

# INFLUENCERS

**Making it clear that ads are ads**

**Updated August 2021**

Please Note: The ASA is publishing this 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. The ad content requirements applies to all ad content posted from 14th September 2020.

# Summary

- The Advertising Standards Authority (ASA) Codes apply to all advertising in all media, including Influencer advertising content.
- An Influencer may be an advertiser. For example, they may advertise their own product or service.
- An Influencer may act as a media platform. For example, they may post ad content that is controlled directly or indirectly by an advertiser.
- The ASA's definition of advertising is broad and includes any content that is controlled directly or indirectly by an advertiser.
- All ad content must be easily identifiable as advertising by consumers.
- Consumers should know it is advertising at their first interaction with the ad content.
- Labels or other means used to identify ad content must be obvious, clear, prominent and upfront and they must be separate from other disclosures, hashtags or links.
- Every post that includes ad content and each segment of a story that includes ad content needs to be identified as advertising.
- All parties to an ad - i.e. the influencer, advertiser and other agents - are all responsible for making it clear the content is advertising.
- The ad label requirements applies to all ad content posted from 14th September 2020.
- **From August 2021, there is a new process for reporting an Influencer Ad Identification breach.**

# Who is an "Influencer"?

For the purposes of applying the ASA Codes, an Influencer is a broad term used to describe people who have influence over the choice, opinion or behaviour of their followers.

An Influencer is someone who has access to an audience (regardless of size) for their own organic content and ad content they generate income from.

Influencers who develop and / or distribute content about products or services in return for some form of payment are providing a platform for advertising.

# What is "ad content" and what does this mean for Influencers?

The ASA's definition of advertising is:

***"Advertising and Advertisement(s)" means 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 includes any Influencer content that is controlled directly or indirectly by an advertiser to promote a service or product, usually for payment. 'Payment' can be any benefit the Influencer may receive in exchange for the content they distribute including but not limited to: money, free product or service, credit, event tickets, travel, product loans.

**The ASA's definition of advertising is much broader than what many think of as an ad.**

It is important to consider the intent behind the distribution of the content. If an advertiser is using an Influencer to promote its products, services or brand, it is ad content. If the Influencer content is about a product or service and is in return for some form of payment, it is an ad.

Organic Influencer content that relates to, for example, their lifestyle or their personal opinion, is unlikely to be ad content providing there is no form of payment for it. When an Influencer has a mix of ad content and organic content on a platform, the content that is advertising needs to be clearly identified.

**Control** of content by an advertiser e.g. change to, and final approval of, proposed content

Content controlled by a **formal or informal (written or verbal) agreement** with an advertiser

Content about an advertiser or their brands from an Influencer who is their **brand ambassador**

**Payment** (monetary or other including free products and services) to Influencer to create or include ad content to promote an advertiser or their brand

Advertiser control over **whether content appears or not, the number of times it appears or the date and timing content appears**

**EXAMPLES OF CONTENT THAT IS ADVERTISING**

**Inclusion of ad content provided by the advertiser** e.g. particular words, phrases, themes, key messages, inclusion of specified hashtags

**Additional content** about a product or service that is posted outside of the contracted deliverables regardless of whether the advertiser did or did not prompt or approve the content

Inclusion of a **discount code** or **affiliate code** (Influencers own or others)

Inclusion of advertiser's **competition, prize draw or give-away**

Content about an Influencer's own products or services

# What about content relating to a gifted product or service?

Content about a **free product or service (gift)** received from an advertiser (or their agent) must be identified as advertising.

Advertisers (or their agents) control which Influencers receive the free gift based on factors about the Influencer such as their age, gender, number of followers, interests and areas of expertise.

Advertisers (or their agents) are therefore in control of what advertising platform the ad content may appear on. A free product or service constitutes an exchange of value between advertiser and Influencer and has been given to the Influencer for a reason. That is, to obtain a review that is shared with the Influencer's followers.

Identification of the content about a free gift as advertising is required, **regardless of whether or not** the **advertiser** (or their agent);

- requires the Influencer to post content
- provides the Influencer with suggested content such as key messages
- has any control over the content
- has any previous relationship with the Influencer
- has incentivised the Influencer in any way apart from providing the gift



# Identifying "ad content"

All ad content must comply with the Advertising Standards Code Rule 2(a)

## **Advertisements must be identified as such**

It should be obvious to consumers if content is an ad at their first interaction with it. They shouldn't have to click or otherwise interact with it or spend time working out whether it's an ad or not.

