

NOTE: Case OLG Celle, the [Higher Regional Court Decision 8.6.2017, 13 U 53/17](#) re the use of #ad

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In this case, a well-known Influencer with more than 1 million followers published a post on Instagram for the drugstore chain Rossmann, for which he was paid:

#### The Post

"To all savers/ smart spenders: Note/ Listen up ONLY tomorrow there will be a 40% discount on eye make-up in all branches of #rossmann & on the online shop! Have fun shopping! @mein\_r. Eyes: RdeL Y. Mascara & M.N. Y. The Rock Nudes Eye Shadow Palette. #b. #ad #eyes #shopping #discount #40%"

- The Court ruled it infringed s. 5a (6) UWG; in this case, the use of #ad was not sufficient to identify the commercial purpose of the post, stating that that must be apparent and recognisable *at first glance / sight (auf den ersten Blick hervortreten* - see Para 9 of [the judgement](#) (DE), so that there can be no doubt to the average member of the respective consumer group
- In the case above, commercial purpose is not apparent because #ad is used at the end of the post, 2nd in a line of 6 hashtags, effectively hiding the #ad. In addition, it was not clear from the context that it was advertising; there was no difference in presentation compared to non-commercial posts from other Rossmann Influencers; emojis were used, which suggested private versus commercial use, impeding identification of the post's advertising nature 'at first glance'
- The Court left open the question as to whether the use of hashtags "#ad", as formerly recommended by State Media Authorities ALM, is in principle suitable to identify as advertising a post on social media
- ALM, in its 'Answers to social media questions', now recommends commercial posts are labelled with #advertising (*#werbung*) or #promotion (*#anzeige*), and that they should not be placed at the end of the post or in a link, but at the front of the post. The use of identifiers like #ad, #sponsored by, or #powered by are not recommended; see the final section of [the document](#) (EN) under Example 5