

# An Influencer's Guide to making clear that ads are ads



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# Who are you?



**The Advertising Standards Authority (ASA)** is the UK's advertising regulator. The ASA makes sure ads across UK media stick to the advertising rules (the Ad Codes).



**The Committee of Advertising Practice (CAP)**, whose members represent advertisers, media owners and agencies, is responsible for writing the **Ad Codes**.

Together, we work to make ads responsible. We do this by taking action against misleading, harmful or offensive advertising and providing advice and training to help businesses get their ads right.



**The Competition and Markets Authority (CMA)** is the UK's primary competition and consumer authority. We are an independent non-ministerial government department with responsibility for carrying out investigations into mergers, markets and the regulated industries and enforcing competition and consumer law.

If we have concerns that a market or business practice may be harming consumers we can investigate and take legal action to stop it.

For more information on the CMA see our [homepage](#).

# What are the rules?



**Just because an ad is covered by the CAP Code, this doesn't mean it's a problem – it just needs to follow the rules.**



There are lots of rules that could apply, depending on the circumstances, but it's worth paying particular attention to the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the **CAP Code**) and the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

The CAP Code, enforced by the ASA, applies to most forms of influencer marketing. Just because an ad is covered by the Code, this doesn't mean it's a problem – it just needs to follow the rules. The Code is broken up into sections containing rules that relate to different subjects. For example, **Section 2** contains rules about how ads should be recognisable as ads, and **Section 3** sets out rules that advertisers must follow to avoid misleading people.

Consumer protection legislation, enforced by the CMA, also applies to influencer marketing.

This makes 'unfair commercial practices', including using 'editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial)' against the law. Other practices which may break the law are falsely claiming or giving the impression that an individual is acting outside of their business purposes or falsely representing themselves as a consumer; failing to identify a commercial intent behind a social media post; and omitting or hiding 'material' information.

# What counts as an ad?



There are a few different ways in which something you post could count as ‘advertising’ and fall under the rules in the CAP Code, including:

## **Paid-for space**

The most obvious way to make something an ad is to pay for it to appear in ‘paid-for ad space’, which means space that is normally used for ads, e.g. banner ads, paid-for search results and the ‘sponsored/promoted’ posts on social media platforms.

## **Own advertising**

If you’re posting about your own products/services; e.g., products you sell and events you’re running etc., then this also counts as advertising – even on your own personal channels. The same goes for any prize draws or giveaways you do (these are ‘promotional marketing’ and you would be the ‘promoter’).

# What counts as an ad? – Affiliate marketing



**For affiliate ads, you are effectively acting as a secondary advertiser so you need to make sure that your content follows all of the relevant rules...**

## **Affiliate marketing**

When your content promotes particular products or services and contains a hyperlink or discount code that means you get paid for every 'click-through' or sale that can be tracked back to your content, this counts as advertising.

If there are affiliate links or discount codes for only some of the products mentioned in your content, and the rest you've mentioned in a purely editorial capacity (i.e. there's no affiliate link), then only the bits of the content that relate to affiliate-linked products are ads, rather than the post as a whole. In that case, you only need to make clear that those bits are advertising.

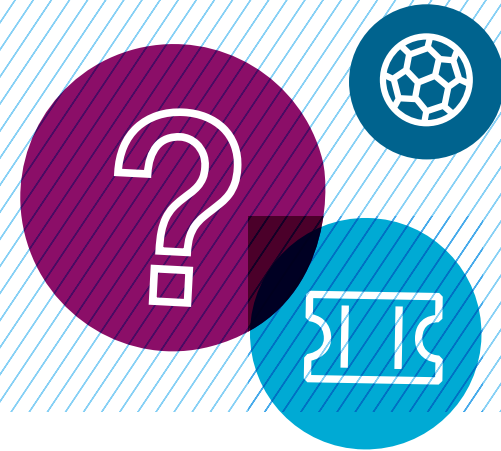
Obviously, if all of the content is about affiliate-linked products, the whole thing's an ad and you'll need to make clear upfront that the whole of the content is advertising. For affiliate ads, you are effectively acting as a secondary advertiser so you need to make sure that your content follows all of the relevant rules, not just the ones on making clear that it's advertising.



# What counts as an ad? – Advertorial



It's not an 'either/or' – there has to be both 'payment' and 'control' for this type of post to count as an ad under the CAP Code.



If you work with a brand to create some content that you'll be posting on your own channels, it'll qualify as an ad if the brand:

1. 'paid' you in some way (can be freebies, doesn't have to be money), **and**
2. had some form of editorial 'control' over the content, including just final approval.

