

A close-up photograph of a person's hands holding a smartphone. The hands are dark-skinned, and the person is using their thumb to interact with the screen. The background is blurred, showing a variety of colorful lights in shades of yellow, blue, and green, suggesting a night-time urban environment.

# Influencer Marketing Guide

# Introduction

Welcome to the first edition of DLA Piper's Influencer Marketing Guide. The importance of influencer marketing is constantly increasing and it is already a major component of many marketing campaigns. There are numerous legal challenges for influencers and the companies they cooperate with. The legal framework is still in flux in most jurisdictions, which makes it particularly difficult to carry out cross-border influencer marketing campaigns in a legally compliant manner. This guide is designed to give an overview of the legal framework for influencer marketing in 22 jurisdictions around the world.

People are spending more time than ever on social media, so it is crucial for companies to be visible on these platforms to promote their products or services. In addition to publishing posts through corporate channels and placing banner advertisements, endorsements and product placements by influencers are playing an ever-increasing role in marketing strategies. One of the main advantages of collaboration with influencers is that their followers trust them, which results in their strong influence on purchasing decisions.

## Editors

Since influencers often share personal experiences, the question arises about when a post mentioning or showing a product is considered an advertisement. In addition, it needs to be determined to what extent labelling requirements apply and how such a label has to be provided. The consequences influencers and companies may face if these legal requirements are not met also have to be addressed.

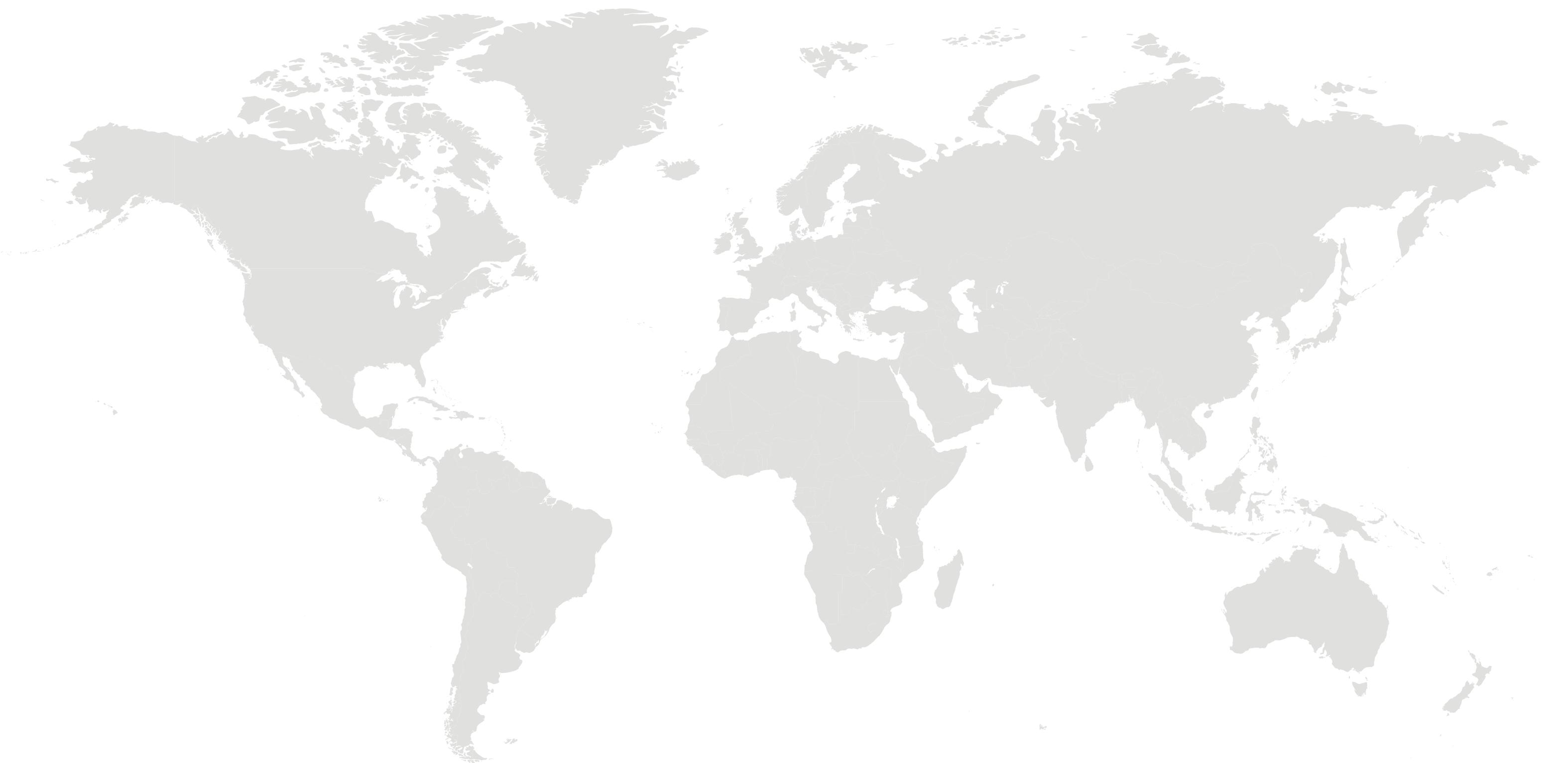
This interactive document will help you quickly find answers to these questions and others. The chapter for each jurisdiction can be accessed by clicking on the respective countries on the world map on page 3. You can also click on the buttons containing keywords to see additional information. Interactive elements are indicated wherever you see this icon ⓘ\*.

This guide is not a substitute for legal advice, nor is it intended to be an exhaustive guide to all rules and regulations relating to influencer marketing in the jurisdictions covered, or to cover all aspects of the legal regimes surveyed, such as specific sectoral requirements. Rather, it aims to simplify what are often complex provisions into a more manageable summary and to highlight areas of potential concern.

\*This guide is designed to be viewed on a desktop in order to access all interactive elements.

# Contents

Click on the map to navigate through the jurisdictions.



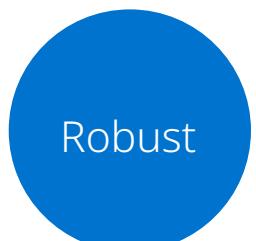
Risk and enforcement key:



Limited



Moderate



Robust



Heavy



## Australia

Risk and enforcement level: Robust

# Australia

## What qualifies as advertising under Australian law?

### REGULATED CONDUCT

The Australian Consumer Law (ACL) is the primary law in Australia governing all forms of advertising and marketing practices relevant to Australian consumers. Interestingly, "advertising" is not expressly defined in the ACL. Instead, the focus is on conduct and representations made to Australian consumers in any form that are commercial in nature. In particular, the two fundamental rules relating to advertising are that:



The concept of "conduct" is intentionally broad to capture action as well as inaction (i.e. refusing to do something or silence) and can apply to verbal representations made by a person or corporation. Further, the conduct only needs to be likely to mislead or deceive. It does not matter whether the conduct actually misled anyone, or whether there is an intention to mislead.

Whether a representation is made in trade or commerce, which is a threshold requirement, depends on whether the activity in question has a trading or commercial character. Promotional activities are considered to have such a character. Given this, social media activities by influencers which have the effect of promoting a product or service are captured by the ACL.



In addition to the ACL, Australia has in place a system of advertising self-regulation, established by the Australian Association of National Advertisers (AANA). A definition of "advertising and marketing communication" is contained in the AANA Code of Ethics which encapsulates any material which is published or broadcast using any medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, and:

- over which the advertiser or marketer has a reasonable degree of control; and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct.

Both factors are required to be present for the material to be classified as advertising. The AANA has confirmed that contextually targeted branded content, integrated content and native advertising all fall within the definition of advertising and marketing communication, particularly where a brand has a reasonable degree of control over the material. Overall, the focus is on making sure that advertising content is clearly distinguishable as such.

### UN-REGULATED CONDUCT

Generally, where an influencer decides to positively post about a particular product or service and this is done without commercial benefit to the influencer or pursuant to a direction or arrangement with the business that offers that product or service, the post is unlikely to be subject to the ACL.



## What are typical influencer practices in Australia and in which cases are they considered advertising?

As indicated in Question 1, the types of posts which would be considered “advertising” for the purposes of the ACL will be very broad. Regarding practices which would fall within the ambit of the AANA Code of Ethics (compliance of which is not mandatory), the main issues to consider will be whether the advertiser or marketer has a reasonable degree of control over the material and whether the material is calculated to promote a product or service.

By way of example only, the following are common influencer practices which may be captured by the ACL:

Posts\* mentioning or featuring third party products or services;

Posts mentioning or featuring the influencer’s own products or services

Offering or directing followers to access discount codes or enter competitions for promoted products or services

Using or failing to use certain hashtags or in-image tags that result in a misleading impression about the particular products or services featured or referred to.

\*The term ‘post’ is used widely given the range of influencer marketing activities across platforms, e.g. written blog posts, pictures, video, and commentary posted on Instagram or Snapchat, and content posted on YouTube and TikTok.

## Which legal obligations apply?

### AUSTRALIAN CONSUMER LAW

The key ACL provisions referred to at Question 1 require regulated content to be truthful and accurate, and if necessary to have appropriate substantiating materials which support the claims made.

Influencer marketing may be misleading or deceptive where there is a failure to disclose that a post is advertising a business, product or service, or is otherwise sponsored. As such, it is an implied requirement of compliance with the ACL that influencers disclose these arrangements in the particular post, e.g. through use of appropriate hashtags (see Question 4, below).

### INDUSTRY SELF-REGULATION

As mentioned, industry self-regulation of influencer marketing in Australia is growing as part of a move to legitimise the practice. Various self-regulatory bodies have established codes of practice for their members as well as voluntary guidelines which set the baseline of accepted practices for influencer marketing. While not binding on non-members, these codes are generally considered best practice and reflective of Australian community standards.

The following industry codes and guidelines are particularly relevant to influencer marketing (in addition to the AANA Code of Ethics as mentioned in Question 1):





### PLATFORMS

Influencers and those brands engaging them must also make sure to familiarise themselves and comply with advertising disclosure requirements (if any) particular to the social media platform on which the advertising content will appear. The declarations required by influencers in order to ensure compliance with the ACL and relevant codes/guidelines may vary across platforms.

### What labelling requirements do you need to be aware of?

The law does not mandate specific labelling for influencer marketing. However the AIMCP sets out examples of best practice minimum disclosure: insertion. Information on product placements must be inserted at the beginning of the video.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
#Ad	#sp
#Sponsored	#spon
	#gift

The AIMCP suggests that the following terms can be used in addition to the minimum disclosure tags:

- #Ambassador
- #Collab
- #PaidPartner

As noted above at Question 1, where an influencer decides to positively post about a particular product or service and this is done without commercial benefit to the influencer or pursuant to a direction or arrangement with the business that offers that product or service, the post is less likely to be considered a form of advertising that requires disclosure. Nonetheless, the AIMCP suggests that influencers should still consider using tags such as "#FreeGift" as appropriate and in the interests of maximising transparency, as well as reducing the likelihood of confusion amongst consumers.

### Describe specific laws, regulations or guidance aimed at influencers in Australia

As outlined above, Australia does not have specific legislation addressing influencer marketing activities. The key obligation on influencers and those brands that engage them as part of their marketing strategies, is to comply with the misleading and deceptive conduct provisions in the ACL.

The Australian Competition and Consumer Commission (ACCC) is the regulator that monitors and enforces compliance with the ACL. It is a very active regulator. While no Australian influencer or business associated with influencer marketing has been sanctioned or faced a penalty from the ACCC, the ACCC recently (August 2020) reminded influencers and commissioning brands of their obligations to comply with the ACL, particularly with respect to disclosure to their audience of sponsored posts.



## What are the consequences for influencers if advertising content is not clearly labelled?

The ACCC has a range of enforcement tools at its disposal to address contraventions of the ACL, including issuing infringement notices (fines), or requiring parties to enter into court enforceable undertakings. Individuals and corporations can also have federal court proceedings brought against them by the ACCC or private parties aggrieved by the misconduct.

Maximum penalties for individuals found to be in breach of the ACL are \$500,000 per breach. For a corporation, the maximum penalty is \$10 million, or if the value of the benefit can be ascertained, then three times the value of the benefit, or if the value of the benefit cannot be obtained, 10% of annual turnover of the corporation.

To date, the ACCC has not taken action against influencers for breaches of the ACL. While this is not indicative of the stance the regulator may take in future, it does suggest that the current risk for influencers is potentially lower than other groups. Regardless, influencers directing posts or other promotional content at Australian consumers must comply with the ACL, and should also aim to comply with industry best practice including the AANA Code of Ethics and the AAMA AIMCP.

## What legal risks apply when cooperating with influencers in Australia?

The primary legal risk for companies engaging influencers to conduct marketing activities at their direction is breach of the ACL from failure to make disclosures, or otherwise misleading or deceiving consumers about the promoted product or service.

Non-compliance with the ACL may also carry reputational risks for the company and the influencer. For example, the ACCC regularly publicises its enforcement activities and these are widely reported in Australian media.

The ACCC is unlikely to take a favourable view of businesses that direct or commission influencer marketing content that breaches the ACL. Businesses must comply with the ACL and should ensure that their arrangements with influencers are documented via way of contract (including appropriate warranties and indemnities, as well as provisions regarding IP ownership).



## Key contacts



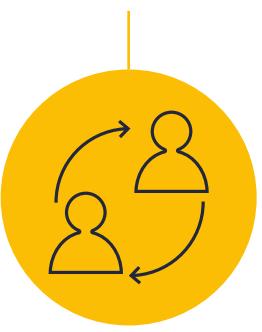
## Austria

Risk and enforcement level: Robust

# Austria

## What qualifies as advertising under Austrian law?

A post by an influencer only qualifies as “advertising” if it directly or indirectly promotes the sale of goods or services. Whether, in turn, a post is considered to promote the sale of goods or services depends on several indicators:



## What are typical influencer practices in Austria and in which cases are they considered advertising?

There are various influencer practices which can be classified as advertising:



## Which legal obligations apply?

### RECOGNISABILITY AS ADVERTISING:

Recognisability as advertising: The basic rule is that advertising must always be recognisable as such by the targeted audience.

Whether a post is clearly recognisable as advertising depends on numerous factors, particularly:

- the influencer's appearance
- the influencer's audience
- the presentation of the products and services.

### LABELLING REQUIREMENT:

If an advertisement is not directly apparent from the circumstances, its commercial nature must be made clear by labelling it as advertising. Usually it is also necessary to disclose the client who instructed the influencer, e.g. by placing a link to their website.

### SEPARATION OF ADVERTISING AND EDITORIAL CONTENT:

If advertising takes place in the context of editorial content, e.g. on a fashion blog, such promotional content needs to be clearly separated from the editorial content (so-called separation rule).

Further specific rules apply to on-demand audiovisual media services, e.g. content for information, entertainment or educational purposes posted on YouTube, namely:

- the ban of surreptitious advertising;
- the obligation to disclose sponsorships;
- the obligation to clearly indicate product placements; and
- In cases of influencers seated in Austria, the obligation to notify Austrian authorities prior to the start of their activities.



## What labelling requirements do you need to be aware of?

### GENERAL RULE:

The labelling must be so apparent that, from the point of view of an average member of the relevant public, there is no doubt about the commercial purpose of the post. That means that the labelling has to be adjusted to the specific circumstances of an advertisement. The German terms mentioned in the table below – “Anzeige”, “entgeltliche Einschaltung” and “Werbung” are considered to be sufficient in general.

Examples from German case law which will also apply under Austrian law:

- “#ad” as one of several hashtags under a post was considered insufficient and
- “#sponsoredby” was held to be insufficient.

Instead, it is required to use the German terms for advertisement, i.e. “Werbung” or “Anzeige”.

### PLACEMENT OF LABELLING:

The labelling must be visible at first glance. Thus, if it is necessary to click on certain buttons or to scroll down in order to become aware of further information, the labelling will be considered insufficient. The note should therefore be inserted at the beginning of the post. If a video focusses on a certain product throughout, it can even be advisable to use a permanent insertion. Information on product placements must be inserted at the beginning of the video.

### LABELLING REQUIREMENTS FOR AFFILIATE LINKS:

It is mandatory to provide information about how the affiliate link works and that the influencer receives a commission.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
“Werbung” (“advertisement”)	“Promotion” (“promotion”)
“Entgeltliche Einschaltung” (“paid notification”)	#ad
“Anzeige” (“advertisement”)	#sponsoredby
“Bezahlte Kooperation” (“funded cooperation”)	
“Bezahlter Inhalt” (“paid content”)	

### Describe specific laws, regulations or guidance aimed at influencers in Austria

There are not any specific laws, regulations or guidelines that apply exclusively or specific to influencers. However, the Austrian Press Ethics Council have issued a guideline concerning “Ethics in Digital Communication” which states certain principles (i.e. labelling, standards of journalism) its members have to follow. Those are not legally binding.



## What are the consequences for influencers if advertising content is not clearly labelled?

If influencers violate these labelling obligations, they may face legal proceedings brought by competitors or certain business or consumer associations. In some instances, such violations can also be sanctioned by regulatory authorities:

### COMPETITORS/BUSINESS OR CONSUMER ASSOCIATIONS:

If an advertisement is not sufficiently labelled, this constitutes an unfair commercial act. In this case, competitors have a claim to cease and desist. They can therefore send a warning notice and assert the claim in court. Furthermore, such claims can also be raised by certain consumer protection or business associations. In addition, such associations or competitors may be entitled to damages, e.g. reimbursement of their costs for the warning notice.

### REGULATORY AUTHORITIES:

Moreover, there is a risk of sanctions imposed by the supervisory authorities. Administrative fines of up to €20,000.00 may be imposed if posts are not sufficiently labelled. In cases of on-demand audiovisual media services (e.g. certain content on YouTube) fines of up to €40,000.00 may be imposed. Apart from monetary fines authorities may also prohibit or block posts if they violate the above mentioned requirements.

## What legal risks apply when cooperating with influencers in Austria?

If an influencer violates these labelling requirements, the company that mandated him or her may also be liable. In particular, a company would be liable if it exerted control over the composition of the respective post. Such an exertion of control would be assumed, for example, if a company had instructed the influencer not to insert the necessary labelling.

Yet even without knowledge of such violation, the company may be held liable under certain circumstances, i.e. if:

- the influencer is integrated into the sales organization;
- the success of his or her actions benefits the company; and
- the company had the possibility of exerting influence on the behaviour of the influencer in the area in which the violation occurred.

Such claims based on labelling infringements can be brought either against the influencer, the company or both.

In addition, companies may be liable for other legal infringements by the influencer, e.g. of third party copyrights. Such liability may arise if the company instigated the influencer to infringe certain rights or had to expect such an infringement and did not intervene.

Thus, before the start of a campaign, a company should stipulate in its contract with the influencer how posts are to be designed and labelled. Additionally, compliance with these provisions should be monitored throughout the campaign.



## Key contacts





## Belgium

Risk and enforcement level: Moderate



# Belgium

## What qualifies as advertising under Belgian law?

### DEFINITION OF ADVERTISING:

The Belgian Code of Economic Law ("BCEL") includes two broad definitions for advertising. The first applies to advertising in the field of commercial practices and consumer protection in general, whilst the second applies more specifically to digital advertising (the so-called "**electronic economy**").

1. Article I.8, 13° BCEL (applicable to "Commercial practices and consumer protection" in general (Book VI BCEL)) defines advertising as: *"any communication with the direct or indirect aim of promoting the sale of products, irrespective of the place or means of communication used."*

2. Article I.18, 6° BCEL (applicable to "Law of the electronic economy" more specifically (Book XII BCEL)) defines advertising as: *"any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession."*

*For the purposes of Book XII, the following does not in itself constitute advertising:*

- a. *information giving direct access to the activity of a company, organisation or person, in particular a domain name or an electronic mail address;*
- b. *communications compiled independently and in particular without any financial compensation".*

### DEFINITION OF INFLUENCER MARKETING:

Due to the specifics of influencer marketing, the Belgian Advertising Council (since 25 May 2020 revamped as the "**Communication Center**") has published guidelines for online influencers on 8 October 2018 (the "**Guidelines**", available in [French](#) and [Dutch](#)), i.e. self-regulation by the advertising sector.

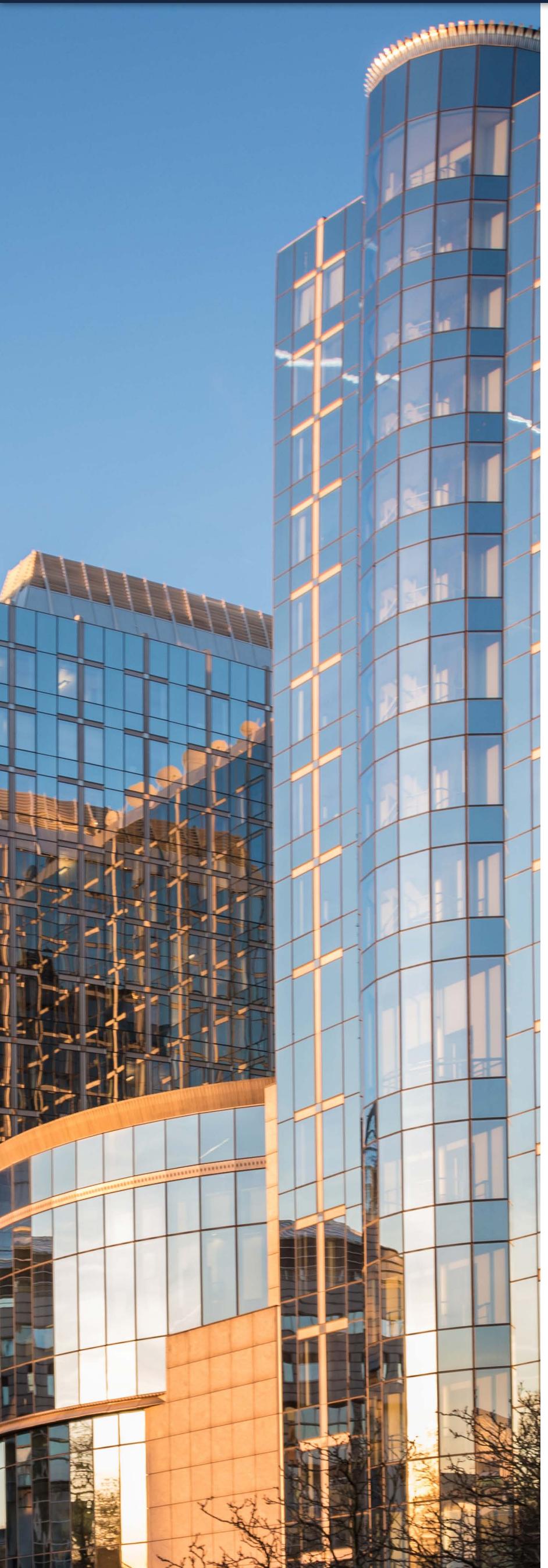
These Guidelines define influencer marketing as *"a form of marketing through which companies activate online influence and relevant sectoral knowledge of individuals or "influencers". The influencers are influential people who have built a large online community on social networks, websites, forums (...)"*.

The Guidelines apply provided that the following two cumulative conditions are met:

- a. The influencer receives **remuneration** in cash or in kind: the advertiser, or the agency acting at the advertiser's request, gives the influencer compensation in order to communicate about its brand, product, service or organisation. Allowing the free use of a product for a specified period of time or offering a product can be considered payment in kind; and
- b. The advertiser has significant **control** over the communication: the advertiser agrees on guidelines with the influencer.

If these conditions are not met, the published content will (according to the Communication Center) not be considered as advertising but as the mere expression of the influencer's opinion (see also the definition above: Article I.18, 6°, b) BCEL).

The supervising authority in charge of securing the correct implementation of the guidelines is the Jury for Ethical Practices ("**JEP**").



## What are typical influencer practices in Belgium and in which cases are they considered advertising?

According to the Communication Center, the following situations are not to be considered as "influencer practices" that fall under the scope of the Guidelines:

- A product is delivered for free, without the company expecting a review (i.e. the company has no control over the content);
- The "influencer" posts a spontaneous and honest opinion that is not imposed by the brand (e.g. the influencer offers a free product or service for a review and provides information about the product or service, but the message is not written by the brand, nor does it have the right to approve the message);
- An employee of a company communicates about the company on social media with his or her friends, acquaintances, etc. as a result of his/her loyalty to that company (the compensation (i.e. the wages) is not dependent on the employee communicating such messages).

Please note however, that for certain practices, it could still be argued that the general principles on commercial practices apply (see broader definition in article I.8, 13° BCEL).

The Communication Center provides the following examples of influencer practices that are "in scope" of the Guidelines:





## Which legal obligations apply?

In general, Book VI BCEL ("**Commercial practices and consumer protection**") stipulates that any kind of advertising (including influencer practices) that amounts to "*unfair, misleading or aggressive market practices*" (articles VI.92-VI.103 BCEL) is prohibited.

More specifically, Book XII BCEL ("**Law of the electronic economy**") determines the general requirements to be followed when advertising online. For instance, (i) the advertising character of the content must be clearly identifiable, and (ii) the identity of the company or individual being advertised must be clearly identifiable (Article XII.12).

In addition to the above, when advertising meets the conditions of influencer marketing (as explained above under Section 2), the Guidelines provide that every commercial communication must be:

a. *Clearly recognizable* - which can be achieved by:

- An explicit and textual statement;
- The context in which the online message is published;
- Brand or logo notification.

b. *Fair* - The message must not contain incorrect information or mislead the target group with false statements and the commercial communication should not directly encourage children to persuade their parents or other adults to buy products for them.

## What labelling requirements do you need to be aware of?

The former Belgian Advertising Council (now Commercial Center) has issued the following recommendations when applying the rules:

- a. The online influencers must make the commercial relationship clear in a visual or audible way. This can be done by mentioning the following words in the commercial communication: "**advertising**", "**publicity**", "**sponsorship**", "**promotion**", "**sponsored by**", "**in collaboration with**" or **other types of similar entries or hashtags #ad, #spon or #prom**.
- b. It is necessary to adapt the above words in function of the language of the message or the target group because social media does not have any language boundaries.
- c. The words must be **mentioned** in the right way and placed such that the recipient immediately understands the commercial nature of the message.
- d. Finally, the words **cannot be hidden** in such a way that the average consumer does not notice them easily.



ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
"reclame" or "advertentie" ("advertising")	Labels that do not make sufficiently clear to consumers that it concerns an influencer practice. No clear examples of unacceptable labels are given in the Guidelines.
"sponsoring" (NL); "sponsorisé" (FR) ("sponsorship/sponsoring")	
#spon; #adv; #sample or #prom	
"publicité" or "annonce" (FR) ("advertising")	

## What are the consequences for influencers if advertising content is not clearly labelled?

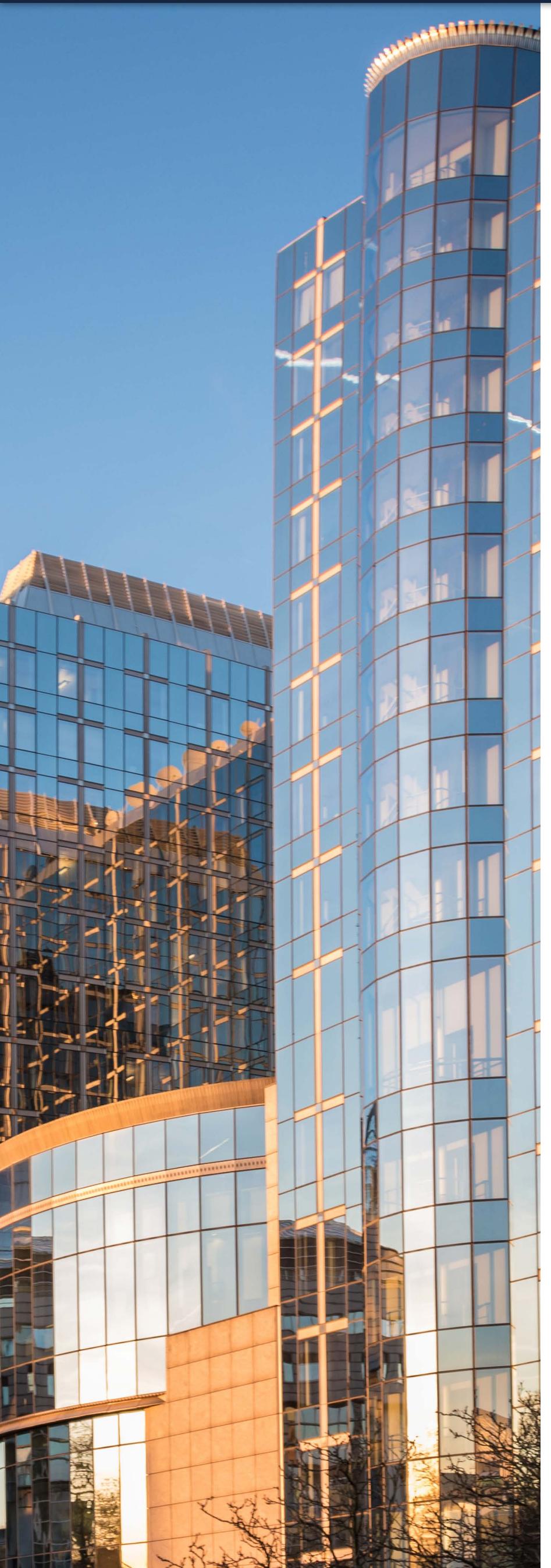
The Jury of Advertising Ethical Practices ("JEP") is the body authorised to receive complaints regarding influencer marketing. In such circumstances, the JEP will handle them in accordance with its regulations (available at <http://www.jep.be>). As a reminder, if the JEP decides to discontinue or modify a campaign, it expects voluntary compliance with its decisions by advertisers (influencers), their agencies and the media.

