

IAB – ISBA Guidelines on the Payment for Editorial Content to Promote Brands within Social Media July 2012

Introduction

This document outlines guidelines in relation to the payment for editorial content to specifically promote a brand, product, or service within a social media environment.

The objective is to set out clear and practical steps to help brand owners and marketing practitioners comply with the Consumer Protection from Unfair Trading Regulations 2008 and to therefore provide transparency to consumers engaging with and sharing content in a social media environment.

What is the current law?

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) specifically prohibits “*using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).*” The CPRs also prohibits: “*Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.*”

Therefore, under the CPRs, using editorial content in the media to promote a brand, product, or service where the trader has paid for the promotion, without making that clear in the content or by images or sound is prohibited. It is also prohibited to mislead consumers by act or omission (for example in relation to any endorsement of the product), where this is likely to have an impact on the consumer’s decision making about the brand, product, or service. These rules apply to any trader involved in the promotion, sale or supply of products to or from consumers. The primary legal responsibility for complying with the law lies jointly with the brand owner and any agencies involved with the promotion.

In December 2010, the Office of Fair Trading (OFT) took enforcement action under the CPRs against Handpicked Media, a commercial blogging network, and secured undertakings that promotional comments that have been paid for must be clearly identified. For further details on the case visit: www.offt.gov.uk/news-and-updates/press/2010/134-10.

A full copy of the CPRs is available at: www.legislation.gov.uk/ukxi/2008/1277/contents/made. An OFT guide is available at: www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf%20.

Guidelines

The IAB and ISBA recommend that **brand owners and marketing practitioners** follow three steps when a payment has been made in order for someone to editorially promote a brand, product or service within social media:

1. **Ensure that the author or publisher of the message discloses that payment has been made. This will ensure that it is clear to consumers that it is a marketing communication. See below examples.**
2. **Ensure that authors adhere to the appropriate terms and conditions of the social media platform or website that they are using in relation to promoting a product or service. This includes search engines likely to index the content.**

Ensure that the content of the ‘marketing communication’ adheres to the principles of the CAP Code. See www.cap.org.uk/The-Codes/CAP-Code.aspx.

Example A: Video Placement

The owner or publisher of a blog or website is paid by a brand owner or marketing practitioner to promote a brand, product or service by publishing a video produced by the brand owner on their site. The brand owner or marketing practitioner should ensure that the author discloses the payment within the body of the blog post or page that contains the video to ensure it is clear and transparent to a viewer. If hypertext links to a website commissioned by the brand owner or marketing practitioner are included alongside the video in the blog post or page, these should have the ‘nofollow’ attribute.

See <http://en.wikipedia.org/wiki/Nofollow>.

Notes: As some consumers may read the content outside of the blog in question (via an RSS reader or if the content is syndicated elsewhere), it’s essential the disclosure happens within the body of the blog post itself, and not elsewhere. Google’s webmaster guidelines explicitly state that paid-for links should have the ‘nofollow’ attribute, and brands found breaking these guidelines are routinely de-indexed by Google.

See www.google.com/support/webmasters/bin/answer.py?answer=35769.

Example B: Blog Content

The author or publisher of a blog is paid by a brand owner or marketing practitioner to promote its brand, product or service by including mention of the brand, product or service, or of a marketing campaign in editorial within a blog post. The brand-owner or marketing practitioner should ensure that the author or publisher discloses the payment within the body of the blog post itself to ensure it is clear and transparent to a reader. If hypertext links to a website commissioned by the brand owner or marketing practitioner are included in the blog post, these should have the 'nofollow' attribute. See <http://en.wikipedia.org/wiki/Nofollow>.

Notes: As some consumers may read the content outside of the blog in question (via an RSS reader or if the content is syndicated elsewhere), it's essential the disclosure happens within the body of the blog post itself, and not elsewhere. Google's webmaster guidelines explicitly state that paid-for links should have the 'nofollow' attribute, and brands found breaking these guidelines are routinely de-indexed by Google.

See www.google.com/support/webmasters/bin/answer.py?answer=35769.

Example C: Video Blog

A video-blogger is paid by a brand owner or marketing practitioner to promote a product in an editorial video. The brand should ensure that the video discloses the payment within the content of the video itself to ensure it is clear and transparent to the user.

Notes: As some consumers may view the content outside of the video sharing platform the video is hosted on (via RSS or if the content is embedded elsewhere), it's essential the disclosure happens within the content of the video itself.

Example D: Twitter

A Twitter user is paid by a brand owner or marketing practitioner specifically to use Twitter to promote a brand, product or service. The brand owner or marketing practitioner should ensure that the Twitter user discloses the payment by including '#ad' within their tweet. As tweets are limited to 140 characters, the use of the '#ad' hashtag allows maximum room for the message itself, but also makes clear to consumers that the message has been paid for.

Notes: The Mars Snickers *You're not yourself when you're hungry* Twitter campaign was referred to the ASA. Complainants had stated that the series of out of character celebrity tweets were misleading. In March 2012 the ASA cleared the campaign as the reveal tweet made clear it was a marketing communication – and was the only one to involve the product.

For further information on the ruling see: http://www.asa.org.uk/ASA-action/Adjudications/2012/3/Mars-Chocolate-UK-Ltd/SHP_ADJ_185389.aspx

In June 2012 the ASA upheld a complaint against the Nike #makeitcount campaign. The ASA found that the tweets from footballers were under the marketers control and did not make clear that they were marketing communications.

For further information on the ruling see: http://www.asa.org.uk/ASA-action/Adjudications/2012/6/Nike-%28UK%29-Ltd/SHP_ADJ_183247.aspx

Example E: Forums

A brand owner or marketing practitioner, wishing to promote a brand, product or service to the members of a particular internet forum, should follow that forum's community guidelines, moderation policy or similar. Where these are not available, or do not detail how brand representatives should conduct themselves, brand owners or marketing practitioners should approach the administrators of the forum directly or via their agencies to seek permission to post the content themselves (making sure to clearly identify themselves as representatives of the brand) or come to a commercial arrangement with the owners of the forum (for example having a sponsored area of the forum).

Notes: Brand owners or marketing practitioners should not consider asking (whether or not payment is involved) third-parties to promote brands, products or services within internet forums, bulletin boards or news groups without permission from the forums' administrators, even with disclosure, as doing so would contravene generally accepted etiquette and is likely to generate negative sentiment amongst the forums' members. Brand owners or marketing practitioners should of course feel free to *reply* to comments in a non-promotional way on forums concerning their brands, providing they clearly disclose that they are affiliated with the brand in question.

Example F: Facebook

A brand owner or marketing practitioner should not consider paying individuals to promote brands, products or services on the individuals' pages or profiles on Facebook, even with disclosure, as doing so would contravene Facebook's terms of service.

Notes: In April 2011 Facebook banned Ad.ly, a service that was paying celebrities to endorse products in their Facebook page updates, as it violated section 3.1 of the site's terms of service which states "*You will not send or otherwise post unauthorized commercial communications (such as spam) on Facebook*".