It's not an 'either/or' – there has to be both 'payment' and 'control' for this type of post to count as an ad under the CAP Code.

However, consumer protection legislation still applies where there has been 'payment' (i.e. any form of monetary payment, a loan of a product/service, any incentive and/or commission or the product/service has been given free) but no 'control' and this is enforced by the CMA.

# What counts as 'payment' for advertorial content?

“

...products, gifts, services, trips, hotel stays etc. for free, this is all likely to qualify as a 'payment'

”

Obviously, if you're paid a specified amount of money to create and/or post a particular piece of content, this counts as 'payment'.

But this isn't the only type of arrangement that counts. If you have any sort of commercial relationship with the brand, such as being paid to be an ambassador, or you're given products, gifts, services, trips, hotel stays etc. for free, this is all likely to qualify as 'a payment [or other reciprocal arrangement]'.

There's nothing wrong with getting paid to create content and this alone doesn't make it an ad for the purposes of the CAP Code; the brand also needs to have some sort of control over the content.



# What counts as 'control' for advertorial content?



Whether or not a brand has 'control' over an influencer's post will usually depend on the agreement you have with them. As a rule of thumb, if you weren't completely free to do and say whatever you wanted whenever you wanted, then there could have been some level of editorial 'control' by the brand.

The simplest way for a brand to 'control' the content is by telling you what you have to say, e.g. if there are particular words, phrases, themes or 'key messages' you need to include, or you have to use a particular hashtag.

This doesn't just apply to text or words – if the brand has specified what needs to be in an image, required you to include a specific action in a video or specified the type of content you need to create (e.g. 'unboxing' the featured product), this is likely to count as 'control'.

Requiring you to post a specific number of times, on certain dates or at particular times could also count as 'control'.

If a brand reserves the right to check/approve the content before it's posted and/or to ask you to change it, this could similarly count as 'control'. They don't need to actually ask for changes – if they could, and you would have to do it (e.g. they could stop you from posting), that's enough.

# What if there's 'payment' but no 'control'?



**Sponsorship isn't covered by the CAP Code, and the ASA won't pursue complaints about it.**



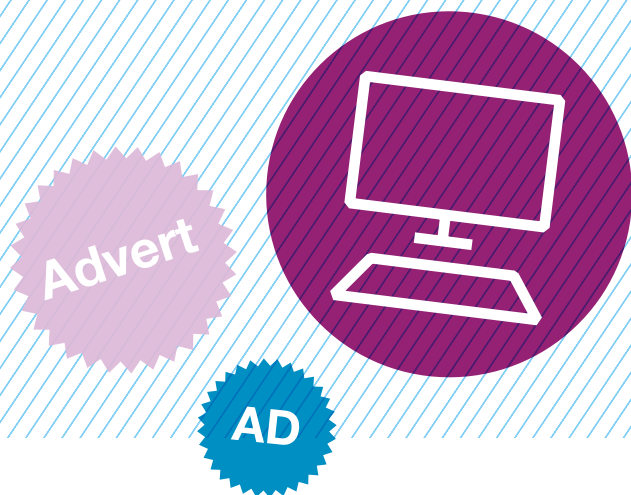
If you've been 'paid' (either in money or in gifts/freebies), but it isn't as part of an affiliate arrangement and the brand doesn't have any 'control' of what (or even if) you post, it's unlikely that the content will count as advertising under the CAP Code.

In that case it's a little like sponsorship, in the way that events and TV programmes can be sponsored – the sponsor has no 'control' over the actual content of what they're sponsoring, they're just helping to fund its creation (and paying for an association with that content).

Sponsorship isn't covered by the CAP Code, and the ASA won't pursue complaints about it.

That said, arrangements like this are still subject to regulation under consumer protection legislation enforced by the Competition and Markets Authority (CMA). The CMA expects influencers to disclose when they've received any form of monetary payment, a loan of a product or service, any incentive and/or commission or have been given the product they're posting about for free. The CMA has published some more information on this [here](#) and [here](#).

# How do I make it clear that ads are ads?



**Under the CAP Code ads ‘must be obviously identifiable as such’.** This means that consumers should be able to recognise that something is an ad, without having to click or otherwise interact with it. Since it needs to be ‘obvious’, consumers shouldn’t have to work too hard to figure it out.

Most influencer marketing appears alongside independent/editorial content in a very similar style, so it often isn’t immediately obvious when something is or isn’t an ad from the context alone.

Both you (acting as a ‘publisher’) and the brand are responsible for ensuring that advertorial content makes clear that it’s advertising.

