

DO SOCIAL MEDIA INFLUENCERS HAVE TO TELL YOU WHEN THEY'RE #SPONSORED?

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What do Kylie Jenner, Selena Gomez, Cristiano Ronaldo and Dwayne “The Rock” Johnson all have in common? They’ve all been paid close to a million dollars for a single post on social media. Sure, these are A list celebrities, but YouTube, Instagram, Vine and SnapChat stars like Lilly Singh, Zach King, Jake Paul and Lele Pons also have big brands in their back pockets. Companies have realised how much power social media influencers have over the masses and they’re using it to their advantage. And while these influencers have played by the rules and clearly pointed out when they were being paid to promote a product, there are many more that have failed to take the steps necessary to ensure that consumers know that they are being paid.

The [Consumer Protection Act](#) (“CPA”) defines “advertisement” as any direct or indirect visual or oral communication transmitted by any medium, by means of which a person seeks to bring the attention of the public to the existence of any goods or services or promote the supply of any goods or services. This means that sponsored content is considered advertising, and the CPA therefore applies. Section 29 of the CPA states that a producer, retailer or service provider must not market goods or services in a way that is misleading, fraudulent or deceptive. Section 41 of the CPA goes on to state that the supplier must not fail to correct an apparent misapprehension on the part of the consumer. So when a social media influencer fails to disclose when the content they post has been sponsored, they are in blatant violation of our laws.

But that’s just in South Africa, the [Consumer Protection from Unfair Trading Regulations](#) (“CPUTR”), the U.K equivalent to our CPA, defines “commercial practice” as any act, conduct or representation (this includes advertising and marketing) by a trader, which is directly connected to the promotion, sale or supply of a product or service. Section 5 of the CPUTR states that a commercial practice is misleading if it contains false information about, *inter alia*, the main characteristics of the product and the nature, attributes and rights of the trader, and it causes, or is likely to cause, the average consumer to take a transactional decision they would not have otherwise taken. Subsections 5 and 6 go on to state that the “main characteristics” include usage of the product and “nature, attributes and rights” include the traders’ affiliations or connections. Section 6 of the CPUTR illustrates scenarios when advertising can be viewed as a misleading omission which include instances where the advertisement omits or hides material information or provides material information in a manner which

is unclear, unintelligible, ambiguous or untimely. This, again, means that not making it apparent when your content is sponsored is in direct violation of the law and can mean fines and imprisonment of up to two years.

The Competition and Markets Authority (“**CMA**”) recognises that celebrities could sway the shopping habits of millions by telling followers what they eat, what they wear, or what products they use. Consumers are likely to trust a product if they think it’s being recommended by someone they hold in high esteem, especially if they don’t realise that the post is part of a commercial agreement. That’s why it’s imperative that influencers make it clear when they have been paid or rewarded in some way.

Something as simple as #Advert and using the “Paid Partnership” feature on Instagram lets consumers know that the content is sponsored. However, these hashtags must be prominent and clear. Tagging a brand, using ambiguous language or vague hastags like #sp or #collab just won’t cut it. The consumer should be able to tell that content on social media is sponsored immediately.

Following the liquidation of the Advertising Standards Authority of South Africa, the [Advertising Regulatory Board](#) assumed the role of regulating the advertising and marketing industries. However, it’s [Code of Advertising Practice](#) remains silent on the use of social media influencers in the marketing of a product.

A South African guide on what is acceptable in terms of social media marketing seems to be a work in progress. In the interim, however, the [Advertising Standards Authority](#) in the UK has created a short, easy to read [influencer’s guide](#) that sets out exactly when, why, and how you should disclose sponsored posts. Then again, you could just contact us for more good, clear, precise advice.