Influencer ad content will sometimes appear alongside their own organic content and will be similar in style. This means it may not be immediately obvious to consumers when they're interacting with advertising.

**It's important to note that all parties to an ad i.e. the Influencer, the advertiser and agencies, are all responsible for making it clear the content is advertising. Advertisers and their agents should ensure their expectations on the identification of ad content is made clear in their contracts with Influencers and with the gifted products or services provided where there is no formal contract.**

If it's not immediately obvious to consumers that content is advertising then a clear, prominent and upfront disclosure is needed – separate from other disclosures, hashtags or links.

# There are different ways of making sure "ad content" is clearly identified

1. Some platforms used by Influencers are also used by advertisers to promote their brands, products or services. When it is obvious to, and well understood by, consumers that they are engaging with advertising by brands, no additional identification of ad content is usually required. For example, when a consumer is engaging with the Instagram account of a large retailer.
2. Influencers can clearly explain in the first interaction consumers have with the content that it is advertising. Consumers must understand from the explanation that the Influencer means ad content.
3. Influencers can use the Branded Content or Paid Partnership tools available on some platforms to clearly identify ad content.
4. If in doubt as to whether one of the above options alone clearly identifies the ad content or if an Influencer does not use any of the above options, the content must be labelled so that it's obvious to consumers they're engaging with ad content.



# Use Ad, Advert or Advertisement to label "ad content"

To support compliance with the Advertising Standards Code, the ASA recommends using labels that say it how it is, in a way that consumers understand. Words and abbreviations that most consumers are unlikely to understand as meaning advertisement should be avoided.

When an Influencer uses a label to identify ad content, the ASA recommends using one of the following (**with or without hashtags**) and it must appear at the first interaction consumers have with the ad content.

## **Ad, Advert, Advertisement**

Influencers may choose to include other labels, in addition to but not instead of, the ad identification labels above to provide their followers with a greater understanding of the exact nature of the relationship between the Influencer and the advertiser.

Examples include (with or without hashtags), but are not limited to; Gift, Gifted, FreeGift, FreeSample, ProductReview, ProductTrial, FreeTrial, Ambassador, WorkingWith[advertiser name], [advertiser name]Partner, FreeLoan, PRSample

Influencers who choose to use additional labels should include them **after** and separate from Ad, Advert or Advertisement.

# WHEN USING AD, ADVERT OR ADVERTISEMENT TO CLEARLY IDENTIFY AD CONTENT



## Be Up Front

Consumers need to know it's an ad at their first interaction with the ad content.



## Put the label in a prominent place

- Examples:
1. At the start of a post or story;
  2. In the title or thumbnail;
  3. On the first image or screen the consumer sees;
  4. Make it large enough to be noticed;
  5. Make it clear enough to be noticed e.g. plain colour text on contrasting background.



## Separate

Separate the Ad, Advert or Advertisement label from other labels and hashtags.



## Appropriate for the channel and devices used

The ad identification label should be clear regardless of the channel used, the device where the consumer sees the ad, and how the consumer interacts with the ad.



## Label each separate post and each segment of a story that contains ad content

Blanket disclosures in Influencer profile information is not sufficient to notify consumers about ad content in individual posts or stories.

Label is one of many labels or hashtags

Label appears below the first screen visible to consumers

Label is only voiced and not heard when consumers have their sound off

Label is not in an obvious position to be noticed

Label is only accessible via a 'see more' or similar link

Label is too small to be noticed

Consumer has to watch a story or video before realising it's an ad

Label is in a colour that does not sufficiently contrast with the background colour to be noticed

Label is not visible as soon as the consumer first interacts with a post or ad content in a story

**EXAMPLES OF COMMON MISTAKES WITH LABELS**

Directing consumers to another Influencer's post or story to obtain clarity regarding what is ad content

# What else should Influencers consider before posting "ad content"?

More information about identifying ad content is available in the ASA's [Guidance Note on Identification of Advertisements](#).

Clearly identifying ad content is just one of the responsibilities Influencers and other parties to an ad have to ensure responsible advertising. In addition to the Fair Trading Act 1986, there are many pieces of legislation that apply to advertising. For more information, view the [Advertising Regulation Guide](#) on the ASA website.

