

Summary of the consultation process for the draft Influencers AdHelp Information August 2020

1. INTRODUCTION

1.1 About the ASA

The [Advertising Standards Authority](#) (ASA) is an industry organisation that sets the standards (the [Codes](#)) for responsible advertising in New Zealand. The Codes cover truthful presentation and matters of social responsibility. The [Advertising Standards Code](#) sets the standards for all ads in all media. There are also specialist codes for advertising to children and young people and for categories including alcohol, gambling, financial advertising and therapeutic and health advertising.

The ASA runs a complaints process to support compliance. The ASA dealt with 1,429 enquiries in 2019, including complaints about 463 advertisements for a range of products and services. Just under half of these advertisements were considered to have a case to answer and two thirds of those ads were changed or removed.

The ASA member organisations represent advertisers, agencies and media organisations and it is funded primarily through subscriptions and levies.

1.2 Purpose of the Influencers AdHelp Information

The ASA is publishing the [Influencers AdHelp Information](#), free of charge, to highlight the importance of clearly identifying advertising, including Influencer advertising content. AdHelp is the ASA's user-pays information service for advertisers and agencies to support responsible advertising. It is not legal advice or binding on the Complaints or Appeal Boards. If a complaint is received and accepted, the Complaints and Appeal Boards are the arbiters of code compliance.

There has been significant interest in and growing awareness of the role of Influencers in advertising. Recent decisions on the identification of Influencer advertising content by the Advertising Standards Complaints Board resulted in a request from the Complaints Board to the ASA to provide specific information to this sector on applying the ASA Codes, with a primary focus on the identification of advertising content.

It is important to note that clearly identifying advertising content is one of the many responsibilities Influencers and other parties to an ad have to support responsible advertising. There are six [ASA Codes](#) that may apply and in some categories of advertising there are significant rules and constraints e.g. alcohol, food, dietary supplements, health and wellness.

The Influencers AdHelp Information is intended for a wide audience ranging from individuals who are starting out as an Influencer and have little knowledge of the ASA Codes and how to apply them, to those in the advertising industry with experience and knowledge in applying these codes. The AdHelp Information is intended to be clear and easy to follow for this wide audience, without being either too brief or too complex.

1.3 Identifying advertising

The [Advertising Standards Code](#) Rule 2 (a) states that *Advertisements must be identified as such*. This rule applies to all ads in all media. It supports consumer confidence in advertising and a level playing field across all media platforms. This coupled with the ASA's broad definition of advertising means that commercial content from Influencers is likely to be advertising and should be identified as such.

The ASA's Influencers AdHelp Information provides guidance on what constitutes Influencer ad content and how this should be identified.

1.4 Consultation

The ASA developed the [draft](#) Influencers AdHelp Information based on the application of the ASA New Zealand Codes, international research (including the ASA UK research on [Labelling of influencer advertising](#)) and guidance provided in other international jurisdictions including the UK and Canada. The ASA consulted with a range of individuals, organisations and agencies including the advertising industry, public relations and talent management industry, individual Influencers, Government and Non-Governmental organisations and the public.

This consultation process was specifically about developing guidance on the identification of advertising from Influencers. Some submitters raised matters outside its scope including the role of the Advertising Standards Authority and advertising self-regulation. The Influencers AdHelp has been revised taking into account the feedback provided on identification of Influencer ad content.

The ASA received 53 submissions and wish to thank all submitters for their time and expertise in providing their submission to the ASA.

A breakdown of submitters follows;

Submitter Category	Number of Submissions Received
Influencers	6
Advertisers	12
Agencies (Advertising, PR, Talent Management)	12
Media placement organisations	3
Industry associations and regulatory bodies	9
Researchers/Universities/ public health NGOs	7
Consumers	4

2. KEY ISSUES RAISED IN SUBMISSIONS

2.1 Definition of an Influencer

A number of submissions (16) sought clarity on the definition of an Influencer and this has been added. The definition is broad and is for the purpose of applying the ASA Codes. An Influencer is defined as a person who has influence over the choice, opinion or behaviour of their followers. An Influencer is someone who has access to an audience (regardless of the size of that audience) for their own organic content and ad content they generate income from.