Additionally, when an influencer practice (that qualifies as advertising as defined above under Section 1) violates a BCEL rule (e.g. an unfair commercial practice), administrative fines and other sanctions (Book XV BCEL) may be imposed on the influencer by the FPS Economy.

## Describe specific laws, regulations or guidance aimed at influencers in Belgium

On 15 May 2018, the Belgian Federal Public Service Economy ("FPS Economy") published guidelines for influencers on Twitter. After protest on social media, the FPS Economy withdrew its guidelines and stated that its announcement was "premature", as the guidance was not yet "validated".

It should be carefully monitored if and when new guidelines are published by the FPS Economy, as the guidelines published on 15 May 2018 were more restrictive (severe fines, specific guidelines for several social media platforms, etc.) than the Guidelines of the former Belgian Advertising Counsel (now Commercial Center), which were published after consultation with the sector.



## What legal risks apply when cooperating with influencers in Belgium?

The responsible person for abiding by the rules set forth by the Guidelines will be whoever places the post (i.e. the influencer). However, the following entities may also be held liable for such infringements: companies that request to place advertising posts, networks, agencies, platforms and other parties involved in social network marketing.

Furthermore, if an influencer practice (that qualifies as advertising as defined above under Section 1) violates a rule included in the BCEC (e.g. an unfair commercial practice), administrative fines and other sanctions may be imposed by the FPS Economy on companies working with (or instructing) the influencer.

Competitors/consumers can also file complaints and/or initiate legal proceedings (cease-and-desists, but also claims for damages suffered as a result of the unfair commercial practice) for alleged unfair commercial practices (e.g. unlawful comparative advertising).

In addition, companies may be liable for other legal infringements by the influencer, e.g. of third party copyrights. Such liability may arise if the company instructs the influencer to infringe certain rights or had to expect such an infringement and did not intervene.

Thus, before the start of a campaign, a company should stipulate in its contract with the influencer how posts are to be designed and labelled. Additionally, compliance with these provisions should be monitored throughout the campaign.

## Key contacts



Canada

Risk and enforcement level: Robust

# Canada

## What qualifies as advertising under Canadian law?

Advertising in Canada is any message where the content is controlled directly or indirectly by the advertiser and which is communicated in any medium to viewers with the intent to influence their choice, opinion, or behaviour.

A post by an influencer qualifies as advertising if there is a material connection between the influencer and the company they are posting about. A material connection is any connection between an entity providing a product or service and an endorser, reviewer, influencer or person making a representation that may affect the weight or credibility of the representation, and includes: benefits and incentives, such as monetary or other compensation, free products with or without any conditions attached, discounts, gifts, contests and sweepstakes entries, and any employment relationship.

## What are typical influencer practices in Canada and in which cases are they considered advertising?

There are various influencer practices which can be classified as advertising:



## Which legal obligations apply?

If content is qualified under the law as advertising, the influencer must disclose the relationship between themselves and the advertiser. Any commercial relationship between an influencer and a advertiser that has the potential to affect how consumers evaluate the influencer's independence or impartiality is a material connection and requires disclosure. This type of relationship can involve:



## What labelling requirements do you need to be aware of?

The disclosure should catch viewers' attention and be placed where they are unlikely to miss it. A key consideration is how viewers see the screen when using a particular platform.

Influencers should state the nature of the material connection (i.e. free products, monetary compensation, exclusive invite to an event, etc.), name the brand, and list the specific products they are promoting. Blanket statements that are not product and brand-specific are not transparent for the viewers. If an influencer receives a product for free from a company, they are not necessarily required to use specific tags such as #ad or #sponsored, but they do need to disclose that they received the product for free. Here are some example of tagging options.

ACCEPTABLE TAGS	UNACCEPTABLE TAGS
#ad	#SP
#sponsored	#Spon
#XYZ-Partner	"Thank you company X"
#XYZ-Ambassador	Labels such as #Partner' or #Ambassador' without naming the company.



**SPECIFIC MEDIA CHANNEL DISCLOSURE****Describe specific laws, regulations or guidance aimed at influencers in Canada**

There are no specific laws or regulations aimed at influencers, but regulators have made it clear that the laws governing advertising and marketing in Canada apply to influencer marketing just as they do to other forms of advertising.

In Canada, the Competition Bureau is the primary government body responsible for enforcing laws about misleading marketing practices. An arm of the federal government, the Competition Bureau oversees the Competition Act with the goal of preventing fraud and eliminating deceptive marketing practices. The Competition Bureau has issued the Deceptive Marketing Practice Digest with guidance for influencer marketing.

In addition, the Canadian advertising industry's self-regulatory body called "Ad Standards", administers The Canadian Code of Advertising Standards. Ad Standards has also published The Influencer Marketing Guidelines, which is specifically aimed at influencers.



## What are the consequences for influencers if advertising content is not clearly labelled?

Breaching the Competition Act can result in civil or criminal action by the Competition Bureau, though civil action is more common than criminal action.

Under Section 52 of the Competition Act a person who knowingly or recklessly make a representation to the public that is false or misleading in a material respect may be found guilty of an offence and liable:

- a. on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or
- b. on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

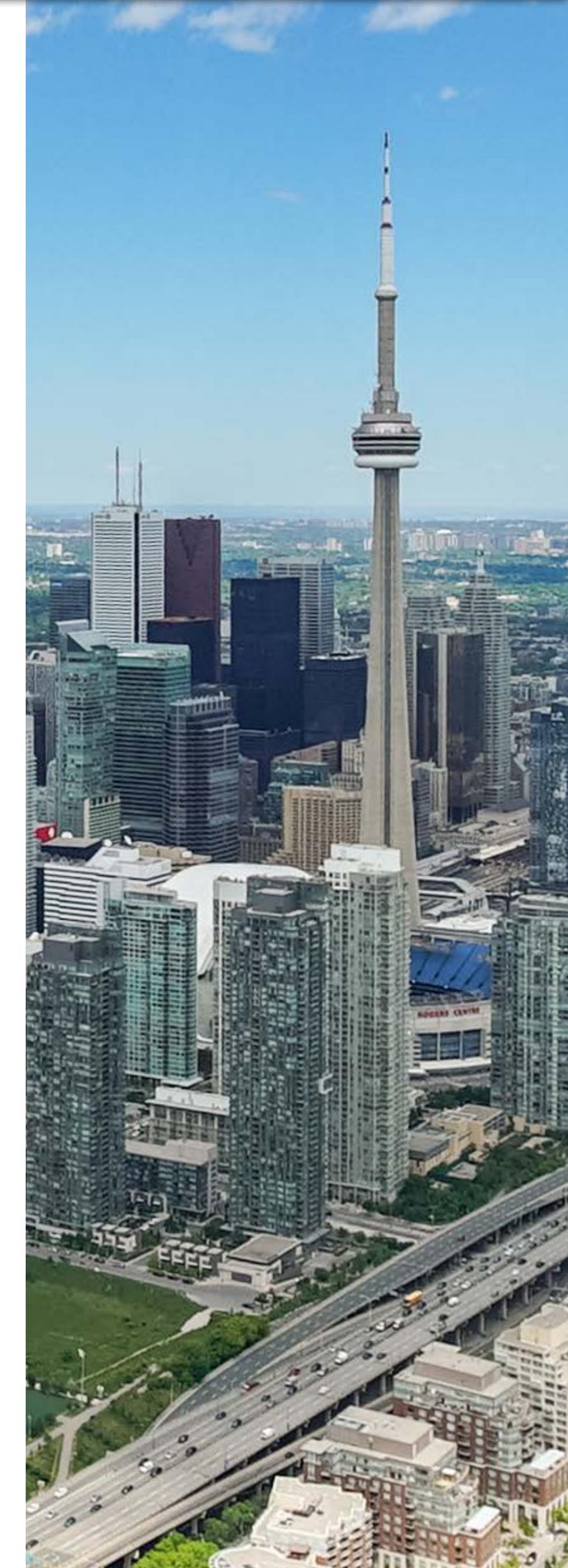
Under Section 74 of the Competition Act if a court determines that a person is engaging in or has engaged deceptive marketing practices the court may order the person to pay an administrative monetary penalty, in any manner that the court specifies, in an amount not exceeding:

- (i) in the case of an individual, \$750,000 and, for each subsequent order, \$1,000,000, or
- (ii) in the case of a corporation, \$10,000,000 and, for each subsequent order, \$15,000,000

## What legal risks apply when co-operating with influencers in Canada?

The Competition Bureau warns that compliance is a shared responsibility of the companies and their advertising agencies along with their influencers. Companies or their advertising agencies cannot rely on their lack of control over the format or content of the influencers' posts to avoid liability under the Competition Act.

Companies should therefore ensure that Influencers comply with the applicable provisions of the Competition Act. That includes ensuring that influencers clearly communicate any material connection that they have with the company and verifying that influencers aren't making performance claims about a product or service that haven't been adequately tested.



## Key contacts





## Denmark

Risk and enforcement level: Robust

# Denmark

## What qualifies as advertising under Danish law?

A post by an influencer qualifies as “advertising” under Danish law if the post directly or indirectly promotes the sale of goods or services.

If an influencer makes a post after making an agreement with a company, or if the influencer gains an advantage by posting, the influencer must clearly state this in the post.

### AGREEMENT BETWEEN THE INFLUENCER AND THE COMPANY:

If it is agreed between the influencer and the company that the influencer mentions, for example, a certain product from the company, then the influencer’s post will be regarded as “advertising” given that the purpose of the post was to increase the awareness of the company and to promote the sale of the company’s products.

It is irrelevant whether the company sets requirements for the wording or content of the post or not. It is however important that the company has a commercial intent in providing the influencer with their product.

Any agreement may be in writing, oral or implied. An implied agreement is, for example, if the company regularly sends products to the influencer, and the influencer continuously mentions these products positively, irrespective of whether the influencer has or has had any direct contact with the company.

The post will be considered as advertising if:

- a company pays the influencer to mention the company or its products;
- the influencer receives a discount or other benefit for promoting a company (e.g. as an ambassador);
- the influencer arranges competitions or giveaways for a company;
- the influencer uses advertising links (so-called “affiliate links”), where they mention a company or a company’s product at the same time as they link to the company’s store and they receive payment for clicks on the link which lead to a purchase; or
- the influencer is awarded a discount when buying products from the company if the influencer mentions the company’s products in their posts.

The rationale is that such posts are not intended to increase the sale or the procurement of goods or services, but to express the influencer’s opinion or to inform the public about the matter in question.





#### NO SPECIFIC AGREEMENT BETWEEN THE INFLUENCER AND THE COMPANY:

Even if no agreement is entered into between the influencer and a company there may still be a commercial intent behind the post which requires advertising labelling. For example, this applies in the following situations:

**Gifts:** The general rule is that if a company sends an influencer a product as a gift, it is assumed that the purpose of sending the gift is that the influencer mentions the product in one or more posts. Therefore, the commercial intent must be clearly stated in the influencer's post involving the product. The same applies where the influencer is asked to "test the product" or "give honest reviews" about the products or services that the influencer has received from a company. If an influencer receives a product from a company and must decide whether to use the product or destroy it, the influencer has acquired the product and, therefore, the influencer must include advertising labelling in a post regarding the product. Further, if the company continuously furnishes the influencer with products that the influencer is supposed to mention in posts, such posts must be labelled as advertisements.

**Event invitations:** If an influencer is invited to an event hosted by a company, one might assume that the company is anticipating that the influencer will mention the event. In case the influencer receives goods or services at the event, for example a "goodie bag" or a free dinner, and the influencer posts a picture of that goodie bag, the post must be clearly labelled as an advertisement.

Transparency is important. Consumers who see the post must be able to easily perceive the reasoning behind the post. Therefore, if the commercial interests of the company cannot be clearly perceived from the post itself, the commercial interests of the company behind the products/services, must be explicitly disclosed in the post.

#### EXAMPLES OF POSTS THAT DO NOT REQUIRE TO BE LABELLED AS ADVERTISEMENTS:





## What are typical influencer practices in Denmark and in which cases are they considered advertising?



## Which legal obligations apply?

### HIDDEN ADVERTISING IS PROHIBITED:

A trader must clearly state the commercial intent of any trading practices, including advertising, cf. section 6(4) of the Danish Marketing Practices Act. The provision prohibits hidden advertising.

The purpose of the prohibition is to ensure that consumers are aware of marketing messages and can judge their contents accordingly.

### THE BUSINESS PARTNER MUST BE MENTIONED:

It must be clear from the post on whose behalf the influencer is advertising, cf. section 9(1) of the Danish E-commerce Act. It suffices if it is clearly explained in the post or from the context. It is recommended to use "Advertising for [business partner]" or "Advert for [business partner]" immediately after the "advertisement" label.



## What labelling requirements do you need to be aware of?

### GENERAL RULE:

The label must be so conspicuous in the post that the average consumer would not be in any doubt as to the commercial intention behind the post.

### EXAMPLES OF LABELS FROM CASE LAW:

A post which contains advertising is not labelled sufficiently if only vague terms or indistinct labels are used. This is, for example, the case if:

- the advertising label is placed at the bottom of a post or among hashtags;
- ambiguous words have been used e.g. "spons" or "ad";
- only the company name is tagged in the post; or
- the advertising posts are shared from one social media to another.

It is recommended to use the Danish terms for advertisement, these being "Reklame" or "Annonce".

### POSITION OF THE LABEL:

The influencer decides how to label the advertising as such, if the followers/receivers become aware that it is advertising when they see the mention. If the followers must search in the caption to find out if the post is advertising, the labelling requirement is not met. Thus, the labelling must be visible at first glance. If it is necessary to click on certain buttons or to scroll down to become aware of further information, the labelling will be considered insufficient. The labelling should therefore be inserted at the beginning of the post, e.g. at the beginning of the caption on Instagram. If a video focusses on a certain product throughout, it might be advisable to use a permanent insertion. Information on product placements must be inserted at the beginning of the video.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
"Reklame" ("advertisement")	"I samarbejde med" ("in collaboration with")
"Annonce" ("advertisement")	The name of the company is tagged in the post, i.e. "@[business partner]"
	"Spons"
	"Ad"
	Unclear font size and colour
	The label is placed at the bottom of a post, hashtags or disappears in other texts/illustrations

With regard to some labels, it remains to be seen whether these are sufficient. For example to "Betalt partnerskab med [virksomhedens navn]" ("Paid partnership with [business partner]").



#### ADVERTISEMENT LABELS WITH TEXT/IMAGES:

The influencer must at the beginning of the text, in the image itself, or at the beginning of the text attached to the image, clearly state that the post is an "advertisement" with one of the acceptable labels in Danish language, these being "Reklame" or "Annonce".

The influencer may choose to use other words than the acceptable label examples, provided that the said words/terms enable the influencer's followers and other third parties to clearly perceive these words as "advertising labels". In accordance with practice, statements like "in collaboration with" do not clearly indicate that it is advertisement.

Information as to where a product can be purchased, the name of the company – for example: "@[business partner]", "Affiliate agreement", "#[Product name]", "Sponsor" or "Ad" are examples of advertisement labels that do not sufficiently indicate that it is an "advertisement".

Further, tagging the company in a post containing advertising, for example, on Instagram with @\*[company name] does not suffice.

#### LABELLING OF ADVERTISING VIDEOS:

Advertising videos will be sufficiently labelled if each video is clearly labelled as "Reklame" or "Annonce" in the title of the video. The crucial factor is that it is immediately clear to the viewer that the video is advertising.

The prohibition of hidden advertising covers all aspects of marketing, including the presentation of the video (e.g. its title). An influencer may choose other words as long as it is clear to the influencer's followers and others that the words/terms are "advertising labels".

If a series of videos are shown consecutively and provided that it is not possible to become aware that the videos are advertising before the viewer chooses to watch them, for example on Snapchat or Instagram Stories, the

influencer must clearly state in the beginning of the videos that they are advertising. Each video must be clearly labelled.

#### LABELLING OF ADVERTISING LINKS (AFFILIATE LINKS):

Advertising links (affiliate links) must be labelled as advertising. An advertising link will be adequately labelled if "Reklamelink" or "Annoncelink" is used.

The influencer may fulfil the requirement by using other words. However, it must be words that the influencer's followers and others clearly perceive as "advertising labels".

Advertising links or affiliate links will not be sufficiently labelled if the label is, for example, at the end of the post, or if the links in question are simply labelled by "affiliate aftale" (in Danish – affiliate agreement), "affiliate link", or if it appears from the post that "the post may contain advertising links". The crucial point is that the readers become aware that a link is an advertising link before or at the same time as they see the link itself.

If an influencer has written a post that is advertising, where he or she has inserted advertising links, it must be clear from both the post and from the link itself that they are advertising. It must also be clear on behalf of whom the influencer is advertising.

If the influencer has clearly stated that the post is an advertisement, there is no need to label every single link by "Advertisement". However, if the reader may have doubts the influencer should state, for example, "advertising link" or "affiliate link" above or following the link.

#### ENGLISH LABELLING OF ADVERTISING:

An advertisement post in English aimed at persons who understand English will be sufficiently labelled if the post is clearly labelled with the statements "Advertisement" or "Commercial promotion". If the advertisement is in Danish, the advertisement label must also be in Danish.



## Describe specific guidance aimed at influencers in Denmark

No laws nor regulations in Denmark apply exclusively or specifically to influencers.

### ADMINISTRATIVE GUIDELINES:

The “Danish Consumer Ombudsman’s guidelines to influencers regarding hidden advertising” is written for influencers to enable them to avoid violating the prohibition of hidden advertising. These guidelines include recommendation as to when and how to label posts which have a commercial intention and/or content.

These guidelines are regularly updated to reflect changes in the industry and to ensure consumers’ understanding of advertising labelling.

## What are the consequences for influencers if advertising content is not clearly labelled?

Violation of the prohibition on hidden advertising is subject to fines, cf. section 37(3) of the Danish Marketing Practices Act.

Further, the Danish Consumer Ombudsman can report the influencer or the company to the police.

If a post of a product or company is advertising but it is not flagged as such, then the influencer in question will be held liable. The company that the influencer is advertising for will also be held liable for violation of section 6(4) of the Danish Marketing Practices Act.

The size of the fine varies since the fines are calculated on a case-to-case basis, taking into consideration: the gravity of the violation, its extent, and the intended or obtained profit of the influencer and/or the company.

If the violation is reported to the police by the Danish Consumer Ombudsman, the police’s prosecution entity must decide whether to initiate criminal proceedings with the courts. Regardless of whether the Danish Consumer Ombudsman issues a fine or ask for a police report, a press release on the case will be issued.

In 2017, the Danish Consumer Ombudsman closed two cases regarding hidden advertising.





In 2019, the Danish Consumer Ombudsman investigated the commercial advertisements of 37 influencers on social media and made random compliance checks on several accounts if they had more than 100,000 followers.

In August 2019, the Consumer Ombudsman reported four influencers to the police for hidden advertising. The police prosecution authority has filed charges in one of the cases and in the indictment it is stated that the prosecution is aimed at a fine of DKK 120,000.

In addition to the four police reports, two other influencers have received a warning letter from the Danish Consumer Ombudsman for not properly labelling their posts as advertising.

### What legal risks apply when cooperating with influencers in Denmark?

If an influencer violates the labelling requirements, the company that mandated the influencer may also be held liable.

A company would be liable if it exerted control over the composition of the respective post. Exertion of control would be assumed if, for example, a company had instructed the influencer not to insert the necessary advertisement labelling.

The company is required to ensure that advertisements are clearly labelled as such. The Danish Consumer Ombudsman recommends that companies enter into agreement containing provisions on how to mention the company's products and how to label them and to continuously monitor whether the influencers' references are correctly labelled in accordance with the agreement.

If a company becomes aware that an influencer's posts involving their products or services are not sufficiently labelled, the company must persuade the influencer to properly state the company's commercial intent or to delete the post.

Agencies that advise influencers and facilitate contacts between influencers and companies may also be held liable. Advertising agencies and public relations agencies will be liable if they are hired by a company to enter into an agreement with an influencer with the effect that the influencer must mention the company or the company's products or services in their posts.



## Key contacts



## Finland

Risk and enforcement level: Robust

# Finland

## What qualifies as advertising under Finnish law?

There is no single all-encompassing definition of what constitutes advertising, marketing communications and marketing, which are often used interchangeably. In general, any measures that a company takes in an effort to promote its sales or raise the profile of its brand are qualified as advertising. In other words, advertising means any representation in connection with a trade or business in order to promote the supply of goods or services.

Influencer marketing is commercial cooperation between companies and influencers whose goal is to promote the sale of the company's products or to raise their brand profile. Commercial cooperation can be established by, for example, the company and influencer making an agreement to produce content involving the company's products. The end product of influencer marketing might be a video, audio clip, photograph or a blog entry published by the influencer that deals with the company or its products.

Whether a post by an influencer is considered an advertisement, and therefore promotes the supply of goods or services, depends on several factors, such as:



## What are typical influencer practices in Finland and in which cases are they considered advertising?



### Which legal obligations apply?

#### RECOGNISABILITY AS ADVERTISING:

The following legal obligations are based on valid legislation and its preparatory work, legal praxis and the Consumer Ombudsman's oversight decisions:

Recognisability of advertising: Advertisements must be easily recognisable as such, regardless of the method of presentation or advertising channel. Consumers have the right to know when attempts are being made to influence them commercially. This requirement concerning the recognisability of marketing applies to all forms and channels of marketing, including social media.

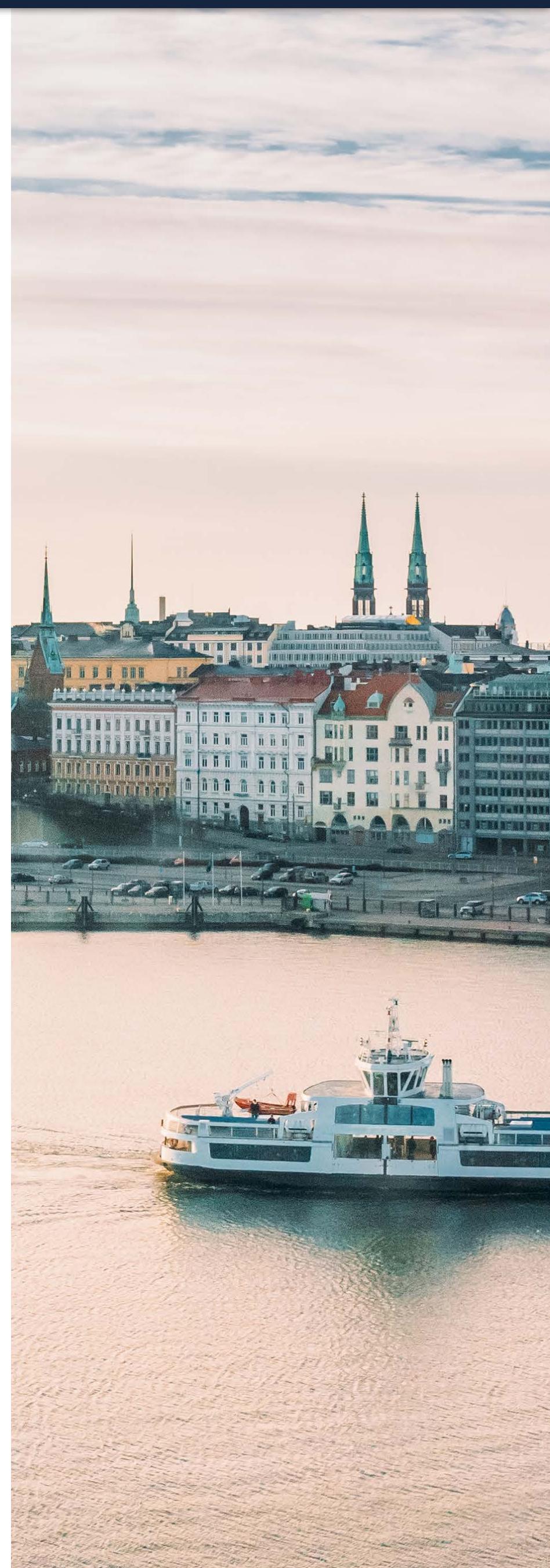
Whether a post is clearly recognisable as advertising depends on numerous factors, particularly:

- the influencer's appearance;
- the influencer's audience; and
- the presentation of the products and services.

General principles regarding the recognisability of advertising:

- Commercial messages must not be hidden.
- The advertiser must be recognisable from the advertising.
- Subliminal and hidden advertising are unacceptable.

The recognisability requirement applies not only to the content and presentation of advertisements, but also to their placement. Advertisements must be clearly separated from other materials. It must be clear to the audience where the advertisements begins and ends.



**THE RULE OF GOOD PRACTICE:**

No conduct that is inappropriate or otherwise unfair from the point of view of the consumers shall be allowed in marketing.

**CHILDREN AND YOUNG PERSONS AS A TARGET GROUP:**

Underage persons (children and adolescents under the age of 18) enjoy a special position in the Consumer Protection Act. Marketing targeted at underage persons is subject to stricter rules than other marketing, because children are considered to be more susceptible to the effects of marketing due to their limited knowledge or experience. It is important that companies take into account the special position of underage persons especially when instructing the influencers. For example: games, pastimes and other entertainment must be clearly separated from advertisements.

**LABELLING REQUIREMENTS:**

The principle rule of influencer marketing is that it must be clearly stated at the beginning of all publications that it is an advertisement for a company or other recognisable commercial name (e.g. a trademark).

**SEPARATION OF ADVERTISING AND EDITORIAL CONTENT:**

If advertising takes place in the context of editorial content, e.g. on a fashion blog, such promotional content needs to be clearly separated from the editorial content (the so-called separation rule).

**What labelling requirements do you need to be aware of?****GENERAL RULE:**

Advertising must clearly indicate its commercial purpose and on whose behalf it is being carried out. The rule is the same regardless of what media or methods are used.

