

NL: Social Media and Influencer Marketing 2019

Full title	Social Media and Influencer Marketing 2019 Advertising Code (RSM - Reclamecode Social Media) Section B (Special Advertising Codes) of The Dutch Advertising Code (Nederlandse Reclame Code – NRC). The 2019 Code in Dutch: https://www.reclamecode.nl/nrc/reclamecode-social-media-rsm/
Context	We (GRS) have translated the new (2019) sections of this Code, which is otherwise taken from the 2014 version published in English in the Dutch Advertising Code. Key changes are the amendment of the explanation to Article 3.
Article 1	Scope The Social Media & Influencer Marketing Advertising Code (“the Code”) relates to Advertising via Social Media (including Influencer Marketing).
Article 2	Definitions In this Code, the following definitions apply: <ol style="list-style-type: none">Advertising via Social Media: advertising within the meaning of Article 1 of the Dutch Advertising Code in relation to Social Media and Influencer Marketing.Advertiser: the party encouraging the Distributor to create and/or publish Advertising via Social Media and/or the party that advertises by placing advertising on social media and/or editing or allowing the editing of communications on social media.Distributor: the party that has a Relevant Relationship with the Advertiser and distributes Advertising through Social Media. A Distributor may be a natural person or legal person. Distributor is understood not to include an administrator of social network sites and forums that facilitate communication between participants and takes a neutral stance regarding content. Explanation: For example, bloggers, vloggers and/or online content creators can be considered as Distributors.Relevant Relationship: the relationship between the Advertiser and the Distributor directed at (causing the) distribution of Advertising through Social Media, in return for payment or any benefit, that might affect the credibility of Advertising through Social Media.Social Media and Influencer Marketing: a marketing activity of an Advertiser that is directed at causing Distributors to communicate about a product or brand, whether or not on the instructions of the Advertiser, and at (causing the) modification of third-party communications via social media on behalf of an Advertiser.

URL of source: NL: <https://www.reclamecode.nl/nrc/reclamecode-social-media-rsm/>

Article 3

Disclosure and Recognisability of a Relevant Relationship

- a. Advertising via Social Media must be clearly recognisable as such.
- b. If a Distributor receives consideration in money or in kind from the Advertiser, this must be explicitly communicated in the communication.
- c. The requirements referred to in points a and b can be met in any event if the content and nature of the Relevant Relationship is disclosed clearly and in an easily accessible manner, e.g. by means of layout and/or presentation. The content and nature of the Relevant Relationship is in any event clearly recognisable if it is formulated in accordance with the suggestions in the explanation to this article.

Explanation

If an advertiser offers the Distributor any benefit, or chance thereof, (for example by giving a discount, free products or services or making a payment) for distributing Advertising via Social Media and that benefit affects the credibility of the relevant communication, the relationship between the Advertiser and the Distributor must be clear. Whether it is clear enough depends on the context and platform being used.

If advertising is aimed at children, the comprehension of children must be taken into account, as established in the Child and Youth Advertising Code.

Below are some examples of the way in which the Relevant Relationship can be made known to visitors of different platforms. The list of examples and platforms is not exhaustive. Other ways are possible provided they make clear that advertising is involved. For more examples and guidelines, refer to www.reclamecode.nl/social

I. Advertising distributed via video sharing platforms (for example YouTube and Instagram TV (IGTV):

Via **text** in the video and / or in the description below the video that is visible without having to click on a button such as "show more" and (as far as technically possible) visible on all types of devices and platforms on which the video can be viewed to and / or via a **spoken** message in the video, for example:

- "This video contains advertising for [advertiser]"
- "This video contains a paid partnership with [advertiser]"
- "[Advertiser] paid me to make this video"
- "I received these products from [advertiser]"
- "Thank you [advertiser] for sending the products"
- "This video was made possible by [advertiser]"

II. Advertising distributed via photo / message sharing platforms (for example Instagram, Facebook, Twitter):

Via **hashtags** in or below the photo / message, for example:

- #ad
- #adv
- #spon
- #collab
- #partner (ship)

And / or

Via **text** in the description below the photo / message, for example:

- "Cooperation with @ [advertiser]"
- "Made possible by @ [advertiser]"
- "Got it from @ [advertiser]"

III. Advertising distributed through a podcast platform:

A statement in the description of the podcast and / or in the podcast itself, for example:

