



# ASAI GUIDANCE NOTE



## Recognisability of marketing communications

This Guidance is given by the Executive of the Advertising Standards Authority for Ireland. It does not bind the Advertising Standards Authority 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 new advertising techniques, the question is asked: what is a marketing communication and how can it be flagged as such?

The Code provisions that are primarily relevant to marketing communications being identifiable as such are:

### 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.

## Social media

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

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.

## Independent Reviews, including Blogger and Vloggers

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 reviewer 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 reviewer (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 a blogger enters into a commercial arrangement with an advertiser to promote the company's products or services through their blog then they are effectively acting as a publisher and they have a responsibility to indicate to their readers what material is marketing communications (marcom) material.

### *Key watchouts*

Ensure that the fact that the material is marcom is clear from the beginning. Disclaimers should be visible for consumers to see before they interact with/read the relevant material. A disclaimer below-the-fold on websites, in terms and conditions, or at the end of the piece is not sufficient.

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

If a brand sponsors a blogger but has no control over the material, then it is not likely to be marcom, but good practice would suggest that the commercial relationship is disclosed.

### *Free products*

If an advertiser provides free products to a blogger (reviewer or vlogger) 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 for the purposes of the ASAI Code. (However, advertisers and others should be aware that the Competition and Consumer Protection Commission may require disclosures under the Consumer Protection Act 2007).