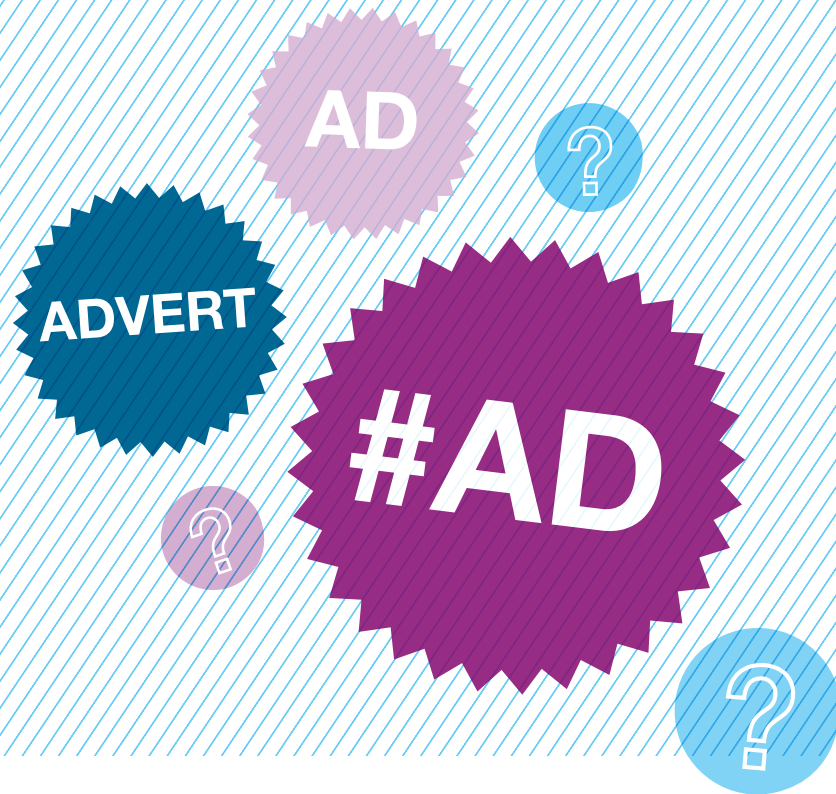


Influencers' guide to making clear that ads are ads



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Who are you?



The Advertising Standards Authority (ASA) is the UK's advertising regulator. The ASA makes sure ads across UK media stick to the advertising rules (the Ad Codes).



The Committee of Advertising Practice (CAP), whose members represent advertisers, media owners and agencies, is responsible for writing the Ad Codes.

Together, we work to make ads responsible. We do this by acting against misleading, harmful, irresponsible, or offensive advertising and providing advice and training to help businesses get their ads right. For more on the ASA & CAP, see our [website](#).



The Competition and Markets Authority (CMA) is an independent non-ministerial UK Government department and is the UK's principal competition and consumer protection authority. We help people, businesses, and the UK economy by promoting competitive markets and tackling unfair behaviour. For more information on the CMA, see our [homepage](#).

For more information about the roles of the different regulators in this sector, [see here](#).

What is this?



This a best-practice guide on how to ensure that advertising content posted by ‘influencers’ is clear about what it is. While it’s written with an influencer’s perspective in mind, the guidance is also useful for brands and agencies.

For the purposes of this guide, the concept of an ‘influencer’ includes any human, animal or virtually produced persona that is active on any online social media platform, such as Facebook, Instagram, Snapchat, TikTok, Twitch, YouTube, and others. Though they may be named differently on certain platforms or in regulatory frameworks, e.g., ‘bloggers’, ‘streamers’,

‘celebrities’ or ‘content creators’, they are all within scope of this guidance.

This guide is intended to provide the reader with a good understanding of the laws and rules that apply to them and how to make sure that they are following those rules for the benefit of their audience and the wider influencer marketing industry.

What are the rules?



Simply put, the key rule here is that it needs to be clear that ads are ads.



The main rules to take notice of are in the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the **CAP Code**).

The CPRs make ‘unfair commercial practices’ against the law. These include using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).

