

# Written evidence submitted by the Advertising Standards Authority

7 May 2021

## ASA system submission to the Digital, Culture Media and Sport Committee inquiry into Influencer culture

### 1. Background and Introduction

- 1.1. This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the ‘ASA system.’
- 1.2. The ASA is the UK’s independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for 59 years and the broadcast Advertising Code (written and maintained by BCAP) for 17, with our remit further extended in 2011 to include companies’ advertising claims on their own websites and in social media spaces under their control.
- 1.3. We are responsible for ensuring that advertising is legal, decent, honest and truthful and our work includes undertaking proactive projects and acting on complaints to tackle misleading, harmful or offensive advertisements. We are committed to evidence-based regulation and we continually review new evidence to ensure the rules remain fit-for-purpose.
- 1.4. Our system is a form of ‘collective regulation’ – neither statutory nor purely self-regulatory – and involves the active participation of a range of legal backstops and partner organisations including National Trading Standards, Ofcom, the Gambling Commission, the Information Commissioner’s Office, the Medicines and Healthcare products Regulatory Agency, the Financial Conduct Authority and the Competition and Markets Authority. We use our convening powers to bring together the ad industry and media owners to set, maintain and police high standards. Through the sharing of information, joined-up enforcement action and referral processes, our partners bolster our regulation and assist us, where necessary, to bring non-compliant advertisers into line. Together, this ‘collective regulation’ helps to protect people and responsible business from irresponsible ads: ads that mislead, harm or offend their audience.
- 1.5. The UK Advertising Codes are drafted and maintained by CAP and BCAP, supported by experts in our Regulatory Policy team. This ownership of the rules by the ad industry is an important part of our system. It means businesses have a direct stake and an enlightened self-interest in adhering to the standards they set and creates a level-playing field amongst them. Many of the rules derive from legislation, of course. For example, the rules requiring ads not to mislead or be likely to mislead originate from UK consumer law. However, many do not, particularly those seeking to prevent harm, offence and social irresponsibility. Whichever the case, in setting the rules which govern UK advertising, CAP and BCAP have multiple checks and balances in place to ensure the process is transparent, open to scrutiny and follow the principles of good regulation. From calls for evidence and public consultations on rule changes, having an independent consumer panel advising CAP and BCAP, Ofcom signing off on BCAP rule changes and, ultimately, the ASA System’s processes being open to judicial review. All to ensure the system is wholly accountable.

- 1.6. In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies and media to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place. CAP and BCAP provided 722,523 pieces of advice and training in 2020.
- 1.7. The ASA system is providing this written submission in response to the Digital, Culture Media and Sport Committee inquiry into Influencer culture.

## 2. Our remit on social media

- 2.1. The ASA is the UK's regulator for advertising across media. This includes TV, radio, online, social media, cinema, newspapers and outdoor spaces. Our Codes contain rules which require ads not to mislead, harm, offend or be otherwise irresponsible.
- 2.2. The CAP Code covers many different types of advertising in social media, from the more traditional 'paid-for' ads to advertorials and affiliate marketing, and also - since 2011 - marketing claims on a company's own social media channels.
- 2.3. 'Influencer marketing' is covered by the Code, be it in the form of a blog, vlog, tweet, post, story or other channel-specific format. Influencer marketing is an advertising trend that has evolved alongside the rise of social media and advances in technology.
- 2.4. In practice, the ASA defines an influencer as anyone who has been paid by a brand, in money or in kind, to advertise a product or service on their own social media account. Advertisers and brands enter into commercial relationships with influencers as a means of directly reaching the target audience who follow them.
- 2.5. Influencer posts tend to be either '[advertorial](#)' or '[affiliate](#)' ads, but instances where an influencer is promoting their own products/services etc. are also covered by the Code. Put simply, advertorials on social media are copy, usually presented in a similar way as the influencer's editorial content, which is controlled by the marketer and disseminated by the publisher (the influencer) in exchange for a payment or other reciprocal arrangement. Affiliate ads include links in social media posts that direct consumers to the website of a company, where the influencer is paid on a cost per click and/or cost per purchase arrangement.
- 2.6. Though the ASA recognises there are differences between the arrangements behind 'advertorial' and 'affiliate' advertising, both are subject to exactly the same rules, including that they must be obviously identifiable to the audience as advertising.
- 2.7. The majority of our regulatory work involving influencer advertising, to date, concerns issues around disclosure i.e. is an influencer being upfront and clear with their followers when they have been paid to post an ad?
- 2.8. If a brand gives an influencer a payment, free item, or other 'perk' in exchange for a post, the commercial nature of the post must be disclosed, for example, by use of an upfront and clear label such as #advertisement or #ad.
- 2.9. As the day-to-day, frontline regulator for ads in the UK, the ASA primarily enforces this disclosure requirement under CAP Code rule 2.1: 'Marketing communications must be obviously identifiable as such'. In circumstances where the brand cannot be found to exert editorial control over the post, the same disclosure requirements can be enforced by the Competition and Markets Authority (CMA) or Trading Standards under consumer protection from unfair trading legislation.
- 2.10. When a particular post is found to breach the Code, both the publisher (i.e. the influencer) and the brand can be named in the ASA ruling. The negative publicity that arises

