

FTC Lawyer on UK Endorsement Guide Compliance

Article By:

Richard B. Newman

[Influencer marketing and review websites](#) have attracted a great deal of attention recently by states and federal regulatory agencies, including the FTC. The [FTC's Endorsement Guides](#) addresses the application of Section 5 of the FTC Act to the use of endorsements and testimonials in advertising.

The [FTC Endorsement Guides](#) suggest several best practices, including, but not limited to, the clear and conspicuous disclosure of all material connections between advertisers and endorsers (e.g., a financial or family relationship with a brand).

U.S. regulators are not the only ones policing influencer disclosures. In fact, the Competition and Markets Authority, the British government agency that regulates advertising, has previously sent numerous warning letters to British celebrities and other social media influencers.

The [CMA](#) has also released its own [guidelines for influencers](#).

- People need to know if influencers have been paid, incentivized or in any way rewarded to endorse or review something in their posts. It's important that they make this clear to their followers. This includes when a product or service has been given to them for free. This needs to be clearly stated when a product, brand or service is tagged, linked or endorsed in any way.

If you mislead your followers, you may be breaking consumer protection law, and could face enforcement action from the CMA, local authority Trading Standards services or the Department for the Economy in Northern Ireland.

You might also break industry rules on advertising.

- Any form of reward, including money, gifts of services or products, or the loan of a product, is 'payment' – whether you originally asked for it or got sent it out of the blue (e.g. 'freebies'). Influencers receive freebies because of their high public profile and because brands or businesses hope they might post about them in return. If you have not purchased a product or service yourself, but received it free, make this clear.
- Be clear about your relationship with a brand or business. If you are including discount codes, competitions or giveaways, or references to your own range of products, don't

assume this is enough to make the relationship clear. Make sure you are transparent and state that the post is a promotion. Past relationships matter too. Even if you don't have a current relationship with a brand, if there was a past relationship (or you received product loans, gifts and/or other incentives) people need to know about this.

- Do not be misleading or give the impression that you are just a consumer when you are actually acting for your own business purposes or on behalf of a brand or other business, you have bought something that was given to you as a gift or on loan, or you have used the service or product yourself, if you haven't.
- If you are promoting a product or service you have not used yourself, make sure this is clear—otherwise people might reasonably assume that any results that are being claimed are ones you have achieved or experienced first-hand.
- There is not just one way of explaining your relationship to a brand. The CMA takes the view that 'Advertisement Feature' or 'Advertisement Promotion', are useful descriptions, but it has seen a range of other wording, (including #Ad, #Advert, and using the 'Paid Partnership' tool on Instagram in addition to these hashtags), which convey the appropriate messages simply and effectively.
- Practices CMA has seen, which it considers not to go far enough to comply with the legal requirements, include: tagging a brand or business in either the text, picture and/or video of a post without additional disclosure; tagging a gift from a brand in either the text, picture and/or video of a post without additional disclosure; using discount codes in a post without additional disclosure; using ambiguous language without additional disclosure in a post (for example 'thank you'; 'made possible by'; 'in collaboration with'; or 'thanks to...'); unclear use of hashtags (for example: using #sp; #spon; #client; #collab; etc.; adding #ad directly after the name of the brand or business (for example #[BRANDNAME]ad; when the disclosure (for example #ad, #advert) is not prominent because it is hidden at the end of or among other text and/or hashtags); product placement where there is an associated (and undisclosed) payment or other incentive' disclosing the commercial affiliation only on an influencer's front, home or profile page.
- Each social media platform has different features and is used in different ways so it's important that influencers, agencies and brands are mindful of these differences and how they affect what a follower sees or understands from the post.

It is the responsibility of influencers, their agents, and brands to keep up-to-date with relevant consumer protection law as well as any guidance from the ASA about complying with its Advertising Code.

Along with the Committee of Advertising Practices, the CMA has also co-published the [Influencers' Guide to Making Clear that Ads are Ads](#). It explains how to comply with consumer protection law and the Advertising Codes enforced by the Advertising Standards Authority (ASA). The CMA has also published guidance regarding [online reviews and endorsements](#), including additional information for businesses on how to comply with consumer protection law on [online reviews](#).

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