

Full title of Code

The Spanish Association of Advertisers (aea) and the Association for the Self-Regulation of Commercial Communication (Autocontrol) Código de conducta sobre el uso de influencers en la publicidad 2020. In force January 1, 2021

<https://www.autocontrol.es/wp-content/uploads/2020/10/codigo-de-conducta-publicidad-influencers.pdf>

Code of Conduct on the use of Influencers in advertising 2020

This is an unofficial GRS translation

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Introduction

In recent years a widespread practice of companies' digital communication strategies has been to use so-called 'Influencers'; that is, people who are thought to have a high level of influence on the public due to their significant number of followers on social networks and / or digital communications media and who interact both through tweets, videos and posts, as well as through messages on blogs or other means. This group includes the so-called '*social media influencers*', '*bloggers*', '*Youtubers*', '*Instagrammers*' and '*Facebookers*'.

In practice, the collaborations of these influencers with brands for the publication of content are conducted, among other ways, by mentioning products or services, placing products in their messages, participating in the production of content, or disseminating content related to the product or service, in order to promote it.

The use of this community strategy is a priori lawful, without prejudice to the fact that it is, as with any other action of an advertising nature, subject to legislation in force and, in particular, what the regime has called the 'Principle of authenticity' or 'Principle of advertising identification', derived from the prohibition of covert advertising contained in the Law of Unfair Competition and other sectoral rules.

In any case, it should be borne in mind that the influencer has the double status of being a communicator and of being another consumer of the set of products and services that are available to the public in the market and, therefore, he/ she is affected by commercial communication developed by brands, for their offers, promotions and discounts. Similarly, the influencer may have their own knowledge of certain products and services on which he/ she takes a stance for or against without any intervention from the brands that represent them.

Moreover, the influencer develops a language, a format and some communication styles throughout their career that have allowed him/ her to create and grow a number of 'followers', who are normally regular and in tune with their way of communicating and with their language. This consistency allows the definition with a certain degree of objectivity of the average profile of the followers that will be affected by certain content or messages and, therefore, the interpretation made of the principle of advertising identification must be based on said profile.

The Spanish Association of Advertisers (aea) and the Association for the Self-regulation of Commercial Communication (AUTOCONTROL), aware of this reality and committed since their origin to the promotion of responsible advertising, promote this Code of Conduct, through which a set of rules are established that will bind all those who adhere to the aea and to AUTOCONTROL, as well as any other companies in the sector (advertisers, agencies, representatives, media) or influencers who voluntarily adhere to it .

The application of the Code is entrusted to the Spanish advertising self-regulation body, AUTOCONTROL, whose Advertising Jury will be in charge of resolving any complaints that may arise due to breach of the ethical rules contained therein.

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Ethical rules

1. The companies in membership of the aea and AUTOCONTROL, as well as the influencers and others companies that adhere to this Code, undertake to observe in their commercial communications the rules included herein.
  2. The companies adhering to this Code shall inform influencers of its existence and will encourage their adherence to the code. The need to comply with these ethical standards
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will be included. In the contracts established with influencers.

3. For the purposes of this Code, advertising references or content shall be considered to be all those references or content - graphic, audio or visual - that cumulatively:
  - a. Are intended to promote products or services;
  - b. The dissemination of the aforementioned content is set out in the collaboration framework or reciprocal commitments as subject to a payment or other consideration on behalf of the advertiser or their representatives;
  - c. the advertiser or its agents exercise editorial control over the distributed content, previously establishing all or part of it and / or approving it.

On the contrary, content that is purely editorial will not be considered to be advertising and, therefore, this Code will not be applicable, nor to the content released by influencers at their own and sole initiative, unrelated to the advertiser or its agents.

4. For the purposes of rule 3 of this Code, considerations will be deemed to be, inter alia: direct payment (or indirect through agencies), free delivery of a product, free tickets to events, free provision of a service, gift vouchers, gift bags and travel
5. The advertising nature of the statements made by influencers or of the digital content disseminated by them, that has such advertising status, must be identifiable for their followers.

In those cases in which the said advertising nature is not clear and obvious on seeing the statement or content itself, a statement that is explicit, immediate and appropriate to the medium and message on the advertising nature of such statements or content must be included.

- a. For this purpose, it is recommended to use clear generic statements such as 'advertising' (publicidad), ad (Publi), 'in collaboration with' (en colaboración con) or 'sponsored by' (patrocinado por), or alternatively descriptive depending on the specific collaboration in question (for example, 'Ambassador of [brand]' (Embajador de [marca]), 'Thanks to [brand]', (Gracias a [marca]), 'Gift from [brand]' (Regalo de [marca]), 'Sponsored trip', (Viaje patrocinado) etc.).
  - b. On the contrary, generic indications are discouraged (such as 'information', 'legal' (información, legal) or similar), statements that require an action by the user (for example, click), and unclear notes (such as 'Colab', 'Sponso' or 'sp').
  - c. The notice regarding the advertising nature of the statement or content must remain or be added when the influencer shares or 'reposts' content subject to this Code on other networks, platforms or web pages.
6. The content of the advertising messages must respect the applicable rules and codes.

