[GB] Advertising watchdog warns Instagram influencers over compliance

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On 18 March 2021, the Advertising Standards Authority (ASA), the UK's regulator of advertising across all media, published its research on whether influencer ads are appropriately disclosed on social media. 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 UK 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 must be "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 that 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 are working are held equally responsible for failing to adequately disclose advertising content.

The prominent use of #ad is recommended by the ASA as the clearest way of communicating the nature of advertising content. 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.

In 2020, the number of complaints received by the regulator about influencers increased by 55% from the previous year. This is despite the advisory information that has been made available by the ASA on "making clear that ads are ads" and a series of rulings on inadequately labelled influencer advertising. As the regulator's 2021 Influencer Monitoring Report notes, the ASA continues to see "far too many incidences of non-disclosure".

Although the Authority's rules on appropriate ad disclosure apply to all types of media where influencers choose to advertise, the ASA's assessment focused on Instagram content because the majority of complaints tended to be raised in relation to this platform and its features. For the purposes of its monitoring

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exercise, approximately 24 000 individual Instagram "Stories" across 122 UK-based influencers were assessed over a three-week period in September 2020. The regulator identified nearly one in four 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 ads were insufficiently labelled as advertising. Ads in the beauty, food and fitness, clothing and leisure sectors were found to have particularly low rates of compliance.

More specifically, the following shortcomings emerged: first, inconsistent disclosure of ad content spanning a number of consecutive Stories; second, instances where posts, IGTV or Reels content were accurately disclosed as an ad but their corresponding Story was not; third, poor visibility of labelling (e.g., small fonts) which made it difficult to spot an ad; fourth, lack of clarity in disclosing affiliate content (i.e. a marketing model whereby an affiliate generates traffic to a brand's website in exchange for a commission, usually a percentage of sales) which still counts as advertising; and finally, instances where influencers relied on bios or previous posts to communicate to consumers their connection to a product.

The ASA put on notice all the influencers monitored (including the brands that featured in 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.

ASA Influencer Monitoring Report

https://www.asa.org.uk/uploads/assets/dd740667-6fe0-4fa7-80de3e4598417912/Influencer-Monitoring-Report-March2021.pdf

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