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The UK's advertising watchdog is losing patience with influencer marketing

On 18 March 2021, the Advertising Standards Authority (ASA), the UK's regulator of advertising across all media, published its research on [influencer ad disclosure](#). The regulator's report revealed a "disappointing overall rate of compliance" with its rules requiring ads on social media to be clearly signposted as such.

The Rules

The Code of Non-broadcast Advertising and Direct and Promotional Marketing (CAP Code), which applies to ads in all non-broadcast media, including digital platforms, requires that marketing communications are "obviously identifiable" as such ([Rule 2.1](#)). There are equivalent rules in the Code for broadcast media. Marketers must leave consumers in no doubt over when they read, 'like' or otherwise engage with advertising content. This is underpinned by the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). If influencers fail to make it sufficiently clear when they are being paid to promote a product or service, they are in breach of the CAP Code. The brands with which non-compliant influencers have partnered are held equally responsible for failing to ensure adequate disclosure of advertising content.

The prominent use of #ad (or other similar variants such as #advert or #advertisement) is recommended by the ASA as the clearest way of communicating the commercial intent behind posted content. Other forms of disclosure like "brand ambassador", "in association with" or "made possible by" are deemed risky. Alternatively, transparency can also be promoted by using a platform's own branded content tools, e.g., Instagram's Paid Partnership tool which can help communicate the existence of a commercial relationship between a creator and a business.

Background to the report

In its [2019 Annual Report](#), the ASA revealed that complaints about influencer posts accounted for more than a quarter of all online complaints. In 2020, the number of complaints received by the regulator about influencers increased by 55% from the previous year. This was despite the extensive [advisory information](#) that had been made available by the ASA on "making clear that ads are ads" and several rulings on inadequately labelled influencer advertising, which emphasised influencers' responsibility to disclose any material connection to a product or service. As the regulator's 2021 Influencer Monitoring Report notes, the ASA continues to see "far too many incidences of non-disclosure, which threaten to bring this marketing discipline into disrepute and breed distrust in consumers".

Key findings

Although the ASA's rules on appropriate ad disclosure apply to all types of media where influencers choose to engage in advertising, the regulator's assessment focused on Instagram content because the majority of complaints so far tend to be raised in relation to this particular platform and its features. For the purposes of its monitoring exercise, approximately 24,000 individual Instagram 'Stories' across 122 UK-based influencers were assessed over a three-week period in September 2020. The regulator categorised nearly 1 in 4 of these Stories as marketing (as opposed to editorial content). Compliance rates were "far below" what was anticipated. The ASA considered that 65% of these Stories identified as ads were insufficiently labelled (3,718 out of 5,732). Ads in the beauty, food and fitness, clothing and leisure sectors were found to have particularly low rates of compliance.

The following broader trends became apparent: first, inconsistent disclosure of ad content spanning a number of consecutive Stories; second, instances where posts, IGTV or Reels content were accurately disclosed as ads but their corresponding Story was not; third, poor visibility of labelling (e.g., low contrast level between text and background, small fonts) which made it difficult to spot an ad; fourth, lack of clarity in disclosing affiliate content (i.e., performance-based marketing that enables influencers to earn a commission by generating traffic to a brand's website) which still counts as advertising; and fifth, instances where influencers relied on bios (the description area on a user's Instagram profile) or previous posts to communicate to consumers their connection to a product.

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Some recommendations

Based on these common shortcomings, the following recommendations can be proposed. First, when ad content appears across consecutive Stories, each Story must be identified as an ad, unless it is clear that this is part of the same posting. Second, disclosing in a post but not in a corresponding IGTV, Reel or Story will not be compliant. Each is a separate ad and should be identified as such. Third, ad labels need to be clearly visible and legible regardless of the device used and not obscured by the platform's design and features. The extent to which the wording, placement, visibility and style affect people's ability to identify an ad must all be considered. The consumer should not have to act like a 'detective' to work out the state of the post, Story etc. or find the disclosure. Fourth, a standalone label using #affiliate, #aff or 'Swipe Up' are unlikely to be sufficient on their own for a Story to be recognisable as an ad. And fifth, when an influencer is promoting their own-brand products or services (e.g. products they have created or events they are running rather than paid-for promotions for third parties), any label used needs to be upfront and prominent in each post. References to bios or past posts will not suffice.

The DCMS Inquiry and next steps

The ASA contacted all the influencers monitored (including the brands featured in the undisclosed ads) and requested assurances of future compliance. Enforcement action is likely to be taken if follow-up monitoring spot checks indicate further instances of non-compliance. This might include promoting their non-compliance not only through the regulator's website but also through its own targeted paid search ads.

As the COVID-19 pandemic appears to have [accelerated](#) the adoption of online services and remarkably augmented the popularity of social media applications, influencer marketing is likely to continue to rise. Whilst the UK's advertising watchdog is cracking down on poor ad labelling, the UK Parliament's cross-party Digital, Culture, Media and Sport Committee has its sight set on influencers too. The Select Committee announced in late March 2021 an [inquiry into the phenomenon of influencer culture](#). The inquiry will examine, among others, the concerns over the perceived lack of transparency around influencers' promotions online and more broadly the impact of influencer culture and how influencing operates on social media.

Earlier in February 2021, Instagram influencers were again under the regulatory spotlight. The ASA applied for the first time its core principles on the use of pre and post-production techniques in ads for cosmetics to two rulings against influencers' Instagram posts which promoted tanning products using social media filters (ASA Rulings on [We Are Luxe Ltd t/a Tanologist Tan in association with Cinzia Baylis-Zullo](#) and [Skinny Tan in association with Elly Norris](#), both issued on 3 Feb. 2021). The ads in question were banned on the grounds that the use of filters gave a misleading impression about the performance capabilities of the products that were the subject of the posts (e.g. altering the skin tone or creating a smoother complexion etc.). These recent adjudications demonstrate that the regulator is likely to take a dim view of beauty and cosmetics influencers and marketers whose visual claims make use of filters (or other production techniques) that are directly relevant to the intended performance of the products promoted and are likely to exaggerate their true effects.

The number of complaints and upheld adjudications against influencers have been steadily on the rise in recent months. The level of non-compliance was described in the ASA's [announcement](#) of the publication of their report as "unacceptable". The monitoring report suggests that neither influencers nor brands are doing enough to ensure that followers and consumers know when ad is an ad. The regulator has put social media influencers on notice and warned that those who are caught out again could be named and shamed on a dedicated non-compliant webpage. The associated brand reputational damage that might result from the negative publicity can be equally severe. Tighter legal or regulatory interventions in this area are likely to emerge quickly but these are best grounded on a holistic thinking practice and multi-level approach that proactively addresses careful drafting of contractual agreements, due diligence checks covering thorough approval processes and more effective ways of awareness raising among influencers.

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