There is no minimum number of followers an Influencer has to have before the ASA Codes apply. The trigger for the ASA Codes to apply is whether the content is advertising. Some Influencers will have a small number of followers highly engaged with their content and followers should be able to distinguish between advertising content and the Influencer's personal posts.

2.2 Clarification on Advertising Content

Some submitters sought clarification on what constitutes Influencer advertising content and what is considered 'organic' content.

For the purposes of applying the ASA Codes, content is likely to be advertising when it has been created and / or distributed in return for some form of payment. 'Payment' is determined to be any benefit the Influencer may receive in exchange for their content. This includes, but is not limited to; money, free product or service, credit, event tickets, travel and product loans.

Organic content relating to an Influencer's lifestyle or personal opinion is unlikely to be advertising content unless there is some form of payment for that content. Content about products and services is unlikely to be advertising where there is no payment or other commercial incentive for the Influencer to include this content.

2.3 Influencer Content about Free Gifts

A number of submissions (16) sought clarity on when Influencer content about a free product or service they have received is considered advertising.

The ASA's position is that this content is likely to be advertising and should be identified as such. This is regardless of whether or not the advertiser or their agents provided the Influencer with any guidance or key messages regarding what that content / review should include.

While Advertisers or their agents may not control the detail of the content that is created and distributed by the Influencer, they do control which Influencers receive the free product or service. This selection may be based on factors about the Influencer including their age, gender, number of followers, areas of interest and expertise. By deciding to include Influencers in their marketing mix, advertisers are controlling which media platforms are used. Advertisers and their agents may also provide information with the free gift including the recommended retail price, stockists and features and benefits and this may be used in some way in the Influencer ad content.

The provision of a free product or service constitutes an exchange of value between the advertiser and the Influencer and it has been provided for a reason. Usually that reason is to obtain a review that is shared with the Influencer's followers. Influencers control whether or not they create and distribute content about the free product or service and they generally control to some extent the content they create.

Some submissions questioned the difference between sending a free product or service to Influencers or to other content creators such as a magazine editor. Any platform that has a mix of advertising and editorial or organic content should distinguish between the different types of content. For example: Editorial magazine

content is under the jurisdiction of the [New Zealand Media Council](#) and must comply with its Statement of Principles.

2.4 Ways to Identify Advertising Content

There are different ways to identify advertising content. Using labels such as Ad, Advert or Advertising (with or without hashtags) is one of the ways this can be done. This has been made clearer in the Influencers AdHelp Information.

Where it is obvious to and well understood by a consumer that it is advertising, additional labelling or other forms of advertising identification is unlikely to be necessary. There are tools available with some platforms that support identification of advertising content and these can be used to help consumers understand that they are engaging with advertising content. The primary objective, regardless of the way it is done, is to make sure consumers understand when the content is advertising.

When Influencers choose to do this by way of a label, the ASA has provided a short list of labels the consumer will understand to mean advertising. There are a number of other labels currently in use and while the meanings of these may be well understood by people in the advertising industry, research has shown they are less clear to the average consumer.

2.5 Shared Responsibility to Identify Advertising Content

As with all advertising in all media, all parties to an advertisement have a shared responsibility in ensuring the Advertising Standards are adhered to, including the identification of advertising content.

Advertisers or their agents can make it clear in their formal or informal contracts with Influencers what their expectations are with regard to identifying advertising content. Where there is no contract, advertisers or their agents can provide instruction to Influencers when they receive products and services. It is up to the Influencer to apply the conditions of the contract or the instructions received, knowing that future commercial relationships for them may depend in part on how well they adhere to the requirement to identify advertising content.

2.6 Frequently Asked Questions

Submitters asked questions about the application of the advertisement identification rule using specific examples from their own experiences. Where possible, these questions have been addressed by the addition of a Frequently Asked Questions section at the end of the AdHelp.

3. NEXT STEPS

The ASA Influencers AdHelp Information has been released to a wide range of individuals and organisations including all ASA Members, the advertising industry, all submitters and it is available on the ASA website. The ASA encourages all stakeholders to support compliance including advertisers, agencies and Influencers.

The ASA provides customised training on a user-pays basis. Advertisers, agents and Influencers are encouraged to register their interest in training through the [registration form](#) on the ASA website.