- "This podcast contains advertising for [advertiser]"
- "This podcast contains a paid partnership with [advertiser]"
- "[Advertiser] paid me to make this podcast"
- "I received the products (which I discuss in my podcast) from [advertiser]"
- "This podcast was made possible in part by [advertiser]"

IV. Advertising distributed through platforms where content is only visible for a limited time (such as Snapchat and Instagram Stories):

Via **hashtags** in the posted content (for a series of messages at least in the first and last posted content, which is visible during the time the content is available), for example:

- #ad
- #adv
- #spon
- #collab
- #partner (ship)

And / or

Via **text** in the placed content that is visible during the time that the content is available, for example:

- "Cooperation with @ [advertiser]"
- "Made possible by @ [advertiser]"
- "Got it from @ [advertiser]"

V. If the advertising is distributed via social media platforms on which (live) streaming services are offered, the statements can be used by means of a hashtag, text and spoken messages as described above if it is sufficiently clear that there is a Relevant Relationship. In addition, it is important that the Relevant Relationship is mentioned with some regularity with a long stream of the type that viewers/ listeners are expected to switch on or off during the stream.

In addition to or instead of the aforementioned examples, a feature of a platform on which the advertisement is distributed can also be used, provided that it is sufficiently clear that there is a Relevant Relationship (for example the Instagram function where the Distributor can name an Advertiser in a post: "Paid partnership with [advertiser]").

Article 4

Manipulation Ban

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- a. Modifying posts or other communications on social media such that the average consumer may be misled is prohibited.
 - b. If the Advertiser modifies posts or other communications on social media or lets/ allows others to modify them (on his behalf) in order to commend/ promote a product, service or activity of the Advertiser or a third party, the Advertiser must disclose this in a clear and accessible manner.
 - c. If posts or other communications on social media are modified, selected or compared within the context of commending/ promoting a product of the Advertiser or a third party, the Advertiser must do everything necessary to clearly mention the nature of the Relevant Relationship.
 - d. The Advertiser is furthermore prohibited from systematically creating and / or using false or non-existent identities in bulk to communicate about a product and / or service via social media.

Explanation

The Advertiser is also required to make this known when displaying content generated by consumers in a selective manner, as a result of which only positive communications are presented.

Example: When micro-blog posts are displayed on an (owned) platform and the Advertiser publishes positive communications there, the Advertiser must clearly indicate this. For example, by indicating that it concerns a selection of positive reactions. Naturally, paragraph a of this article continues to apply: such clarity does not necessarily mean that the result of the selection cannot be misleading.

Example: An advertiser opts to post or cause posts about a product or service using false or non-existent identities. In that case, the recipient is incorrectly informed about the Distributor's identity and the Relevant Relationship with the Advertiser, which is prohibited.

The distinction between paragraphs b and c is that, in paragraph b, the Advertiser modifies posts himself while, in paragraph c this is done by a third party. If the third party has a Relevant Relationship with the Advertiser, the third party must mention it. If he discovers that the Relevant Relationship is incorrectly missing, the Advertiser must point this out to the third party and ensure, as far as possible, that this relationship is still mentioned.

NB: Teasers are permitted except when the teaser causes or may cause the average consumer to make a decision about a transaction that he would not otherwise have made.

Article 5

Children

Advertisers are prohibited from directly encouraging children aged 12 or under to advertise products or services on social media.

Article 6

Duty of care / Advertiser's responsibility towards the Distributor and third parties

1. The Advertiser is required:
 - a. To make the Distributor familiar with the contents of this Code;
 - b. To require the Distributor working on his instructions to comply with the relevant law and regulations, including the Dutch Advertising Code and this Code (for example by drawing up rules);
 - c. If the Distributor is permitted to use third parties: to draw the Distributor's attention to the fact that such third parties must also comply with the

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- obligations referred to in b;
- d. Actively endeavour to hold the Distributor to the obligations referenced in b and c and actively to take measures against the violations referenced in b and c.
 2. The Advertiser cannot excuse himself from the obligations referred to in 1 based on the mere fact that the Distributor is not working on his instructions.
 3. If the Advertiser has fulfilled the abovementioned obligations, the Advertiser has made the best endeavours that may reasonably be expected from him to ensure that the Distributors comply with the rules.
 4. The Advertiser and Distributor each bear their own responsibility for compliance with Articles 3, 4 and 5 of this Code. When a complaint is acknowledged, the Advertising Code Committee and, on appeal, the Board of Appeal can designate the party to which non-compliance with this Code is attributable.
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Article 7**Miscellaneous Provisions**

The provisions of this Code do not prejudice the provisions of the Dutch Advertising Code, in particular the provisions about misleading advertising in Articles 7 and 8 of the Dutch Advertising Code and the recognisability of advertising referred to in Article 11.1 of the Dutch Advertising Code.

