

Legal made easy: part I

Quick reference guide for influencers



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‘How you communicate and influence others often matters more than the idea you are pitching’

Aliza Licht – Leave Your Mark





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Who are Charles Milnes and Company?

We are a well known specialist insurance broking firm working with digital, online, media and production businesses run by creative and innovative people.

We bring 20 years' experience and exceptional value to every client.

Based in the heart of creative London, we are passionate about what we do and are proud to work with some of the most successful social media influencers in the business.





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Essential tips

for successful influencers

To be successful and grow in a digital world, influencer activity needs to comply with media and industry regulation and stay within the law.

Alongside our new influencer insurance package, we have worked with the law firm, Lewis Silkin, to produce an indispensable and no nonsense guide to the current legal and regulatory landscape.

It will be published in 3 handy sections.

In the first part you will learn:

To identify and understand what is classed as 'promotional content' and why it needs to be properly handled

How to ensure that promotional content complies with existing regulation and law

When and what needs to be labelled and how to do it.

Where to access useful free resources and websites





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The Guide

promotional content

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Introduction

It is important that you recognise when the content you create for brands will be considered as if it is “advertising” under English law, even if it doesn’t feel like traditional advertising to you. Many types of influencer marketing need to comply with the relevant advertising and consumer protection rules. Because your online profile is based on authenticity and trust, it’s important that you disclose when you are being rewarded to promote a product or brand to ensure your audience isn’t misled and you maintain their trust.





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Identifying promotional content

Commercial relationships with brands can provide an important income stream for influencers. They can also help you to create interesting and engaging content for your audience. But when engaging in influencer marketing, it is crucial that you are transparent with your audience and properly identify any commercial relationship with a brand through the use of an appropriate label.

If you are approached by a brand to create some content for them, when does this become “promotional content” that has to be labelled?

The golden rule is that if they are paying you and the brand has some degree of editorial control or approval over the content you produce, then this is considered to be “advertising” by the Advertising Standards Authority (“ASA”) in the UK.

Payment and Editorial Control

The concept of ‘payment’ is wider than just monetary payment and a better word to keep in mind is ‘reward’. If you are receiving anything from a brand in exchange for mentioning them, such as free products, event access, or promotion of your online presence then this will be considered as ‘payment’.



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Identifying promotional content

If you are **rewarded** to mention a brand within your content and if the brand has a level of **editorial control** over the content you produce, it will become 'promotional content' and you will need to disclose this to your viewers.

Editorial control has a very broad meaning and doesn't just mean that the brand has the final editorial decision. Editorial control in this context could mean a brand giving you a script or a direction on what to include, or a brand giving you a contract with do's and don'ts (e.g. 'produce a vlog of an unboxing' or instructions to mention a particular website, promotion, challenge, hashtag or slogan).

If a brand **pays** you to produce content but **does not control** the content (i.e. you retain complete editorial control over the content and can say what you like about it), then you will still need to disclose the fact that you have been paid by the brand somewhere within the content, but the labels you need to use are slightly less prescriptive as it falls outside of the ASA remit.





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Labelling promotional content

It is essential to correctly label promotional content and disclose commercial relationships to your audience early on, and often you need to disclose this relationship before viewers engage with the content.

Own Channel Publication - If a brand pays you to produce a vlog presented on your own channel promoting its brand or product and the brand has editorial control over the post, it must be labelled as an Advert. You can do this by including the word or hashtag 'Ad', 'Advertisement' or 'Advertising Promotion' somewhere in the title of the video. It isn't sufficient to include the information in the vlog description if the user has to click on a link to read the description (as is the case on YouTube) because the user has to be made clearly aware of the promotional content before they engage. The ASA recommends as good practice that the vlogger also verbally discloses the commercial relationship at the start of the video, although if the vlog has been properly labelled as advertising content in the title this isn't essential.

With other types of social media posts (such as Facebook) it is advisable to include the label at the top of the post. Including #Ad or #Advert is usually considered acceptable in a Facebook post, Instagram post, Snap or Tweet, ideally at the beginning. If the disclosure comes at the end of a long paragraph of text (after the user has had to scroll down) then this is unlikely to be sufficient.





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Labelling promotional content

Labels such as “brought to you by”, “thanks to [brand]”, “sponsored” or #spon are NOT sufficient to disclose your commercial relationship with brands when you are being paid to create influencer marketing.

Some platforms (such as Instagram) have developed their own labels and tools (such as “Paid Partnership”), which you are encouraged to use by the relevant platforms. However, the ASA has not yet confirmed whether it supports these labels as being sufficient to disclose the commercial relationship, and we are likely to find out whether the ASA supports these labels in the coming months.

Brand Channel Publication – If a brand pays you to produce content which will only be published on the Brand’s own channel, a label will usually not be required because the promotional nature of the content will be obvious to the user from the context it appears.

Commercial Breaks within Vlogs - If most of a vlog is controlled by you and presented in your usual style, but you devote a section of the content to discuss a particular product (and you have been paid to refer to this product) then it probably isn’t essential to label the whole video as #ad or similar. You do need to identify the specific section of the content as an advert though, either by holding up a sign, using an on-screen label or simply saying that you’ve been paid to talk about the next product. The ASA recommends including the words ‘Includes promotional content’ in the title or description.



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Labelling promotional content

Product Placement - If a brand has provided you with a 'prop' to use within a video and is rewarding you to use it, this is product placement and it should be disclosed to the audience. How you disclose this can be tailored to your style. For example, you could use an on-screen label saying 'Product Placement' or 'Ad'. Or you could do so verbally e.g. 'These hair curlers have been provided by [Brandname] who paid me to talk about them and want you to know that...'.

Mentioning or selling your own products - Promoting your own products in your content is still considered advertising. You may need to use appropriate disclosures such as #ad to make it clear that it is an advert.





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Summary

- Commercial relationships always need to be made clear to your audience
- Properly identifying promotional content maintains your user's trust and keeps you within the law
- How and where you disclose commercial relationships depends on the content and the context
- The safest label to use is #ad or "Advert", and to make sure this is visible before the user engages with the content



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Useful resources

ASA Vlogger Guide

ASA Twitter Policy

Advertising Codes

Competition and Markets Authority Online Endorsement 60 Second Guide

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About Lewis Silkin LLP: Lewis Silkin LLP is a commercial law firm renowned for its work with creative, innovative & brand-focused organisations. Its Creators, Makers and Innovators Department advises individuals and companies across the creative sector, including Brand Ambassadors, Production Companies, Advertising Agencies and Global Brands. For more information visit www.lewissilkin.com/cmi



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