All advertisements in all media must comply with the ASA's [Advertising Standards Code](#). Additional ASA Codes apply to certain sectors of advertising:

- [Alcohol Advertising and Promotion Code](#)
- [Children and Young People's Advertising Code](#)
- [Therapeutic and Health Advertising Code](#)
- [Gambling Advertising Code](#)
- [Code for Financial Advertising](#)

Influencers must note their responsibilities to comply with the ASA Codes and relevant legislation when including COVID-19 content. In addition to the Codes noted above, the ASA provides COVID-19 specific AdHelp information for both Therapeutic & Health Advertising and Alcohol Advertising.

[COVID-19 AdHelp Information – Therapeutic and Health](#)

[COVID-19 AdHelp Information – Alcohol](#)

# What else should Influencers consider before posting "ad content"?

Particular note of the relevant legislation and ASA Codes should be taken if ad content is:

- Making claims about the product or service (these need to be able to be proven);
- Advertising age-restricted products (e.g. alcohol);
- Promoting products that are subject to a lot of advertising rules and restrictions (e.g. food, dietary supplements, and health and wellness).

The Association of New Zealand Advertisers (ANZA) administer a user-pays ad review and approval service for therapeutic and health advertising, alcohol advertising and promotion and advertising targeted to children and young people. To support a high standard of social responsibility in these sectors of advertising, the ASA strongly recommends Influencers and advertisers make use of these services to help minimise the risk of breaching the ASA Codes.

If there are any questions on advertisements outside the scope of the ANZA services, email us at [asa@asa.co.nz](mailto:asa@asa.co.nz).

# FAQs

Please note: The ASA [Frequently Asked Questions](#) website page includes a wide range of information about the ASA and the Complaints Process.

## **Frequently Asked Questions about identification of Influencer advertising content**

*1. When do the guidelines in this AdHelp take effect?*

These label requirements apply to all ad content posted from the 14th September 2020.

*2. Which social media platforms does the ad identification requirement apply to?*

The requirement to identify ad content applies to all ads in all media. This means the rule applies to all social media platforms where advertising is permitted including existing and new platforms, along with platforms not yet developed.

Please note: Tik Tok announced in August 2021 the option to advertise on this platform, so the ad identification rules now apply to this platform.

*3. Is it advertising if an Influencer shares content about a recently purchased (or gift from family/friends) product or service for personal use?*

This is unlikely to be advertising providing there is no commercial incentive for the Influencer to post the content and no commercial association with the advertiser. This content is likely to be viewed as genuine organic content.



# FAQs

*4. Is content shared by an Influencer about their attendance at an event that was organised and/or paid for by them (or their family/friends) considered ad content?*

This is unlikely to be advertising providing there is no commercial incentive for the Influencer to post the content and no commercial association with the event organiser or event participants. This content is likely to be viewed as genuine organic content.

*5. Is it 'ad content' if the Influencer only has a few followers?*

If the content meets the definition of ad content (see pages 4, 5 & 6 of this document) then it's advertising and needs to be identified.

*6. What happens if an Influencer receives an ad identification breach report that claims their genuine organic content is advertising?*

Each party to the content will be contacted by the ASA and will be asked to respond to the report. The Influencer and the advertiser (and their agents) where appropriate can provide the ASA with a response that demonstrates there is no commercial relationship or connection between the parties. The Influencer can provide the ASA with background information to demonstrate they acquired the product or service by paying for it themselves or as a gift from family or friends. A receipt with proof of purchase may be helpful.

*7. How long after receiving a free gift is content about that gift no longer ad content?*

That will depend on a number of factors. If there is no longer any commercial incentive for the Influencer to post the content (i.e. no payment by the advertiser (including other free gifts), no ongoing written or verbal contract with the advertiser, no ongoing relationship with the advertiser such as the use of an affiliate or discount code) and if there is no longer any commercial gain for the advertiser then the content is unlikely to be advertising. Historical free gifts that appear incidental to other content may not be considered advertising. Continual tagging of the advertiser in association with a free gift is likely to be considered advertising, regardless of any on-going payment.

# FAQs

8. *To what extent is the advertiser responsible for making sure Influencer content about a free gift they have provided is identified as ad content?*

Advertisers need to take all practical steps to ensure Influencers identify ad content about the free product or service the Influencer has been given. For example, in the communication that accompanies a free gift, the advertiser can state that Influencer content about the gift must be identified as advertising. Influencer awareness and application of the ASA Codes and guidelines will show advertisers they take their responsibility seriously.

9. *Why does the ASA AdHelp Guidance for Influencers not include #Sponsored or #Sponsored Content as an option to label advertising content?*

The terms 'sponsored' and 'sponsored content' are used by some platforms to indicate when brands are advertising themselves with 'boosted' or paid promoted posts. To avoid confusion, these labels should not be used by Influencers to label their advertising content about brands, products or services.