Other unfair practices include falsely claiming or giving the impression that an individual is acting outside of their business purposes or falsely representing themselves as a consumer; failing to identify a

commercial intent behind a social media post; and omitting or hiding ‘material’ information (e.g., that you are an ambassador for a brand whose product you have posted about).

The CAP Code, enforced by the ASA, also applies to most forms of influencer marketing. The Code is broken up into sections containing rules that relate to different subjects. For example, **Section 2** contains rules about how ads should be recognisable as ads, and **Section 3** sets out rules that advertisers must follow to avoid misleading people.

When do I need to disclose?



If you've received payment or any other incentive from a brand, or you are otherwise personally or commercially connected to the brand, any related content will need to make clear that it's advertising.

This means that whenever you receive any sort of incentive from a brand (even if it's not money – free products and other benefits count too, see p5), or you are directly connected to a brand e.g., you're an owner, employee, shareholder, director or have any other commercial or personal interest (i.e. family and friends), you need to make clear in any content where you feature or refer to the brand, that it's advertising. This is the case even when the brand doesn't know if or what you're creating. The same is true

for content containing affiliate marketing links (see p6).

The easiest way to ensure that content makes clear when it's advertising is to include a clear and prominent 'Ad' label upfront before people view the rest of the content (see p7). Both you and the brand are responsible for ensuring that content is properly disclosed, and you are expected to disclose throughout any ongoing relationship and in relevant content for a period of 12 months after.

What counts as 'payment' or 'relationship'?

There's nothing wrong with getting paid or otherwise incentivised to create content, but you need to be upfront about this with your audience.

Obviously, if you're paid by a brand to post a particular piece of content, that counts as 'payment' – but any incentive, even if it's not money, counts as a 'payment' for any resulting content.

If you have any kind of commercial relationship with a brand, this qualifies as 'payment'. This includes;

- being a brand ambassador;
- being a shareholder;
- being a director or having a position in the company;
- you are collaborating on your own 'edit' or 'collection';
- you are receiving an exclusive discount or a commission; or
- you are given products, services, trips, hotel stays, event invites, loans, leases, rentals, or shares etc. for free (whether requested or unsolicited).

It doesn't matter if there was no obligation to post about free items/services received, it still counts as 'payment' and needs to be disclosed.

Similarly, if you are promoting any brand that you, your family, or your friends own, it needs to be disclosed as advertising. This includes products or businesses you've created; events, gigs, or concerts you're doing; filters or 'presets' that you're selling; and any prize draws or giveaways you're running or participating in.

Affiliate marketing



Both you and the brand involved in an affiliate relationship are responsible for ensuring that the content follows the rules...

When your content contains or directs people to a link or discount code that means you get paid for ‘clickthrough’s’ or sales, it counts as advertising because it is ‘affiliate marketing’. This includes trackable links obtained directly through brand-owned affiliate programs, such as ‘Amazon Associates’, or through affiliate networks like ‘Awin’, ‘Skimlinks’ or ‘LTK’.

Both you and the brand involved in an affiliate relationship are responsible for ensuring that the content follows the rules (and not just the ones on disclosure, see p15).

If the content is wholly about affiliate-linked products, the whole of the content is advertising and you’ll need to make that clear upfront (see p7).

If only some of the products mentioned in your content have affiliate links or codes and the rest you’ve mentioned in a purely editorial capacity (or some of the content is completely unrelated to the affiliate-linked products),

then you need to make clear that the content that relates to the affiliate-linked products is advertising e.g., by putting an ‘Ad’ label clearly and prominently before any relevant content.

It is not sufficient to include a general disclaimer indicating that ‘some’ links ‘might’ earn you a commission – you need to specifically highlight what parts of the content are advertising. You should avoid labels such as ‘aff’, ‘af’ and ‘afflink’, which are unlikely to be familiar to the average person.

For further advice on affiliate marketing specifically, see [here](#).

How do I make it clear?



... you should, as an absolute minimum, include a prominent label at the beginning ...



People should be able to recognise immediately when content is advertising, without having to click or otherwise interact with it. It needs to be clear and obvious, so people shouldn't need any special knowledge or have to figure it out.

