

CODE OF CONDUCT ON THE USE OF INFLUENCERS IN ADVERTISING

2020

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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 considered 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 publishing content related to products or services, to promote them.

The use of this common strategy is a priori lawful, without prejudice to the fact that it is, like any other action of advertising nature, subject to all legislation in force and, specially, to what has been called by the legal doctrine the '*Principle of authenticity*' or '*Principle of identification of advertising*', derived from the prohibition of surreptitious advertising contained in the Unfair Competition Spanish Law and other sectoral rules.

In any case, it should be borne in mind that influencers have the double condition of being a communicator and of being a consumer, of the set of products and services that are available to the public in the market and, therefore, they are also affected by commercial communications developed by brands, and by their offers, promotions, and discounts. Similarly, influencers may have their own knowledge of certain products and services and this knowledge can position them in favor or against those products or services, without any intervention from the brands that represent them.

Moreover, influencers develop throughout their career, a language, a format, and some communication styles, that allow them to create and increase a number of 'followers', who are usually persistent and in tune with their way of communicating and with their language. This consistency allows to delimit, with a certain degree of objectivity, the average profile of the followers that will be affected by certain content or message and, therefore, the interpretation made of the principle of identification of advertising must be based on the said profile.

The Spanish Association of Advertisers (aea) and the Association for the Self-regulation of Commercial Communication (AUTOCONTROL), aware of this fact and committed since their foundation to the promotion of responsible advertising, promote this Code of Conduct, establishing a set of rules that will be binding for all those adhered to the aea and adhered to AUTOCONTROL, as well as for any other companies in this sector (advertisers, agencies, representatives, media) or influencers, who voluntarily adhere to the Code.

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.



ETHICAL RULES

1. The companies adhered to the aea and adhered to AUTOCONTROL, as well as influencers and other companies that adhere to this Code, undertake to comply in their commercial communications with the rules included herein.
2. The companies adhered to this Code shall inform influencers of its existence and will encourage their adherence to the Code.

The companies will include, in their contracts with influencers, a clause stating that compliance with this Code is compulsory.

3. For the purposes of this Code, advertising references or content shall be all those references or content -graphic, audio, or visual- that cumulatively:
 - a. Are intended to promote products or services;
 - b. are published within the framework of collaborations or reciprocal commitments, and the publication of such content is subject to payment or other consideration, by the advertiser or its representatives;
 - c. the advertiser or its agents exercise editorial control over the published content, previously establishing all or part of it and/or validating it.

On the contrary, content that is purely editorial will not be advertising and, therefore, this Code will not be applicable, nor it will apply to the content published 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 products, free tickets to events, free provision of services, gift vouchers, gift bags and travels.
5. The advertising nature of the references made by influencers or of the digital content published by them, which have such advertising condition, must be identifiable for their followers.

In those cases, in which the said advertising nature is not clear and obvious in view of the reference or content itself, a warning regarding the advertising nature of such references or content must be included. This warning must be explicit, immediate, and appropriate to the medium and message.

- a. For this purpose, it is recommended to use clear generic warnings such as 'advertising', 'ad', 'in collaboration with' or 'sponsored by', or alternatively descriptive warnings depending on the specific collaboration (for example, 'Ambassador of [brand]', 'Thanks to [brand]', 'Gift from [brand]', 'Sponsored trip', etc.
- b. On the contrary, generic mentions (such as 'information', 'legal' or similar), warnings that require an action by the user (for example, a click) and unclear notes (such as 'Colab', 'Sponso' or 'sp'), are discouraged.
- c. The warning regarding the advertising nature of the reference 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 considered that, as provided in section 2 of article 7 of Law 3/1991 on Unfair Competition, when assessing an eventual omission of information in limited space or time media, such limitations shall be taken into account, along with all the steps taken by the entrepreneur or professional to provide the necessary information through other means.

Additionally, in the absence of an objectively delimited profile, the average profile of the consumer habitually following an *'influencer'*, will be understood as consumers who are active and knowledgeable about new information technologies, usually attentive and informed, with sufficient capability to access and understand digital media and the autonomy to search, select from and adapt the contents of the network in their navigation according to their tastes or interests.

APPLICATION RULES

A. OBSERVANCE OF THE CODE

1. The companies adhered to the aea and those adhered to AUTOCONTROL, and other companies that voluntarily adhere to the Code, 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 decisions that the AUTOCONTROL Advertising Jury may adopt for the resolution of complaints regarding this Code.
2. The list of companies and influencers adhered to the Code will be made public.

B. INTERNAL PRIOR CONTROL AND COPY ADVICE®

1. Companies will establish internal control measures aimed at ensuring compliance with the ethical rules contained in this Code.
2. In those cases, in which a company or an influencer has doubts about the legal or deontological correctness of an advertising reference or content, they may submit it to the AUTOCONTROL Technical Office for previous examination via the voluntary, confidential and non-binding prior consultation system. The Technical Office of AUTOCONTROL will act in accordance with its rules.

C. POST-CONTROL: ADVERTISING JURY

1. In addition to the companies adhered to 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 above, may submit complaints to the Advertising Jury for infringement of the rules contained in the Code.

2. For the effective application of this Code and when processing and resolving any complaints regarding the infringement of this Code, against the advertising of companies adhered to it, the AUTOCONTROL Advertising Jury will proceed in accordance with the principles of independence, transparency, contradiction, efficacy, legality, freedom of choice and the right to representation by the consumer, and in accordance with the provisions of its Rules and with the processes and fees established by AUTOCONTROL.
3. The decisions adopted by the Advertising Jury in application of this Code will be immediately communicated to the interested parties for their compliance.
4. Decisions will be made public through their insertion on the websites or other channels of the aea and AUTOCONTROL.

D. POST CONTROL: MONITORING

1. If the aea and AUTOCONTROL deem it necessary, AUTOCONTROL may carry out monitoring exercises for evaluating the degree of compliance with the rules in this Code, by the adhered companies and influencers.

E. FOLLOW-UP COMMITTEE

1. For the supervision of this Code, a Follow-up Committee is established, with a mixed composition, which will be made up of two representatives of the aea and representatives of AUTOCONTROL, who will meet periodically.

F. ENTRY INTO FORCE

1. This Code of Conduct enters into force on 1st January 2021.

ANNEX

Example list of recommended location of the identification of advertising references or content



Blogs

Include the identifying word or label in the title of the post.



Facebook

Include the identifying word or label in the title of the entry or post.



Instagram

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.



Pinterest

Include the identifying word or label at the beginning of the message.



Twitter

the identifying word or label in the body of the message as a tag.



Vlogs

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.



YouTube 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



Snapchat

Include the identifying word or label in the body of the message as a tag.