Ultimately, if it’s not obvious from the context that something’s an ad, more needs to be done with the content to make this clear. If you are promoting your own products or services on your own

channels – provided it’s clear that you’re talking about your own products – people are usually able to recognise that you’re advertising your own stuff.

Affiliate marketing and advertorial content, on the other hand, are much less likely to be clear recognisable by context alone, so this is where you may need to work a little harder to make it clear. There are potentially loads of ways you could make advertising content ‘stick out’ as being advertising, but by far the easiest is to include a prominent label that makes this clear.

## How do I make it clear that ads are ads?



The main thing to remember is that you need to make it obvious - any label (or other means) you use to highlight the ad needs to be upfront (before people click/engage), prominent (so people notice it), appropriate for the channel (what can you see and when?) and suitable for all potential devices (it needs to be clear on mobile too!).



At the moment we know that the ASA likes labels that just say it how it is, e.g.:

- Ad
- Advert
- Advertising
- Advertisement
- Ad/Advertising/  
Advertisement Feature

Other labels are riskier, and although it will always depend on the wider content and context, we usually recommend staying away from:

- Sponsorship, Sponsored content, Spon, #Spon, #Sp
- In association with
- Thanks to [brand] for making this possible
- Just @ mentioning the brand

This is because the ASA has previously made clear that labels like this don't tell the full story and don't go quite far enough to make it obvious that it's advertising.

The main thing to remember is that you need to make it **obvious** – any label (or other means) you use to highlight the ad needs to be upfront (before people click/engage), prominent (so people notice it), appropriate for the channel (what can you see and when?) and suitable for all potential devices (it needs to be clear on mobile too!).

This means that burying the label in a sea of hashtags or putting it where it can only be seen by clicking 'see more' or clicking to view the full post, probably isn't going to cut it. We recommend including it 'at the beginning' – which might mean in the title, thumbnail or on an image (if that's all people see at first).

# What are the CMA's requirements?

“

Consumers need to know the endorsement has been 'paid for'. If this isn't clear, your post risks breaking the law.

”



If it's not an ad covered by the CAP Code but you were still 'paid' (in money or in kind), the consumer protection legislation enforced by the CMA still applies.

Although it's not illegal for brands to pay people to promote their products in blogs, vlogs, tweets or other online articles – consumers need to know the endorsement has been 'paid for'. If this isn't clear, your post risks breaking the law.

The CMA expects brands, influencers and media agencies to have made sure that the content is clearly identifiable as being 'paid-for', for example by prominently labelling posts/ videos as 'Advertisement

Feature' or 'Advertisement Promotion', and to have regard to the ASA/CAP guidelines.

Commercial relationships must be disclosed upfront, any views expressed by the influencer should be genuine and everyone involved should ensure that there are robust compliance processes in place that accurately reflect the requirements of the law.

The CMA has published some more information on this [here](#) and [here](#).

# What else do I need to remember?



**Make sure you've got an idea of generally what the rules cover**



Making it clear it's an ad is only the beginning. If you're advertising your own products/services or engaged in affiliate marketing, then other rules are likely to apply to your content too.

Make sure you've got an idea of generally what the rules cover, particularly if you are:

- making claims (you'll need to back them up);
- advertising age-restricted products (like gambling or alcohol);

- promoting products subject to lots of rules (like food or supplements); or

- running your own 'giveaways' and prize draws (seriously read Section 8).

But this is just a taster, the Code covers a lot more than that.

# Is my post an ad and do I need to label it?

## START

Is the post advertising your own products, services or events?

Y

N

Have you included a code or hyperlink as part of an 'affiliate' agreement, so you get paid a commission for each time someone clicks through and/or makes a purchase?

Y

N

Are you receiving money for promoting a product/service/brand in this post?

N

Y

Have you been told to say specific things about the product or to include specific information, including hashtags or links?

Y

N

Are you receiving benefits, freebies, free products, free visits, etc?

Y

N

It sounds unlikely the post will be considered an ad under the Code, so you probably don't need to label it.

Does the brand have final approval before you post it or have they reserved the right to tell you to change it?

Y

N

Are you posting it because you've agreed to do it a specific number of times, either on one particular date or between a specific range of dates?

Y

N

It's likely to be considered 'sponsored' content rather than an 'ad' under the CAP Code, so not for the ASA. But CMA rules apply here – you must make sure content is clearly identifiable as being paid-for. For example, by using the label 'advertisement feature' or 'advertisement promotion'.

It's an ad under the UK advertising rules! Is it immediately obvious that it's an ad, before people click on it?