Ultimately, if it's not obvious from the context that something's an ad, a clear and prominent disclosure is needed upfront. Most influencer marketing and affiliate marketing content appears alongside or within organic or editorial content, and is presented in a very similar style, so in almost all cases it won't be immediately obvious to the audience when something is or isn't an ad from the context alone.

If you are promoting your own products or services on your own personal channels, you need to ensure that people can recognise that upfront from the content itself – meaning your audience shouldn't need to check your bio, or to have seen

your other content to know you're advertising your own stuff. For more on this [here](#).

To make it sufficiently clear upfront when content is advertising you should, as an absolute minimum, include a prominent label at the beginning - don't bury the disclosure in many other hashtags or leave it poorly contrasted with the content background. General disclosures separate from the content, also won't be sufficient.

Both you, the brand and any agents involved in creating or publishing the content are responsible for ensuring that it's clear when content is advertising. For more detail, including ASA rulings, see [here](#).

What labels are OK?

ADVERT

Considering the **ASA's research**, it's unlikely that labels other than those that explicitly call the content what it is, in a way that consumers understand, will be good enough.

Both the ASA and the CMA expect labels to just say it how it is, in a way that consumers understand e.g.;

#Ad

#Advert

#Advertising

#Advertisement

#AdvertisementFeature

This applies to all types of marketing content, from a post about a gifted product all the way through to a brand collaboration.

It's not necessary to use a '#' as part of the label, provided it is prominent and clearly separate from any other content. You are also free to include further information about the type of 'ad' the



content is, provided you've made clear that it's an 'ad' upfront and any additional words or explanations will be understood by the average person.

As any label used needs to be understood by consumers and make immediately clear that content is advertising, **we advise against using:**

Supported by/ Funded by

**In association with/
In partnership with**

**Thanks to [brand] for making
this possible/ Made possible by**

**Just tagging the brand
in the content**

Gift/ Gifted

**Sponsorship/ Sponsored/
Spon/ Sp**

Affiliate/ Aff/ Af/ Afflink/ Collab

**PR/ PRTrip/ PRTreatment/
PRHaul/ PR Stay**

iworkwith/ brandambassador

myedit/ mycollection

**Any other abbreviations or
words that consumers are
unlikely to be familiar with**

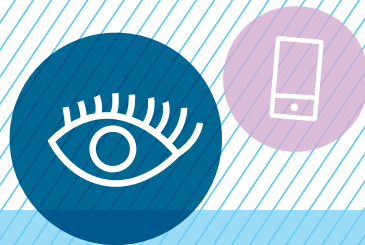
Where the platform provides a tool which can label branded content for you, e.g., the 'Paid partnership' tool on Instagram, this may be sufficient if the label is upfront, clear, and prominent when it's added to your content.

If you're not sure – for example the label is obscured by the background of your image or doesn't make clear that the content is advertising – you should include an additional 'Ad' label.

How should I present this?



Always put yourself in the audience's shoes – if you didn't already know, would you be able to tell immediately and without a shadow of a doubt that a specific piece of content was, in fact, advertising?



The main thing to remember is that you need to make it **obvious** from the outset.

Any label you use needs to be clear, prominent, upfront, timely, appropriate for the platform and format of the content (e.g., a post, a story, a reel), and suitable for all potential devices (it needs to be clear on mobile and apps too!).

This means that anything which obscures the label or delays the disclosure, such as burying it in a sea of hashtags; putting it where it can only be seen by clicking 'more' in a TikTok video; readers needing to scroll down a blog article; only disclosing part-way through that a YouTube video is an ad – really isn't going to cut it.

You should ensure that the disclosure is at the very beginning of the advertising content, which might mean at the start of the post text,

in a title or thumbnail, or on an image – **whatever people see first**. If advertising content spans across several stories, you should label each relevant story in the series, particularly if they could potentially be viewed separately. Also, if advertising content appears in multiple different formats e.g., a Story, post, and a Reel, or is reposted from one format into another e.g., a Story that references a post, each individual piece of content needs to make it clear.

When you've included advertising sections in longer-form editorial content, so not all the content is advertising, you don't need to label the whole of the content – but you do need to make clear where the advertising content is, by clearly labelling those sections.

What does that look like?