from our interventions can erode consumers' trust in the brand and followers' trust in the influencer; so, neither party wins from a failure to disclose advertising as such. Although we have additional sanctions, as outlined in section 6.8, negative publicity (or merely the threat of it) tends to be an effective sanction in the majority of cases.

2.11. It should therefore be noted that brands are just as responsible as influencers are when failing to properly disclose ads.

2.12. Our remit covers influencers and brands based in the UK, but we work with regulatory bodies in other countries and occasionally refer cases to them so that they can take relevant action against posts in their own jurisdictions.

### 3. The rules on ad disclosure

3.1. The [CAP Code](#) states that advertising needs to be obviously identifiable. This means that it should be immediately obvious to a consumer when the media content they see, hear or interact with is advertising. Put simply: viewers of social media content should not have to 'play the detective' to deduce the status of that content. This rule is well established in offline media and existed long before influencer marketing became a trend.

3.2. These rules are important because our own [ad labelling research](#) and [Ofcom research](#) shows that consumers have difficulty in recognising and distinguishing certain types of online ads from independent editorial or organic user-generated content. [A survey by the BBC](#) also found that 82% of respondents thought it was not always clear when an influencer had been paid to promote an ad.

3.3. This means that when an influencer talks about a particular brand, it isn't self-evident whether they are expressing an independent opinion or whether they have been incentivised to do so by the brand. That is why it's important for influencer ads to be clearly and obviously distinguished from other posts.

3.4. 2020 saw a 55% increase on 2019 in complaints received by the ASA about influencers, from 1,979 to 3,144 individual complaints. 61% of those complaints in 2020 were about ad disclosure on Instagram.

3.5. The ASA expects such posts to include a prominent 'ad' label upfront to highlight that a post is a marketing communication. We consider that, in most cases, the use of #ad (or similar) is the clearest way of communicating the commercial nature of advertising content, though using a platform's own disclosure tools, such as Instagram's Paid Partnership tool, can also distinguish advertising from other content.

3.6. The CAP Code specifically refers to "Advertisement Feature" as an appropriate label for 'advertorial' content and "Ad", "Advert", "Advertising", "Ad Feature" and similar are all very likely to be considered acceptable by the ASA (with or without a '#').

3.7. In terms of where a label needs to be, this depends on the platform, the nature and overall content of the post. Primarily, the label must:

- be prominent enough so that consumers will easily notice it
- be early enough (if it's a video or similar) so consumers notice it before they click on anything or engage with, or watch, the content
- be visible regardless of the device used
- not be buried in a list of hashtags, put in a colour that contrasts poorly with the background or placed 'under the fold' where consumers would need to click 'see more' to expand the post, or concealed in any other kind of way

3.8. Because the term "sponsored" is open to varied interpretation, we advise against using it to refer to advertising. We also advise against using terms such as "Supported by", "Funded by", "Gifted", "In association with..." for the same reason.