To this end, it will be taken into account that, as provided in section 2 of article 7 of Law 3/1991 on Unfair Competition, in assessing the existence of an omission of information when the media used imposes space or time limitations, such limitations shall be taken into account along with all the steps taken by the entrepreneur or professional to convey the necessary information through other channels

Similarly, in the absence of an objectively defined profile, the average profile of the consumer accustomed to following an *'influencer'*, will be understood as one who is active and knowledgeable about new information technologies, usually attentive and informed, with sufficient capability to access and understand digital media and the wherewithal to search, select from and adapt the contents of the network in their process of navigation based on their tastes or interests.

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#### A. Link to the code

1. The member companies adhered to aea and to AUTOCONTROL, and other companies that voluntarily observe it, undertake to respect the rules contained herein in their advertising activities with influencers, as well as to abide by and immediately comply with the content of the resolutions that the AUTOCONTROL Advertising Jury may issue for the resolution of complaints made in relation to this Cod.
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	2. The list of companies and influencers observing the Code will be made public.
B. Internal prior control and copy advice®	<ol style="list-style-type: none"> <li>1. Companies will establish internal control measures aimed at ensuring respect for the rules of conduct in this Code.</li> <li>2. In those cases in which a company or an influencer has doubts about the legal or ethical correctness of an advertising statement or content, they may submit it to the AUTOCONTROL Technical Office for prior examination via the voluntary, confidential and non-binding prior consultation system, which will act in accordance with its Rules.</li> </ol>
C. Post-control: advertising jury	<ol style="list-style-type: none"> <li>1. In addition to the companies that have respected this Code, the aea, AUTOCONTROL, Public Administrations, any company or professional business association, as well as consumer groups and individual consumers or other persons, entities or groups not foreseen in this relationship, may submit complaints to the Advertising Jury for infringement of its rules.</li> <li>2. For the effective application of this Code and the processing and resolution of any claims that may arise due to the infringement of this Code against the advertising of the companies observing it, the AUTOCONTROL Advertising Jury will be governed in its action by the principles of independence, transparency, contradiction, efficacy, legality, freedom of choice and the right to representation by the consumer and will proceed in accordance with the provisions of its Rules and in accordance with the processes and rates established by AUTOCONTROL.</li> <li>3. The resolutions issued by the Advertising Jury in application of this Code will be immediately communicated to the interested parties for their compliance.</li> <li>4. Decisions will be made public through their placement on the websites or other channels of the aea and AUTOCONTROL.</li> </ol>
D. Post control: monitoring	<ol style="list-style-type: none"> <li>1. If the aea and AUTOCONTROL deems it necessary, AUTOCONTROL may carry out monitoring exercises that allow the evaluation of the degree of compliance with the rules in this Code by the companies and influencers adhering to it.</li> </ol>
E. Monitoring committee	<ol style="list-style-type: none"> <li>1. For the monitoring of this Code, a Monitoring Committee is established, of mixed composition, which will be made up of two representatives of the aea and representatives of AUTOCONTROL who will meet periodically.</li> </ol>
F. Entry into force	<ol style="list-style-type: none"> <li>2. This Code of Conduct enters into force on 1st January 2021</li> </ol>
ANNEX	<p>Example list of recommended location of the identification of advertising statements or content</p> <p><b>Blogs.</b> Include the identifying word or label in the title of the post.</p> <p><b>Facebook.</b> Include the identifying word or label in the title of the entry or post.</p> <p><b>Instagram.</b> Include the identifying word or label in the title above the photo or at the beginning of the displayed text. If only one image is seen, the image itself must include the identifying word or label at the beginning of the message. The advertising identification label established by the platform itself ('Paid partnership tag') can also be used.</p> <p><b>Pinterest</b> Include the identifying word or label at the beginning of the message.</p> <p><b>Twitter.</b> Include the identifying word or label in the body of the message as a tag.</p> <p><b>Vlogs.</b> Superimpose the identifying word or label while commenting on the product or service or state it out loud before talking about the promoted product or service.</p> <p><b>YouTube</b> and other video platforms, such as Musical.ly and Twitch. Superimpose the identifying word or label while commenting on the product or service or state it out loud before talking about the promoted product or service.</p> <p><b>Snapchat.</b> Include the identifying word or label in the body of the message as a tag.</p>

