

# Influencer Marketing & Consumer Rights



# INFLUENCER MARKETING AND CONSUMER BEHAVIOUR



Influencer marketing is a marketing strategy which is increasingly being used by brands and marketers to promote products and services.

Influencer marketing often blends advertorial content into everyday personal content to seem more genuine and authentic. Consequently, consumers may not always realise that an influencer is promoting a product or service to influence their purchase choices.



## INFLUENCER MARKETING AND CONSUMER RIGHTS



Consumers have a legal right to make informed purchasing decisions, which requires a clear distinction between commercial and non-commercial content.

Marketing practices that distort or diminish consumers' legal rights could amount to a misleading commercial practice which is prohibited under consumer legislation.

Consumer protection legislation safeguards consumers against misleading and deceptive practices that may influence their economic behaviour.



The Unfair Commercial Practices Regulations (Part VIII, Consumer Affairs Act) specifically prohibit traders from:

- Concealing the commercial intent of a commercial practice.
- Falsely claiming or implying that a trader is not acting for purposes related to their trade or business.
- Falsely representing oneself as a consumer.

## ARE INFLUENCERS CONSIDERED TRADERS?



The Unfair Commercial Practices Regulations define a trader as any natural or legal person who, in commercial practices, is acting for purposes relating to their trade, business, craft or profession and includes anyone acting in the name or on behalf of a trader.

Influencers who regularly promote products online are considered traders and must comply with consumer legislation, no matter the size of their audience.

## WHAT QUALIFIES AS COMMERCIAL CONTENT?



- Paid endorsements where influencers are paid to create content, whether temporary (e.g. Instagram stories) or permanent (e.g. Posts), to promote products or services.
- Barters, where influencers receive free products or services in exchange for promoting a brand.

## WHAT QUALIFIES AS COMMERCIAL CONTENT?



- Affiliate marketing, where influencers earn a percentage of sales made through their affiliate links or discount codes.
- Promotion of own range of products or services for business purposes.

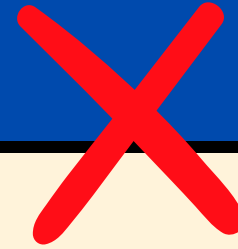


## DISCLOSURE GUIDELINES



### Acceptable Disclosures

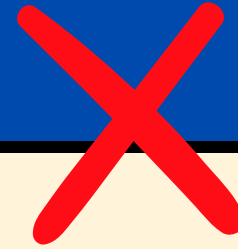
- Clearly indicate in writing that the content includes advertising.
- Use clear disclosure labels, such as “advert” or “advertising.”
- Label **EACH** individual post, reel, or story with a disclosure.
- Utilise the disclosure features provided by social media platforms, like “paid partnership” or “sponsored.”
- Place disclosure labels at the beginning of the caption or on the first screen.
- Ensure that disclosures are clearly visible and stand out against the background.



## **Unacceptable Disclosures**

- Thanking the brand without saying that it is an advert.
- Disclosing the content as advertising only verbally.
- Use of unclear labels (e.g. gifted, partner, ambassador).
- Disclosing only in influencer's bio/profile.
- Tagging the brand only.
- Sharing discount codes without mentioning a business connection.

**DISCLOSURE GUIDELINES**



## Unacceptable Disclosures

- Hiding the disclosure at the end or among other text.
- Placing disclosures behind 'read more' or at the end of the post description requiring scrolling.
- Placing disclosure on a background that makes it invisible or barely visible.



## LEGAL COMPLIANCE WITH CONSUMER PROTECTION LEGISLATION



Failing to disclose a commercial relationship between an influencer and a company is considered a breach of the legal provisions of the Unfair Commercial Practices Regulations (Part VIII, Consumer Affairs Act.)

Non-compliance may result in the institution of judicial proceedings by the Director General (Consumer Affairs).

## LEGAL COMPLIANCE WITH CONSUMER PROTECTION LEGISLATION



Penalties and/or compliance orders may be issued by the Civil Courts (Commercial Section).

Social media influencers, brands and marketing agencies are all legally responsible to abide by the above-mentioned legal provisions to ensure compliance.



### **Disclaimer**

*The information provided in this guidebook does not constitute legal advice and does not supersede or replace the legal requirements stipulated in the Consumer Affairs Act and other relevant legislation.*