

Full title of law or regulation Reclamecode Social Media & Influencer Marketing (RSM). 2022 Update.
<https://www.reclamecode.nl/nrc/reclamecode-social-media-rsm/> (NL)

Title of section All; this is an unofficial and non-binding translation of the July 2022 version of this code.

1. SCOPE

The Advertising Code for Social Media & Influencer Marketing (“the Code”) pertains to Advertising through Social Media (including Influencer Marketing).

2. DEFINITIONS

In this Code, the following definitions apply:

- a. Advertising via Social Media: advertising within the meaning of Article 1 of the Dutch Advertising Code in connection with Social Media & Influencer Marketing. Social Media is understood to mean online platforms on which users generate their own content and interaction is possible between the users, such as (but not limited to) YouTube, Facebook, Instagram and TikTok.
- b. Advertiser: the party encouraging the Distributor to create and/ or publish Advertising through Social Media and/or the party that advertises by placing ads on social media and/ or by (causing the) modification of communications on social media.
- c. Distributor: the party that has a Relevant Relationship with the Advertiser and that distributes Advertising through Social Media. A Distributor may be a natural person or legal entity. Distributor is understood not to include an operator of social network sites and forums that facilitates communication between participants and that takes a neutral stand regarding content.

EXPLANATION

Distributors can be online content creators such as bloggers, vloggers and influencers.

- d. Relevant Relationship: the relationship between the Advertiser and the Distributor with the purpose of causing distribution of Advertising via Social Media, in return for payment or any other benefit, which may influence the credibility of Advertising via Social Media.

EXPLANATION

A relevant relationship is in any event a contract, the sponsorship or the offering of free products to Distributors for the purpose of posting something about the free product.

The existence of a relevant relationship also requires that the distributor provides some form of benefit that the advertiser attaches to the distribution of the statement. This can be a material benefit (money or goods), but also any other benefit such as brand awareness and/ or extra followers.

- e. Social Media & Influencer Marketing: an advertiser’s marketing activity whose purpose is to have Distributors communicate about a product or brand, whether or not on the direct instructions of the Advertiser, as well as to edit third parties’ statements via social media to an Advertiser’s benefit

EXPLANATION

Where this code refers to product(s), it refers to both goods and services.

3. DISCLOSURE AND RECOGNISABILITY OF A RELEVANT RELATIONSHIP

- a. Advertising through Social Media must, in line with Article 11 NRC, be clearly recognisable as such.
- b. If a Distributor has a Relevant Relationship with the Advertiser, this must be explicitly stated in the advertisement.
- c. The requirements referred to in 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 are in any event clearly recognisable, if set up in accordance with the suggestions in the explanation to this article.

EXPLANATION

If an Advertiser offers the Distributor (an opportunity of) any benefit (e.g. by granting a discount, free products or services or making a payment) for the distribution of Advertising via Social Media and such benefit influences the credibility of the

communication in question, the relationship between Advertiser and Distributor must be clear. Whether this is sufficiently clear is subject to the context and the platform used.

The disclosure of the relevant relationship must be clearly legible or audible. This is so that the statement is sufficiently prominent so that it properly informs the average consumer. This requirement must take into account the medium in which the advertisement appears including, among other things, context, placement, time, duration, language and target group.

If the activity concerns advertising targeted at children, note must be taken of children's level of comprehension, as set out in the Code for Advertising Directed at Children and Young People.

Below are several examples of the manner in which the Relevant Relationship can be communicated to visitors on various platforms. The list of examples and platforms is not exhaustive. Other forms are possible, if they make it clear that it is about advertising. For more examples and guidelines, see www.reclamecode.nl/social.

I. Advertising distributed through video sharing platforms (e.g. YouTube, Instagram and TikTok)

NB: Distributors who upload videos on video platforms may also be subject to the Media Act. The Media Authority supervises this and has drawn up policy rules in this regard. For video uploaders who are active on YouTube, Instagram and/ or TikTok, have at least 500,000 followers/ subscribers, have posted at least 24 videos in the last 12 months, earn from the videos (money or free products) and are registered as an entrepreneur with the Chamber of Commerce, specific obligations and advertising restrictions apply.

For more information, see influencerreglement.com/mediawet and the website of the Media Authority (www.cvdm.nl).

In the case of advertising within the meaning of this code, the statement (via text or audio) may be included at the beginning of the video, during the promotion or continuously visible in the video and in any description below the video, for example by use of the following text:

- "Deze video bevat reclame voor [adverteerder]"
- "Deze video bevat een betaalde samenwerking met [adverteerder]"
- "[Adverteerder] heeft mij betaald om deze video te maken"
- "Advertentie"
- "Advertorial"
- "Betaalde promotie"
- "Betaald partnerschap met [adverteerder]"

- "This video contains an advertisement for [advertiser]"
- "This video contains a paid partnership with [advertiser]"
- "[Advertiser] paid me to make this video"
- "Advertisement"
- "Advertorial"
- "Paid Promotion"
- "Paid partnership with [advertiser]"

And/ or:

Via a feature of a platform on which the advertisement is distributed, provided that it is sufficiently clear that there is a Relevant Relationship (for example by using the Instagram function where the Distributor can mention an Advertiser in a post: "Paid partnership with [advertiser]").

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

Via hashtags in or below the photo/post, e.g.:

- #ad
- #reclame
- #advertentie
- #spon

And/ or:

Via text in the description below the photo/ post, e.g.:

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- "Samenwerking met @[adverteerder]"
 - "Mede mogelijk gemaakt door @[adverteerder]"
 - "Gekregen van @[adverteerder]"
 - "Betaald partnerschap met [adverteerder]"

 - "Collaboration with @[advertiser]"
 - "Made possible by @[advertiser]"
 - "Received from @[advertiser]"
 - "Paid partnership with [advertiser]"

And/ or:

Via a feature of a platform on which the advertisement is distributed, provided that it is sufficiently clear that there is a Relevant Relationship (for example by using the Instagram function where the Distributor can mention an Advertiser in a post: "Paid partnership with [advertiser]").

