

## LEGAL BRIEF #6: HOW TO DISCLOSE ADVERTISING ON SOCIAL MEDIA

As we mentioned in one of our earlier videos, influencer marketing generally consists of advertising goods or services for money, goods, services, or other benefits. If you do influencer marketing, you probably engage in one or more of the following deals:

- a) **Endorsements:** that's when you receive money to make ads on any kind of social media platform or website - whether the content is temporary (like Instagram Stories) or permanent.
- b) **Barters:** that's when you receive things (e.g. free hotel rooms, clothing) to make ads for brands - this can mean 'gifted' products and services, or public relations activities (when you are invited to a restaurant or provided with a free video game to play on YouTube). Even brand trips and PR packages can be considered barters when brands have the expectations that by providing these goods or services to you, they would benefit from your advertising services.
- c) **Affiliate marketing:** that's when you receive a percentage of every sale you drive, often based on advertising what is being sold. Often this is tracked through an affiliate link or discount code for your followers.

The brands you work with will often ask you to make content that looks organic and authentic. But if you make any advertising content, the law is pretty clear: you need to make sure your audiences understand that it's advertising. The standard way of doing that is with disclosures, which are basically messages to your audience, whether in writing or spoken, saying that your content is an ad. Advertising disclosures or labels are expected in all situations we just outlined - when you receive money in exchange for your advertising services as well as when you receive gifted products or services, or pretty much any benefit. This was explained by the Court of Justice of the European Union in the [Peek and Cloppenburg](#) case, where advertising services were offered in exchange for copyright-protected photos. This case clarified the [Unfair Commercial Practices Directive](#) (UCPD), as well as one of the most important obligations in that Directive for influencers.

The UCPD has an Annex that lists practices which are considered always unfair. One of these practices, which the European Commission has clarified is directly relevant for influencer marketing, can be found under point 11 of the Annex. It deals with so-called 'advertorials'. Advertorials are media content giving information about a product or a service in a way that may come across as objective (just like your other non-sponsored content), when in fact it includes advertising. This may have the potential of misleading consumers. Point 11 prohibits undisclosed advertorials. As long as there is a definite link between a payment or the provision of something that has 'asset value' for a party (meaning you), and an advertising service, this must be disclosed to consumers. This also includes services - for example if you are gifted a haircut, to test-drive a car or have a complimentary stay at a hotel.

In practice, that means that as long as you receive products or services from brands for free with the purpose of advertising them, there needs to be a clear disclosure of advertising. Companies sending PR packages or gifts will do so with the purpose of advertising - whether they asked you to cover their products or not. Especially when sending PR packages to influencers, companies will have an implicit expectation that you would review and promote the goods and/or services (even if they know that not everyone will feature or review their

products). For this reason, it's better to consider disclosing content made with PR packages also as advertising.

Some countries will have more specific disclosure requirements. You can find a concrete overview of the disclosure hashtags recommended by self-regulatory organisations by using the new [DiscloseMe](#) tool by the European Advertising Standards Alliance. Remember, however, that in some situations, consumer protection authorities may have some different practices and expectations, so it is important to check the websites of national authorities for more information at national level.

As a matter of principle, when you make ads on social media and want to disclose them, to be on the safe side, we suggest that you go through the following checklist:

1. **How can I make my disclosure clear?** There's a lot of hashtags and words used for disclosures, depending on the language, such as ambassador, partner, or gifted. But at the end of the day, it's important to communicate disclosures to your audience in a way that would leave no interpretation that certain content is advertising. You can do this by mentioning advertising in a caption or through a hashtag (#advertising). There's a very big debate around how content labelled as advertising performs on social media, but research has shown that some disclosed content actually performs as good as or even better than undisclosed or non-sponsored content. So have no fear, if your audience loves your content, they will support your advertising.
2. **Can my audience easily see my disclosure?** There are many spots where you can add a disclosure on social media. The easiest is to use the features offered by the platforms you're on (but remember to do that also for affiliate marketing or barterers!). The second easiest way to disclose advertising is to make sure that you add the right words in a place where consumers can easily spot them. Law enforcement authorities do not accept disclosures that force consumers to scroll down or click on "read more". If you add a disclosure at the very end of a long caption, maybe not everyone will get to see it. Same with disclosing only within a video and not through the caption. If consumers don't watch the whole video (including the part where you mention it's an ad), they will likely not be able to easily see your disclosure.

As an influencer, you're in a tough spot: you need to be happy with your content, and at the same time also keep your audience and the brands you work with happy. But while it may be very attractive to blend ads with your non-sponsored content, remember that disclosures are a complicated legal word for something that is actually very basic and common sense: honesty.