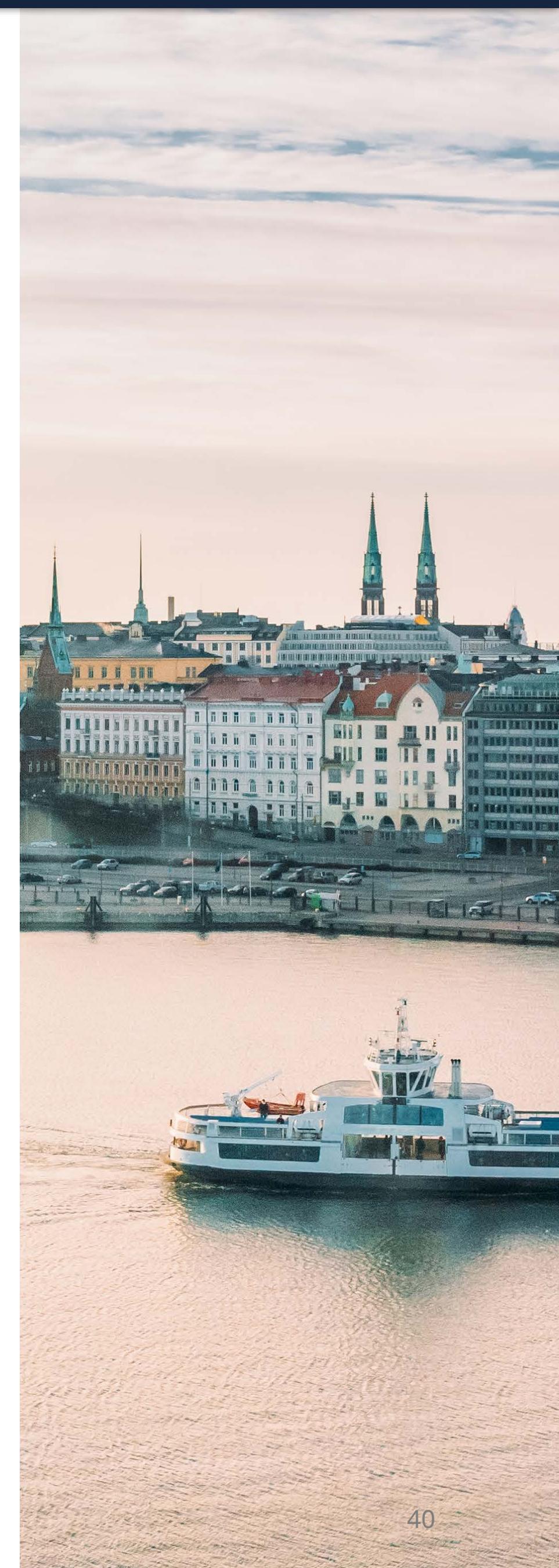


The principle rule of influencer marketing is that it must be clearly stated at the beginning of publications:

- that it is an advertisement;
- for a company or other recognisable commercial name (e.g. a trademark).

If the publications include marketing for several products, the name or other commercial name of all companies advertising must be stated clearly at the beginning of the publications. It is recommended that these publications be labelled with the term "advertisement". Alternatively, the term "commercial cooperation" can be used.

The [guidelines](#) regarding the recognisability of advertising given by the Finnish Competition and Consumer Authority (KKV) sets out that the advertisements must be easily recognisable as such, regardless of the method of presentation or advertising channel. Consumers (also e.g. children, people with disabilities and/or senior citizens) have the right to know when attempts are being made to influence them commercially. Even though it is not obligatory to translate the label into Finnish, it is highly recommended.



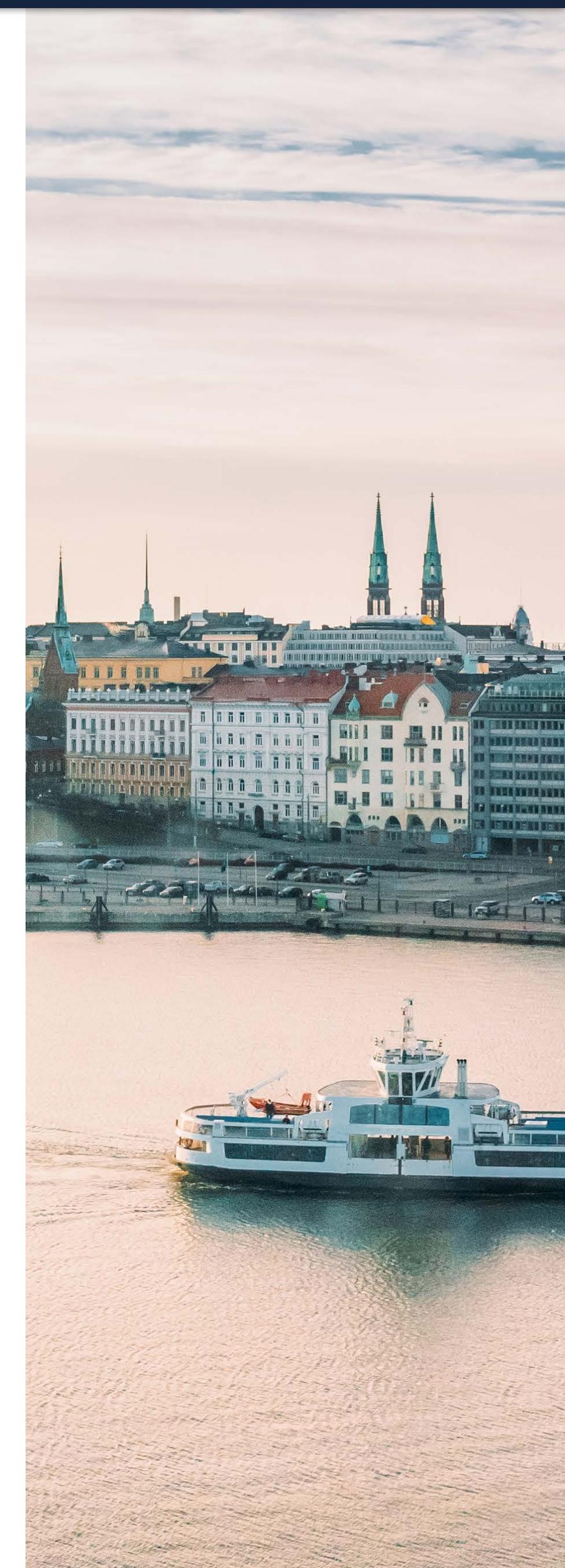
ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
"Mainos" ("Advertisement")	"Sisältää maksettua mainossisältöä" ("Includes Paid Promotion")
"Mainos [Yrityksen] kanssa" ("Advertisement with [Company]")	"postilaatikkoon kolahti tuote X" ("Product X ended up in my mailbox")
"Mainos [Tuotemerkin] kanssa" ("Advertisement with [Trademark]")	"osa tuotteista saatu [Instagramin tms.] kautta" ("Some of the products received through [Instagram, etc.]")
"Sisältää [Yrityksen, Yrityksen, ...] mainoksia" ("Includes adverts for [Company, Company, ...]")	"Küitos yritys XX tästä tuotteesta/ mahdollisuudesta" ("Thanks to Company XX for this product/opportunity")
Kaupallinen yhteistyö [Yrityksen] kanssa ("Commercial cooperation with [Company]")	#Yhteistyö (#Cooperation)

## Describe specific laws, regulations or guidance aimed at influencers in Finland

The legal requirements are based on valid legislation, such as the Consumer Protection Act (1978/38) and the Unfair Business Practices Act (1978/1061), and legislation's preparatory work, legal praxis and the Consumer Ombudsman's oversight decisions.

### ADMINISTRATIVE GUIDELINES:

The supervisory authorities have issued guidelines on "[Influencer marketing in social media, 2019](#)". The document contains basic guidance on the recognisability of marketing on social media, the labelling requirements for advertising on different types of platforms and minors as a target group and marketing to minors. However, courts are not bound by these administrative guidelines and may deviate from the recommendations mentioned therein.



## What are the consequences for influencers if advertising content is not clearly labelled?

Both the company benefitting from the post and the influencer are obligated to ensure that the commercial purpose of influencer marketing is clearly stated and that no subliminal advertising is being practiced. The company engaged in influencer marketing is, under the Consumer Protection Act, responsible for stating the commercial nature of the cooperation, regardless of whether the commercial cooperation is being carried out with a professional influencer or a non-professional one.

A professional influencer is, under the Consumer Protection Act, responsible for stating the commercial nature of cooperation in the same manner as a company making use of influencer marketing. Professional influencer refers to an individual for whom influencing is their primary occupation.

A non-professional influencer refers to a consumer for whom content production for social media is a leisure time activity and not an occupation. In this case, the activities carried out by the influencer are not subject to the Consumer Protection Act or the authority of the Consumer Ombudsman. Despite this, the labelling of advertising is demanded, because followers will not otherwise be able to avoid subliminal advertising.

### REGULATORY AUTHORITIES:

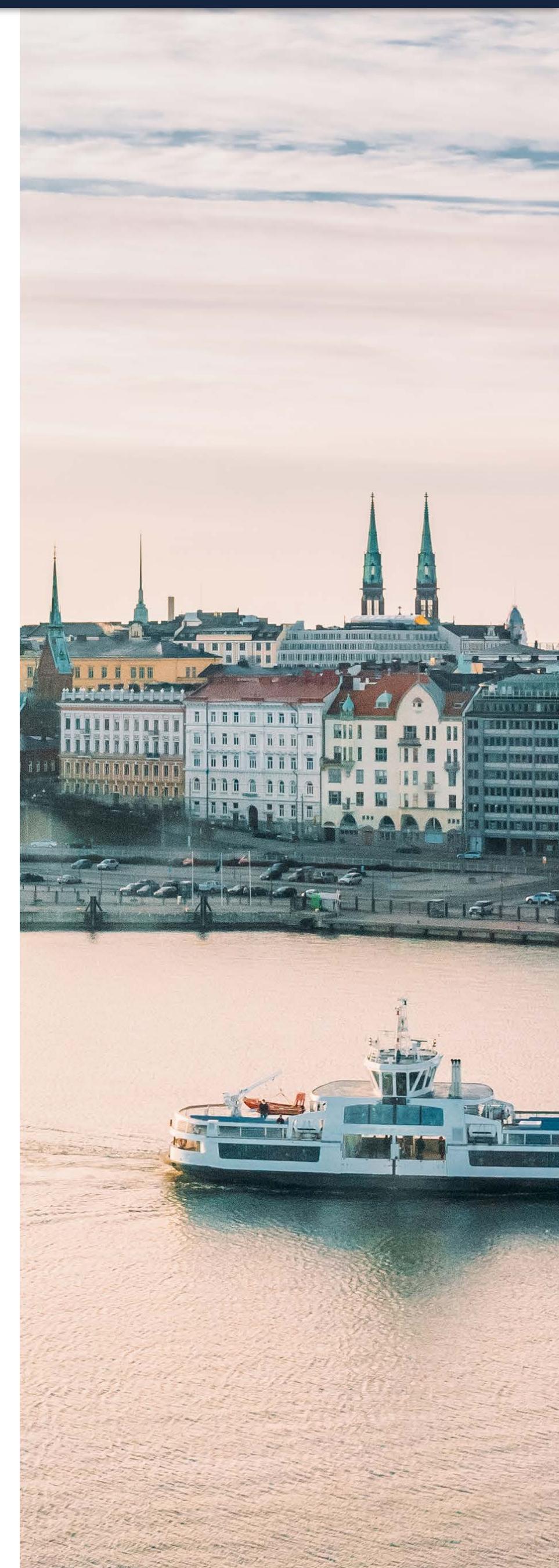
There is a risk of sanctions imposed by the supervisory authorities. The Consumer Ombudsman supervises compliance with the Consumer Protection Act. If the company cannot be persuaded to cease the unlawful activities, the Consumer Ombudsman can take the necessary enforcement actions or refer the issue to the court for resolution. In practice, these situations are subject to imposing a prohibition reinforced with a penalty payment. Matters involving prohibition are resolved by the Market Court.

## What legal risks apply when cooperating with influencers in Finland?

The company is responsible for its marketing, regardless of the party it chooses to handle its marketing. Yet, even without knowledge of such violation, the company may be held liable under certain circumstances, for example, if:

- the influencer is integrated into the sales organisation,
- the success of his or her actions benefits the company; and
- the company had the possibility of exerting influence on the behavior of the influencer in the area in which the violation occurred.

In addition, companies may be liable for other legal infringements by the influencer, e.g. of third-party copyrights. Such liability may arise if the company encouraged the influencer to infringe certain rights or expected (or should have expected) such an infringement and did not intervene.



## Key contacts





## France

Risk and enforcement level: Robust



# France

## What qualifies as advertising under French law?

Directive 2006/114/EC (dated 12 December 2006), which concerns misleading and comparative advertising, defines "advertising" as the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations.

An influencer may work in an editorial context or in collaboration with a brand in order to publish content (product placement, participation in content production, publication of commercial content, etc.).

A post from an influencer, i.e. a person expressing a point of view or providing advice in a specific area and according to their own style or process, may be qualified as advertising. Where or not a publication is considered "advertising" by nature turns based on the following cumulative criteria:

- Reciprocal commitments, i.e. payment or intervention of the influencer against payment or delivery of products or services;
- Editorial control of the advertiser over the content and requirement from the latter to validate the content before publication; and
- Promotion of a product or service.

## What are typical influencer practices in France and in which cases are they considered advertising?

Any posts published by an influencer which meet the above mentioned criteria may be qualified as advertising. In this respect, influencers may:





## Which legal obligations apply?

When the criteria to characterize advertising are met, posts must comply with the legal provisions related to advertising, including without limitation, provisions related to (i) identification of advertising and advertiser, (ii) unfair, misleading or aggressive commercial practices, (ii) comparative advertising, (iii) identification of the advertising and advertisers, (iv) specific products (e.g. tobacco and alcohol), (v) use of the French language.

Advertising messages must be easily and clearly identifiable. In this respect, directive 2010/13/EU (dated 10 March 2010) and Decree No. 92-280 (dated 27 March 1992) provide that television advertising and teleshopping must be readily recognisable and distinguishable from editorial content. These advertisings must be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.

Further, specific rules apply such as:

- the ban of surreptitious advertising;
- the obligation to disclose sponsorships; and
- the obligation to clearly indicate product placements.

In addition, it is advised that the advertising comply with ARPP (Autorité de régulation professionnelle de la publicité) recommendations, even despite the fact that they are not legally binding in.

Posts must also comply with intellectual property laws, such as copyright ("droits d'auteur"), trademarks, design rights and image rights.

Influencers must comply with all applicable laws and regulations.

## What labelling requirements do you need to be aware of?

Advertising must disclose any collaboration between influencers and advertisers:

- In an explicit and immediate way: at the beginning of the post (first lines of the post or first seconds of the video), users must not have to scroll down and click to see the disclosure. Some social media, such as Instagram and YouTube also offer tools to highlight commercial collaboration.

The ARPP guide, published in May 2019, identified two categories of posts which do not comply with this requirement, these were:





Pursuant to the ARPP guide, this practice represented only 33% of the analysed content.

- In French; and
- By any means (i.e. verbally or in writing alongside the content).

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
"Partenariat rémunéré avec XXX" ("paid partnership with XXX")	#AD
"Par partenariat sponsorisé @XXX" ("by paid partnership @XXX")	*AD
"Pour cette #collaboration voyage&beauté avec @XXX" ("for this #collaboration travel & beauty with @XXX")	"On m'a proposé de tester" ("I have been offered to test")
"Partenariat rémunéré avec XXX" ("paid partnership with XXX")	"J'ai été contacté par" ("I have been contacted for")
"En collaboration avec XXX" ("in collaboration with XXX")	"Merci pour cet essai!" ("thanks for this test")
"Publication réalisée en partenariat avec @XXX" ("publication made in partnership with @XXX")	"produit gratuit" ("free product")

The relationship between an influencer and an advertiser mentioned on the influencer's Instagram account must also appear on their Facebook account if the two media refer to each other. In other words, cross-referencing between platforms necessitates a disclosure of collaboration on both platforms.



## Describe specific laws, regulations or guidance aimed at influencers in France

**Decree No. 2019-1530 dated 3 December 2019:** companies producing or marketing human healthcare products or providing services related to these products must make available, on a separate public website: the subject, date, beneficiaries, value, and participants to the collaboration, in circumstances where health products are being promoted and influencing the public.

**Law under discussion at the French Parliament aiming at controlling the commercial exploitation of image of children under 16 on online platforms:** this proposed law aims to create a legal framework to extend to children influencers the prior individual authorisation regime applicable to children working in the entertainment sector.

**ARPP recommendations:** Although not binding, the recommendations related to digital advertising communication provide guidelines in respect of influencers.

Note that the French Competition Authority tends to acknowledge a relevant market related to activities of management of influencers' career and image (decision No. 19-DCC-94, May 24, 2019).

## What are the consequences for influencers if advertising content is not clearly labelled?

The potential legal consequence for influencers if they do not (or do not clearly enough) label advertising content as advertising is that the content in question be characterised as a **misleading commercial practice**, which opens the influencer up to the following:

- up to 2 years' imprisonment and a fine of up to EUR 300,000 for individuals and EUR 1,500,000 for corporate entities;
- the fine may be set, for individuals, at up to 10% of the average annual turnover during the three preceding financial years or 50% of the cost of the practice constituting the offense;
- the fine may be set, for corporate entities, at up to 50% of the average annual turnover during the three preceding financial year or 250% of the cost of the practice constituting the offense;
- possible additional sanctions for individuals: prohibition from exercising the activity in the context of which the violation was made/a commercial or industrial profession/managing or controlling a commercial/industrial business or a commercial company, for up to 5 years;
- possible additional sanctions, including for corporate entities:
  - (i) prohibition for up to 5 years from: operating a business, operating one or several establishments having been involved in the violation, issuing securities to the public, submitting public procurement bids, issuing checks or using credit cards,
  - (ii) placement under judicial control for up to 5 years,
  - (iii) confiscation of the means used to commit the infraction, and
  - (iv) publication of the decision;
- in addition, a Court may order the cessation of the misleading practice.

In addition, competitors may also bring a claim against the influencer and/or the brand, considering that the post constitutes an unfair commercial act, which could result in a court ordering (i) the payment of damages, (ii) cessation of the unfair commercial act, and (iii) publication the related decision.



## What legal risks apply when cooperating with influencers in France?

The promotion of a product by an influencer does not exclude the brand's liability. When the influencer's publications are made in a commercial purpose, advertisers may also be held liable.

In this respect, it is recommended for companies to enter into an agreement with influencers in order to ensure compliance with the relevant rules.

## Key contacts



## Germany

Risk and enforcement level: Robust

# Germany

## What qualifies as advertising under German law?

A post by an influencer only qualifies as "advertising" if it directly or indirectly promotes the sale of goods or services. Whether, in turn, a post is considered to promote the sale of goods or services depends on several indicators:



## What are typical influencer practices in Germany and in which cases are they considered advertising?

There are various influencer practices which can be classified as advertising:



## Which legal obligations apply?

### RECOGNISABILITY AS ADVERTISING:

The basic rule is that advertising must always be recognisable as such by the targeted audience.

Whether a post is clearly recognisable as advertising depends on numerous factors, particularly:

- the influencer's appearance
- the influencer's audience
- the presentation of the products and services.

### LABELLING REQUIREMENT:

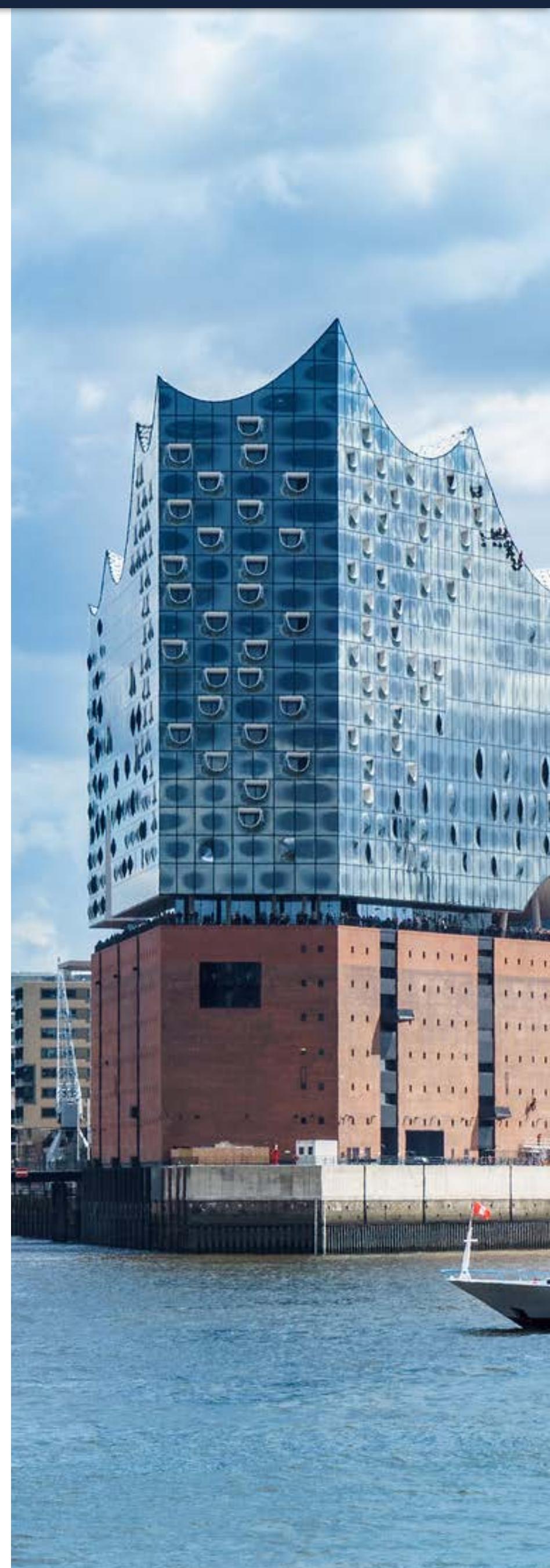
If an advertisement is not directly apparent from the circumstances, its commercial nature must be made clear by labelling it as advertising.

### SEPARATION OF ADVERTISING AND EDITORIAL CONTENT:

If advertising takes place in the context of editorial content, e.g. on a fashion blog, such promotional content needs to be clearly separated from the editorial content (so-called separation rule).

Further specific rules apply to on-demand audiovisual media services, e.g. content for information, entertainment or educational purposes posted on YouTube, namely:

- the ban of surreptitious advertising;
- the obligation to disclose sponsorships; and
- the obligation to clearly indicate product placements.



## What labelling requirements do you need to be aware of?

### GENERAL RULE:

The labelling must be so apparent that, from the point of view of an average member of the relevant public, there is no doubt about the commercial purpose of the post.

Examples from case law:

- "#ad" as one of several hashtags under a post was considered insufficient; and
- "#sponsoredby" was held to be insufficient.

Instead, it is required to use the German terms for advertisement, i.e. "Werbung" or "Anzeige".

### PLACEMENT OF LABELLING:

The labelling must be visible at first glance. Thus, if it is necessary to click on certain buttons or to scroll down in order to become aware of further information, the labelling will be considered insufficient. The note should therefore be inserted at the beginning of the post. If a video focusses on a certain product throughout, it can even be advisable to use a permanent insertion. Information on product placements must be inserted at the beginning of the video.

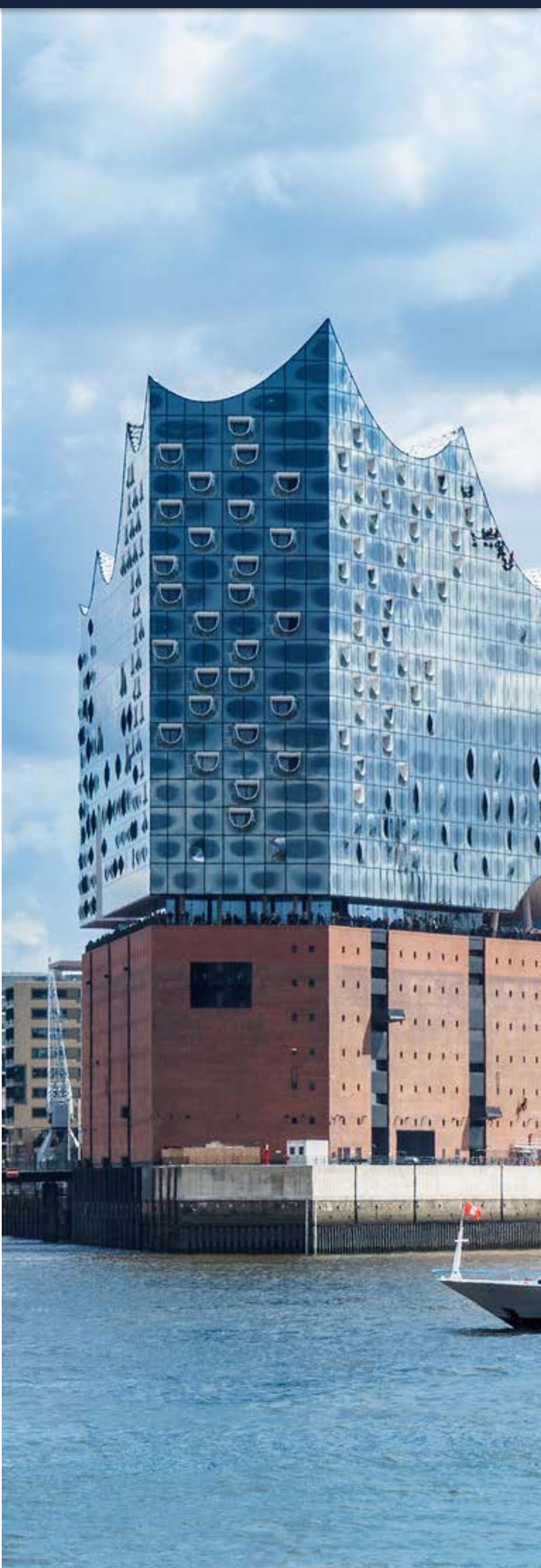
### LABELLING REQUIREMENTS FOR AFFILIATE LINKS:

It is mandatory to provide information about how the affiliate link works and that the influencer receives a commission.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
"Werbung" ("advertisement")	#ad
"Anzeige" ("advertisement")	#sponsoredby

## Describe specific laws, regulations or guidance aimed at influencers in Germany

There are no laws or regulations that apply exclusively or specifically to influencers.



## What are the consequences for influencers if advertising content is not clearly labelled?

If influencers violate these labelling obligations, they may face legal proceedings brought by competitors or certain business or consumer associations. In some instances, such violations can also be sanctioned by regulatory authorities:

### COMPETITORS/BUSINESS OR CONSUMER ASSOCIATIONS:

If an advertisement is not sufficiently labelled, this constitutes an unfair commercial act. In this case, competitors have a claim to cease and desist. They can therefore send a warning notice and assert the claim in court. Furthermore, such claims can also be raised by certain consumer protection or business associations. In addition, such associations or competitors may be entitled to damages, e.g. reimbursement of their costs for the warning notice.

### REGULATORY AUTHORITIES:

Moreover, there is a risk of sanctions imposed by the supervisory authorities. Thus, in the context of on-demand audiovisual media services (e.g. certain content on YouTube), fines of up to EUR 500,000 may be imposed. However, if the post only contains written statements or photos, the powers of regulatory authorities are limited. In such cases, they can only prohibit the post or order its blockage.

## What legal risks apply when cooperating with influencers in Germany?

If an influencer violates these labelling requirements, the company that mandated him or her may also be liable. In particular, a company would be liable if it exerted control over the composition of the respective post.

Such an exertion of control would be assumed, for example, if a company had instructed the influencer not to insert the necessary labelling.

