

Full title of law or regulation

Recommendations of the Council of Advertising on the issue of Online influencers

https://www.jep.be/sites/default/files/rule_recommandation/recommandations_du_conseil_de_la_publicite_influenceurs_en_ligne_fr.pdf

Introduction

These Recommendations help online influencers, advertisers, agencies, media and the platforms to:

- protect the consumer: the consumer has the right always to know clearly if a post on social networks is an opinion formed from competence or experience, or if it is a commercial communication; and
- provide legal certainty: advertisers as well as influencers need to know the rules applicable to influencer marketing. Only then can they ensure that the consumer is properly protected

Identification, honesty and transparency are the priorities.

These Recommendations are applicable only when marketing fits the description under point 1 below.

1. What is Influencer marketing?

Definitions

Influencer Marketing is a form of marketing through which companies activate the online influence and relevant sectoral knowledge of people or 'influencers', people of influence who have built a large online community. On social networks, websites, on forums, influencers are referred to as bloggers, Instagrammers, Youtubers, Twitterers, streamers, podcasters, Pinterest influencers,

influencers are increasingly solicited to present advertisers' products and services positively and/ or to recommend them to their followers, who represent the advertiser's target market.

The advertiser wishes to reach their target group in the most focused and effective way possible, so as to maximise the influence on the consumer positively to regard the brand.

An online influencer is a person who has built his/her reputation from knowledge and interest in a specific subject. An online influencer communicates via posts on social networks (text, speech, video and photo) with a loyal and appropriate audience of followers. Well-known personalities, political and corporate leaders, bloggers and smaller influencers fall under this description.

These Recommendations only apply when marketing meets both of the following conditions:

- Condition 1: The online influencer is rewarded
- Condition 2: The advertiser controls the communication.

Both of these conditions are explained below.

When one of these conditions is not met, it is not about influencer marketing, but simply an opinion expressed by an individual on the internet. In that event, these Recommendations do not apply.

2. What is a 'reward'? What 'control' does the advertiser have?

Explanation

- The advertiser, or the agency acting at the advertiser's behest, gives the online influencer a consideration in kind or money to communicate about its brand, product, service or organisation. Permitting free use of a product for a specified period, or providing a product, may be considered a payment in kind.
- The advertiser exercises significant control over the message: the advertiser agrees the guidelines with the online influencer.

Sometimes it is unclear whether a particular message should be considered influencer

	marketing in the above sense. We try to clarify via the examples below.
Example 1	If the product is offered for free but without waiting or asking for a (positive) review (this means that the brand does not have the control on the content that is subsequently published), there is no question of commercial communication.
Example 2	The involvement is sometimes genuine and the influencer can post a spontaneous opinion that was not imposed by the brand. For example, when the influencer receives a free product or service in order to publish a review and then receives information regarding the product or service, but the message was not from the brand and the brand does not have the right to approve the message. In this case, the influencer's content is not considered to be a commercial communication but a personal point of view or opinion.
Example 3	A partner/ employee of a company that shares messages about this company on social networks with his friends, acquaintances, etc., given his loyalty to this company, is not considered to be an online influencer paid to disseminate commercial communication. The reward (i.e. the salary) has no connection with the dissemination or otherwise of a communication from the business

3. What are the applicable rules?

Applicable rules	<p>In the case of a commercial communication for which the influencer receives a consideration and the advertiser has control over the message, the following rules are applicable:</p> <p style="text-align: center;">ANY COMMERCIAL COMMUNICATION MUST BE CLEARLY IDENTIFIABLE AS SUCH</p> <p>When reading the message, it must be immediately clear to the recipient that it is a commercial communication. This can be done in the following ways:</p> <ul style="list-style-type: none"> • A specific written statement that it is a commercial communication; • The context in which the message appears online makes it clear that this is a commercial communication; • The mention of the brand or logo that makes it clear that it is a commercial communication. <p style="text-align: center;">ANY COMMERCIAL COMMUNICATION MUST BE FAIR</p> <p>The message cannot contain incorrect information or mislead the target group with false statements. Commercial communication should not directly encourage children to convince their parents or other adults to buy the products for them.</p>
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4. Our recommendations for applying the rules

Application	<ol style="list-style-type: none"> 1. The online influencer makes clear, audibly or visibly, the commercial relationship with the brand, by mentioning one of the following words: <i>publicité, annonce, sponsoring, promotion, sponsorisé par, en collaboration avec, ...</i>, or other similar mentions, or one of the following hashtags: #spon, #pub, #prom, #adv, #sample, # ... or other kinds of similar hashtags. Such treatment guarantees transparent communication 2. Social networks know no (language) boundaries. Adapt the words depending on the language of the message or of the target group (reclame, advertising, promoted, ad, paid, ...) 3. Make sure these words are stated in a way and at a place such as the recipient directly understands immediately the precise nature of the message. 4. Do not hide these words. Make sure that the average consumer notices them during normal contact with the message.
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5. Who is responsible for complying with these rules?

Responsibility	Whoever posts, so the online influencer himself/ herself is responsible for the transgression of
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these Recommendations. In addition, those companies who request the placement of advertising posts, networks, agencies, platforms and other parties involved in marketing on social networks may also be held liable for breaches of these Recommendations.

6. Who is in charge of compliance with the Recommendations?

JEP

The Jury of Advertising Ethics (JEP) can receive complaints about influencer marketing. In that event, the JEP will treat them in accordance with its regulations, available on the website www.jep.be. As a reminder, in case of JEP decisions to cease or modify a campaign, it can rely on voluntary compliance with its decisions by advertisers, their agencies or the media.

SEE TABLE BELOW FOR SCENARIOS

SCENARIOS	
CONTEXT	OPINION
A sports personality receives free samples of a new sugar-free beverage to taste it. The message from the brand is: "Hello, here is our new product to taste. Enjoy. " The athlete tests the product, takes a photo and publishes this photo on his Facebook page with a positive comment.	The brand has not requested a review, and has not communicated content for use by the athlete. The photo and Facebook post that followed are entirely in the athlete's hands. This is not a commercial communication as the brand does not have significant control over the message.
An influencer on Instagram regularly receives free make-up products from a brand. This brand does not make an agreement with the Instagrammer to communicate a review about these products and share content on the brand with their followers. The Instagrammer often posts positive content about the brand's products.	The brand does not make an agreement with the Instagrammer that (only) positive comments will be given, but it maintains the active relationship with the Instagrammer by sending products regularly and for free. This is not a commercial communication as the brand does not have significant control over the message.
A vlogger received a skin ointment to carry out a review. The agreement between the brand and the vlogger is that the explanations that have been given about the product must be present in the review. For the rest, the vlogger is free to post additional comments if he/ she so wishes.	This constitutes a commercial communication as the brand has significant control over the message and consideration in kind has been granted.
A clothing brand sponsors an event attended by a large number of people, including journalists. Every journalist is free to write what he / she hears about the event.	This does not constitute commercial communication. Although the event is sponsored by a clothing brand, there is no control over the message likely to be published by journalists. They are free to decide if they want to write something about the event, and if so, what they intend to write. The content published by each journalist and influencer is not considered to be commercial communication.
A website that promotes holiday destinations posts a blogger's review to be visible. In exchange for a trip to a vacation destination, the blogger was provided with specific content that he had to add to his review.	The brand has significant control over the content of the blogger's review and has paid the blogger. This is commercial communication and it must be reported as such.