Article 8**Evaluation and Entry into Force**

- a. This Code enters into force on 1 January 2014. As of May 15, 2019, the explanation to Article 3 has been amended and Influencer Marketing has been added to the title of the code.
 - b. Each year after its entry into force, this Code will be evaluated and amended if necessary.
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Annex**Annex to the Social Media Advertising Code - Explanation**

The Social Media Advertising Code makes a start in regulating advertising and marketing activities by means of social media. This code is intended to promote transparency in Social Media Marketing by disclosing the relationship between the Advertiser and the party distributing the advertising communication. Developments in this channel are still in flux, which is why this code will be regularly evaluated and amended if necessary.

A characteristic of Social Media and Influencer Marketing is that the distribution of the advertising message is not performed by one or more parties instructed by an advertiser, but by distributors (consumers and legal persons) who have (sometimes but) usually not been directly instructed by the advertiser, but have been encouraged by the advertiser.

In order to enable the recipient (consumers and businesses) to correctly recognise an advertising message via Social Media and Influencer Marketing, he must, in a number of cases, be aware of the nature of the relationship between the advertiser and the distributor. The consumer need not be aware of relationships that do not affect the credibility of the advertising message.

A relationship of which the consumer must be aware is referred to in this code as a Relevant Relationship. A double assessment is always made: there must be some benefit and that benefit must affect the credibility of the relevant communication.

In any event, a Relevant Relationship exists when there is a contract, sponsoring or an offer of products free of charge to consumers accompanied by a request to post something about the free product. It is irrelevant, for example, whether the advertiser contacts a distributor to convince him or her to write a positive story about the

advertiser. Sending review copies (i.e. an advance reading copy - free copy of a new book) is also irrelevant when sent to a reviewer. Nor will there be a Relevant Relationship with journalists doing their work in accordance with their journalistic codes of conduct.¹

Consumers may already be aware or deemed to be aware of a Relevant Relationship. If such is not the case, the relationship must be disclosed with the communication. Another requirement of a Relevant Relationship is that there must be some benefit for the distributor that the advertiser has linked to the distribution of the communication. This may be a material advantage (money or goods), but can also consist of extra "followers", "friends" or publicity.

If a Relevant Relationship ensues from an agreement, the advertiser must compel the distributor to comply with this Code, for example by including a provision in the contract, employment agreement or the terms and conditions of the promotion. If there is no agreement, the advertiser must explicitly draw the distributors' attention to this Code when inviting them to provide their opinion of its products. If a social media campaign generates not only commendations but critical communications as well, the advertiser is still accountable under this Code.

The advertiser also bears responsibility when communications are made in violation of this Code but the advertiser is able to remove these, for example because they are posted on its website or websites related to it.

The advertiser must furthermore ensure that the impression created about a product or service by blog posts is not misleading. On its own media, therefore, the advertiser must disclose every type of selection or modification of posts. Obviously, the advertiser may utilise posts elsewhere, apart from the forum on which they were posted, in its own discretion, naturally to the extent permitted under the Dutch Advertising Code. The issue is avoiding the suggestion of an open forum where one does not exist.

The Social Media Advertising Code is part of the Dutch Advertising Code. If complaints are received, it is ultimately up to the Advertising Code Committee to determine in each case whether communications published through social media can be categorised as advertising, for which the advertiser is responsible.

The provisions in this Code are in addition to the statutory provisions from the Dutch Civil Code, the Personal Data Protection Act and the Telecommunications Act and, as indicated, the Dutch Advertising Code's self-regulation. The off-line and on-line communication media's own rules must also be respected in so far as these are not contrary to the provisions of this Code and the Dutch Advertising Code. If they are, this Code and the Dutch Advertising Code prevail and the advertiser cannot escape its responsibilities under this Code and the Dutch Advertising Code by invoking such rules.

¹ Under certain circumstances, advertising can also exist without a Relevant Relationship (cf. advertising for medicinal products)