Yet even without knowledge of such violation, the company may be held liable under certain circumstances, i.e. if:

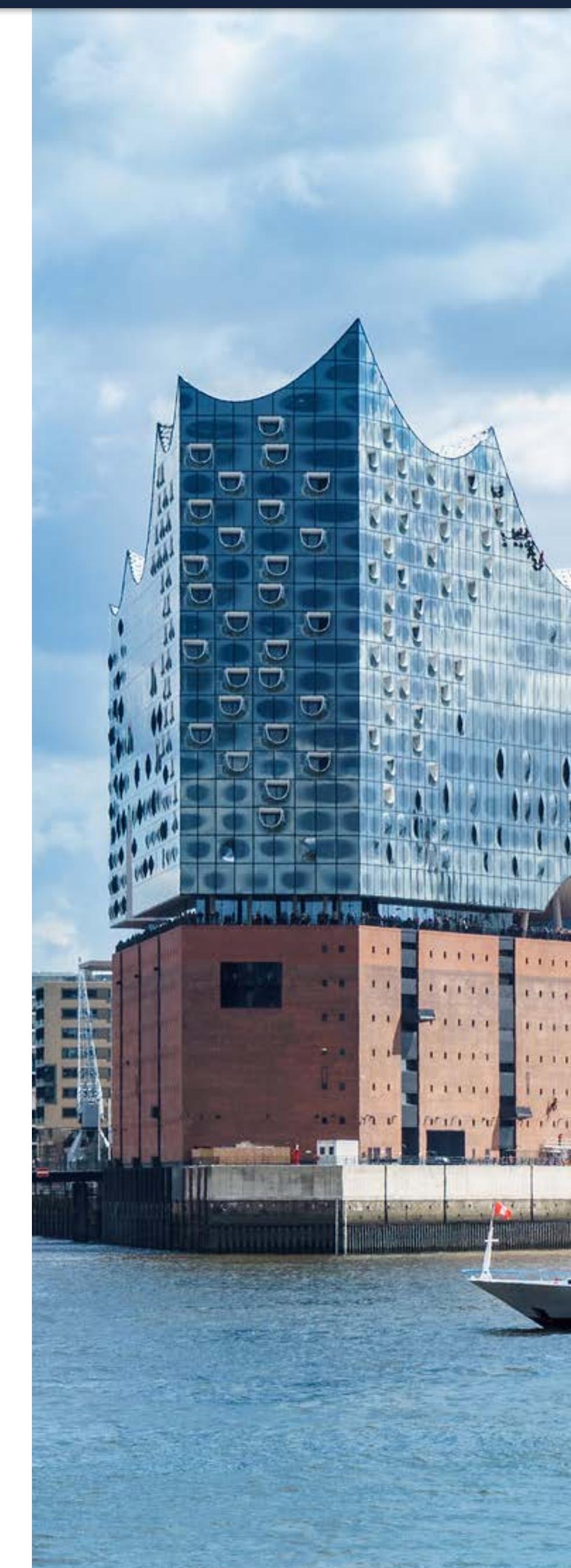
- the influencer is integrated into the sales organization;
- the success of his or her actions benefits the company; and
- the company had the possibility of exerting influence on the behavior of the influencer in the area in which the violation occurred.

Such claims based on labelling infringements can be brought either against the influencer, the company, or both.

In addition, companies may be liable for other legal infringements by the influencer, e.g. of third party copyrights. Such liability may arise if the company encouraged the influencer to infringe certain rights or expected such an infringement and did not intervene.

Thus, before the start of a campaign, a company should stipulate in its contract with the influencer how posts are to be designed and labelled.

Additionally, compliance with these provisions should be monitored throughout the campaign.



## Key contacts





## Hong Kong

Risk and enforcement level: Moderate

# Hong Kong

## What qualifies as advertising under Hong Kong law?

There is no influencer-specific definition of advertising under Hong Kong law.

However, in the context of advertisements on television programme services, the Generic Code of Practice on Television Advertising Standards issued by the Communications Authority pursuant to section 3 of the Broadcasting Ordinance (Cap. 562) defines:

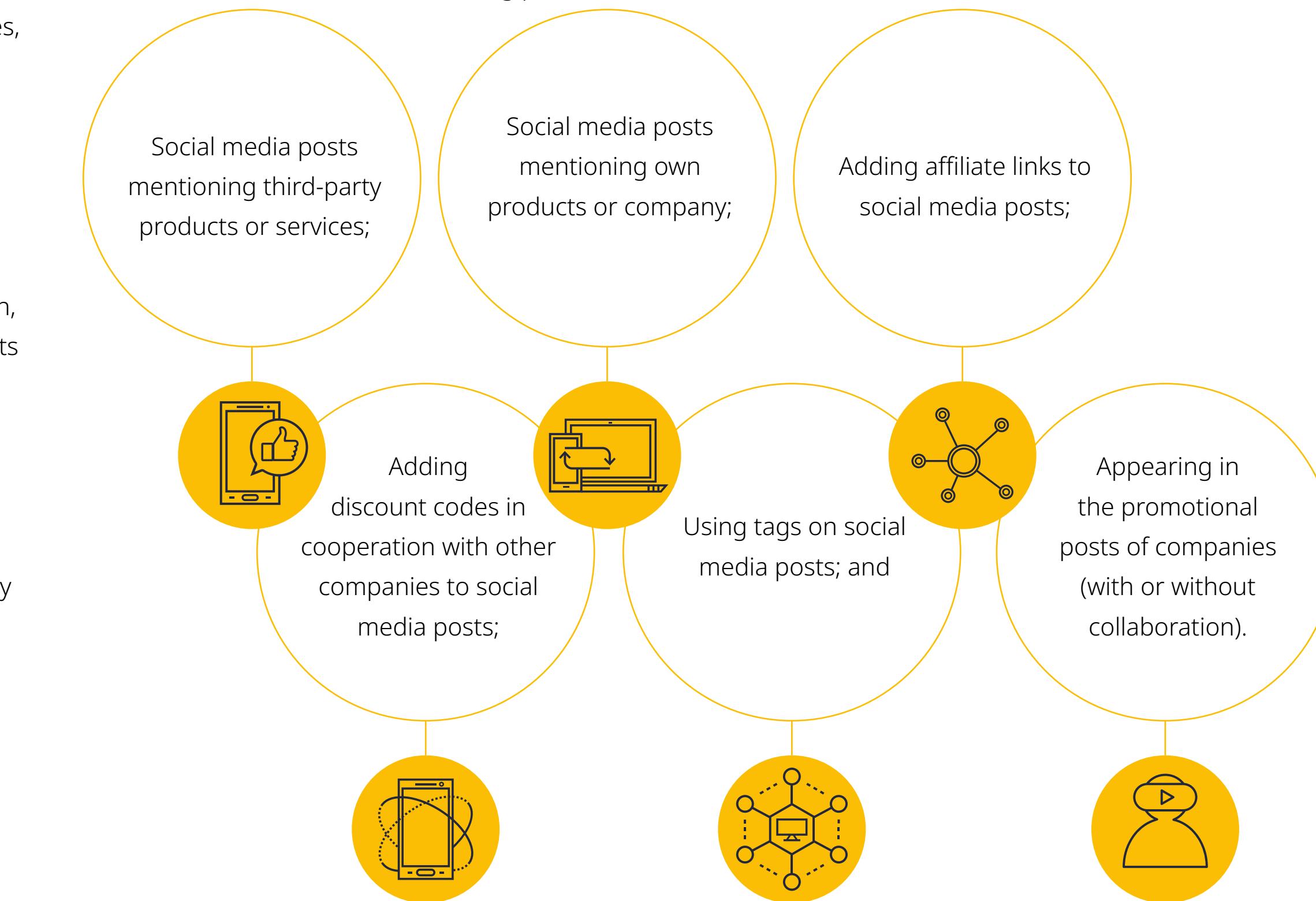
"advertisement" or "advertising materials" as any materials included in a television programme service which is designed to advance the sale of any particular product or service or to promote the interests of any organisation, commercial concern or individual; whether by means of words, sound effects (including music) and/or of visual presentation and whether in the form of direct announcements, slogans, descriptions or otherwise, as well as any promotional reference in the course of a programme to any products or services.

In addition, whilst not directly defining what would constitute "advertising by an influencer" in Hong Kong, the Trade Descriptions Ordinance (Cap. 362) ("TDO") was amended in 2013. The amendment resulted in the creation of a number of new offences, including the offence of misleading omission in advertising and marketing texts. Under the amended Trade Descriptions Ordinance, an offence is committed where a company fails to identify the commercial intent of a commercial practice that is not otherwise apparent from the context.



## What are typical influencer practices in Hong Kong and in which cases are they considered advertising?

There are various influencer marketing practices:



The TDO applies to traders engaging influencers in product promotion activities including the above-mentioned influencer marketing practices.



## Which legal obligations apply?

Although there is no comprehensive legal framework governing advertising in Hong Kong, there are different pieces of legislation as well as common law torts that will potentially affect influencers. We have set out the main pieces of legislation and briefly discussed some of the common law torts below.

- As mentioned above, the TDO prohibits the application of false trademarks, false trade descriptions in respect of goods and services, misleading omissions, aggressive commercial practices, bait advertising and bait-and-switch tactics.
- In respect of misleading omissions in particular, the authorities charged with the enforcement of the TDO issued a set of Enforcement Guidelines. Among other things, the Enforcement Guidelines provided examples of what would constitute a "misleading omission". An "omission" (as set out in the TDO) will be considered "misleading" if:

it omits material information;

it hides material information;

it provides material information in a manner that is unclear, unintelligible, ambiguous or untimely; or

it fails to identify its commercial intent, unless this is already apparent from the context,

and as a result, it causes, or is likely to cause, the average consumer to make a transactional decision that the consumer would not have made otherwise.

- The Enforcement Guidelines require traders (who, in turn, would require the influencers engaged by them to comply with these guidelines) to clearly identify the commercial intent of all posts and reviews. Companies that disguise themselves as consumers and post comments in discussion forums or social media platforms to promote their own products or undermine their competitors' products will commit the offence of misleading omission under the amended TDO.
- Some other pieces of legislation/common law torts that may be applicable include the following:
  - The Sale of Goods Ordinance (Cap. 26) provides that any goods sold must correspond to their samples and descriptions which are provided by their sellers and/or printed on their packages.
  - Influencers also have to comply with the Copyright Ordinance (Cap. 528) and the Trade Marks Ordinance (Cap. 559), as well as be aware of the risks of the common law tort of passing off when advertising products, especially with respect to the language of the advertisement and when the products or services offered in the advertisement are supplied to consumers in Hong Kong.



- Influencers must also bear in mind the risks related to misrepresentation. A misrepresentation is a false statement of fact which is relied on by the person to whom the statement is made when entering into a contract or a legally binding transaction. An action for misrepresentation can be brought in respect of a misrepresentation of fact or law, for damages suffered arising from the misrepresentation.
- An influencer may also be liable under defamation laws in Hong Kong for publishing or authorising the publishing of or distributing defamatory marketing material via social media outlets.

### What labelling requirements do you need to be aware of?

There are no specific examples of labelling requirements for such advertising under Hong Kong law, save that traders must procure that the influencers engaged by them clearly identify the commercial intent of all their posts and do not disguise or attempt to disguise themselves as consumers without disclosing the contractual relationship between the influencers and the traders. In our view, some labels used by influencers are acceptable (see below for examples), but there is, at present, no case law confirming that these are sufficient.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
#sp	There are no specific examples from the TDO on this point.
#ad	
#sponsored	
"this post contains affiliate links..."	

### Describe specific laws, regulations or guidance aimed at influencers in Hong Kong

There are no laws or regulations that apply exclusively or specifically to influencers. However, as mentioned, amendments were made to the TDO in 2013 to take into account the risks of misleading omissions that may occur in sponsored social media posts by influencers.

### What are the consequences for influencers if advertising content is not clearly labelled?

The making of a false trade description or failing to disclose the commercial intent of a post are both offences under the TDO. The authorities in charge of enforcing the TDO have the option of accepting undertakings from the trader instead of prosecuting for the offence. These undertakings are undertakings not to continue or repeat the conduct, or engage in conduct of that kind or conduct of a substantially similar kind.

### What legal risks apply when cooperating with influencers in Hong Kong?

In addition to the TDO offences described above, the Personal Data (Privacy) Ordinance (Cap. 486) is strictly enforced, particularly in relation to breaches of the direct marketing and protection provisions. Among other things, companies cooperating with influencers for advertising have to ensure the data user and the purpose of data collection (if any) is made known to consumers at the time of collection.



## Key contacts



Risk and enforcement level: Moderate

## Hungary

# Hungary

## What qualifies as advertising under Hungarian law?

The term "advertising" is defined in Subparagraph c) of Section 3 of Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities ("**Advertising Act**"). In accordance with the Advertising Act *commercial advertising* shall mean any form of communication, information or the making of a representation in any form with the aim or having the direct or indirect effect of promoting the supply of goods of a fungible nature that are capable of being delivered, including natural resources that can be utilized as capital goods, including money, securities and financial instruments ("product"), and services, immovable property, rights and obligations (all of the above collectively as "goods"), or in connection with this objective, the representation of the name, the trade mark or the activities of a producer of goods or a provider of services.

Apart from advertising, another relevant term of the Advertising Act is *sponsorship* which is defined as any form of public or private contribution to any event or activity, or to any individual in connection with an event or activity with the aim or having the direct or indirect effect of promoting the purchase or use of a product.

The key legal instrument with respect to influencer marketing and advertising is Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices ("**UCP Act**") as it serves as the primary basis for procedures initiated by the regulatory authority (the Hungarian Competition Authority) in procedures initiated against influencers. The UCP Act generally prohibits unfair commercial practices aimed towards consumers, and also contains a detailed list of practices that are considered unfair by definition.

One of these is defined in Point 11 of Annex 1 to the UCP Act as "*advertising disguised as editorial content*" and it shall cover the following: "using editorial content in the printed or electronic media to promote the sale or other form of use of a product where a business entity has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer".

The three elements of the above are: (i) editorial content; (ii) compensation; and (iii) it is not evident for the consumer that compensation was provided to the influencer.

Compensation for promotion shall be widely interpreted, it encompasses all incentives offered for publication, including but not limited to financial compensation, discounts or goods (e.g. clothing, cosmetic products, event tickets, use of motor vehicles, etc.) which would otherwise be paid for. It is important to note that such incentives are not limited to financial compensation but include also cases where the parties undertake to provide services to each other without any obligation to pay (i.e. 'bartering').



## What are typical influencer practices in Hungary and in which cases are they considered advertising?

Pursuant to the guidance of the Hungarian Competition Authority the content and the practice of influencers may include opinions, comments, notes, expressions of mood, spontaneous reactions, labels using the # (hashtag) sign, marking of web links (<https://www...>), product placements, sponsored posts, advertisements, promotions, publicity messages, articles raising consumers' awareness, commentaries and explanations disseminated through optional mediums including online and various digital channels.

These practices trigger the competence of the Competition Authority if they are deemed unfair commercial practices, namely "advertising disguised as editorial content", as discussed above. If the communication of the influencer fits into the definition of "advertising disguised as editorial content", then it is considered an unfair commercial practice towards consumers and the Competition Authority may initiate a procedure.

## Which legal obligations apply?

If the content shall be considered advertising, influencers are in breach of the UCP Act if the content they publish is deemed advertising disguised as editorial content (as described above). Such non-compliance shall trigger the liability of the influencer, and that of the company in the interests of which the content was published, and the regulatory authority may initiate a procedure.

The influencer must state clearly, simply, unequivocally and in an understandable manner any existing business relationship and direct economic interest in the published content as paid or supported. Any kind of business relationship or co-operation between influencer and advertiser should be clearly and accurately identifiable. The influencer must convey a true, fair and authentic image of the product or service. The content needs to be simple and capable of clear interpretation by consumers. Unknown or mysterious abbreviations, signs or expressions that are open to different interpretations are unlikely to comply with the requirement of clear and understandable wording.

Any business relationship to the content concerned needs to be directly indicated. Additionally, reference to the existence of a business relationship in the introduction or legal disclosure can help to further ensure that consumers are properly informed.



## What labelling requirements do you need to be aware of?

The guidance (available [here](#)) issued by the Hungarian Competition Authority provides a detailed list of Do's and Don'ts.

Indicators of business relationships should be emphatic, conspicuous, legible and clear. It is worth noting that content differs in appearance across electronic devices (smartphone, tablet, desktop computer). It is important that text elements are clearly identifiable i.e. in cases of longer content, the mark should be visible to consumers before any potential click opportunity, without requiring a search or other consumer activity. For example, users of Facebook or Instagram on smartphones typically only see the first two or three lines of content unless they click on the 'More' button. Publication or disclosure of a business relationship cannot take a hidden or disguised form (e.g. in footnotes, hyperlinks or other parts of the text unlikely to be read by the consumer or only seen briefly, or in an unreadable size).

Considering the differences among social media platforms, the characteristics of the environment in which the content appears should also be taken into account. Each platform offers different technical solutions for the publication e.g. the 'branded content' or 'paid promotion' tag.

It is important that the reference to sponsored '#' is still readable in the first place it appears before further '#' labels are used. The brand name of the undertaking should be marked and can be further supported by the display of any trademark, as this may facilitate information exchange among market participants.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
"reklám" ("advertisement")	"köszönöm, partner" ("thank you partner")
"hirdetés" ("advertisement")	"promóció" ("promotion")
"fizetett tartalom" ("paid content")	
"szponzorált tartalom" ("sponsored by") – but exclusively if the relationship of the parties suggest that	

## Describe specific laws, regulations or guidance aimed at influencers in Hungary

There are no specific laws or regulations in this regard. However, the Hungarian Competition Authority issued a guidance in this subject which can be accessed [here](#) in English.



## What are the consequences for influencers if advertising content is not clearly labelled?

Pursuant to the labelling requirements mentioned under Question 4, the content of the publishing influencer shall meet those standards.

As of today the Hungarian Competition Authority has imposed a fine on influencers and/or companies as a result of their initial findings only once, rather obliged the parties to undertake certain obligations that are in compliance with the requirements as set out above. However, as a result of follow-up investigations on whether the parties complied with such undertakings, the Authority did impose fines upon the non-compliant influencers and advertisers for breaching the prescribed undertakings. The amount of the fine may be up to 10% of the annual turnover of the company and it shall be determined with regard to all applicable circumstances, in particular, the gravity of the infringement, the nature of market and economic conditions affected by the commitment, the existing level of competition, the public interest underlying the resolution prescribing the commitment, the company's market position and attributability, and the extent of the commitment undertaken has been fulfilled up to that point. The gravity of the infringement shall be determined, in particular, on the basis of the degree of obstructing competition and the scope and extent of injury to the interests of competitors and trading parties.

Please note that as of today the Authority initiated proceedings in only four cases, and intends to 'educate' the public rather than initiating many proceedings. The mentioned cases were initiated against influencers with great reach and not against influencers with a smaller audience.

## What legal risks apply when cooperating with influencers in Hungary?

In accordance with the so-called '*interest-principle*' any undertaking is responsible for the publication of the content if it has a direct interest in the sale or promotion of the product associated with the commercial practice. Therefore, in addition to the publishing influencer, the producers of the product, as well as distributors (e.g. advertisers, contributing agencies and offices) may also qualify as a responsible party, and be subject to fines. With respect to fines, the above under Question 6 shall also apply to companies.



## Key contacts





Risk and enforcement level: Moderate

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Ireland



# Ireland

## What qualifies as advertising under Irish law?

Marketing and advertising in Ireland is overseen by the advertising Standards Authority for Ireland ("ASAI"), an independent self-regulatory body set up and financed by the advertising industry. It is committed to promoting the highest standards of marketing communications and covers advertising, promotional marketing and direct marketing.

Its rules are set out in the Code of Standards for Advertising and Marketing Communications in Ireland (the "Code"). ASAI members are required to abide by the Code and not to publish an advertisement or conduct a promotion which contravenes Code rules. Complaints can be brought by consumers or competitors (if the interests of consumers are involved).

A post by an influencer will come within the scope of the Code if:



The influencer receives compensation for the advertiser; and



The advertiser exercises significant control over the contents of the post.

The code is not clear on whether the compensation itself (where the influencer is not directed, controller or instructed by the advertiser) is sufficient for it to constitute advertising. However, it is recommended that any commercial relationship is always disclosed.

It is important to note that if an influencer receives a product for free, with a requirement that a post/review is positive, this would be considered marketing communication/advertising.

## What are typical influencer practices in Ireland and in which cases are they considered advertising?

There are various influencer practices which could be classified as advertising:





## Which legal obligations apply?

**Recognisability:** marketing communication/advertising should always be presented in such a way that it is clear that it is a marketing communication/advertising. Such communication should not be mischaracterised or presented as market research, consumer survey, user-generated content, etc. Any marketing communication/advertising should be clearly identified and distinguished from editorial matter. The identity of the advertiser, product and service should be clear and the contact details of the advertiser should be included where appropriate.

**Truthfulness:** The marketing communication/advertising should not mislead, or be likely to mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise.

**Honesty:** The advertisers should not exploit the credulity, inexperience or lack of knowledge of consumers. The design and presentation of marketing communication/advertising should allow them to be easily and clearly understood.

## What labelling requirements do you need to be aware of?

Where influencers are sponsored by brands or advertisers, or are paid directly to promote a product, it must be clear that their posts are marketing communications/advertising.

ASAI is not specific regarding acceptable and unacceptable labelling other than saying that it must be made clear when influencers are being paid to promote a product or a service. It does stress, that if the context does not make it clear that a post is advertising, flags such as #ad should be used. Although not specifically mentioned by ASAI, burying such information at the end of the post might not suffice.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
#ad	
#SP	

## Describe specific laws, regulations or guidance aimed at influencers in Ireland

There are no laws or regulations that apply specifically to influencers.

However, ASA issued a [Guidance Note](#) on Recognisability of marketing communication which addresses the majority of issues related to influencer marketing.



## What are the consequences for influencers if advertising content is not clearly labelled?

It is important to note that ASAI can only take enforcement action against its members (i.e. the advertising industry in Ireland). The influencers themselves are unlikely to be ASAI members by will be indirectly (through advertisers) bound by the Code.

The ASAIs powers include:

- Power to remove advertising that breaches the Code;
- Power to direct the advertiser to change the advertisement;
- Power to publish Case Reports including names of advertisers and influencers who have been subject to a complaint;
- Power to fine the advertisers; and
- Power to suspend the advertiser's ASAII membership.

As far as influencers are concerned, the posts (if they are marketing communication/advertising) which violate the Code can be taken down. Depending on the agreement in place between the advertiser and the influencer, the latter might also be at risk of breaching such an agreement.

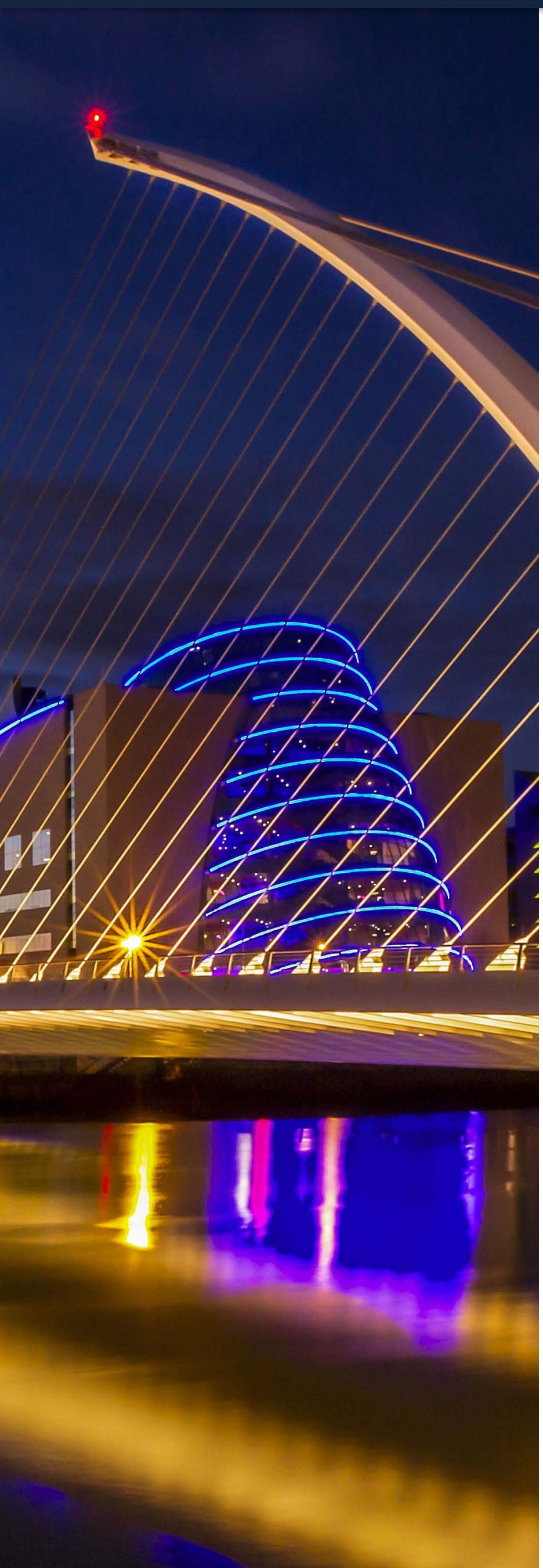
Repeated breaches are likely to result in a reputational damage to the influencer and a reluctance of advertisers to cooperate.

## What legal risks apply when cooperating with influencers in Ireland?

Please see the answer to question 6. The sanctions described above are directly applicable to advertisers given: (1) their membership with ASAII, (2) their products being advertised.

In addition to the sanctions described above, advertisers are exposed to a potential reputational risk.

It is therefore important to have a robust agreement in place between the advertiser and the influencer.



## Key contacts



# Italy

Risk and enforcement level: Robust

# Italy

## What qualifies as advertising under Italian law?

Under Italian law, any kind of communication, distributed by whatever means, qualifies as "advertising" if it directly or indirectly promotes the sale of goods or services. However, online communication does not constitute advertising, if it can be considered as editorial content – i.e. if it is primarily intended to express the influencer's personal point of view on the products and the influencer has not received any consideration from the company whose products are mentioned.

Given the special environment and features of digital marketing, it is often difficult to establish whether an influencer's post has a promotional or editorial nature. Italian advertising authorities generally consider as indicators of the commercial purpose of a post the following: ⓘ



## What are typical influencer practices in Italy and in which cases are they considered advertising?

### ENDORSEMENT:

Posts where the influencer presents products or services of a third-party or from the influencer's own company in a way aimed at increasing the visibility, credibility or reputation of the products/services and the related brand.

### NATIVE ADVERTISING:

Native advertising is developed with the aim of dipping the advertising message in a specific context, through content that takes the form of the original ("native") content of the platform that hosts them, to capture the interest of the public. A commercial communication that tries to establish an engagement with users, placing itself in a less "intrusive" perspective. Among the many types of native advertising, the most common and widespread currently online are: in-feed units, paid search units, and recommendation widgets.

### REPOSTING:

The reposting by the influencer of a post published by the sponsored brand on its social media channels constitutes a new act of communication to the public, subject to the authorisation of the holder and also qualifies as advertising.

### EVENTS:

Even if the relationship between the influencer and the brand is not governed by an existing agreement, but merely consists of the brand sending an invitation to take part in an event, the posts and other messages produced by the influencer online that convey information about a product or brand in relation to the event are still considered as advertising.

## Which legal obligations apply?

Under the general principle of transparency provided by advertising regulations and the Italian Consumer Code, the influencer shall disclose the existence of a relation with the sponsored brand and the promotional nature of the post. There is no specific national regulation on payments to bloggers and standard tax and employment regulations will apply.

## What labelling requirements do you need to be aware of?

One of the following labels must be clearly inserted at the beginning of the post, or in another message posted online:

"Pubblicità/Advertising", or "Promosso da ... brand/Promoted by ... brand" or "Sponsorizzato da ... brand/Sponsored by ... brand", or "in collaborazione con ... brand/In partnership with ... brand";

and/or within the first three hashtags of a post, provided it is clear and prominent, one of the following labels should be inserted:

"#Pubblicità/#Advertising", or "#Sponsorizzato da ... brand/#Sponsored by ... brand", or "#ad" together with "#brand".



For contents available for "a limited time", for instance the stories, one of the above labels should be superimposed in a clear and readable manner for any promotional content.

Conversely, should the relationship between the influencer and the brand not be governed by an existing agreement, but consist merely in the advertiser occasionally sending the influencer its products free of charge or for a modest consideration, rather than the notifications stated above, posts or other messages distributed online in which the influencer mentions or represents these products must feature a disclaimer of the following type: "product sent by... brand", "supplied by... brand" or equivalent.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
#pubblicità/#advertising	#ad plus brand name <i>(without spaces and hashtags)</i>
#ad #brand name	#partner/#ambassador
#sponsoredby...	#spon
#giftedby...	#thanks

## Describe specific laws, regulations or guidance aimed at influencers in Italy

There are no State law specifically dealing with digital marketing, but blogs and influencers have been addressed in the Digital Chart Guidelines of the Advertisement Self-Regulatory Authority (Istituto Autodisciplina Pubblicitaria - IAP), which are rules of soft law regarded as the best practices to be followed in such field and are part of the Code of Advertising.

