[GB] Facebook provides Undertakings to the Competition and Markets Authority to improve transparency of incentivised content on Instagram

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Julian Wilkins
Wordley Partnership

On 16 October 2020, the Competition and Markets Authority (CMA) published undertakings dated 1 October 2020 given by Facebook Ireland Ltd, which operates Instagram in the United Kingdom, committing to tackling hidden advertising on the photo- and video-sharing platform. The undertakings were issued pursuant to section 219 (4) of the Enterprise Act 2002. The CMA had been investigating hidden advertising on Instagram concerning too many social media influencers posting content about businesses without clarifying whether they had been paid or incentivised to do so, and whether Facebook was adequately addressing the problem.

Incentivised endorsements are defined by the CMA guidelines as any situation where a user, such as an influencer, posting content has received any payment or gift directly or indirectly from the brand in the past year (irrespective of whether this was “in exchange for” the post). This includes any type of financial or non-financial benefit, as this could influence their opinion of the product.

The undertakings will make it harder for an advert to be posted on Instagram without labelling it as such. Such clear labelling brings incentivised posts into line with consumer protection law, particularly the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), to guard against people being misled.

The CPR bans the practice of falsely claiming or creating the impression that a trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.

Instagram undertakes to prompt users to confirm if they have been incentivised in any way to promote a product or service and, if so, requires them to disclose this fact clearly.

It also undertakes to further extend its "paid partnership" tool to all users so they can easily display a clear label at the top of a post.

Furthermore, it undertakes to use technology and algorithms designed to identify when users might not have disclosed clearly that posts are adverts, and to report those users to the businesses being promoted. One undertaking by Facebook is to

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investigate the effectiveness and feasibility of developing a reporting tool to allow users to report suspected inadequately labelled or unlabelled incentivised endorsements, and, if feasible, to provide that tool to users.

Instagram is also required to involve businesses in the changes by creating a tool to help them monitor how their products are being promoted. This will ensure that businesses comply with consumer protection law and take action where appropriate, including asking the platform to remove posts if necessary. Instagram will report its progress against all commitments to the CMA regularly.

The undertakings apply to all users in the United Kingdom as well as to anyone globally who directs their posts towards Instagram users in the United Kingdom. It is part of a wider investigation into misleading online endorsements; in 2019, sixteen celebrities pledged to reform how they promoted themselves on social media following CMA action.

Andrea Coscelli, Chief Executive of the CMA, said: “For too long, major platforms have shied away from taking responsibility for hidden advertising on their site. So, this commitment to tackle hidden adverts and overhaul the way people post on Instagram – making it difficult for users to ignore the law – is a welcome step forward”.

The CMA has not made a finding on whether Instagram’s practices have breached consumer protection law. The provision of undertakings is neither an admission of a breach of the law nor an admission that any person has committed any criminal offence or otherwise infringed the law. The CMA is subject to Part 8 of the Enterprise Act 2002, whereby they can enforce the law through the courts; however, only a court can decide whether a particular practice infringes the law.

Some of the undertakings given by Facebook take effect from 31 December 2020, with full effect from 30 June 2021.

Undertakings to the Competition and Markets Authority (pursuant to Section 219 of the Enterprise Act 2002 (EA02)) relating to the Consumer Protection from Unfair Trading Regulations 2008, CMA

https://assets.publishing.service.gov.uk/media/5f882329e90e07415e7f36cb/Facebook_Undertakings___-.pdf

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