#AD Rainy day adventures!
AnInfluencer · No views · 4 minutes ago

#AD Rainy day adventures!
An Influencer · 5 views · 22 hours ago
#AD Thanks @brand for the memories! Show more

TikTok

AnInfluencer23 · 8m ago
#AD Thanks @brand for the memories!
Paid partnership
See translation
Thunder - Live/Acoustic - @Imagine...

Facebook

An Influencer is 🥰 feeling grateful.
1 m · 🌐
#AD - Thanks @brand for the memories!
Paid partnership
See translation
Thunder - Live/Acoustic - @Imagine...

Twitter

An Influencer
@AnInfluencer23
[AD] Thanks @brand for the memories! 🌧️🧸👤
16:57 · 23/01/2023 · 3 Views



aninfluencer23
Paid partnership with brand
#AD Thanks @brand for the memories! 🌧️🧸👤
1 like
aninfluencer23 [AD] Thanks to @brand for the memories! #nobadweather
14 minutes ago

Instagram



Is my content an ad that needs to be disclosed?



Who enforces the law?

The CMA and Trading Standards Services have powers to investigate and take legal action to stop breaches of consumer protection law which may harm the collective interests of consumers.

The Consumer Protection from Unfair Trading Regulations 2008 ('CPRs') prohibit unfair commercial practices which distort consumers' decisions, e.g., whether they will purchase a product or engage with a brand.

They ban certain practices like not making it clear to consumers that you have received payment for something you are promoting or creating the impression that you are just a consumer.



A breach of the CPRs is against the law. Guidance on how influencers can comply with the CPRs can be found [here](#).

When posting incentivised endorsements, the CMA expects commercial relationships/payments to be disclosed upfront and any views expressed by influencers to be genuine.

Everyone involved in the chain (including brands, marketers, and influencers) should ensure that there are robust compliance processes in place that accurately reflect the requirements of the law.

It is important to note that industry rules may be specific about certain points but under consumer law, it does not matter who is 'in control' or who is selling a product/service.

Consumer law does not distinguish between types of endorsements, so whether you are promoting your own products/services or advertising /endorsing something on behalf of a brand, a clear and upfront disclosure is always necessary.

Although it's not illegal for brands to pay people to promote their products in blogs, vlogs, tweets or other online articles, consumers need to know the endorsement has been 'paid for'. If this isn't clear, your post risks breaking the law. We strongly recommend referring to the CMA's [guide for content creators](#) to ensure that you stay on the right side of consumer protection law. The CMA has more information on its case page, found [here](#).

More information on who enforces the law can be found [here](#).

Who enforces the Ad Code?



The ASA enforces the CAP Code and can act when you're advertising your own products (whether you're selling them yourself or doing so in collaboration with a third party), running a competition, prize draw or giveaway and when you post affiliate marketing.



It can also act where a brand:

1. 'paid' you in some way (doesn't have to be money),

AND

2. had some form of editorial 'control' over the content, including final approval.

The simplest way for a brand to have 'control' over the content is by telling you what you have to say and/or when, e.g., if there are particular words, phrases, themes, hashtags or 'key messages' you need to include (or not include), or you need to post a specific number of times or on certain dates/times.

Similarly, if the brand has specified what needs to be in an image, required you to include a specific action in a video or specified the type of content you need to create

(e.g., 'unboxing' the featured product), this is all likely to count as 'control'.

If a brand reserves the right to check/approve the content before it's posted and/or to ask you to change it, this could similarly count as 'control'. They don't need to have asked for changes – if they could, and you would have to do it, that's enough.

Even an expectation that content will be created, as opposed to a hope that it might be, could be seen as 'control' for the ASA's purposes.

As a rule of thumb, if you weren't completely free to do and say whatever you wanted whenever you wanted, or to do nothing at all, then there was probably some level of editorial 'control' by the brand.

What happens if I don't disclose?



If you are unwilling to clearly disclose when your posts are advertising, the ASA has some sanctions to encourage compliance.

These include adding your details to a dedicated '**non-compliant social media influencer**' page for up to three months (before consideration of further sanctions) and running our own 'On-Platform Targeted Ads', alerting the users that follow you that you have repeatedly failed to properly disclose when you are advertising.