In addition, general misleading advertising (d. lgs. 145/2007) and unfair commercial practices (d. lgs. 206/2005) regulations will apply.

Likewise depending on the context, general rules on intellectual property rights, freedom of speech, data protection, protection of rights of publicity will also apply.

## What are the consequences for influencers if advertising content is not clearly labelled?

In case of misleading advertising there can be a wide range of negative consequences, including: cease and desist obligations, publication of the court decision in the media, and damages compensation.

Also the Italian Unfair Competition Authority (AGCM) can issue heavy monetary sanctions (from a minimum of EUR5,000 up to a maximum of EUR5,000,000, considering the gravity and duration of the infringement) when it determines an unfair commercial practice had been perpetrated.

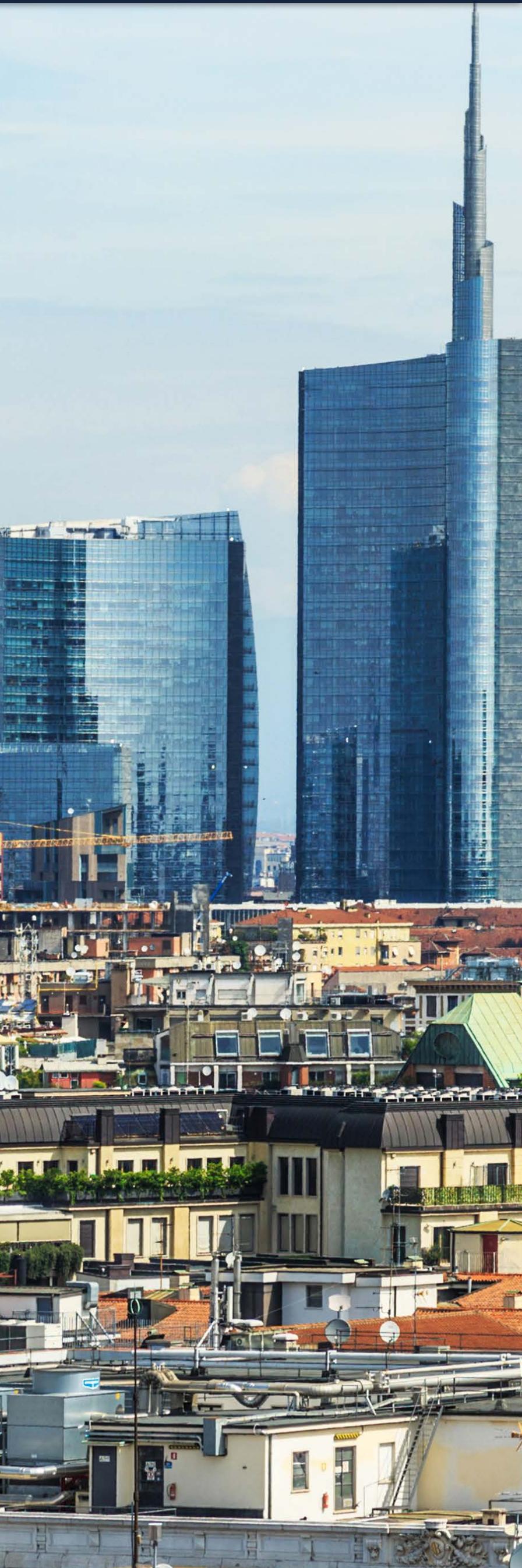
Furthermore, the IAP could prevent the communication of unfair and misleading advertisings, which are communicated (i) by digital means by companies that have upheld the Code of Advertising; or (ii) on TV, radio and on magazines/newspapers that have upheld the Code (which is the vast majority). The IAP cannot issue monetary sanctions, but the continuous non-compliance with the Advertisement Code could trigger the publication of the decisions, with substantial reputational consequences.



## What legal risks apply when cooperating with influencers in Italy?

Under art. 2049 of the Italian Civil Code, the company can be held liable for vicarious liability for the conduct of the influencer and the same sanctions illustrated in answer six above in relation to influencers apply. Therefore, under Italian law companies are subject to a very strict liability regime because both the IAP and the AGCM hold the advertiser liable even when the content has been spontaneously published by the influencer, if the advertiser is unable to demonstrate that it has adopted monitoring, deterrence and sanctioning tools to prevent the infringement of the law. This is why it is so important that companies cooperating with influencers enter into specific agreements with them where all such provisions shall be inserted.

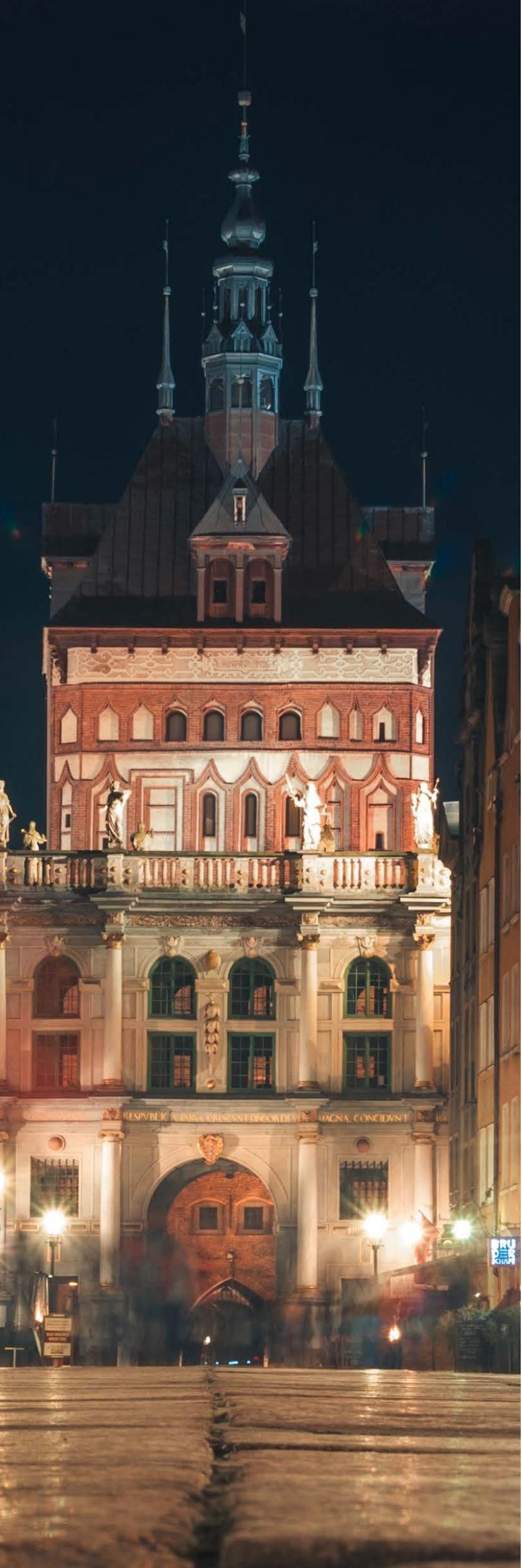
## Key contacts





## Poland

Risk and enforcement level: Robust



# Poland

## What qualifies as advertising under Polish law?

Under Polish law there are several legal definitions of "advertising". Application of the appropriate definition varies based on context. Advertising matters are covered by:

- Act of "16 April 1993 on Combating Unfair Competition";
- Act of "23 August 2007 on Combatting Unfair Market Practices";
- Act of "6 September 2001 Pharmaceutical Law"; and
- Act of "29 December 1992 on Broadcasting".

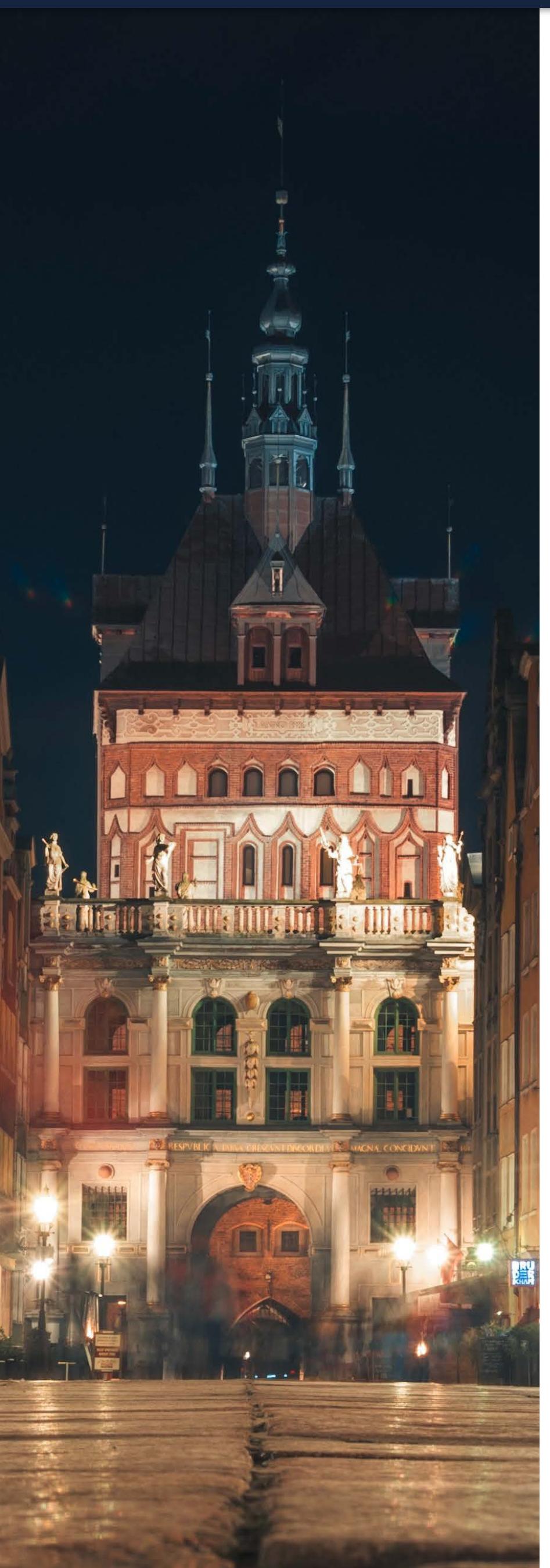
The general definition of "advertisement" is clarified in the following excerpt from Polish Supreme Court's judgment, which emphasise a broad scope of the definition:

*"Advertising is any statement addressed to potential consumers relating to goods, services, as well as to an entrepreneur who offers goods or services, aimed at encouraging them to purchase goods or services. The encouragement may be expressed directly, e.g. by the use of terms referring to specific acts which will result in the sale of goods or services, or indirectly. The latter means a creation of an evocative image of the goods and services or the trader himself, to the extent that the recipients may have a compelling urge to purchase the goods and services."*

(Judgement of the Supreme Court of 16 January 2006, Case V CSK 83/05)

Whether or not a post is considered an "advertisement" will depend on:





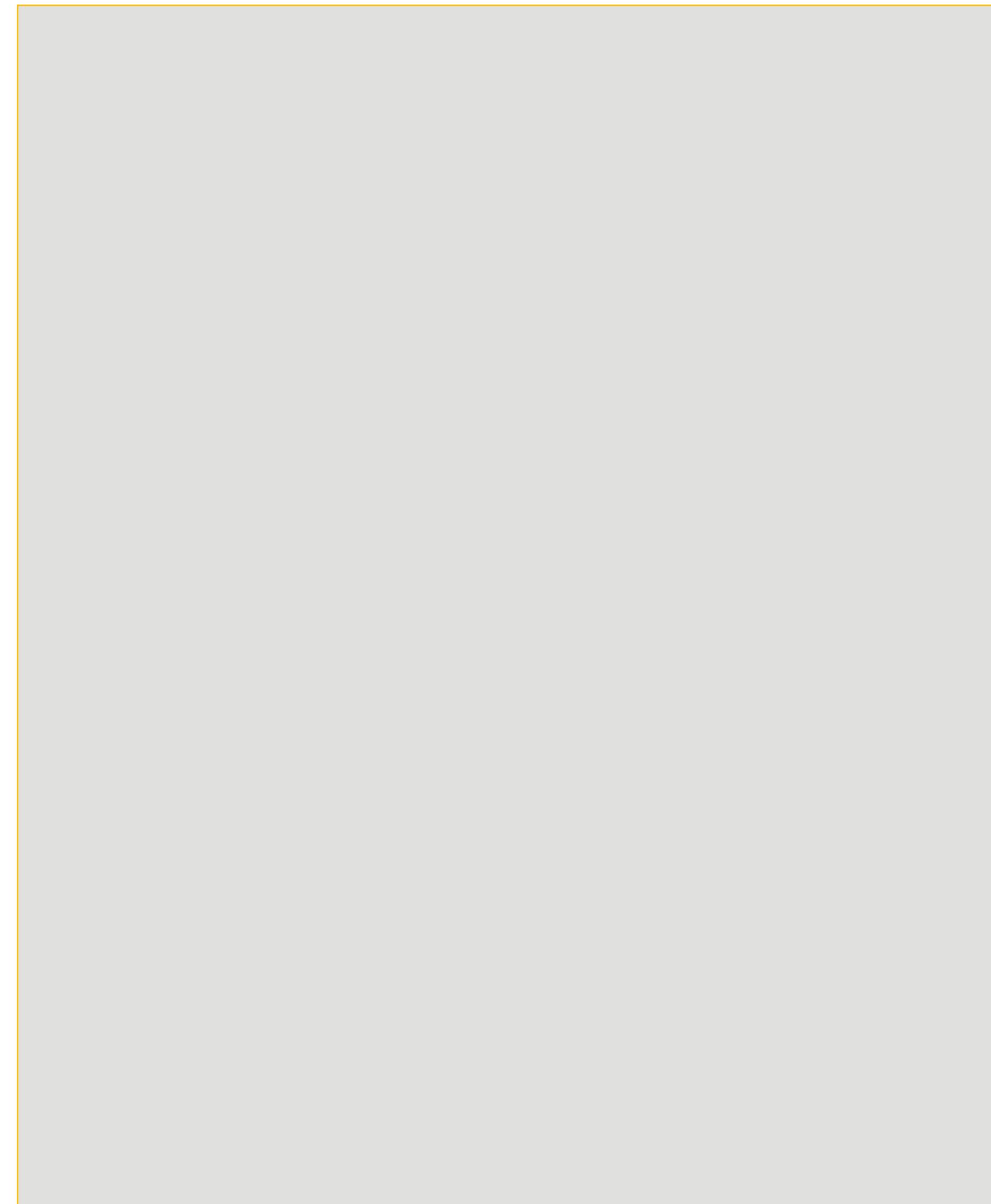
## What are typical influencer practices in Poland and in which cases are they considered advertising?

As a rule, influencer activities consist of creating and conducting promotional campaigns via social media (e.g. through the mediums of a blog, vlog, or social media profile). In accordance with the letter issued by the Director of the National Tax Information, the duties of the influencer may include activities such as:

- preparing content (including familiarisation with the subject of the post, market analysis, writing blog entries, and producing content on social media);
- photography sessions, selection and photo processing;
- preparing the graphic design of a post;
- posting content on a blog, vlog or social media account; and
- maintain content on a blog, vlog or social media account for a fixed or indefinite period.

The agreement specifies the broad scope of freedom of the influencer's actions as part of a promotion – the influencer, apart from using his own creative invention, may also receive ready-made content from the advertiser and only post and maintain it in his own online media.

According to the report of the Polish Association of Bloggers and Vloggers from 2015 (no more updated data), 26% of Poles admit that they are not guided by classic advertising when shopping. As a result, alternative methods of marketing are gaining popularity, bringing influencer practices to the fore among other marketing activities. Influencer practices include:





## Which legal obligations apply?

### RECOGNISABILITY AS ADVERTISING:

Advertising must be recognisable as such.

### LABELLING REQUIREMENT:

There is no legal obligation to use specific labels of advertising materials. However, it is important that the advertising material is marked in a way that allows the recipient to determine whether a given message is being an advertisement. Therefore, a variety of terms are used, including "advertising", "promotion", "announcement", "sponsored text", or "sponsored article". Sole addition of the brand's hashtags or highlight their social media profile may not be sufficient to fulfil these obligations. In order to avoid any doubts it is recommended to highlight promotional nature of the post in both Polish and English.

### SEPARATION OF ADVERTISING AND EDITORIAL CONTENT:

The recipient should clearly see whether a post is sponsored. Hiding advertising content amongst normal content without sufficient marking is not permitted. Making a false impression as to the objectivity of influencer's assessment or the neutrality of a statement shall be assumed to be a misleading practice which affects consumers' purchasing decisions and therefore would constitute an unfair market practice. As a precaution, those markings should appear at the beginning of any text.

### SPECIFIC OBLIGATIONS:

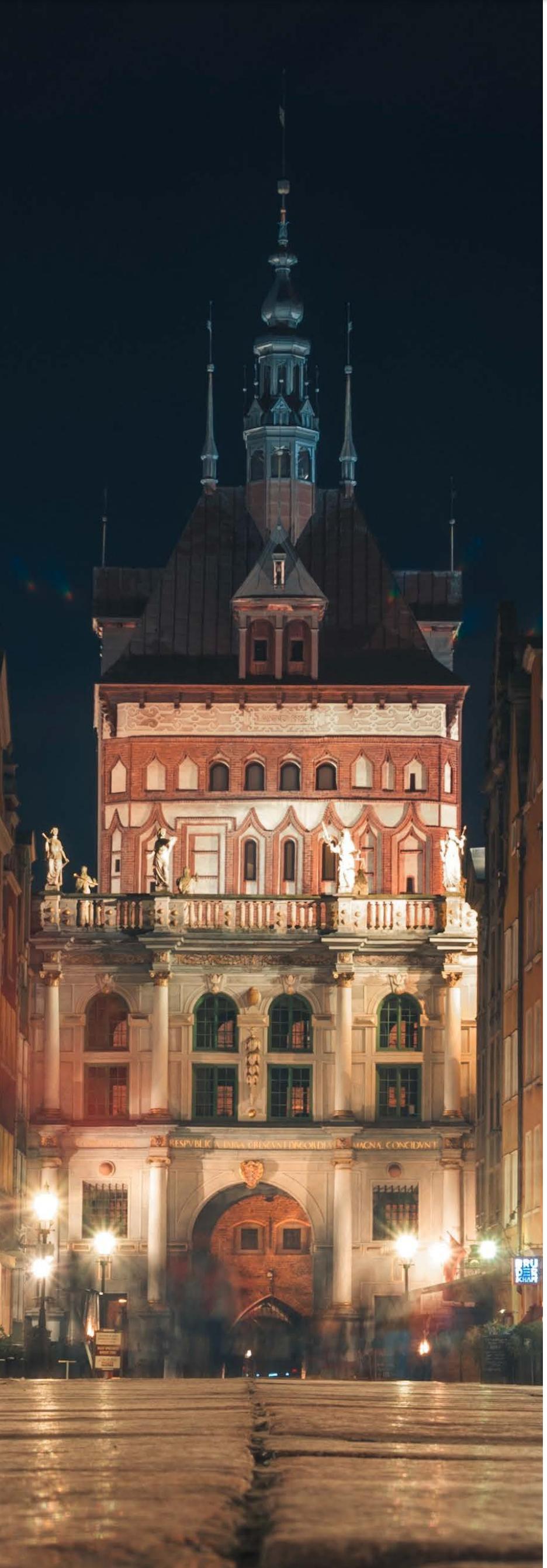
It is crucial to mention that certain goods have their own specific advertisement regulations (e.g. alcohol beverages, tobacco products, medicine, and dietary supplements).

## What labelling requirements do you need to be aware of?

Disclaimers stating that a given content is an advertisement should be, above all, clear and understandable for the average reader - otherwise the advertisement may be considered crypto-advertising - an unfair market practice involving the use of journalistic content in the mass media to promote a product in exchange for money (or similar). Under Polish law, such action violates the Act on Counteracting Unfair Market Practices.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
"post sponsorowany" ("sponsored post")	#ad
"reklama" ("advertisement")	
"konkurs" ("contest")	
"rozdanie" ("giveaway")	
"nagroda" ("prize")	

The designation of the advertising material should be understandable to the average reading. As such, the hashtag "#ad" may not be considered sufficient in Poland due to the language barrier.



## Describe specific laws, regulations or guidance aimed at influencers in Poland

There are no separate laws, administrative measures or guidance which relate specifically to influencer marketing in Poland, nor any self-regulatory measures (such as codes of good practice). Therefore, general rules regarding advertising should be applied to influencer marketing.

The case law relating to influencer marketing is scarce (the only court judgements relate to tax issues). There are few decisions of regulatory bodies relating to (1) advertising of prohibited products, (2) services by bloggers/vloggers and (3) relating to the Advertising Ethics Committee (an self-regulatory adjudicating body operating in the Polish advertising market). Note however, this self-regulatory and administrative case law is still relevant to defining what can be regarded as editorial or advertising content.

## What are the consequences for influencers if advertising content is not clearly labelled?

If influencers do not label advertising content in an appropriate way (disclosing the commercial character of their activity) they may face allegations of carrying out covert or misleading advertising. In such circumstances legal proceedings may be brought by following entities and under following acts:



### Legislative Discussions

There are opinions that influencer marketing should be at least regulated by the means of self-regulatory measures (a specific advertising code should be adopted by business associations). Currently the Polish government is also producing new legislation on medical devices (restricting the advertising of such devices). The draft provisions refer to the typical practices of influencers/bloggers and determine that publicly communicated opinions on are advertisements, if remuneration is given. It should be noted that this broad definition may also influence the way advertising is defined in sectors other than pharmaceutical.

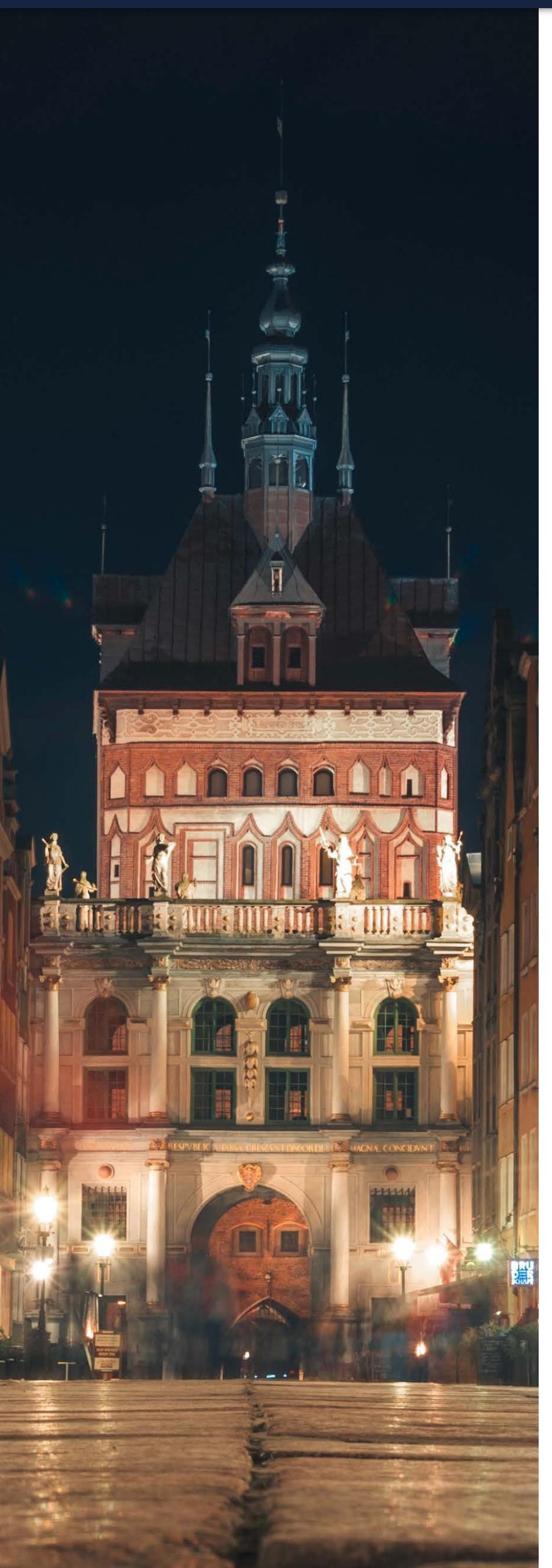


## What legal risks apply when cooperating with influencers in Poland?

If an influencer violates the labelling requirements and publishes covert (or misleading advertisements), the company that mandated them to publish the advertisement may be liable. This liability may arise even if the company does not directly instruct the influencer to hide the commercial nature of their publications, but also if the company simply does not control whether these materials are properly labelled (intentional as well as negligent behaviors may give rise to such liability). Liability of the company cannot be waived by the fact that advertising agency or influencer is an entrepreneur providing professional advertising services.

The company may also be liable for damages, in addition to influencer, in cases where the influencer infringes upon third party's intellectual property, in particular copyrights, trade mark or image rights. This liability will arise, if the company instigates the influencer to use a third party's IP while being aware that it has no rights to use such materials; provides them to the influencer or allows for its use and gains benefits from using them in advertising. It also cannot be ruled out, that the company may be regarded as a direct infringer, since according to some judgments (albeit in the area of unfair completion), it is the company that actually uses the advertising (and thus uses third party's materials), regardless of who is technically publishing the advertisement.

With this in mind, it is crucial to properly secure companies' interests in the contract with any influencer. First of all, the contract should precisely describe how influencer's materials should be labelled (also to avoid potential disputes around the issue of whether the contract was properly performed by influencer) and provide for the influencer to indemnify and hold harmless the company of any damage arising from materials published by the influencer. The contract should also vest the company with the right to pre-approve the influencer's materials or demand their amendment or immediate removal. From practical point of view, it is necessary to monitor the influencer's compliance with labelling requirements since the argument that the influencer was in breach of their contractual obligations with the company is unlikely to be a successful defence.



## Key contacts



Risk and enforcement level: Moderate

## People's Republic of China (PRC)

# People's Republic of China (PRC)

## What qualifies as advertising under PRC law?

There is no specific definition of advertising by an influencer under PRC law and there is no single set of laws or guidelines that regulates social media marketing in China.

However, in the context of online advertisements, the Interim Measures for the Administration of Internet Advertising ("Internet Ad Measures") define "internet advertising" as commercial advertisements which directly or indirectly promote goods or services through the Internet such as via website, web pages, applications, etc., in the form of texts, images, audios, videos or other means.

In addition, while lacking clear definition of what would constitute "advertising by an influencer", the PRC Advertising Law defines commercial advertising as activities that directly or indirectly introduce, and/or promote goods or services via certain media.

## What are typical influencer practices in PRC and in which cases are they considered advertising?

The following marketing practices of influencers are examples of what would be considered "internet advertising" and "commercial advertising":

- Adding affiliate links to social media posts;
- Adding discount codes under cooperation with other companies to social media posts;
- Using tags on social media posts; and
- Appearing on promotional posts of companies (with or without collaboration)



## Which legal obligations apply?





## What labelling requirements do you need to be aware of?

The advertising must be clearly and conspicuously labelled as "广告" ("advertisement" in Chinese).

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
"广告" ("advertisement")	Labels other than "广告" ("advertisement")

## Describe specific laws, regulations or guidance aimed at influencers in PRC

There are no laws or regulations that apply exclusively or specifically to influencers. However, as mentioned, typical influencer practices would be regarded as "internet advertising" stipulated under the Interim Measures for the Administration of Internet Advertising.

## What are the consequences for influencers if advertising content is not clearly labelled?

Failure to label the content as advertising may be ordered by the regulators to take corrective actions, and/or subject to administrative fines of up to RMB 100,000 (approximately USD 14,000).

## What legal risks apply when cooperating with influencers in PRC?

- **False or misleading content** – companies may be held liable if the influencer advertising contains false or misleading content, or defrauds or misleads consumers.
- **Copyright infringement** – companies may be liable for copyright infringement by the influencer. Such liability may arise if the company instigated the influencer to infringe certain rights or had expected such an infringement and did not intervene.
- **Reputational risk** – this is not a legal risk per se. However, the image and reputation of the company may be negatively impacted if the influencer posts personal posts that feature improper behaviour or which contain negative comments. Prior to engaging an influencer, companies may want to carry out a background check on the influencer to get an indication of how the influencer generally behaves online.