If only a hashtag is used, it must clearly stand out and not be hidden between other hashtags or other information. In any event, it will be clear if the hashtag is placed at the beginning of the message or post.

III. Advertising distributed via a podcast platform:

A statement in the podcast itself and/ or in a description that is visible without having to click on a button such as "show more" of the podcast; for example:

- "This podcast contains advertising for [advertiser]"
- "This podcast contains a paid partnership with [advertiser]"
- "[Advertiser] paid me for making 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 brief time (such as Snapchat and Instagram Stories):

Via hashtags in the posted content (in the event of a series of messages, in the content posted first and last, visible during the full period in which the content is present), e.g.:

- #ad
- #reclame
- #advertentie
- #spon

And/ or:

Via text in the posted content visible during the full period in which the content is present, e.g.:

- "Samenwerking met @[adverteerder]"
- "Mede mogelijk gemaakt door @[adverteerder]"
- "Gekregen van @[adverteerder]"
- "Betaald partnerschap met [adverteerder]"

- "Collaboration with @[advertiser]"
- "Advertisement made possible by @[advertiser]"
- "Received from @[advertiser]"
- "Paid partnership with [advertiser]"

And/ or:

Via a feature of a platform on which the advertisement is distributed, provided that it is sufficiently clear that there is a Relevant Relationship (for example by using the Instagram function where the Distributor can mention an Advertiser in a post: "Paid partnership with [advertiser]").

If only a hashtag is used, it must clearly stand out and not be hidden between other hashtags or other information. If the

hashtag is placed at the beginning of the message or the post, it will anyway be clear.

V. Advertising distributed via a live streaming service (such as Twitch, Instagram Live and TikTok live)

If the advertising is distributed via social media platforms on which live streaming services are offered, the mentions by means of a hashtag, text and spoken messages as described above can be used 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 in the event of a long stream where viewers are expected to switch on or off during the stream.

4. PROHIBITION OF MANIPULATION

- a. Modifying posts or other communications on social media in such a manner that the average consumer may be misled is prohibited.
- b. If the Advertiser modifies, or has another party modify, posts or other communications on social media in order to recommend a product, service or activity, either from the Advertiser or from 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 recommending a product, either from the Advertiser or from a third party, the Advertiser must do everything necessary to clearly disclose 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 through social media. The use of fake likes and fake followers is also not allowed.

EXPLANATION

When displaying content generated by consumers in a selective manner, as a result of which only positive communications are presented, the Advertiser is required to disclose this.

The advertiser must ensure that an impression about a product or service that emerges from posts is not misleading. He/ she must therefore disclose any form of selection or modification of posts in his/ her own media. The advertiser can, of course, use posts separately from the forum on which they are posted. In as much as these are permitted under the DAC, of course. The point here is to avoid suggesting an open forum when that isn't the case.

Example: When micro-blog posts are displayed on an owned platform and the Advertiser only publishes positive statements there, the Advertiser must clearly indicate this. For example, by stating that this is 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 can't be misleading.

The distinction between paragraphs b. and c. is that, in paragraph b., the Advertiser modifies posts himself whereas in paragraph c. a third party modifies the posts. If that third party has a Relevant Relationship with the Advertiser, the third party must state this. If the Advertiser discovers that the Relevant Relationship is wrongfully missing, the Advertiser must point this out to the third party and ensure, whenever possible, that this relationship is subsequently stated.

NB: Teasers are allowed, unless the teaser might induce the average consumer to make a decision about a transaction that he would not have made otherwise.

NB. The prohibition not to create and/ or use false/ non-existent identities does not mean a prohibition to use virtual influencers or characters (from, for example, books, TV series or films), where it is clear that it is about a non-existent person.

5. CHILDREN

If there is advertising via social media aimed at children, the Children's and Youth Advertising Code applies in full in addition to this Code and the DAC.

6. ADVERTISER'S DUTY OF CARE/ RESPONSIBILITY TOWARDS THE DISTRIBUTOR AND THIRD PARTIES

1. The Advertiser must:
 - a. Make the Distributor aware of the contents of this Code;
 - b. Require the Distributor working on his instructions to comply with the relevant law and regulations, including the Dutch Advertising Code as well as this Code;
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- 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 obligations referred to in b.;
 - d. Actively endeavour to hold the Distributor to the obligations cited in b. and c. and actively to take measures against transgressions referenced in b. and c.
2. The Advertiser cannot excuse himself from the obligations referenced in 1 based simply on the fact that the Distributor does not respect the instruction.
3. If the Advertiser has complied with the obligations above, the Advertiser has made the best efforts that can reasonably be expected to ensure that 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 accepted, the Advertising Code Committee and, on appeal, the Board of Appeal, can designate the party to which non-compliance with this Code can be attributed.

EXPLANATION

If there is a relevant relationship arising from an agreement, the advertiser must oblige the distributor to comply with this Code, for example by including a provision in the assignment, employment contract or promotion conditions, as referenced under b. If there is no agreement, the advertiser must expressly point out this code when inviting distributors to express their opinion on its products.

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 DAC and the recognisability of advertising referenced in Article 11.1.

8. EVALUATIONS AND ENTRY INTO FORCE

- a. This Code entered into force on 1 January 2014. As of 15 May 2019 the comment to Article 3 has been amended and Influencer Marketing has been added to the title of the code. This Code was last amended on July 1, 2022.
- b. This Code may be reviewed annually and amended if necessary.