



March 21, 2021

Hilda Macwan  
Public Relations & Social Media Manager, Marketing  
The Advertising Standards Council of India

**Sub:** Comments to the draft Guidelines for “Influencer advertising on Digital Media”, February 2021

Dear Ms. Hilda Macwan,

ALG India Law Offices LLP (“ALG”) submits these comments in response to the invitation for feedback on the Guidelines for “Influencer advertising on digital media” - draft for stakeholder consultation, which was published in February 2021.

Our key comments and suggestions, discussed in detail in the enclosed Note, are summarized as below –

1. The definition of “influencer” should be clarified further to make it clear that the popularity of a person (in terms of number of followers, subscribers, etc.) is not a yardstick for qualifying as an influencer.
2. A definition of “virtual influencer” should be inserted and responsibility for disclosure in case of virtual influencer advertising should be shared by the advertiser as well as the owner/controller of the virtual influencer.
3. More disclosure label options should be added to the list, towards providing options for more transparent disclosure.
4. Additional guidelines for influencer advertising should be inserted, pertaining to authentic endorsement, video advertising, etc.
5. The “ready reckoner” guidelines for specific media channels should be made more comprehensive to cover disclosure requirements for different types of posts.

We appreciate the considerable effort that has gone into the Guidelines. We recognize the time pressures and challenges, under which the council is working, particularly in COVID19 times. We thank you for your time and consideration of these comments.

**ALG India Law Offices LLP**

Through  
Pranay Bali, Senior Associate  
Sunidhi Bansal, Associate



## NOTE CONTAINING ALG'S COMMENTS AND SUGGESTIONS ON THE GUIDELINES FOR "INFLUENCER ADVERTISING ON DIGITAL MEDIA"

1. An Influencer is someone who has access to an audience and the power to affect the audience's purchasing decisions or opinions about a product, service, brand or experience, because of the influencer's authority, knowledge, position, or relationship with their audience. An influencer can intervene in an editorial context or in collaboration with a brand to publish content.

### 1.1 ALG's *Observation*

The current definition of an "influencer" is broadly worded and includes anyone who has the "power to affect their audience's purchasing decisions or opinions". While such a broad definition would be helpful in increasing the applicability of these guidelines to a greater number of influencers, we are of the view that the definition can be further clarified by making it clear that a person qualifies as an "influencer" based on their power to influence, and not their popularity (in terms of number of followers, subscribers, etc.).

### 1.2 ALG's *Recommendation*

We recommend insertion of the below *italicized* text in the definition -

An Influencer is someone who has access to an audience and the power to affect their audience's purchasing decisions or opinions about a product, service, brand or experience, because of the influencer's authority, knowledge, position, or relationship with their audience, *regardless of the number of followers, viewers or subscribers they may have on the relevant platform*. An influencer can intervene in an editorial context or in collaboration with a brand to publish content.

2. The responsibility of the disclosure is upon the **influencer** or **publishing account** on which the advertisement is published, as well as the **advertiser** for whose brand the advertisement is.

In the case of a brand using a virtual influencer, the onus of the disclosure is upon the **advertiser**.

### 2.1. ALG's *Observation*

The responsibility for making appropriate disclosures in general influencer advertising has been placed on the influencer/publishing account as well as the advertiser. However, it has been stated

that if a brand is using a “virtual influencer”, then the onus of making the disclosure falls solely on the advertiser, viz. for whose brand the advertisement is. A

“virtual influencer” has not been defined and therefore its meaning and scope is vague. Also, in case of virtual influencer, the responsibility for disclosure should be shared by the advertiser and the owner/controller of the virtual influencer.

## 2.2 ALG’s *Recommendation*

The term “virtual influencer” should be clearly defined and explained. A recommended draft definition is as follows –

*A virtual influencer is an artificial computer-generated influencer driven by artificial intelligence and having the appearance, characteristics and personality of a human being.*

*Explanation – the definition of the term “influencer” as laid down earlier in these guidelines is applicable to this definition as well.*

The guideline pertaining to responsibility of disclosure in case of virtual influencer should be revised as follows, with the insertion of the *italicized* portion –

In the case of a brand using a virtual influencer, the onus of the disclosure is upon the **advertiser** *as well as the owner/controller of the virtual influencer.*

## 3. Disclosure label options

#ad  
#collab  
#promo  
#sponsored  
#partnership

### 3.1 ALG’s *Observation*

The current list of disclosure labels is limited and the guidelines state that no other labels may be used. However, some more disclosure label options should be added to the list towards providing options for more transparent disclosure.

### 3.2 ALG’s *Recommendation*

The following disclosure labels should be added to the list –

#Advertisement  
#PaidPromotion  
#Brand\_Ambassador  
#Brand\_Partner

## #Sponsored\_Brand

Explanation – The actual name of the brand is to be inserted in the above labels where the term “Brand” is mentioned.

### 4. Guidelines for Influencer advertising on digital media

#### 4.1 ALG’s *Recommendations*

We recommend insertion of the following additional points to the ten points provided under the head “Guidelines for Influencer advertising on digital media” :-

- The influencer must not discuss their experience with a product or service, or endorse the same without having actually tried or used it.
- Merely tagging the sponsor/advertiser in the advertisement is not adequate. Suitable disclosure labels must be inserted in the advertisement posts in the prescribed manner.
- In video advertisements which are accompanied by a text post/description, the disclosure label should feature in both the video and the text post/description. The disclosure label should be superimposed on the video as per guideline no. 6.

### 5. Ready reckoner for specific media channels

#### 5.1 ALG’s *Recommendation*

We recommend insertion of the *italicized* text in the below provisions -



The disclosure label to be included in the text that shows. If only the image/video is seen, the image/video itself must include the label eg: reels, insta stories. *In case of multiple*

*Instagram stories, the disclosure label should appear clearly in each story which contains the advertisement, as per guideline 6.*



Include the disclosure label in the title of the entry or post. If only the image/video is seen, the image/video itself must include the label eg: FB story. *In case of multiple Facebook stories, the disclosure label should appear clearly in each story which contains the advertisement, as per guideline 6.*



Include the disclosure label in the body of the message in the beginning as a tag or in the text that shows. If only the image/video is seen, the image/video itself must include the label eg snapchat stories. *In case of multiple Snapchat stories, the disclosure label should appear clearly in each story which contains the advertisement, as per guideline 6.*



YouTube and other video platforms

Include the label in the title / description of the post *as well as in the video as per the guidelines.*

X----X