Before the start of a campaign, it is highly recommended that a company stipulate in its contract with the influencer how posts are to be designed and labelled. Compliance with these provisions should be monitored throughout the campaign.



## Key contacts





Risk and enforcement level: **Moderate**

## Singapore



# Singapore

## What qualifies as advertising under Singapore law?

Advertising using social media is regulated in Singapore by the Guidelines for Interactive Marketing Communication & Social Media ("**Social Media Guidelines**"). The Social Media Guidelines were issued in 2016 in response to feedback from the public, and are to be read together with the Singapore Code of Advertising Practice (SCAP). The Social Media Guidelines and SCAP are administered by the Advertising Standards Authority of Singapore (ASAS).

The Social Media Guidelines set out standards of how marketers should conduct online marketing on digital platforms such as blogs, Facebook, Instagram, Twitter, etc.

While neither the SCAP or the Social Media Guidelines have force of law, the ASAS is empowered to request that offending marketers amend or withdraw any advertisements which are contrary to the SCAP.

A post by an influencer will be considered "advertising" if it is communication that uses social media to promote goods and services or to influence consumer behaviour. All marketing communication should be clearly identified as such.

"Social media marketing" is defined very broadly in the Social Media Guidelines as any form of marketing communication that incorporates user interactions that the consumer agrees to display and be shared. It includes marketing that promotes the interest of any person, product or service for a commercial purpose and is paid media. "Paid media" is media where a financial investment is made to place a marketing message. Examples include affiliate marketing, paid search, sponsored content (where sponsorship includes complimentary samples, trials, junkets, etc.), paid endorsements and testimonials, video seeding, and social network advertisements. "Sponsored content" refers to posts on social media that are paid in cash or in kind by the sponsor, who has a role in guiding the creation of the content.

A post will not be considered to be marketing communication if it is an editorial or personal opinion.

Where there is a connection between the influencer and the sponsor/the company whose product/service is being promoted which may materially affect the weight or credibility of the endorsement, this connection must be disclosed. Examples of such connections include: commercial relationships between the influencer and the sponsor/company, complimentary samples, friendly favours and special invitations.



## What are typical influencer practices in Singapore and in which cases are they considered advertising?

The following marketing practices of influencers are examples of what would be considered "internet advertising" and "commercial advertising":

- **Review of sponsor/company's products/services at the sponsor/company's expense:** The influencer provides a review of a product or service at the expense of the sponsor/company. These include preview events, product launches and food tastings;
- Featuring a sponsored product or service in the content of the post;
- **Sponsored content space in exchange for a mention:** Where the sponsor/company sponsors content space in exchange for a mention. The content produced by the influencer may include a "listicle" or an educational message; and
- Promotion of an event, a contest or an offer for a sponsor/company, where the sponsor/company pays for the promotion.

## Which legal obligations apply?

If the content is considered to be advertising or social media marketing, the following must be applied to the content:

- Clearly distinguishing the marketing communication from editorial or personal opinions;
- Clearly disclosing the commercial relationship between the influencer and the sponsor/company in the content;

- Clearly indicating the commercial nature of the content in the content;
- The content should not be portrayed as originating from a credible and impartial source if it has been created by the sponsor/company for the purpose of promoting a product or service; and
- Clearly indicate to consumers whether they will be charged a fee for the use of the services. Influencers should not charge consumers unless such warning has been provided beforehand.

## What labelling requirements do you need to be aware of?

Disclosures in marketing communication of social media marketing should be simple and straightforward. Influencers should use clear language and syntax and avoid legalese or technical jargon. All disclosures should be clear and prominent.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
#adv, #sp, #sponsored, #endorsed	Labels that are hard to read
"This post contains affiliate links"	Labels that are not visible
"This post was sponsored by..."	Labels that are hidden in the content
"This post was brought to you by..."	



The disclosures for sponsored content should:

- Be displayed as early as is reasonably possible so that they are noticeable to consumers with minimal scrolling or clicking**
- Convey and clearly show that the content has been paid for**
- Be in a colour that contrasts well with the background to emphasise the text of the disclosure**
- Be visible and readable on a variety of devices**
- Be easily read without referring the consumer elsewhere to obtain the information**
- Not be communicated through a hyperlink if they are an integral part of the marketing content, but placed on the same page as the marketing content.**

### Describe specific laws, regulations or guidance aimed at influencers in Singapore

As mentioned above, advertising using social media is regulated in Singapore by the Social Media Guidelines. The Social Media Guidelines were issued in 2016 in response to feedback from the public, and are to be read together with the SCAP. The Social Media Guidelines and SCAP are administered by the ASAS.

### What are the consequences for influencers if advertising content is not clearly labelled?

The ASAS has the power to require that influencers take down the advertisement/post.

### What legal risks apply when cooperating with influencers in Singapore?

As the Social Media Guidelines are only guidelines, the legal risks for companies cooperating with influencers is relatively low risk. The main risk would be reputational risk arising from the realisation afterward that a post had in fact been sponsored.

That being said, influencers have come under increasing scrutiny in Singapore, and we recommend that companies clearly require that influencers comply with at least the Social Media Guidelines when putting their sponsored posts/articles online.



## Key contacts



Risk and enforcement level: **Moderate**

## Slovenia

# Slovenia

## What qualifies as advertising under Slovenian law?

In Slovenia advertisements and other types of paid notices, the publication of which is ordered by a legal or natural person with the aim of (directly or indirectly) promoting legal transactions of products, services, real estate, rights or obligations, acquiring business partners, or with the purpose of creating a good name in public qualify as advertising content. Advertisements are published for payment or other similar consideration or for the purpose of self-promotion.

Advertising by influencers is not specifically regulated (see below for more details).

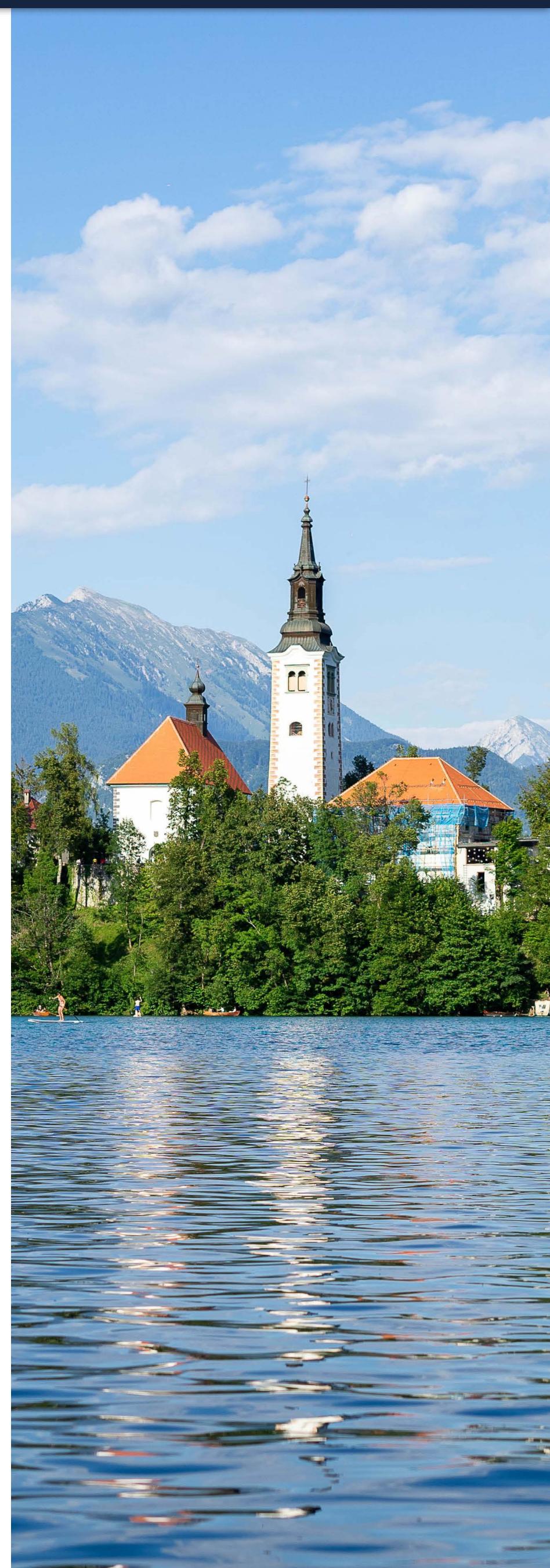
However, recently, the Slovenian Advertising Chamber has issued Recommendations concerning marketing of Influencers (**“Recommendations”**). Although this self-regulatory guidelines are not binding by law, they establish general rules which influencers should follow. The Recommendations quote the following activities in social media and platforms as advertising:

- search marketing;
- any form of promotion of own goods and services;
- “coexisting advertising”: the advertiser pays to include its trademark or commercial message into the content of the influencer’s post;

- affiliate marketing: the influencer enters into a partnership relationship with the advertiser, meaning that he/she becomes co-responsible for the advertising;
- advertorial: influencer cooperates with the advertiser who pays for the post in any kind of remuneration (gifts, products and goods free of charge) and controls the content of the post (including only a final approval).

## What are typical influencer practices in Slovenia and in which cases are they considered advertising?

In Slovenia, there is no legal definition of “influencer practices” but generally speaking, influencers are usually making use of the following practices which could be regarded as advertising and therefore subject to the applicable rules:



## Which legal obligations apply?

As the activities of influencers are not specifically regulated in Slovenia, the basic rules of advertising are applicable, most notably that advertising must always be clearly recognisable as such and it must be clear which company ordered it.

The Slovene Consumer Protection Act implies several additional rules on the content of advertising. It must also not be misleading and/or indecent or in conflict with the law. Moreover, it must not comprise the content that causes or could cause physical, mental or other harm to children or content that take advantage of or could take advantage of their trust or lack of experience. If the advertising includes any special offer (such as discounts or gifts) or prize competition, they must be clearly identifiable and the conditions for obtaining must be accessible and clearly and unambiguously stated.

Arguably, the part of the regulation regarding audiovisual commercial communications also applies, according to which an advertisement must be clearly identified as such and covert audiovisual commercial communication are prohibited.

It shall be highlighted that advertising of specific products and services, such as tobacco products, medicines and medical devices, health services, etc., is regulated by sectoral laws.

## What labelling requirements do you need to be aware of?

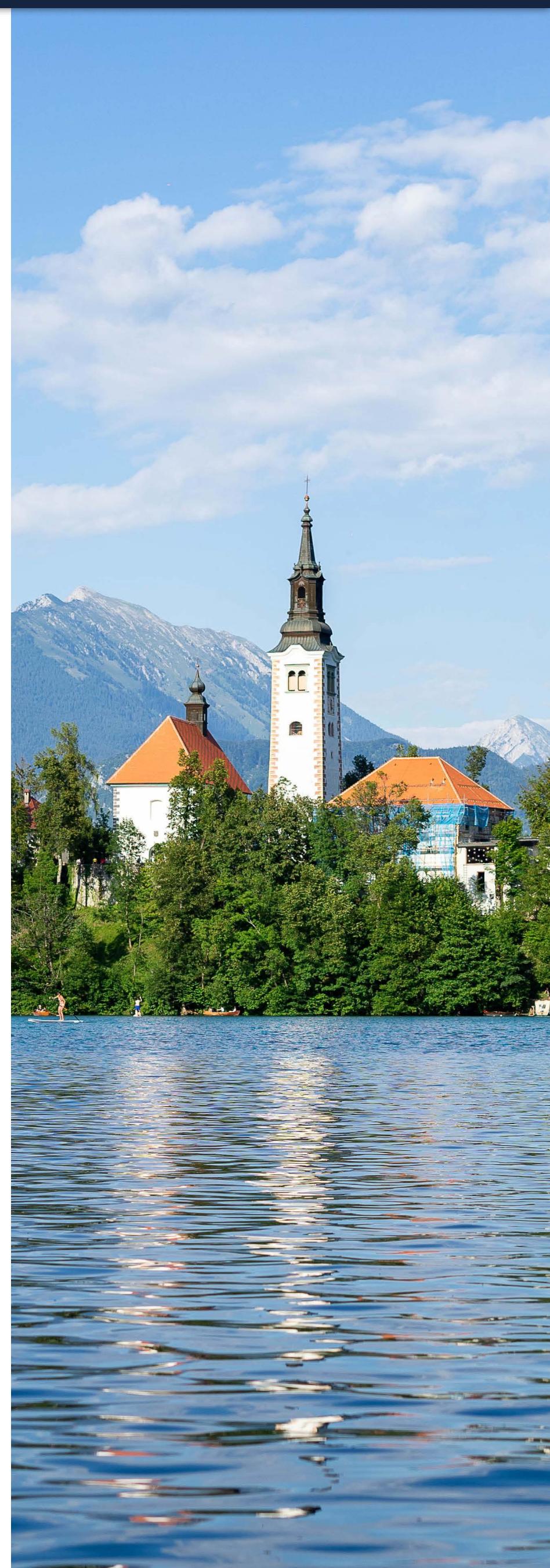
Specifically for influencer advertising, the legislation and court practice did not yet provide any specific rules or guidance as regards labelling requirements.

The Slovenian Advertising Code contains some general provisions in this respect, namely that advertising has to be apparent and clearly marked as advertising. Specifically as concerns influencer marketing, the Recommendations provide that it is essential to enable the consumer to recognize what is the true nature of the post, meaning that advertising content shall be clearly marked as such and that any kind of label used by the influencer to emphasize the advertising nature of the post must be given in advance (before people click on it or continue viewing), must be clearly visible and must be suitable for the respective channel and for all potential devices (e.g. must be well visible even on mobile phone screens). However, the Recommendations allow several ways on how to achieve this standard, meaning that tagging the word "oglas" ("advertising") is only one (albeit the most preferable) of the possible approaches. Therefore, the purpose of the post shall be absolutely apparent, yet it is on the author of the post to properly reveal all the required information on the relationship with the goods, services or the advertiser.

With regards to the sponsoring related posts, the sponsor must be quoted (name, logo or other symbol).

We would deem the following labels as acceptable labels:

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
"oglas" ("advertisement")	N/A
"oglasno sporočilo" (advertisement)	
"sponzorirano" (sponsored by")	



## Describe specific laws, regulations or guidance aimed at influencers in Slovenia

There are no specific laws, regulation or guidance issued that would be aimed specifically at influencers. In fact, there is a legal vacuum in Slovenian regulations regarding this topic as the recent expansion of influencer marketing has not yet been addressed by the Slovenian legislator. Consequently, the existing regulations (the Mass Media Act, the Audiovisual Media Services Act and the consumer protection laws) could potentially apply indirectly and to a limited extent to influencer marketing. However, currently influencer marketing does not seem to be subject to regulatory supervision and there are also no court decisions concerning this topic available.

It has to be noted that changes of the Mass Media Act are contemplated in Slovenia. Based on the current legislation drafts, the activities of influencers will be addressed within these envisaged changes, which means that it is expected influencers would be subject to explicit and more substantial regulation in the future.

## What are the consequences for influencers if advertising content is not clearly labelled?

As noted above, currently it is not clear if influencers could be subject to legal consequences in case of inappropriate labelling of advertising content as advertising as they are not explicitly subject to any regulation and the existing regulation in this respect is unclear.

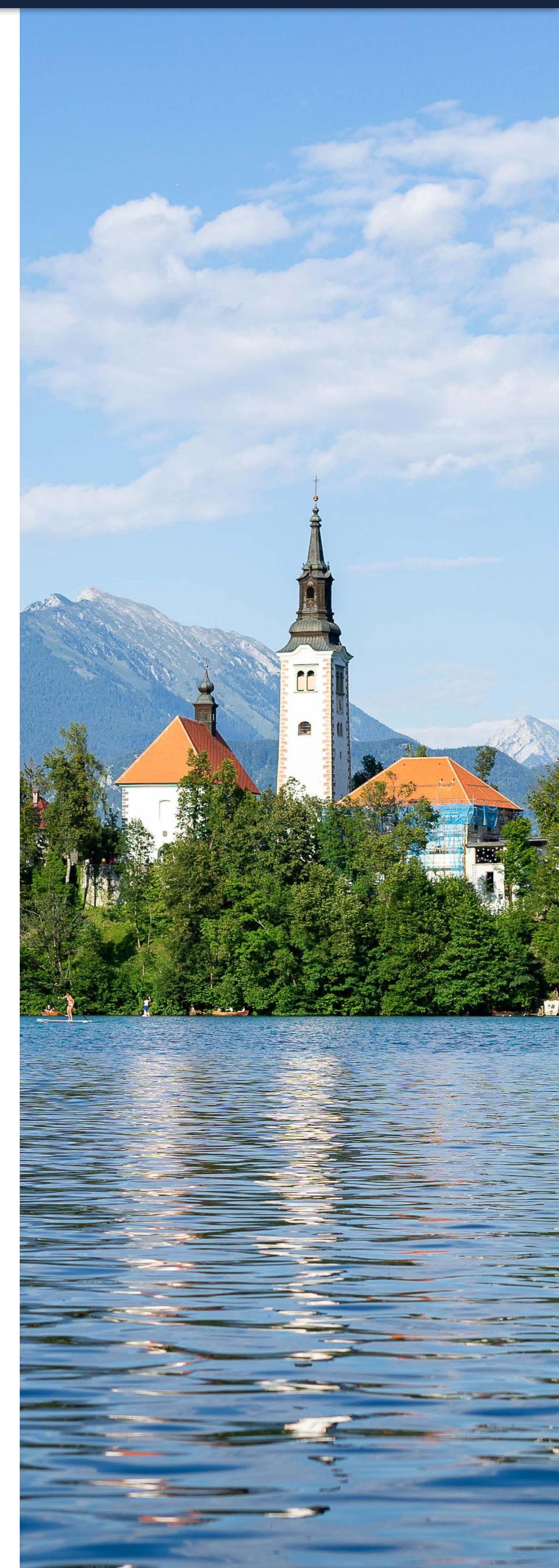
Although not legally binding, the Code of Advertising Practice of Slovenia stipulates very clearly and unambiguously that any advertising must be clearly identifiable as such, regardless of the chosen medium or other communication channel within which it is published. Any content published against payment or for another form of compensation is obliged to be clearly visible as advertising. In this respect publications of influencers can, in the view of the Slovenian Advertising Chamber, also be subject to review

under the Code of Advertising Practice of Slovenia, provided however that a complaint would be filed. Although a decision of the Advertising Tribunal does not have a legally binding effect and only establishes compliance with the Code of Advertising Practice of Slovenia, a publicly announced decision could serve as basis for reporting to the Market Inspectorate of Slovenia.

Potentially, assuming that the existing regulations on mass media, audiovisual media services and consumer protection would apply, the breach of obligations related to advertising could be subject to a fine ranging from EUR 1,050 to EUR 62,600 for companies or EUR 250 or EUR 350 for individuals, depending on the breach and the regulation that would apply. In this regard it also has to be noted that it is not clear who would in fact be held responsible – the company that ordered the advertising or the particular influencer that carries it out. In relation thereto it also has to be noted that the Consumer Protection Act applies only to legal entities, sole proprietorship and individuals exercising an independent business or professional activity.

## What legal risks apply when cooperating with influencers in Slovenia?

The same as outlined in previous question applies.



## Key contacts





Risk and enforcement level: Moderate

Spain



# Spain

## What qualifies as advertising under Spanish law?

Advertising in Spain is governed by a combination of national law and self-regulation.

According to the Spanish Advertising Act 34/1988 ("**LGP**"), "advertising" means any form of communication by a natural person or legal entity, public or private, in the exercise of a commercial, industrial, craft or professional activity, in order to promote directly or indirectly the acquisition of goods or properties, services, rights and obligations.

There is also a self-regulatory body called "*Autocontrol*" which provides codes of conduct and an arbitration court to resolve disputes. Autocontrol has a large membership of advertisers, agencies, media and other publicity-related entities and professionals. However, membership, although advisable, is by no means mandatory. This means that Autocontrol decisions are not binding for non-members except insofar as they decide to accept its authority as arbitrator. Nevertheless, despite not being an institutional body, Autocontrol's Advertising Code of Conduct and resolutions are highly respected among Spanish market operators.

Spanish regulations, however, do not contain explicit provisions regarding specifically the advertising by "influencers". Despite this, on 28 November 2019 Autocontrol issued its first decision which considered an influencer's post on Instagram which was contrary to the principle of "authenticity of advertising" set forth in Section 13 of the Advertising Code of Conduct (the "**Decision**"). Section 13 is generally considered to be (particularly in light of its recent re-drafting) the catalyst for the future regulation of Spanish influencers.

The Decision (available [here](#)) provides guidance for determining whether content published by an influencer shall be deemed to be "advertising". Its content and characteristics shall be sufficient to determine an advertising purpose – for example, if the post is focused on a single product, highlights the product's benefits, fails to mention or suggest any disadvantages, or by failing to mention alternatives in a neutral and objective manner.

Furthermore, it is necessary to take into account that according to the Decision, it is not necessary to obtain any payment or compensation in order to classify an influencer's post as advertising.



## What are typical influencer practices in Spain and in which cases are they considered advertising?

Despite the lack of explicit regulation in the Spanish Law on influencers' activities, the most common influencer practices in the Spanish market are as follows:



Influencers are not yet specifically regulated under any law or regulation in Spain. Their activities are still, so to speak, in no man's land from a legal perspective. They could be classified as "advertising" but there are equally good reasons under the laws of Spain to associate those practices to the activities of commercial agents. Nevertheless, certain legal provisions (specifically, those concerning unfair competition) apply to them in any event, irrespective of whether they are considered publicity market players or commercial agents. Self-regulatory bodies (for example, Autocontrol) in principle support the view that influencers' activities are advertising, however self-regulatory bodies play a much lesser role in Spain than in other European countries; their views are treated as being similar to the ones of any other third party.

## Which legal obligations apply?

The legal framework setting forth the advertisement mandatory requirements is formed by (i) Spanish General Act 34/1988 on Advertising ("LGP"), (ii) Spanish Act 3/1991 on Unfair Competition ("LCD"), and (iii) Spanish Royal Legislative Decree 1/2007 on the Defense of Consumers and Users ("LPCU").



According to this legal framework:

**IT IS PROHIBITED, AS UNLAWFUL ADVERTISING, TO ENGAGE IN:**

- Advertising which undermines human dignity or violates the values and rights recognised in the Spanish Constitution (e.g. the promotion of violence; discriminatory advertising due to race, nationality, religion, disability, age, gender or sexual orientation). This also includes ads that present women in a humiliating or derogatory manner.
- Advertising addressed to minors that induces them to buy a good or a service, exploiting their inexperience or credulity, or in which they appear persuading parents or guardians to buy. Children shall not be presented in dangerous situations without a justified reason. The characteristics of the products, their safety and the child's ability and skills to use them without causing harm to him/herself or others must not be misconstrued.
- Subliminal advertising (the one that is delivered and perceived in a subliminal manner).
- The production of ads that infringe the regulations on the advertising of certain products, goods, activities or services (e.g. tobacco, medicine, or alcohol).
- Misleading advertising which contains false information or information that, although true, by its content or presentation misleads the viewer, is capable of altering their economic behavior, unfair advertising and aggressive advertising. Misleading advertising may, in certain circumstances, be run. For example, if disclaimers are given – such as whether or not the influencer is sponsored.
- Advertising that encourages harmful behavior to the environment and person safety.

- Comparative advertising is allowed insofar as it is conducted in an objective way, is verifiable and features comparisons of equivalent goods.

**FONT SIZE:**

LPCU, states that the font size (in advertising or, more generally, in any information provided to consumers and users) cannot be less than one and a half millimetres and shall have sufficient contrast with the background so that reading may not become difficult. Such information has to be provided at least in Spanish to be binding and effective.

**RECOGNISABILITY AS ADVERTISING:**

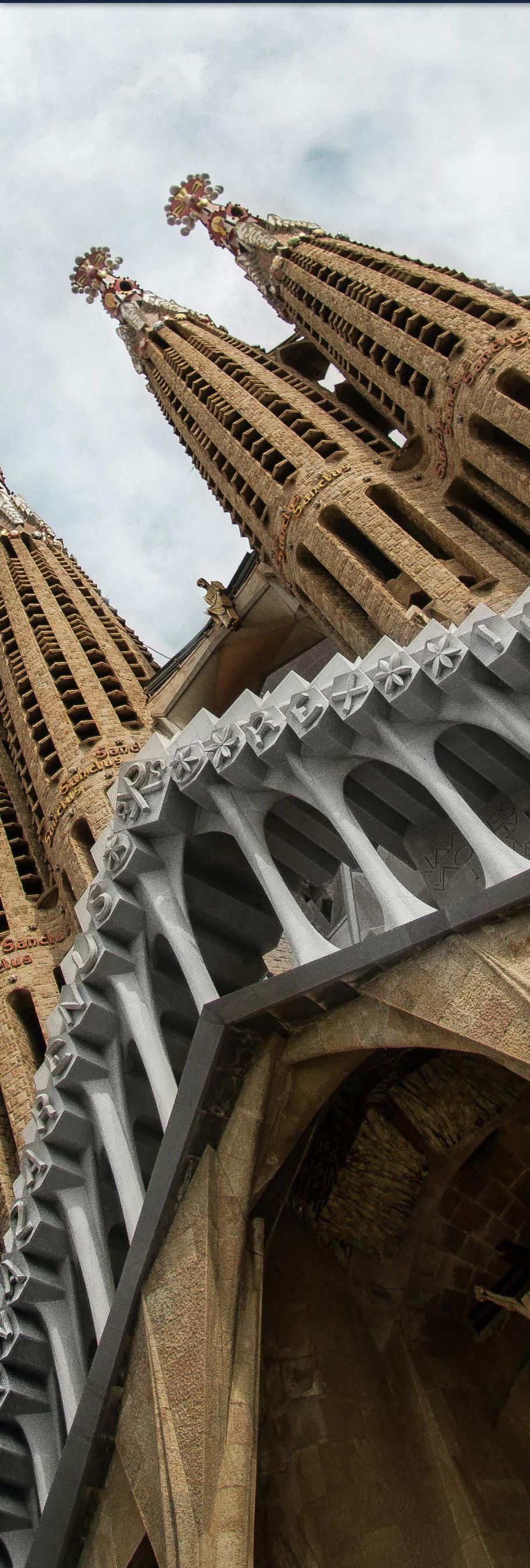
In accordance with Article 7 of the LCD, it is necessary to disclose the commercial purpose of the communication, where it is not immediately obvious from the context.

**EXPLICIT IDENTIFICATION OF ADVERTISING CONTENT:**

In accordance with Article 26 of the LCD, it is considered unfair to include the promotion of goods and services, paid for by a professional, without being clearly specified and identifiable in the content itself that it is advertising content.

Furthermore, Autocontrol's advertising code of conduct, states in its Article 13 that:

Advertising communications shall be identifiable as such, regardless of their form, format, or the media used.



Advertising communications displayed on news media outlets should be presented in a way which renders them easily recognisable as advertising and, where necessary, labelled as such. The true purpose of advertising must be transparent. For example, communications which promote the sale of a good or service should not masquerade as market research, the results of a consumer survey, user generated content, blog posts, private publications in social networks or independent analysis.

The Decision issued by Autocontrol on 28 November 2019 (available [here](#)) clarified that a post on Instagram was not sufficiently labelled. Its location did not make it possible to see at first sight that it is indeed an advert. It leads the audience to believe that it is an opinion or experience rather than advertising. The warning "Ad", was placed at the end of the message in a subtle manner, unnoticed to the target audience.

## What labelling requirements do you need to be aware of?

### GENERAL RULE:

the labelling as advertising must be immediately recognisable and displayed in a place identifiable at first sight so that, from the point of view of the general public, there can be no doubt as to the commercial purpose of the post.

