take care that they all contain an appropriate disclaimer.

Using multiple platforms in paid for campaign



When posting marketing communication content on different platforms, for example, a story on one platform and a video blog on another, it is important that it is clear that each piece of content is a marketing communication. Consumers may not see all the different pieces of content and if the content they see does not have a declaration, they will not be aware they are engaging with marketing communication content.



Affiliate links

If an influencer uses affiliate links, on their own social media content, to products on external third-party website, they must declare the fact that the links are affiliate links. As they will receive a commission should a consumer ultimately make a purchase having followed the affiliate link, the influencer content is a commercial marketing communication. #AF is a common disclaimer.

Where influencers use affiliate links on their own webpages, they must state at this at top of the webpage; disclosures at the end of the webpage or on other areas of the website do not present consumers with the opportunity to know immediately that they are engaging with marketing communications.

Appendix I

Recognisability

- 3.31 A marketing communication should be designed and presented in such a way that it is clear that it is a marketing communication.
- 3.32 Marketing communications should not misrepresent their true purpose. Marketing communications should not be presented as, for example, market research, consumer surveys, user-generated content, private blogs, or independent reviews if their purpose is marketing, i.e. the promotion of a product.
- 3.33 Advertorials should be clearly identified, should be distinguished from editorial matter and should comply with the Code.
- 3.34 The identity of the advertiser, product or service should be apparent. This does not apply to marketing communications with the sole purpose of attracting attention to communication activities to follow (so called “teaser advertisements”).
- 3.35 Marketing communications should, where appropriate, include contact information to enable the consumer to get in touch with the advertiser without difficulty.

Truthfulness

- 4.1 A marketing communication should not mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

Honesty

- 4.4 Advertisers should not exploit the credulity, inexperience or lack of knowledge of consumers.
 - 4.5 The design and presentation of marketing communications should allow them to be easily and clearly understood.
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