Y

N

You need to make it clear that the post is an ad (rather than just editorial or sponsored content). There are various ways you could do this but the easiest is to include a label that's always visible before people click anything. The ASA has decided that for now "ad" at the beginning of the post does the job best.

Are you sure that it's clear from this post alone - even to people who don't usually follow you and across all devices and platforms?

N

Y

Is it clear that it's an ad (whether 'affiliate' or 'native'), rather than just sponsored editorial content?

N

Y

NICE ONE!

Is all of the content about the affiliate product(s)?

Y

N

Just the links and sections of the content that relate to affiliate products are advertising for our purposes and you need to highlight this, e.g. with a clear 'ad' label before /next to the relevant content.

# What happens when someone complains to the ASA?



Every complaint the ASA receives is assessed against the Ad Codes. Many don't raise any issues or give the ASA a reason to contact you or to investigate further, and in those cases they just dismiss the complaint. If they need more information in order to work out whether there's a problem, someone will get in touch with you and the brand.

## Looking into a complaint

In the early stages, they're usually just asking questions to try and work out if they need to take further action. There's no need to be worried, just tell them what they need to know and if you've made a mistake just hold your hands up and say so. We know they can sometimes come

across as a bit formal and scary, but they don't mean to be - they're regulators, it's just how they communicate. They're always happy to talk to you if you're unsure or concerned – we promise they're all nice, friendly people just doing their best to keep UK advertising responsible.



## What happens when someone complains to the ASA?



... the ASA usually prefer to work together with you (and the brand) to resolve it so, where appropriate, they will try and resolve issues informally.



### Resolving things informally

If there seems to be a problem, the ASA usually prefer to work together with you (and the brand) to resolve it, by providing advice and guidance or getting you (and the brand) to agree in writing that an ad will be changed or removed. When they do that, the case ends up on a list published every Wednesday on the ASA website so they can be transparent about the work they're doing. They don't include much information and you can see the list [here](#).

### Investigating an ad

If they have good reason to conduct a formal investigation you (and the brand) will have a chance to respond to the complaint and they'll keep you involved throughout the process. When they've made an assessment, the ASA Council (the independent jury responsible for deciding if the rules have been broken) will need to make the final decision. These decisions become rulings, which are also published every Wednesday – you can see them [here](#).

### What happens after a ruling?

If there was a problem with your content, you'll need to change or remove it (the same goes for any similar content). If you don't, you'll no doubt be hearing from the ASA again and, if that doesn't work, CAP's Compliance team will get in touch. The Compliance team can apply [sanctions](#) if they need to (but they'd prefer it if they didn't need to!).

# Where can I get help? – CAP



## Online Guidance

There's loads of free advice on our website. Why not try searching our [Advice Online](#) database? We've got guidance on various topics – from alcohol to weight loss claims and everything in between.

## Newsletter

Fancy receiving topical tips and guidance updates direct to your inbox? Go ahead and sign up to our [Insight e-Newsletter](#).

## Online & Face-to-face Training

We offer [Advice:am](#) seminars and [eLearning](#) modules on a wide range of topics, including social media. Keep an eye out for our webinars too!

## Tailored Advice

Want to ask a question or sense-check your idea or content before you post it? Contact our [Copy Advice team](#), either on 020 7492 2100 or through the [website](#). It's free and usually takes 24 hours.

You can also follow us (@CAP\_UK) on Twitter for the latest news and guidance updates.

# Where can I get help? – CMA

... guidance on being open and honest when endorsing products/services online.



Here are some more useful resources on this topic:



For more advice and information from the CMA, see the resources below;

**Online reviews and endorsements: information for businesses**

Information and advice for businesses on how to comply with consumer protection law in the online reviews and endorsements sectors.

**Online endorsements: being open and honest with your audience**

CMA guidance on being open and honest when endorsing products/services online.

**ICPEN Guidelines for Digital Influencers**

Guidelines from the International Consumer Protection Enforcement Network (ICPEN) on online reviews and endorsements.

# Where can I get help? – More



**The Internet Advertising Bureau (IAB) UK**, the trade association for digital advertising representing brands, media owners, technology providers and agencies has created Good Practice Guidelines and an infographic to help you work out when and how to disclose content-based and native advertising;

[Content & Native Disclosure Good Practice](#)

[‘Do I Need to Disclose?’ Infographic](#)



**The Incorporated Society of British Advertisers (ISBA)**, the organisation that represents major brands, has created a set of template contractual terms for the industry that influencers and brands alike can use to ensure proper commercial relationships including clauses that address labelling of content;

[Influencer Marketing Management Resources](#)