- 3.9. In contexts where only an image is (initially) visible, such as on Instagram, an identifier may be needed on the image itself, as well as in the accompanying text. On YouTube and similar platforms, it's likely that the title of the video or the thumbnail will need, as a minimum, to include an identifier such as 'ad' so that its commercial nature is clear to consumers before they click to watch the video.
- 3.10. The rules on ad disclosure apply to new platforms or new formats within existing platforms.

#### 4. Additional rules related to influencer marketing

- 4.1. If something falls within the ASA's remit, it has to comply with all of the rules contained within the Code. It therefore should not, amongst other things, [materially mislead consumers](#) or cause serious or widespread [offence](#). Some sections within the CAP Code are sector-specific, which means that ads for particular product types (e.g. products high in fat, salt or sugar, alcohol, gambling and e-cigarettes) must comply with very specific rules, whereas other parts of the Code (e.g. misleadingness, harm and offence) apply to all ads irrespective of the product/service they are advertising.
- 4.2. [Age-restricted products](#) like alcohol and gambling must not be advertised directly to under-18s (and lotteries shouldn't be advertised to under-16s). The rules also prohibit the creative content of ads (including those posted by influencers) for alcohol, gambling, lotteries and e-cigarettes from being of particular appeal to under-18s, especially by reflecting youth culture, and from featuring under-25s (or people who look under 25) in a significant role. For example, in 2019, we ruled against Instagram ads by four different e-cigarette brands ([British American Tobacco](#), [Ama Vape](#), [Global Vaping Group](#), [Attitude Vapes](#)) because they featured people under the age of 25.
- 4.3. These rules mean that brands should take into account the age/demographics of an influencer's followers before deciding to work with them. For example, the ASA has previously considered and ruled against the targeting of a [Tanya Burr story for Heineken](#) (alcohol) and a post from [PointlessBlog for Nutella](#) (HFSS); in both cases the ASA was not persuaded that the under 18/ under 16 audience comprised less than 25% of the overall audience, as required by the relevant rules.
- 4.4. Although technically not 'age-restricted' products, similar rules apply to ads for slimming/weight loss products/regimes in that they must not be directed at under-18s or appeal particularly to them, so brands / influencers should consider this before promoting them. We have taken action, and will continue to take action, against irresponsible social media ads which contribute towards a culture of negative [body image and confidence](#). For example, we recently ruled against an influencer for irresponsibly [promoting weight loss products](#).
- 4.5. [Beauty filters](#) are designed to enhance a person's appearance and are included as in-app features on social media, including on Instagram, TikTok and Snapchat. They are becoming increasingly popular and are often applied when sharing selfies to social networks. Influencers and advertisers promoting beauty products, and indeed any other products, are advised to avoid applying filters to photos or videos which are directly relevant to the product being advertised and which are likely to exaggerate the effect the product is capable of achieving. For example, we recently banned a post by an [influencer](#) for using an Instagram filter to exaggerate the efficacy of a tanning product.
- 4.6. Although not sector specific, [promotional marketing](#) in the form of [prize draws](#) and [competitions](#) are often used by influencers on social media. The ASA has specific guidance for brands/ influencers using these forms of marketing to ensure they don't break the rules in this area, which include, but are not limited to:
- prize draws winners must be picked at random

- prizes must be awarded as stated. If the original prize is unavailable, a reasonable equivalent must be offered
  - the full terms and conditions must be signposted
- 4.7. The [MHRA Blue Guide](#) states that ads for medicines should not contain material which “refers to a recommendation by scientists, healthcare professionals or persons who because of their celebrity, could encourage the consumption of medicinal products”. This means that medicines [should not be endorsed by ‘influencers’](#) whose sway over their audience could unduly encourage the consumption of medicinal products.

