

# Guidance Note on Identification of Advertisements

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## Background

This Guidance Note is to help advertisers, agencies, the media, influencers (“parties” to an advertisement) and the community understand what steps should be taken to ensure advertising is clearly identified as such to its audience, as required by the Advertising Standards Code.

## Identifying an Advertisement

Advertising Standards Code: Rule 2 (a). Identification – Advertisements must be identified as such.

When determining whether this rule has been complied with, in relation to content being generated regarding certain products, services, or brands, there are two steps to consider:

1. Is the content being generated in relation to the advertiser’s product or services an “Advertisement”?
2. If the content is deemed to be an Advertisement, is this being appropriately identified to the relevant audiences?

In many cases it will be obvious to, and well understood by, the audience that they are engaging with an advertisement and in these instances a change to the way the advertisement is currently identifiable to them is not required.

**Where it is not obvious or well understood by an audience that content is an advertisement, all parties to the advertisement (e.g. advertiser, agency, media, influencer) are responsible for ensuring the audience is aware they are engaging with an advertisement.**

Information or labelling located in FAQs, T&Cs or at the end of a long publication may not be sufficient to comply with Rule 2 (a) of the Advertising Standards Code.

**This Guidance Note is applicable to those advertisements where it may not be clear to the audience that they are engaging with an advertisement.**

## Step 1. Is the content an “Advertisement”?

### 1.1 ASA Definition of an Advertisement

“Advertising and advertisement(s)” are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

This broad definition captures a wide range of advertising activity that is controlled by the advertiser. It does not apply to product packaging\*, bona fide news, reviews, editorial and broadcast content not controlled by advertisers.

\*See [Code for Advertising and Promotion of Alcohol](#)

When determining whether an advertiser has direct or indirect control over the “bona fide news, reviews, editorial and broadcast content”, a good indicator is whether or not the advertiser has final approval of the relevant copy. An advertiser may have provided information on their product or service, but that would not result in the relevant content not being bona fide news etc, unless that advertiser also had control over the content of the relevant article.

## **1.2 Payment**

The ASA’s definition of advertising does not necessarily require financial payment to be made to third parties before content they broadcast or publish will be considered an advertisement. Other arrangements, such as the provision of free product to an independent third party in return for advertiser controlled published content, may result in that published content being considered an advertisement by the ASA.

## **1.3 Influencers**

Influencers (otherwise known as independent content creators) are a medium by which advertisers are able to deliver brand messages and content to the audience of the Influencer “.....with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.” As such, if a brand has control over the brand messages and / or content, this is likely to be an advertisement and should be identified as such to meet the standards of the ASA Codes.

An ‘Influencer’ is someone who has access to an audience by virtue of their established credibility and authenticity. They include bloggers, vloggers, tweeters, instagrammers, journalists, celebrities and people who are highly regarded in social circles, marketplaces or industries. Content created by Influencers is often non-commercial with seemingly editorial independence.

Influencers who develop and distribute content about brands may do so for commercial reasons to build their audience base, cover costs involved in running their platform and increase their income. Brands may engage with Influencers directly or indirectly via advertising or PR agencies to discuss, photograph, recommend or insert themselves into conversations about a product or service. This may range from providing free product or services to Influencers without any expectation of a review through to financial arrangements where Influencers are paid to distribute advertiser controlled content about a brand or service. When the brand has control over the content it is an advertisement and it must be identified as such. Failure of an Influencer to disclose this advertiser controlled content may leave a brand at risk of a complaint to the ASA.

Sometimes the engagement is authentic in nature and the Influencer may post genuine opinion that has not been controlled by the advertiser. For example, when the Influencer has free product or service to review and has been given information about the product or service, but the copy has not been written by the advertiser, and nor does the advertiser have any right of approval over the copy. In such cases, the Influencer content is not likely to be considered an advertisement.

All parties to an advertisement have a responsibility for ensuring that advertiser controlled content is clearly identified as such. Usually it is the advertiser of the brand who has primary responsibility for complying with the ASA Codes. Others involved, such as Influencers, also have an obligation to abide by these Codes. Ensuring the audience knows they’re being advertised to is the priority, and advertisers and Influencers should put steps in place to make sure any content controlled by the advertiser is identified such that it is clear to the audience they are viewing an advertisement.

Advertisers and Influencers are responsible for ensuring that advertising complies with the ASA Codes and NZ legislation. Some categories of products and services are subject to significant advertising constraints. Advertisers must make sure the Influencers they have an arrangement with are aware of what is and is not permitted in such advertisements e.g. Therapeutics, Alcohol.