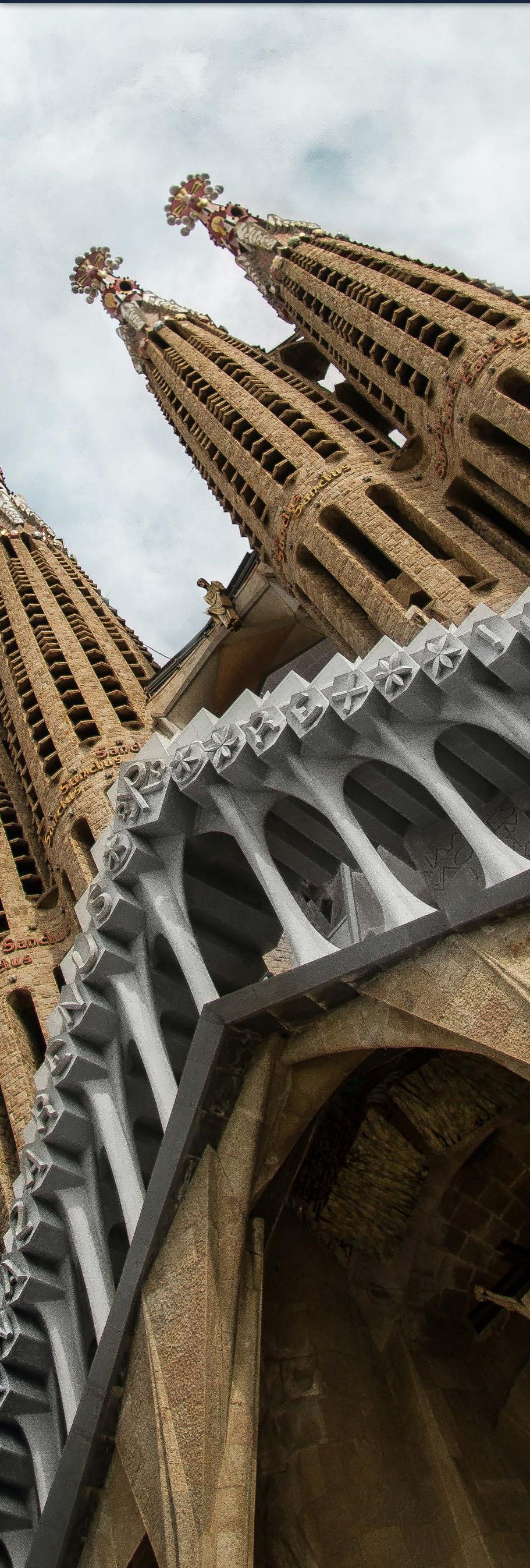
According to Autocontrol's Decision, the use of "#ad" as one of several hashtags under a post was considered insufficient. Considering the lack of specific regulation in Spain, we consider that the following labels could be deemed valid as long as those are displayed in a visible and identifiable place.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
"Publicidad" ("advertisement")	#ad
"Patrocinado por" ("sponsored by")	#advertising
"Colaboración pagada" ("paid collaboration")	

## Describe specific laws, regulations or guidance aimed at influencers in Spain

There are no laws or regulations that apply exclusively or specifically to influencers.

Autocontrol, jointly with the Spanish Advertisers Association ("AEA"), is currently drafting a "Code of Conduct on the Use of Influencers in Advertising", with the aim of providing solutions for the identification of advertising.



## What are the consequences for influencers if advertising content is not clearly labelled?

As for now, Autocontrol is the only Spanish market player which has published its position (but remember that Autocontrol's Decision it is only binding on its members). To date, there is no case law concerning influencer advertising, however, this may be as a result of the fact that in Spain, High Court decisions are not typically published; this is the standard only for decisions issued by the Courts of Appeal or Upper Courts).

However, according to the provisions set forth in the LCD, influencers can face legal proceedings initiated by competitors or consumer associations, as undisclosed or disguised activities may amount to an unfair commercial practice. According to the LCD competitors or consumer associations may seek different types of decisions from the court such as (i) a declaration of disloyalty; (ii) an order to cease and desist; (iii) an order obliging the removal of the effects produced by the unfair conduct; (iv) an order to rectify the misleading, incorrect or false information; (v) an order to compensate the damages caused (by willful misconduct or negligence); and (vi) an order to return the "unfair profits" obtained.

From a Consumer Protection perspective, if a potential issue arises resulting in damage to consumers, regulatory Authorities may impose fines up to EUR 601,012.10. The specific amount of the fines depends on the circumstances of the case and of the region where the infringement occurs (there are 19 different potential combinations).

## What legal risks apply when cooperating with influencers in Spain?

As this topic is not yet regulated in Spain, no specific provisions dictate the responsibilities of companies cooperating with influencers.

However, according to LGP, the advertiser is the person or legal entity in whose interest the advertising is carried out. Therefore, the company will have general responsibilities applicable to advertisers, and thus may also be liable. Under LCP, it can be held that both the influencer and the sponsor are jointly responsible for any misleading publicity.

in damage to consumers, regulatory Authorities may impose fines up to EUR 601,012.10 euros. The specific amount of the fines depends on the circumstances of the case and of the region where the infringement occurs (there are 19 different potential combinations).



## Key contacts



## Sweden

Risk and enforcement level: Robust

# Sweden

## What qualifies as advertising under Swedish law?

A post, video or similar content published by an influencer qualifies as advertising if the content and objective behind it is commercial in nature. For example, if the content relates to a company's business or products and the purpose is to sell these, the post will be considered advertising. Furthermore, there are various kinds of practices that qualifies as advertising and some indicators are:



## What are typical influencer practices in Sweden and in which cases are they considered advertising?

There are various influencer practices which can be classified as advertising.



## Which legal obligations apply?

### IDENTIFICATION OF ADVERTISEMENT:

The basic rule is that all advertising must be formulated and presented in such way that makes it clear that it is a matter of marketing. The recipient must also be able to immediately identify that the post or video is an advertisement and contains marketing content.

### CLEAR INDICATION OF THE PARTY RESPONSIBLE FOR THE MARKETING:

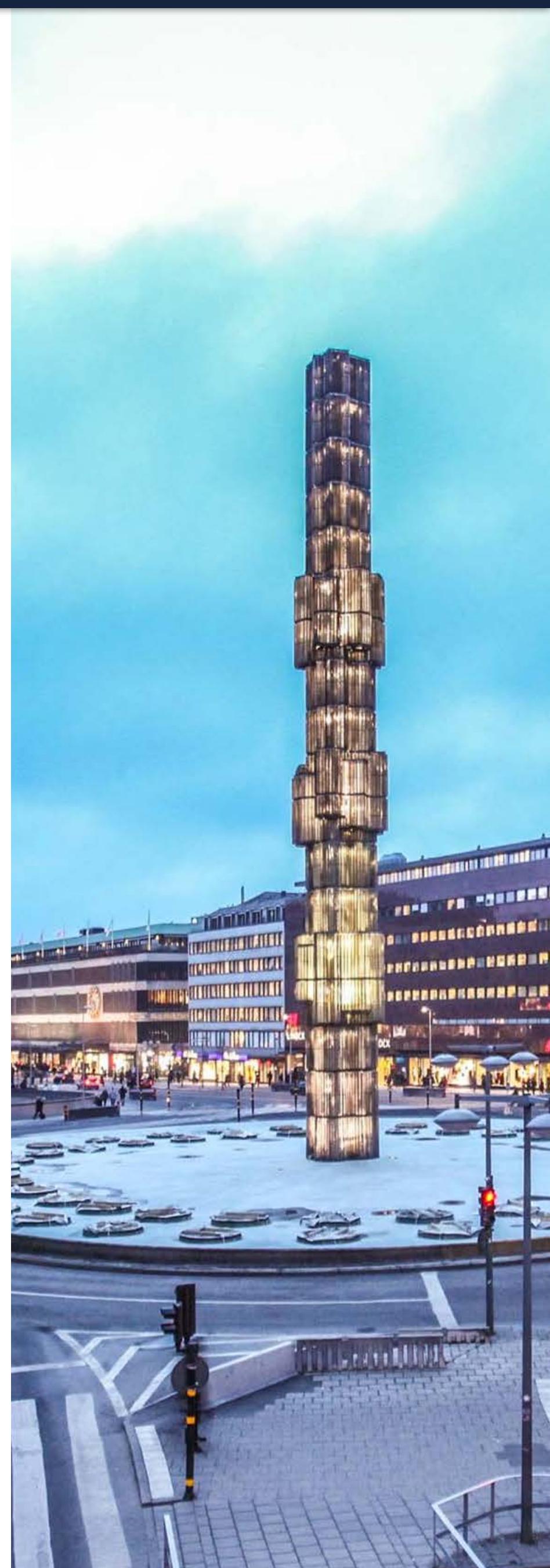
It must be clear to the recipient who the sender of the message is (the company). This is usually done by providing information about the name of the sender or company details. In some cases, only the trademark or logotype is sufficient, provided that it is well established amongst consumers.

### LABELLING REQUIREMENT:

In order to fulfil the obligation to clearly identify posts as advertising, it is necessary to adequately label posts as such. Advertising labels should also be added when influencers market their own products or services.

### SEPARATION OF ADVERTISEMENT AND EDITORIAL CONTENT:

If advertising takes place in the context of editorial content, e.g. on a fashion blog, such promotional content needs to be clearly separated from the editorial content (the so-called separation rule).



## What labelling requirements do you need to be aware of?

### GENERAL RULE:

The labelling must be so apparent that, from the point of view of an average member of the relevant public, there is no doubt about the commercial purpose of the post.

### PLACEMENT AND DESIGN OF LABELLING:

The labelling must be visible at first glance. Thus, if it is necessary to click on certain buttons or to scroll down in order to become aware of further information, the labelling will be considered insufficient. In addition, labels made in a small font, an indistinct colour scheme or otherwise presented in a vague way will also be considered insufficient. The note should therefore be clearly designed and inserted at the beginning of the post.

In relation to video content, labels and/or other information about the advertiser, this must be inserted in both the video (through speech or in writing) and under the video (in the title or the description box). If a video focusses on a certain product throughout, it can even be advisable to use a permanent insertion.

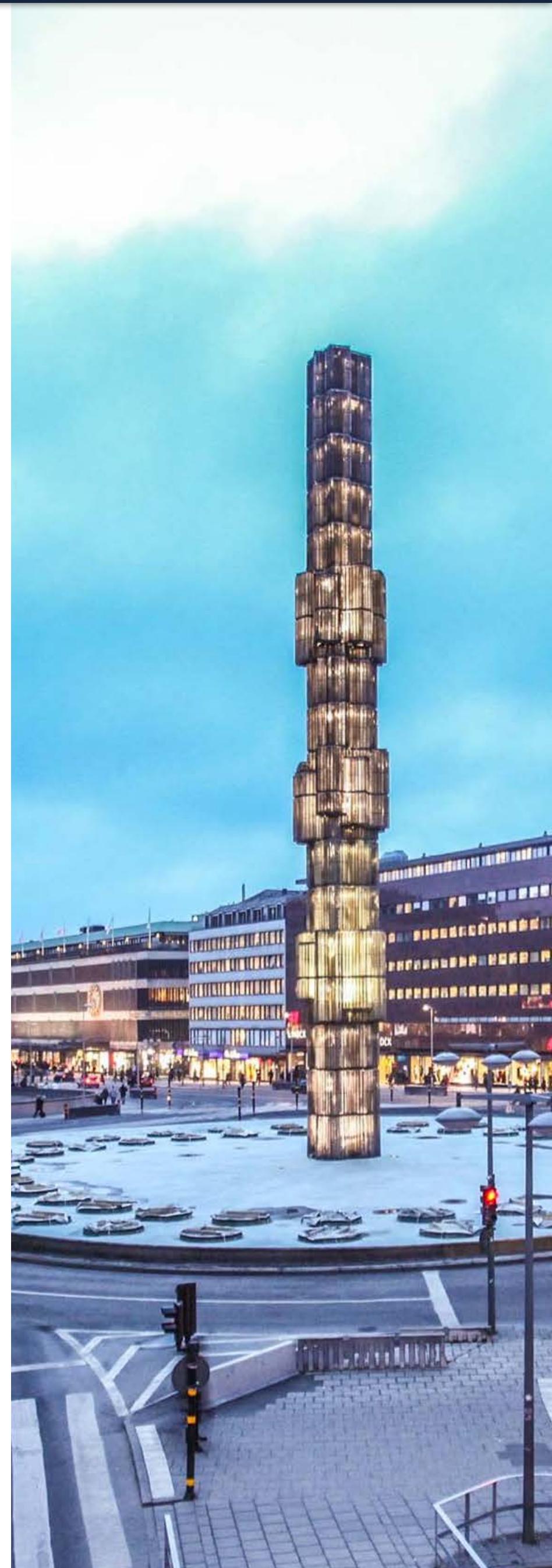
ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
"Reklam" ("advertisement")	"Samarbete" ("collaboration")
"Annons" ("advertisement")	"I samarbete med" ("in collaboration with")
"Reklamsamarbete" ("Collaborative ad")	
"Annonssamarbete" ("Collaborative ad")	
"I betalt samarbete" ("In paid collaboration")	

## Describe specific laws, regulations or guidance aimed at influencers in Sweden

There are no laws or regulations that apply exclusively or specifically to influencers although the Swedish Marketing Act (*Sw. Marknadsföringslagen*) is applicable to advertising made by influencers.

### ADMINISTRATIVE GUIDELINES:

The supervisory authority have issued guidelines on social media marketing ("Vägledning om marknadsföring i sociala medier"). However, courts are not bound by these guidelines and may deviate from the recommendations mentioned therein.



## What are the consequences for influencers if advertising content is not clearly labelled?

If influencers violate the labelling obligations, they may face legal proceedings due to misleading marketing. A claim can be brought by (i) the Consumer Ombudsman (ii) a trader affected by the marketing in question or (iii) a group of consumers, traders or employees.

### COURT PROCEEDINGS:

An appeal of the Consumer Authority's decision can be made to the Patent and Market Court. Furthermore, in case of a breach of the injunction, the conditional financial penalty may be enforced through the Patent and Market Court by the Consumer Ombudsman. The Patent and Market court will then decide if there has been a breach of the injunction and if the financial penalty shall be enforced. In addition, the influencer may also have to compensate any consumer or other trader for any damage arising from the violation.

In case of a serious violation, and on top of a conditional financial penalty, the Patent and Market Court can impose a market disruption charge which can vary from SEK 10,000 to 10,000,000 based on the seriousness of the violation and the breaching party's annual turnover.

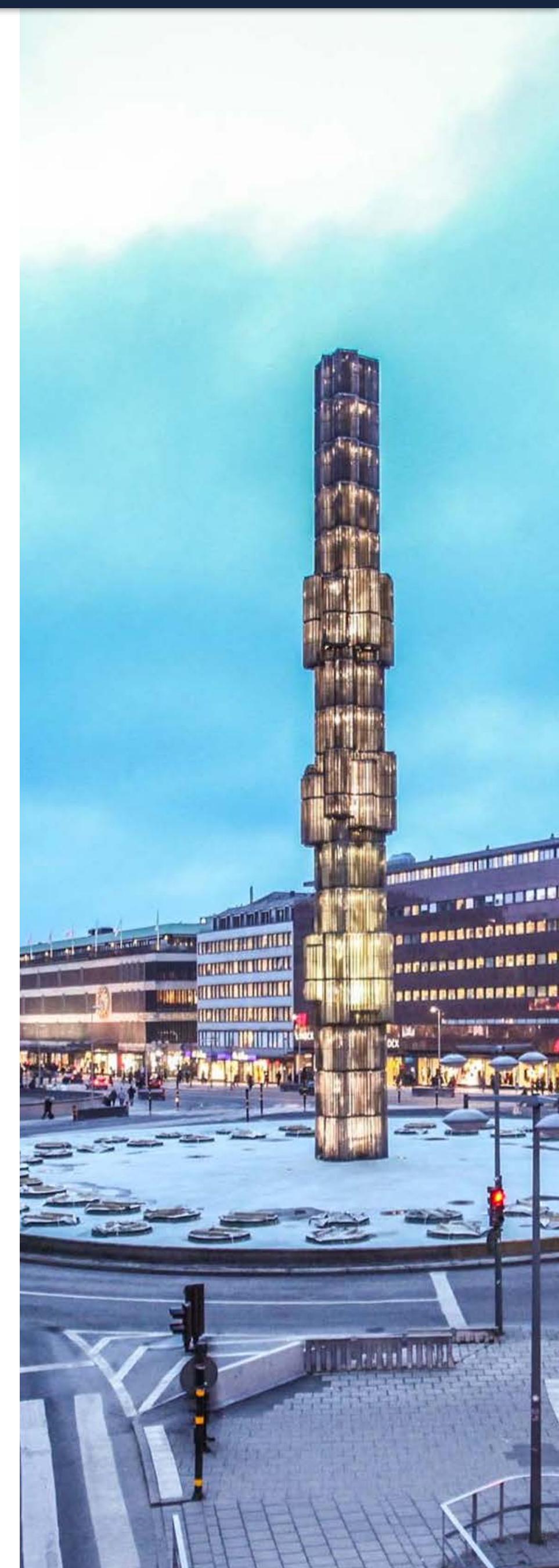
### REGULATORY AUTHORITY:

The supervisory authority is the Consumer Authority through the Consumer Ombudsman. The Consumer Authority can send warnings and issue injunctions that prohibits an influencer from using certain marketing and/or orders to provide certain information in their marketing. An injunction issued by the Consumer Authority shall be subject to an imposition of a conditional financial penalty, unless there are particular grounds rendering this unnecessary.

## What legal risks apply when cooperating with influencers in Sweden?

In general, a company would be deemed to have the primary responsibility for the advertisement of their products. However, claims can be brought against either the influencer, the company or both, depending on who has designated or taken an active part in the design of the advertising material or otherwise actively participated in the marketing. Therefore, a company would be liable if it exerted control over the composition of the respective post. In such case, the company would risk facing the legal consequences described above.

Thus, before the start of a campaign, a company should stipulate in its contract with the influencer how posts are to be designed and labelled. Additionally, compliance with these provisions should be monitored throughout the campaign.



## Key contacts





Risk and enforcement level: Moderate

## The Netherlands



# The Netherlands

## What qualifies as advertising under Dutch law?

The Dutch Advertising Code defines advertising as "any form of public and/or systematic direct or indirect commendation of goods, services and/or ideas by an advertiser or, either wholly or partly, on behalf of him, with or without the help of a third party". The solicitation of services is also defined as advertising.

In addition to the general Advertising Code, there is a specific code for influencer marketing: "the Advertising Code Social Media & Influencer Marketing 2019". This Code applies to specific types of advertising, including the marketing activities of companies aimed at having influencers communicate about a product or brand, whether or not at the request of the company. The influencer must receive a fee or other compensation for this, or must have the possibility of such compensation. The Code also applies to editing of third-party communications via social media for the benefit of the company.

## What are typical influencer practices in The Netherlands and in which cases are they considered advertising?

The definition of advertising is broad and includes different types of influencer practices. Amongst others, it includes:





## Which legal obligations apply?

### THE CONTENT MUST BE RECOGNISABLE AS ADVERTISING:

Content must be recognisable as advertising by virtue of its lay-out, presentation, content or otherwise. The recognisability must be clear; the user should preferably not have to click any further to understand that the content is an advertisement. The intended viewer must be considered by the assessment. Especially in the case of advertising aimed at children, their ability to understand must be taken into account.

### THE RELATIONSHIP BETWEEN INFLUENCER AND COMPANY MUST BE DISCLOSED:

Specifically for influencer marketing, it is important that the commercial relationship between the influencer and a company is disclosed, so consumers can easily understand that the content of the influencer is advertising. It must be explicitly stated that compensation is received.

### THE CONTENT CANNOT BE MISLEADING:

Advertisements are misleading if they entice the average consumer to make a decision on a transaction which they would not have made otherwise. Misleading information can apply to the existence of the product, the most important features of the product (e.g. its design), the price and the quantity characteristics. Misleading advertising can be done by active statements, but also by omitting essential information.

### THE CONTENT CANNOT BE AGGRESSIVE:

Advertising is considered aggressive as soon as the consumer does not have a free choice in buying a product or service. Whether or not a consumer has a free choice depends on the advertisement. Furthermore, advertisements containing unnecessary offensive language or content is also considered aggressive.

Comparative advertising is only allowed in certain circumstances: Advertising in which a competitor is mentioned explicitly or implicitly is allowed, but not always desirable. In any case, such advertising cannot be misleading and should not contain insulting or disparaging content towards the competitor.

## What labelling requirements do you need to be aware of?

Disclosure of the commercial relationship between an influencer and a company is required and all content must be clearly recognisable as advertising. See below for some examples provided by the Dutch Advertising Code Committee of how this can be made clear to consumers and users on different platforms.

### ADVERTISING VIA VIDEO POSTS (E.G. YOUTUBE):

- via text in the video and/or in the description of the video that is directly visible, which means without having to click a button such as "show more", and (if technically possible) visible on all types of devices and platforms on which the video can be viewed; and/or
- via a voice message in the video.

For example: *"This video contains advertising for ..."* or *"Thank you... for sending the products"*.

### ADVERTISING VIA POSTS (E.G. PHOTOS AND BLOGS):

- via hashtags in or under the photo/message, and/or
- via text in the description below.

For example: *#ad, #adv, #spon, #collab, #partner(ship)* or *"Collaboration with @..."*



#### ADVERTISING VIA PODCASTS:

- via text in the description of the podcast; and/or
- in the podcast itself.

For example: *"This podcast contains advertising for ..."* or *"I got the products which I discuss in this podcast from ..."*.

#### ADVERTISING VIA PLATFORMS WHERE CONTENT IS ONLY VISIBLE FOR A LIMITED TIME (E.G. INSTAGRAM STORIES):

- via hashtags in the content (where a series of messages appears consecutively, at least in the first and last posted content, which is visible during the time the content is available); and/or
- via text in the posted content that is visible during the time the content is available.

For example: #ad, #adv, #spon, #collab, #partner(ship) and "Collaboration with @ ...".

It is not mandatory to use Dutch terms for labelling, it is sufficient to only include English terms.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
#ad, #adv, #spon, #collab and #partner(ship)	Indirectly visible labels
"This video contains advertising for..."	

#### Describe specific laws, regulations or guidance aimed at influencers in The Netherlands

The Dutch Advertising Code Committee published an updated Advertising Code for Social Media & Influencer Marketing in 2019, which is specifically aimed at influencers.

In addition, there is the so-called "YouTube Social Code" which was implemented in 2017. However, this Code is voluntary and not legally enforceable. Furthermore, the Code only applies to advertising on YouTube.

Finally, the Dutch Media Act regulates advertising and marketing in the media. Social media are not yet covered by this law. However, in 2018 the revised Audiovisual Media Services Directive was adopted. This new directive contains provisions on video platform services and will (soon) be incorporated into the Dutch Media Act. After that, influencers on video platforms will also fall under the Dutch Media Act.

#### What are the consequences for influencers if advertising content is not clearly labelled?

When advertising is not in line with the Dutch Advertising Code or specifically the Advertising Code on Social Media & Influencer Marketing, a complaint can be filed with the Advertising Code Committee. Anyone, including a competitor, can file such a complaint and in principle every complaint results in a ruling. However, the only possible "sanction" is a recommendation from the Committee, which in essence is an opinion that the claim is misleading.

When the Dutch Media Act is amended, the supervisory body (in Dutch: het Commissariaat voor de Media) will be able to enforce the new provisions that are applicable for influencers on video platform services and hand out fines.



## What legal risks apply when cooperating with influencers in The Netherlands?

As mentioned above, the Advertising Code Committee may rule on complaints about advertisement. When the ruling results in a recommendation, the Committee will ask the company involved whether it will comply with the ruling. If not, the company will be listed as non-compliant on the website of the Committee. The only exception to the non-binding nature of the recommendations concerns radio and TV advertising. However, this will not be the case for influencer marketing on social media.

Furthermore, companies are obliged to inform influencers about the content of the Advertising Code Social Media & Influencer Marketing. Especially when influencers work on their instructions, companies must oblige influencers to comply with the relevant laws and regulations, including the abovementioned Codes. However, a company cannot excuse themselves from these obligations on the mere fact that the influencer does not work on his instructions.

Advertising in line with the Codes is a shared responsibility. It is therefore recommended for companies to sign a contract with influencers on how content is to be posted on social media.

## Key contacts



Risk and enforcement level: Robust

## United Arab Emirates (UAE)

# United Arab Emirates (UAE)

## What qualifies as advertising under the laws of the UAE?

Since the National Media Council ("NMC") issued a Cabinet Resolution Concerning Media Content (No. 23 of 2017) there has been an increased focus upon the regulation of digital content within the UAE, including with respect to digital advertisements.

An "**Advertisement**" is defined under the NMC Advertising Guide (issued in June 2018) ("**Advertising Guide**") as "*any means intended to inform all people about a certain commodity or purpose, whether by presentation or publication in writing, drawing, image, symbol, sound or other means of expression*".

An "**Electronic Advertisement**" is defined under the NMC's Electronic Media Regulation (from which the obligations under the Advertising Guide appear to flow) as "the mode used to present and promote the ideas, commodities and services through the electronic means or telecommunication applications and the paid or unpaid fees." We consider that this definition is broad enough to cover advertisements or posts on social media (and this interpretation is reflected by inclusion of specific obligations regarding social media posts within the Advertising Guide, as described more fully within section 4).

Under the Advertising Guide an "**Advertiser**" is any person, company, institution or entity that "*publishes paid or for any financial consideration or otherwise on websites and social media*". This definition is broad enough to cover, and therefore impose accountability upon:

- the platforms which host such Advertisements (such as Instagram or Facebook);
- the brands who commission influencers to publish paid-for content on their social media accounts; and
- the influencers themselves.

In addition, it is stated under the Advertising Guide that a "*disclosure must be made clearly in case there is any material or in-kind payment paid by the issuing authority for publications or articles published on social media, websites or blogs*." It is our understanding that a social media post made by an influencer would constitute a "publication" for the purposes of the Advertising Guide.



## What are typical influencer practices in the UAE and in which cases are they considered advertising?

The following common influencer practices would likely be considered "Advertising" and therefore fall within the scope of the Advertising Guide:



## Which legal obligations apply?

The NMC Advertising Guide provides, amongst other things, that Advertisements **must**:

- show respect for the UAE government, its emblems and political institutions, along with the cultural heritage of the UAE;
- observe the conditions and terms concerning the use of the flag, emblem and national anthem of the UAE and respect its national identity;
- avoid harming national unity and social cohesion;
- avoid the inclusion of images or words that could violate public morality, a broad concept which is typically present within the laws of the UAE and which would typically cover anything which violates the societal norms around "modesty" across the GCC region. Any advertising for "witchcraft, sorcery and astrology" is also prohibited;
- respect the intellectual property rights of third parties;
- comply with codes of conduct and standards of honesty, including compliance with the rules governing business, especially those with regards to consumer protection and fair competition controls, prohibition of commercial fraud and illegal monopoly;
- comply with the rules of health advertisements contained in Cabinet Resolution No. 4 of 2007 (as amended);
- be approved by the relevant authorities for advertisements relating to health, medicine, energy drinks, nurseries, education, promotions and special offers, real estate and Hajj and Umrah campaigns;
- be real (which we understand to mean "accurate") and unexaggerated;
- be clearly identified as Advertisements and appear distinct and independent from other editorial and information materials. Clear boundaries must separate Advertisements from any other material.



In addition, Advertisements must **not**:

- "offend God and Islamic beliefs" and must show respect for other religions;
- be vague, ambiguous or unclear;
- spread rumours or misleading, false, deceptive or malicious content, including any content which incites hatred or violence;
- include content which is intended to exaggerate, claim exclusiveness or "despise competitors" (which we interpret to be equivalent to "disparage");
- disseminate information that harms or abuses children and women, or any other social groups;
- promote alcoholic beverages or narcotics in any form, whether directly or indirectly;
- promote tobacco or smoking of any kind;
- include any false, fake or unrightfully formulated mark, sign or image.

We understand this to be a restriction upon using another party's brand designation (such as its trade mark) without permission;

- create any confusion by any means with any other brand names, products or activities;
- advertise anything that involves a crime or violates the principles and standards of the media content and the applicable age restriction; and
- advertise anything which may harm the public interest directly or indirectly.