## 5. Our guidance and resources

- 5.1. We know people are spending more time online, businesses are increasingly advertising online and the pace of technological change online is contributing to societal concerns. That’s why, in November 2018, we launched our five year strategy, [More Impact Online](#), which focuses on improving the effectiveness of our online advertising regulation. We’re proud of the technological initiatives we’ve undertaken as a part of that.
- 5.2. As part of our strategy, both the ASA and CAP have invested significant resource and effort into helping the influencer marketing industry understand their responsibilities under the ad rules.
- 5.3. On top of the numerous rulings the ASA has published on ad disclosure on social media, we have hosted an [‘Influencer Responsibility’](#) event and produced myriad and comprehensive pieces of [advice online](#), including the [‘Influencers guide to making clear that ads are ads’](#) and an [ABC Guide](#) specifically designed to help Love Islanders navigate the rules.
- 5.4. We offer clear and concise advice to influencers/brands when advertising on specific social media platforms, including [Instagram](#), [TikTok](#), [Twitter](#), [Facebook](#), [Snapchat](#), as well as on [YouTube](#) videos, and guidance for advertisers when marketing materials are [directed at children](#).
- 5.5. If we look back just a few years to when disclosure on social media, in particular by influencers, was almost unheard of, great progress has been made. At a cursory glance, we see far greater adoption of #ad, but not all the time, which is why we continuously provide and update guidance on our website for all influencers about how to stick to the rules.
- 5.6. Although we work closely with influencers and brands to encourage them to follow the rules, we reserve the right to apply sanctions to both influencers and brands if we identify an ongoing problem such as an unwillingness or inability to adhere to the rules. Our sanctions are explained in more detail in section 6.8.

## 6. ASA report into influencer ad disclosure on Instagram

- 6.1. In September 2020, we undertook a three-week monitoring exercise to review the Instagram accounts of 122 UK-based influencers to assess whether advertising content was being properly disclosed. That involved assessing over 24,000 Instagram Stories, posts, Reels and IGTV to check compliance rates. Stories allow users to share images and videos with followers for 24 hours whereas Reels are 15-second multi-clip videos that include effects and creative tools. IGTV is a standalone app where users can post long form videos.
- 6.2. This monitoring exercise focused on posts on Instagram because complaints to the ASA about influencer ad disclosure tend to relate to this particular platform.
- 6.3. Monitored content was considered very likely to be advertising when it included a “push” to consumers towards a brand. This included explicit references to a discount code or a “swipe up” message, for example. Or, where the content was otherwise clearly linked to a specific

product or service via traditional advertising references to price, benefits of product/service etc.

- 6.4. Influencers were primarily chosen to be monitored on the basis of having been previously contacted about non-disclosure of advertising by the ASA, either in response to a complaint or via our self-initiated, proactive engagements with them on the matter.
- 6.5. Our [findings](#), published in March 2021, categorised nearly one in four Stories as marketing, but found that only 35% of them were clearly labelled as ads.
- 6.6. More specifically, we found:
  - inconsistent disclosure across consecutive Stories - when a piece of ad content spans a number of consecutive Stories, unless it's absolutely clear that this is part of the same posting, each Story must be disclosed as an ad
  - inconsistent disclosure across Stories, IGTV, Reels, posts corresponding to the same ad
  - a lack of visibility of ad labels
  - the use of #affiliate or #aff with no additional upfront disclosure
  - a lack of disclosure on own-brand ads
- 6.7. The Compliance Team ensures the outcome of 'Upheld' ASA rulings are adhered to in cases where an advertiser fails to provide a timely assurance that it will comply. The team also proactively monitor ads across different sectors and media to make sure standards are being maintained.
- 6.8. Our Compliance Team contacted all the influencers and put them on notice that if future spot checks we carry out on any platform reveal problems, we will take enforcement action. That might include promoting their non-compliance on a dedicated page on our website, promoting their non-compliance through our own targeted paid search ads and working directly with the platforms and the CMA on further enforcement action.
- 6.9. The ASA are disappointed with the findings. While many influencers do stick to the rules, our monitoring shows how much more there is to do. We have given influencers and brands fair warning, which is why we're committed to carrying out follow-up monitoring and are preparing to take enforcement action against those continuing to flout the rules.