Brands can also be added to the '**non-compliant online advertiser's**' page. For more on the ASA/CAP's sanctions, see [here](#).

The social media platform may also impose sanctions on you, such as taking down your content, removing functionality or closing your account completely, and brands may stop working with you.

You could also face formal enforcement action by the CMA or Trading Standards Services. The CMA has taken action against a number of influencers (see [here](#) for details), and set out the standards it expects influencers and brands to meet when advertising on social media (see [here](#)).

What else do I need to remember?



Making clear that content is advertising is just the beginning. Other rules also apply to the content and targeting, so make sure you've got an idea of what the relevant ad rules and the law requires, particularly if you are:

- Making claims about the product (you'll need to **back them up** with proof).
- Advertising age-restricted products (like **gambling** or **alcohol**).
- Promoting products subject to lots of rules (like **food or supplements**).
- Running your own **'giveaways' and prize draws** (definitely read **Section 8**).
- Advertising to children (you need to use **enhanced disclosure** and take **particular care** with the content e.g. don't directly ask them to buy anything).

This is just a few key watch-outs – the CAP Code covers a lot more (as does the law!).

You can find the full CAP Code **here**.

Where can I get help?

CAP



For all our Influencer Marketing resources, from topical articles to flowcharts and webinars, visit www.asa.org.uk/influencers.

Online Guidance

We've also got loads of **free advice on our website** covering various topics – from alcohol to weight loss claims and everything in between.

Training

We offer **seminars** and **eLearning** modules on a wide range of topics, including social media. Keep an eye out for **webinars** too!

Newsletter

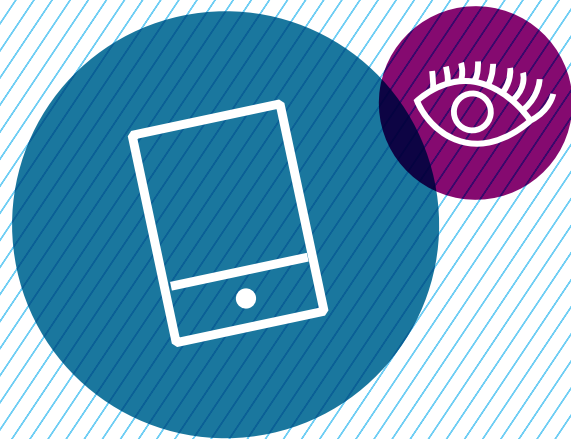
For topical tips and guidance updates direct to your inbox, **sign up to our Insight e-Newsletter**.

Tailored Advice

For bespoke advice, contact our **Copy Advice team** through our website – it's free and usually takes 24 hours.

You can also follow us on **Twitter** or **LinkedIn** for the latest news and guidance updates.

Where can I get help?



For more advice and information from the CMA, see the resources below.

[Content creators and social media endorsements](#)

[Businesses and social media endorsements](#)

[Compliance Principles for social media platforms](#)

[Social Media Endorsements Case Page](#)

[Consumer Protection from Unfair Trading Regulations](#)

Note: The CMA cannot provide legal advice or guidance on compliance with the law on an individual basis.

Where can I get help? (more)



The Internet Advertising Bureau (IAB) UK, the trade association for digital advertising representing brands, media owners, technology providers and agencies has created **Good Practice Guidelines** and an **infographic** to help you work out when and how to disclose content-based and native advertising.

IMTB

The Influencer Marketing Trade Body (IMTB) is a not-for-profit professional membership organisation dedicated to building a robust, sustainable future for the influencer marketing industry. Its website houses **resources detailing Codes of Conduct and guidance** on issues such as hidden advertising including what exactly hidden advertising is, who it affects, who regulates it, and how to stay on the right side of regulation.



The Incorporated Society of British Advertisers (ISBA), the organisation that represents major brands, has an active Influencer Marketing Working Group led by its members.

The Group has co-authored a **Code of Conduct for brands, talent agencies, and influencers** themselves, promoting adherence to disclosure requirements as well as collaboration and good practice.

ISBA has also created a set of template contractual terms for the industry – including clauses that address labelling of content – that influencers and brands alike can use to ensure proper commercial relationships.