10. *When does an Influencer need to identify content as advertising if they have a sponsorship arrangement with a brand, product or service?*

When the Influencer is including content about their sponsorship arrangement this is likely to be ad content and should be identified. When aspects of the sponsorship arrangement (such as wearing a cap that has the sponsors brand on it) is incidental to the rest of the content, this is unlikely to be considered as ad content unless there is commercial incentive in a sponsorship agreement to do so.

11. *What about the use of #sp as a label to identify ad content or as another label to use in addition to #ad?*

#sp is not recommended because it is not clear to consumers that it means advertising.

# FAQs

*12. What about the use of #collab as a label to identify ad content or as another label to use in addition to #ad?*

#collab is not recommended as a means to identify ad content when used alone because it is not clear to consumers that it means advertising. Influencers and advertisers may choose to include #collab in addition to the ad content labels Ad, Advert or Advertisement (with or without hashtags).

*13. Is Influencer content about a free give-away for their followers considered ad content when the Influencer voluntarily does this for the advertiser without any benefit to themselves?*

Content on behalf of an advertiser about free give-aways is unlikely to be considered ad content unless there is some form of payment from, or other commercial arrangement with, the advertiser.

*14. Is it advertising when an Influencer re-shares a follower's or client's posts about the Influencers products or services?*

Whilst the Influencer may not control the content of follower's or client's post, if they re-share that post they are controlling where that post is seen and by whom. If the intent of the re-share is for commercial gain, the post is likely to be ad content. This is similar to other media where advertisers include client testimonials, reviews or endorsements in their ad content.

*15. If an Influencer runs a business page / account on Social Media, does every post or piece of content require a label such as #Ad?*

There are different ways of making sure ad content is clearly identified. In many cases for advertisers with business social media accounts, it will be obvious to, and well understood by, the audience that they are engaging with ad content and in these instances no additional identification is required. Influencers who have social media accounts with both their own organic content and ad content they generate income from need to identify the ad content.

# FAQs

*16. If a business is gifted a product or service from another brand and they post about it, is this ad content and does it need to be identified?*

Yes, this content is likely to be considered advertising. Appropriate wording or labels should be used to identify it.

*17. One of the consequences of an upheld complaint is the advertiser and media are expected to remove the advertisement and not use the same ad again. Given that stories on Instagram automatically disappear after 24 hours, removal of the advertisement is not a consequence of an upheld complaint.*

Ad content that is the subject of an upheld decision may have appeared in the Influencers 'highlights' and it would need to be removed from here and not used again.

There are a number of other consequences to an upheld complaint. All ASA Complaints Board decisions are released to the public and to the media, via the [ASA website](#). Decisions include the name of the Influencer and the advertiser. Decisions also include a description of the ad, details of the complaint, the advertiser and Influencer responses and the Complaints Board deliberation. There is a reputational risk to both the Influencer and the advertiser from an upheld decision. Some decisions become precedents and form the basis of future decisions. In addition, these decisions form the basis of the ASA's education programme with the advertising industry about responsible advertising.

See the [ASA Complaints](#) page for more information.



# FAQs

*18. How can an advertiser be responsible for the identification of ad content if the request is made to the Influencer to identify ad content using a label or other form of identification and the Influencer fails to do this?*

Advertisers and their agents should ensure their expectations on the identification of ad content are made clear in their contracts with Influencers and with the gifted products or services provided where there is no formal contract. In the event of an ad identification breach, advertisers (and other parties to an ad) may be asked to provide the ASA with evidence of the contract or the instructions they provided to the Influencer. It is the Influencer's responsibility to follow the contract or instruction. Where this has not been the case, advertisers are encouraged to review their engagement with the Influencer.

*19. Some Influencers are based outside of New Zealand and some New Zealand Influencers have a large international following (along with NZ followers). What are their responsibilities regarding identifying ad content?*

The ASA standards apply to advertising intended for New Zealanders. Influencers who are based outside of New Zealand and who have a significant proportion of New Zealand followers, need to comply with the ASA standards for identifying ad content. Influencers based in New Zealand who have international followers and who also have a significant proportion of New Zealand followers need to comply with the ASA New Zealand standards for identifying ad content.

For any further queries regarding this AdHelp, please contact the ASA by emailing [asa@asa.co.nz](mailto:asa@asa.co.nz).

More information on the Advertising Standards Authority is available on the ASA website: [www.asa.co.nz](http://www.asa.co.nz).