## 7. Our co-regulation and work with online platforms

- 7.1. As part of our strategy, More Impact Online, we already work with platforms, including Instagram, to have problem content taken down (where an advertiser is unwilling or unable to comply) and will discuss further options with platforms if we continue to see an ongoing problem with non-disclosure by influencers.
- 7.2. As an example of our work with platforms, in 2020, we [issued an enforcement notice](#) to 130,000 wide-ranging businesses across the beauty and cosmetic services industry about ads for Botox. Botox is a prescription-only medicine which are prohibited from being advertised to the public. We identified a trend of these ads appearing on social media, particularly in organic Instagram posts, and took action to ensure advertisers reviewed their advertising. We used monitoring technology to identify where these ads were appearing on Instagram, and flagged them with the platform to have them quickly removed. We made it

clear that any advertisers that continue to break the rules risked being referred to the Medicines and Healthcare products Regulatory Agency or their professional regulatory body.

7.3. We've already worked with the CMA to produce clear guidance for influencers, brands and agencies, to help them understand and stick to the rules. This has led to much greater use of ad labelling. Additionally, the CMA itself has been conducting its own work in this area. Facebook (owner of Instagram) provided the CMA with undertakings in October 2020 that it will do more to prevent "hidden advertising" being posted on its Instagram platform. We expect the combined efforts of all organisations to improve compliance within the influencer landscape.

7.4. As mentioned, we've also partnered with ITV to create an ABC guide for Love Island contestants, so they don't mislead their followers.

## 8. Example rulings related to influencers

8.1. All complaints received by the ASA are assessed against the Advertising Codes to determine whether we will take up the complaint.

8.2. Recent examples of influencer posts we have proactively banned or upheld a complaint against include:

### Ad disclosure on Instagram

- In 2021, we banned a post by Love Islander [Zara McDermott](#), in which she promoted clothes by fashion retailer Missguided, as it was not labelled as an ad
- In 2021, we ruled against two Instagram stories by [Chet Johnson](#) promoting a giveaway because although he included '#ad' on his posts, the text was too small to obviously identify the posts as ads
- In 2021, we banned posts by Love Islander [Anna Vakili and her sister Mandi](#) for not labelling their posts as ads when promoting retailer Select Fashion

### Ad disclosure on TikTok:

- In 2021, we ruled against a TikTok post by [Luke Mabbott](#) promoting clothes by the fashion retailer Boohoo.com as the post was not obviously identifiable as an ad
- In 2021, we ruled against a TikTok post by [The Wave House](#), a prominent group of influencers, for promoting the fashion brand Pretty Little Thing without labelling the post as an ad
- In 2020, we banned a post by [Emily Canham](#) in which she promoted a GHD branded hairdryer because the post was not clearly labelled as an ad

### Body image / social responsibility

- In 2020, we ruled against Instagram posts by Gemma Collins in collaboration with [Skinny Jab](#), [Skinny Revolution](#), [Skinny Clinic](#) for irresponsibly promoting weight-loss products and prescription-only medicines (POMs), which are banned from being advertised to the public
- In 2019, we ruled against an Instagram post by [Jemma Lucy](#) for irresponsibly encouraging the consumption of weight loss products during pregnancy

### Misleading filters

- In 2021, banned a post by [Cinzia Baylis-Zullo](#) for using an Instagram filter to exaggerate the efficacy of a tanning product
- In 2021, we also banned a post by [Elly Norris](#) for the same reason

### Competitions/ prize draws:

- In 2021, we ruled against [Molly-Mae Hague](#) for not administering a prize draw fairly in accordance with the laws of chance and by an independent person or under the supervision of an independent person

- In 2020, we ruled against [@amelias.homestyle.x's](#) for failing to award the prize to the winner of a prize draw

## **9. Copy Advice data related to influencers**

- 9.1.** The Copy Advice Team, is an essential service for advertisers, agencies, media owners and media service providers who want to check how their prospective non-broadcast ads measure up against the CAP Code.
- 9.2.** Copy Advice receive around 150 queries each year about influencer marketing. Although the team has more recently received a few enquiries about promotional marketing, the vast majority of enquires they receive are about ad labelling.
- 9.3.** All the advice and training we have on this subject is collated at [www.asa.org.uk/influencers](http://www.asa.org.uk/influencers)