As is clear from the broad nature of the requirements listed above, the NMC can exercise a great deal of discretion in deciding whether or not an Advertisement is acceptable. Caution should therefore be exercised with regards to the posting of any Advertisement by an influencer on a brand's behalf in order to minimise the risk of falling foul of such restrictions (and the terms of any agreements with influencers should seek to apportion and/or mitigate this risk).

## What labelling requirements do you need to be aware of?

Disclosures in marketing communication of social media marketing should be simple and straightforward. Influencers should use clear language and syntax and avoid legalese or technical jargon. All disclosures should be clear and prominent.

Under the Advertising Guide, in the case of any content that contains, "directly or indirectly, the promotion, advertising or endorsement of a particular product or service", clear language must be used that leaves no ambiguity that the advertisement is an Advertisement and is being paid for.

### IT IS NECESSARY TO:

- use a clear and legible font;
- put the disclosure in a conspicuous place for readers;
- make the disclosure at the beginning of the content or description;
- if the Advertisement is in the form of video, the disclosure must be stated verbally through the video (in addition to making it in writing within description of the video); and
- in case the Advertisement is made by using social media "stories" (whether still images or videos) that are published on a social media account, the disclosure should be published within the first or second still image (in the event that the Advertisement is made up of multiple still story posts) or, in the case of the video story post, at the beginning of the video.



**IT IS NOT ACCEPTABLE TO:**

- use hashtag "#ad" or "#paid\_ad" phrase clearly accompanied with many other hash tags in such a way that they are hard to see;
- use the words "*thank you for ... the advertiser*" or "*in cooperation with ...*" are not sufficient to disclose whether the advertisement is paid for or not;
- use very small font that is unreadable or that has a colour that is similar to the background colour, making it hard to read; or
- place the disclosure in a place that requires users to move to another page or content (e.g., the disclosure may not be placed under a "Read More" link).

It is not mandatory to use the Arabic language when labelling, it is sufficient to only include English terms.

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
#paid_ad within the post description without any other hashtags	#paid_ad with numerous other hashtags within the post description, thereby obscuring the message
Stating at the beginning of an Instagram video that "the following video was sponsored by [brand]"	Thank you to @[brand] for my new product
Putting a clear and legible statement within a Instagram picture which states that the post was "paid for by [brand]"	Use of illegible fonts

**Describe specific laws, regulations or guidance aimed at influencers in the UAE**

In a bid to regulate the social media marketing industry, since 1 June 2018 the UAE has made licences for commercialised influencers in the UAE mandatory. Whilst the NMC Advertising Guide and the Electronic Media Regulations each identify this requirement as applicable to "UAE Citizens", it is our understanding that the requirement also applies to residents of the UAE. Approximately 1,700 licences had been issued in the UAE as of July 2019. Those licences are priced at AED 15,000 (approximately USD 4,000).

Applicants for such a licence **must**:

- be at least 25 years old (although exceptions may be granted by NMC, depending upon the specific nature of the business activities which the influencer is promoting);
- be of good reputation and decent conduct;
- not have been convicted of any crime "*involving a breach of honour or public trust, unless rehabilitation has occurred and the individual has been issued a pardon by the appropriate authorities*";
- hold a high academic qualification from a college, institute or an accredited university (although an exemption for this requirement may be granted by the NMC);
- not have "*any licence that has already been suspended or cancelled*" or any "*company that has been shut down or closed*", or "*already been prevented from carrying out a certain media activity*" unless the related reasons for issuance of the decision or judgment have been remedied or removed as the case may be;
- not owe any financial dues to the NMC at the date of application; and
- abide by the instructions and regulations set for carrying out media activities.



## What are the consequences for influencers if advertising content is not clearly labelled?

A fine of AED 5,000 (approximately USD 1,300) is payable in the event that paid-for content (therefore constituting an Advertisement) is not labelled in accordance with the requirements set out under section 4 above.

That fine must be paid within five working days from the date of the violation, or from the date of issuance of a decision ordering the payment of such a fine. It is however not apparent under what circumstances an individual issued with such a fine would ever wish to pay a fine for a violation without there being a decision of the NMC being made against them that such a violation had occurred.

Where the fine is not paid within five working days, a fine of AED 100 (approximately USD 27) is charged for each day, up to a maximum of AED 5,000.

In addition, the amount of the fine may be doubled when the same violation is repeated within one year from the date of committing the previous offence, provided that it shall not exceed AED 20,000 (approximately USD 5,000) in total.

In addition, the NMC may order the removal of the infringing social media post until it is rectified and a compliant disclosure is included.

## What legal risks apply when cooperating with influencers in the UAE?

As well as the Advertising Guide and the potential for liability under that guide (as described under section 6 above), there are a patchwork of other laws and regulations within the UAE which may be used to place liability upon a brand which instructs an influencer to post content on social media, as well as upon the influencer herself/himself. Examples include:





In addition, it is possible that a third-party intellectual property claim may be brought against the brand in the event that an influencer making a post on a social media site which includes content which was not original and which he or she did not have a licence to include.

Aside from the legal risks, there is of course the reputational risk which a brand may suffer in the event that an individual with whom it has aligned itself does something which is not in line with its own values, or those of the general public at the time at which a post is made.



In light of the above, we recommend that any brand which is commissioning an influencer to post any content on its behalf has in place a written agreement before proceeding with the partnership. As well as clearly defining the commercial position and the specific promotional obligations which apply to the influencer, such an agreement it should also contain provisions which:

- give the brand the right to review content before it is posted to review it from a legal and compliance standpoint;
- give the brand the right to instruct the influencer to immediately remove any content in the event that there is an infringement or risk of reputational harm;
- seek a commitment from influencer that any content will be posted in compliance with all applicable laws and regulations. A particularly prudent advertiser may wish to extract the requirements cited at section 3 above, as well as those cited within section 4, to ensure that the influencer is absolutely clear on his or her obligations;
- seek a commitment from influencer that all content will be original and will not infringe third-party intellectual property rights; and
- give the brand the right to terminate, and possibly even impose some sort of financial penalty, in the event that the influencer is not complying with the provisions of the contract or any applicable laws.

Brands may also look to introduce region specific influencer guidelines which they require their influencers to sign up to, as well as conducting spot checks on the content being posted to ensure that the influencers are complying with the relevant requirements.

## Key contacts





## United Kingdom (UK)

Risk and enforcement level: Robust



# United Kingdom (UK)

## What qualifies as advertising under English law?

The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing ("CAP Code") sets out the rules for non-broadcast advertisements in the UK. The Advertising Standards Authority ("ASA"), which is the UK's advertising regulator, applies the rules set out in the CAP Code to marketing communications that fall within its scope. There are three key types of online content that fall within scope and which will qualify as "advertising" under the CAP Code:

- a. "Paid-for" ad space online – this means any type of online space that is normally sold for the placement of ads, including banner ads, pop-ups, pre-roll videos, sponsored search results and "promoted" posts on social media platforms. Where an advertiser has "donated" ad space for free, it will still be considered to be "paid-for" if it is otherwise normally sold as ad space.
- b. "Directly connected" – this means any online content that is "directly connected" to the sale of something on an individual/company's own websites or other non-paid-for space online under that individual/company's control (e.g. social media) where that individual/company has a direct commercial interest in the supply or sale of that thing (which includes "goods, services, opportunities and gifts"). This definition also applies to "affiliate" ads (see Section 2).
- c. "Advertisorials" – this means any feature, announcement or promotion, the content of which is controlled by the marketer and not the publisher, and which is disseminated in exchange for a payment or other reciprocal arrangement (i.e. where there is payment and control – see below).

So when a brand gives an influencer a "payment" and also has editorial control over the content, the content is deemed to be advertising/a marketing communication, and the CAP Code will apply.

The extent to which content is deemed to be advertising and regulated by the ASA therefore depends on whether there is "payment" and "editorial control". These are defined as follows:

- a. Payment – this includes any form of monetary payment, free loan of a product/service, any incentive and/or commission or where a product/service has been given free. It does not matter whether the product/service was requested by the influencer/marketer, or voluntarily sent by the brand (i.e. as a "freebie").
- b. Editorial Control – the content is controlled by the brand. Whether a brand has "control" over the content will usually depend on the agreement in place between the brand and marketer/influencer. The general rule is that any limitation on a marketer/influencer's ability to create and post content is likely to indicate some level of "control" by the brand. For example, the brand may:
  - tell the marketer/influencer what to say (e.g. include particular words, phrases, themes, key messages, or specified hashtags);
  - tell the marketer/influencer what to include in visual content (e.g. certain products or specific actions);
  - specify the type of content the marketer/influencer has to produce (e.g. an "unboxing" video); and
  - specify the number of posts, or the date or time that the content should be posted.



The brand's ability to change or withhold marketer/influencer content is also likely to indicate control. For example, the brand may:

- reserve the right to check or approve content before it is posted; and/or
- request changes to content, which marketer/influencer must make before it is posted.

The Competition and Markets Authority ("CMA"), which is the UK's competition and consumer authority, has a broader jurisdiction than the ASA and a wider range of "content" falls within its remit. Whereas the CAP Code (and therefore the ASA's remit) is limited to advertising/marketing communications, the CMA's remit extends to commercial practices more generally, so it does not distinguish between an advert (where the brand controls the outcome) and paid-for editorial coverage (where the influencer has taken payment but created the content independently, e.g. in a sponsorship context). As such, some content which is not deemed to be advertising within the scope of the CAP Code may nonetheless be subject to regulation under UK consumer protection legislation as enforced by the CMA ("Consumer Protection Laws"), including labelling requirements for paid content (see Sections 3 and 4).

## What are typical influencer practices in the UK and in which cases are they considered advertising?

There is no threshold (in terms of numbers of followers or occupation) for a social media user to be considered an "influencer". The ASA defines an "influencer" as anyone who has been paid by a brand to advertise a product on their own social media as a result of that individual's social media influence. The CMA does not make any distinction, as the Consumer Protection Laws will apply to any commercial practice that is misleading to consumers. It requires anyone endorsing a product or service on social media to disclose clearly and prominently when they have received any payment (see Section 1 – "What qualifies as advertising").

With this in mind, the following "influencer" practices may be classified as advertising:





## Which legal obligations apply?

Both the ASA and CMA focus on ensuring that the relevant content is open, up-front and honest with audiences. There are many specific obligations under the CAP Code which apply to all content which is deemed to be "advertising". The following are key obligations which are particularly relevant in the context of influencer marketing:

### RECOGNITION OF MARKETING COMMUNICATIONS:

The CAP Code states that marketing communications must be obviously identifiable as such (rule 2.1). This means that it should be obvious to a consumer viewing the content that they are looking at an ad.

The CMA also requires it to be obvious to a consumer that the content is promotional. The use of paid-for editorial content to promote a product is prohibited where the promoter fails to make clear to the consumer that it is a paid-for promotion.

### DISCLOSURE OBLIGATION:

The CAP Code states that marketing communications must not falsely claim or imply that the marketer is acting as a consumer or for purposes outside its trade, business, craft or profession; and marketing communications must make clear their commercial intent, if that is not obvious from the context (rule 2.3).



Similar obligations apply in practice under the Consumer Protection Laws, which require anyone endorsing a product or service to disclose clearly and prominently that they have received a “payment” and not to give the impression that the individual has personally purchased the product or service. The following are also considered to be prohibited practices under Consumer Protection Laws:

- 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 (e.g. that an individual is an ambassador for a brand whose product the individual has posted about).

If only some of the links or content relate to the promoted product, it must be made clear which parts of the content are an ad.

#### **LABELLING REQUIREMENT:**

Marketers and publishers must make clear that advertorials are marketing communications (CAP rule 2.4). If it is not directly apparent from the circumstances that an ad is an ad, its commercial nature must be made clear by labelling it as advertising.

The CMA and ASA have jointly published guidance on labelling requirements (see Section 4 “What are the labelling requirements”).

#### **REQUIREMENT NOT TO MISLEAD CONSUMERS**

Any content that qualifies as advertising (see Section 1 – “What qualifies as advertising”) will be within the remit of the ASA and must comply with the CAP Code in its entirety. It should not therefore materially mislead consumers.

Similarly, the CMA is concerned with the protection of consumers, and any ads that comply with the above requirements (a) to (c) but are otherwise misleading will be in breach of the Consumer Protection Laws in respect of which the CMA might take action.

#### **What labelling requirements do you need to be aware of?**

##### **GENERAL RULE**

All commercial relationships must be disclosed. This means that consumers must see and immediately understand the disclosure before they start to view or read any content. Usually, this will be done by way of labels, and the CMA and ASA have issued joint guidance in respect of such labels.

However, both the ASA and CMA make clear that there cannot be a definitive list of labels or a set way of labelling endorsements, due to the changing nature of platforms and influencer marketing. As such, the guidance is to review content from a consumer point of view before posting, to determine whether consumers will understand that the influencer has received “payment” (even if some time before), and if the post discloses the commercial relationship in a way that is clear, prominent and upfront.



### PLACEMENT OF LABELS

Labels need to make it obvious that content is advertising/promotional. As set out above, the ASA and CMA have issued guidance stating that labels (or other identifier wording) must be:

- a. **Upfront** – the label should be visible before consumers click on anything or otherwise engage with, or watch, the content. Where the content is in image with a caption, the label should be at the beginning of that caption.
- b. **Prominent** – the label should be easily noticed by the consumer. For example, burying the label in a list of hashtags, putting it in a colour that contrasts poorly with the background or placing it “under the fold” (requiring consumers to click “See More” before reading the label) will not be sufficient. The ASA recommends as best practice that influencers use visually striking features (such as use of colour, font and shape) that make it distinctive from other content.
- c. **Appropriate for the channel** – the placement of labels should conform with requirements as to prominence and visibility, notwithstanding any limitations or technical specifications of the platform that is used by the influencer (e.g. character limits, “below the fold” cut-offs and limitations on non-alphanumeric characters) (see below).
- d. **Suitable for all the different types of devices on which content might be viewed** – the label must be clear on mobile devices and in apps, and with different viewing settings. For example, if a video includes a label in accompanying text which is visible on a desktop device, but that accompanying text is not visible when viewing the video on a mobile device, it will not be considered sufficient to comply with the labelling requirement.

- e. **Easily understood by the audience** – the influencer should use clear and simple language that consumers are likely to be familiar with, and avoid abbreviations or “industry jargon” that are unlikely to be understood by the consumer.

The ASA suggests the following as best practice:

- a. **Logos** – influencers include brand logos to support greater recognition of ads.
- b. **Consistency** – standardisation within the industry to help consumers identify ads and distinguish from other influencer/social media content.

An influencer may use the “paid partnership” tool on Instagram and Facebook, or equivalents on other platforms. However, use of platform labelling alone may not be considered enough to enable consumers to identify an advertisement. As above, an influencer should always consider whether the tools and labels used in respect of their content is sufficient to meet the general requirement that the ad is clearly understandable to consumers as such.

Finally, content must be identifiable as an ad without consumers requiring prior knowledge of the influencer’s existing or previous commercial relationships. For example, it will not be considered sufficient to include a label in an influencer’s “bio” on social media platforms (e.g. that an influencer is an ambassador for a particular brand), as “bios” are not always visible alongside posts; posts must make clear where the content is an ad. Similarly, an influencer should not rely on disclosure or labelling in previous posts to make clear to a consumer that content is an ad, as posts can appear in search results and viewed in isolation.



### EXAMPLES OF LABELS

The assessment of whether a specific label is sufficient in part depends on the nature of the relationship between the brand and influencer, and more specifically whether the brand has “editorial control”:



As above, it is not feasible to provide definitive guidance for all possible labels or disclosures. However, the ASA and CMA have issued guidance in which they list labels which are likely to be deemed acceptable or unacceptable:

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
“Ad”	“Affiliate/aff”
“Advert”	“Spon/sp”
“Advertising”	#client
“Advertisement”	#collab
“Advertisement Feature”	#BrandAmbassador
	Adding #ad directly after the name of the brand or business (e.g. #[brand] ad)
	Any other abbreviation or words that consumers are unlikely to be familiar with

There are some labels that have to be deemed “risky”, such as “Supported by”/“Funded by”, “In association with”, “Thanks to [brand] for making this possible”, “@ [brand]”, “Gifted” or “Sponsorship”/“Sponsored”. Those labels may in some limited circumstances be sufficient (depending on the commercial relationship as set out above and the context of the post which may include other labels or identifier wording) but should generally be avoided by influencers and brands in favour of the clearer labels “Ad” and “Advert” etc.

Note that all of the above labels can be used with or without a #, but that it may be necessary to highlight the label in some other way if not using a hashtag, to ensure that it is noticeable to a consumer (e.g. by putting the label in brackets or adding an asterisk either side).



### SPECIFIC MEDIA CHANNEL DISCLOSURE



The labels should not be different for these platforms or for specific types of content (e.g. videos), but should follow the same guidance above. For example, a video cannot use the label “thanks to [brand]”, and should generally include “Ad” (or equivalent above) in the content.

Use of labels and disclosure obligation where marketing is targeted at children

Where an influencer’s content directly targets children (under 12), particular care must be taken to make clear that the content is an ad. The ASA has provided the following recommendations:

- a. **Prominence** – the label should be large and colourful enough to stand out;
- b. **Timing** – the label should appear before (if possible) or as the ad is activated; and
- c. **Identity of marketer** – this must be made clear in the disclosure.



## Describe specific laws, regulations or guidance aimed at influencers in the UK

The ASA and CMA have issued joint guidance targeted at influencers ("Influencers' guide to making clear that ads are ads").

The ASA and CMA have also each independently published guidance for influencers, which is available on their respective websites and blogs. This guidance covers the above obligations, as well as issues around online reviews and endorsements.

Industry bodies have also provided guidance relevant to influencer marketing. For example:

- The International Consumer Protection Enforcement Network (ICPEN) has produced guidelines on online reviews and endorsements ("ICPEN Guidelines for Digital Influencers");
- The Internet Advertising Bureau (IAB) UK, which is the UK trade association for digital advertising, has created good practice guidelines ("Content & Native Disclosure Good Practice"); and
- The Incorporated Society of British Advertisers (ISBA), which is an organization representing major brands, has created a set of resources that influencers and brands can use ("Influencer Marketing: Management Resources").

## What are the consequences for influencers if advertising content is not clearly labelled?

### SCOPE OF LIABILITY FOR BRANDS

The ASA and CMA will hold both the influencer and the advertiser jointly responsible for any breaches.

### SANCTIONS APPLIED BY REGULATORY AUTHORITIES

#### Enforcement by ASA and CAP

The ASA can take action of its own volition, or take action in response to a complaint that it receives in respect of an ad. The ASA accepts complaints from both the public (i.e. consumers) and industry (i.e. including competitors – though a competitor will have to be named unlike a consumer complainant who can remain anonymous).

If a complaint is upheld by the ASA following further investigation, the ASA can require the withdrawal or amendment of the offending ad. The ASA can name the influencer and the brand and detail the non-compliance in published rulings on the ASA website, which may result in adverse publicity for the influencer. The ASA also has other sanctions at its disposal that may be applied in particular cases, but cannot fine parties.



### Enforcement by the CMA

The CMA will investigate and may take legal action to stop breaches of the Consumer Protection Laws. For example, the enforcement action taken by the CMA in 2019 resulted in warning letters being sent to a number of influencers and the CMA also secured formal commitments from a number of high profile influencers to change the way in which posts are labelled.

Ultimately, the CMA and Trading Standards have the ability to bring criminal prosecutions against advertisers and/or influencers under the Consumer Protection Laws, in appropriate circumstances. With regard to influencer marketing, the CMA has to date generally taken the approach of education and guidance rather than formal enforcement.

## What legal risks apply when cooperating with influencers in the UK?

### SCOPE OF LIABILITY FOR BRANDS

Brands should be aware that they can therefore be held jointly responsible for breaching the CAP Code and/or Consumer Protection Laws as a result of the acts of their influencers (even without the brand having any specific participation in or knowledge of the content resulting in the breach).

Brands should also be aware that, as well as being liable for influencer posts not being properly identified as advertising:

- Any content that qualifies as advertising will be within the broader remit of the ASA, and must comply with the CAP Code in its entirety. The Code includes obligations not to materially mislead consumers or cause widespread offence or harm; there are also sector-specific rules for particular product types, e.g. alcohol, gambling products, foods. The brand may face regulatory action where the relevant posts do not comply with any rules in the CAP Code.

- They could potentially also be held liable for other infringements by the influencer, e.g. for breach of third party intellectual property rights.

For these reasons, careful consideration should be given not just to the contractual terms with influencers, but also to influencer selection, initial and ongoing training/guidance given to influencers, and monitoring (or review) and policing/correction of influencer content.

Brands (and influencers) should also be mindful of the fact that influencer marketing has been and continues to be a high priority for investigation and enforcement by the UK advertising regulators, such that breaches of the advertising rules around influencers are more likely to be formally investigated than many other rules breaches.



## Key contacts



Risk and enforcement level: Robust

## United States (US)

# United States (US)

## What qualifies as advertising under the laws of the United States?

"Advertising" is not clearly defined on a nationwide basis in the United States. The Federal Trade Commission has authority to enforce false advertising laws against "unfair or deceptive acts or practices in or affecting commerce". The federal Lanham Act provides remedies for use "in commerce" of false or misleading descriptions or fact or representations which, (A) are likely to cause confusion, or cause mistake or to deceive as to affiliation, connection, or association of such person with another person , or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or (B) in commercial advertising or promotion, misrepresents the nature, characteristics qualities or geographic origin of his or her or another person's goods, services or commercial activities. There are similar state laws.

The Federal Trade Commission views an endorsement as any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, finding, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.

## What are typical influencer practices in the United States and in which cases are they considered advertising?

There are various influencer practices which can be classified as advertising.



## Which legal obligations apply?

The influencer must make it obvious when they have a relationship with the brand they are endorsing, such as a personal, family, or employment relationship, or a financial relationship such as the brand paying the influencer money or providing free or discounted products or services. The influencer's statements must be truthful and not misleading and based on personal experience. The influencer cannot make claims about the product or service that would require proof that the brand does not have (for example, that a product can treat a health condition). An influencer's statements about their experience with a product should reflect typical results of use of such product or they must disclose those typical results in the ad. If it is not otherwise clear from context that content is a commercial advertisement, it must be made clear that it is an ad through clear and conspicuous disclosures.

## What labelling requirements do you need to be aware of?

Pursuant to guidance from the Federal Trade Commission:

ACCEPTABLE LABEL EXAMPLES	UNACCEPTABLE LABELS
"Thanks to Acme brand for the free product"	"Thanks" (standalone term)
"Ad"	"Collab"
"Sponsored"	"Spon"
"Acme Partner" or "Acme Ambassador" (on space limited platforms like Twitter)	"Ambassador" (standalone term)

Disclosures must be "clear and conspicuous" and care must be taken when determining their placement and appearance. Pursuant to the Federal Trade Commission's November 2019 guidance, "[Disclosures 101 for Social Media Influencers](#)", the disclosures should be hard to miss, placed with the endorsement message itself, and not mixed within a group of hashtags or links. When an endorsement is a picture, the disclosure should be superimposed on the picture and appear there for long enough for a viewer to notice and read. When a disclosure is in a video, it should be in the video (not just in the description uploaded with the video), and is more likely to be noticed if it appears in both audio and video format. Video and streaming disclosures may need to be placed periodically for viewers who only see part of the video or stream.



## Describe specific laws, regulations or guidance aimed at influencers in the United States

The Federal Trade Commission conducts investigations and brings cases involving endorsements made on behalf of an advertiser under Section 5 of the FTC Act, which generally prohibits deceptive advertising. In September 2009, the Federal Trade Commission updated its "Endorsement Guides" to cover scenarios specific to influencers, and how Section 5 might apply to those activities. The Federal Trade Commission has since issued various guidance documents directed to businesses and influencers, for example, the 2013 ".com Disclosures: How to Make Effective Disclosures in Digital Advertising" and the 2019 "Disclosures 101 for Social Media Influencers".

These guides provide insight into what the FTC thinks about various marketing activities involving endorsements.

## What are the consequences for influencers if advertising content is not clearly labelled?

The Federal Trade Commission, states' Attorneys General or other public officials may undertake an investigation, send a demand letter, and/or file a lawsuit seeking injunctive relief against misleading ads and/or monetary compensation on behalf of the public.

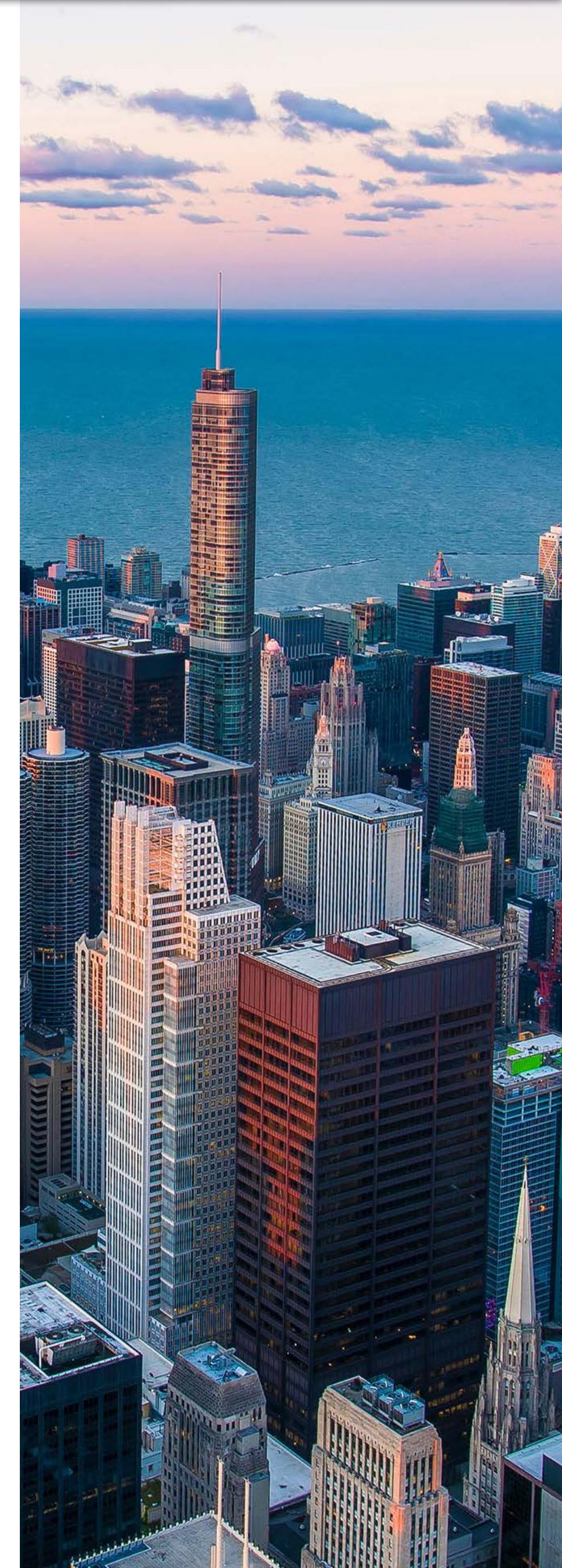
Business competitors may send a demand letter, file a lawsuit seeking injunctive relief against misleading ads and/or monetary compensation under federal and state unfair competition laws.

Consumers may bring a private action (individual or class action) seeking injunctive relief against misleading ads and monetary compensation under federal and state false advertising and consumer protection laws.

Both competitors and consumers may file a claim with the National Advertising Division ("NAD") of the Better Business Bureau, which initiates an industry self-regulatory dispute proceeding, where non-compliance with a determination by the NAD may result in a referral of the case to the Federal Trade Commission.

## What legal risks apply when cooperating with influencers in the United States?

The liability described in the answer to question 6 regarding influencers generally also applies here. Companies may be held liable for the acts of their agencies and the influencers advertising their products. Advertising agencies and other intermediaries may also be liable for an influencer's actions or statements. In addition, companies may be liable for other violations of law by the influencer, e.g., infringement of third party copyrights or trademarks. Therefore, when engaging with influencers, it is very important for companies to set up controls (through contracts, policies, and training), to monitor influencer activities, and to address any issues if and as they arise.



## Key contacts





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