#### **1.4 Native Advertising**

Native advertising is material which seeks to provide content generated by brands which does not look out of place in the habitat within which it is being viewed, heard or experienced.

Advertisers should be aware that their efforts to make their advertising more engaging must not camouflage the fact that it is advertising. Content provided by the advertiser must be clearly recognisable to an audience as advertising.

### Step 2. If the content is an Advertisement, is it appropriately identified to the relevant audiences?

#### **2.1 Assessing whether or not the advertisement is appropriately identified**

When determining whether the advertisement is appropriately identified, it will be relevant to consider from the perspective of the audience in the context of the medium used.

If it is clear to that audience that the relevant content is advertiser controlled, then no further disclosures are required.

Advertiser controlled content may be made clear through a number of devices, including from:

- The nature of the advertisement content
- Where the content is placed
- How the audience is directed to the content
- The theme, visuals and language used in the messaging
- The use of brand names, logos or labels (which may indicate commercial intent)
- The audience in the context of the medium used

#### **2.2 Use of Advertisement 'Identifiers'**

There is flexibility when it comes to ensuring advertising content is identified as such. Where an 'identifier' is considered necessary, parties may use logos or brand names combined with other visual or audio cues where appropriate, such as background shading, outlines, borders, graphics and video or audio messages depending on the medium.

There are a number of considerations that help determine whether an advertisement is clearly identified to the audience and these may be dependent on the platform used. Where identifiers are used, they should be obvious and able to be easily read, seen or heard. Considerations include;

- The position, size and clarity of the identifier
- The length of time the identifier is present
- The clarity of the identifier is equal on different mediums / devices

- The likely interpretation of the identifier by the audience. For example, adults and children will have a different level of understanding and interpretation

When it is not obvious that content is an advertisement such that the audience may need some form of 'identifier', the following examples may be appropriate. They include (but are not limited to) use of the following words / labels and the suitability of each one will depend on the platform or medium used; 'Advertisement', 'Advertisement Feature', 'Advertorial', 'Promotional Feature', 'Paid for Ad', 'Ad Link', boxed or highlighted content labelled as advertising or shortened labels such as #Ad, #Sponsored and #Promoted, an obvious "call to action" such as 'phone now' or 'go to website for more information / to order now', 'brought to you by'.

## Examples

The following examples have been included for illustration purposes only and are provided to assist parties in understanding their obligations to identify advertisements. The examples do not constitute a definitive set of possible scenarios and they have not been tested through the [ASA Complaints Board](#) process.

**Example 1:** A Vlogger has received a skin care product to review. The understanding between advertiser and vlogger is that product content provided by the advertiser is to be included in this review. The Vlogger is free to make other comments as they see fit.

*This is likely to be an advertisement as the advertiser has control over the content. It should be clearly identified as such.*

**Example 2:** A radio broadcaster is provided with an advertiser's script for a product. It says 'Product X is a wonderful new way to clean your car. It works by gently removing dirt and shining the car at the same time. Couldn't be easier. Phone 0800 XYZ now or go to our Facebook page for more information'. The script is written in a way that makes it sound as though the radio broadcaster is spontaneously talking about the product. The radio broadcaster is also encouraged to 'ad lib' some of the comments.

*This is likely to be an advertisement. The radio broadcaster has included obvious information such as 'phone now or go to our Facebook page'. This is likely to be sufficient for the audience to know this is an advertisement.*

**Example 3:** A TV home improvements show has a section where the presenter talks about the features and benefits of a building product. The script has been provided by the advertiser and the producer of the show is contractually required to deliver the script. The advertiser has paid for the product to be featured.

*This is likely to be an advertisement as the advertiser has control over the content. It should be clearly identified as such.*

**Example 4:** A TV cooking show features a range of ingredients supplied by one advertiser. The advertiser has paid to sponsor and/or have its ingredients be included in the show, but the advertiser does not control the comments about the products. The show presenters use the products and spontaneously make comments about them. The comments may be positive or not.

*This is not likely to be an advertisement as there is no control over the messaging of the products.*

**Example 5:** A fashion brand sponsors an event attended by a range of people including journalists. Each journalist is free to write whatever they choose about the event.

*Whilst the event was sponsored by the brand, there is no control over the content which may be provided by the journalists. They can write and publish their own independent content. Each journalist's published content would not likely be considered advertising.*

**Example 6:** A website that advertises holiday destinations publishes a review by a prominent blogger. In exchange for a trip to the holiday destination the blogger was provided with some specific content to include in their review. The advertiser has control over the content of the blogger's review.

*This is likely to be an advertisement and should be clearly identified as such.*