

Legal Issues in

Guidelines for "Influencer advertising on digital media"- draft for stakeholder consultation

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Recommendations made by ALG in its Firm Submission in Response Thereto

Introduction

❖ *Aim and purpose of the Guidelines*

- To address the blurring lines between general content and advertisements
- To distinguish when something is being promoted with an intention to influence opinion
- Clause 1.4 (misleading by omission) and 1.5 (abuse trust of consumers or exploit their lack of experience or knowledge).

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Advertisement and Material Connection

❖ Definitions under the guidelines -

- ❖ **Advertisement** - *paid-for communication, addressed to the public or a section of it, the purpose of which is to influence the opinions and/or behaviour of those to whom it is addressed. Any communication which in the normal course may or may not be recognized as an advertisement by the general public, but is owned or authorised by the advertiser or brand owner would be included in the definition.*
- ❖ **Material Connection** - *Any connection between an entity providing a product or service and an endorser, reviewer, influencer or person making a representation or publishing the communication that may affect the weight or credibility of the representation, and that could include benefits and incentives, such as monetary or other compensation, free products with or without any conditions attached, discounts, gifts, contest and sweepstakes entries, and any employment relationship.*

Influencer

❖ *Definition of Influencer in the guidelines -*

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. An influencer can intervene in an editorial context or in collaboration with a brand to publish content.

❖ *ALG's Recommendations (insertion) –*

4 *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.*

Disclosure

- ❖ The guidelines state that –
 - Disclosure is a clarification that a piece of communication is an advertisement.
 - An average consumer should be able to recognize that something is advertisement without interacting with it.
 - Disclosure labels ought to be used when any communication is an advertisement.
 - Disclosure to be made upfront

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Disclosure labels

- ❖ Disclosure label options under the guidelines –
 - #ad
 - #collab
 - #promo
 - #sponsored
 - #partnership

- 6 ❖ No other label option currently allowed. The list is subject to periodic review and updates.

- ❖ **ALG's Observation** - The current list of disclosure labels is limited and the guidelines state that no other labels may be used. Some more disclosure label options should be added to the list towards providing options for more transparent disclosure.

Disclosure Labels (Contd.)

- ❖ ***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.

Responsibility for Disclosure

- ❖ The guidelines state that –

*“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**”*

- ❖ **ALG’s Observations** –

- 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 has been made) and not on the owner/controller of the virtual influencer.
- A “virtual influencer” has not been defined and therefore its meaning and scope is vague.

Virtual Influencer

❖ *ALG's recommendations -*

The term “virtual influencer” should be clearly defined and explained. Recommended draft definition –

“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.”

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The guideline pertaining to responsibility of disclosure in case of virtual influencer should be revised as follows –

“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.

❖ Example of a virtual influencer –

- “Lil Miquela” (pictured)
- Instagram handle - @lilmiquela
- Over 3 million followers on insta
- Created by tech start-up ‘BRUD’



Image source - <https://www.instagram.com/p/CLW275PHpQG/>

Guidelines for Influencer advertising on digital media

❖ Salient guidelines -

- Advertisements must be obviously distinguishable from user-generated content, for this a disclosure label must be added from the list of approved labels.
- The disclosure label used to highlight advertising content needs to be upfront.
- Blanket disclosures in a profile/bio/about section will not be considered.
- If the advertisement is only a picture post, the label needs to be superimposed over the picture.
- In the case of video not accompanied by a text post, the disclosure label should be superimposed on the video in a manner that is easily visible.
- In the case of audio media, the disclosure label must be clearly announced at the beginning and at the end of the audio
- Filters should not be applied to social media advertisements if they exaggerate the effect of the claim that the brand is making.
- The influencer must do their due diligence about any technical or performance claims made by them.

Guidelines for Influencer advertising on digital media

- ❖ **ALG's Recommendations** - Insertion of the following additional guidelines -
 - The influencer must not discuss their experience with a product or service, or endorse the same without having actually tried or used the same.
 - 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.

Ready reckoner for specific media channels

❖ *Under the guidelines –*



- - 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).




- - 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).



- - 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).

Ready reckoner for specific media channels

❖ *Under the guidelines –*

-  **and other video platforms** - Include the label in the title / description of the post.

❖ *ALG's Recommendation –*

- Disclosure label should appear clearly in each story/video
- Disclosure label should be included both in the in the title/description of the post as well as in the video as per the guidelines.

Summary of ALG's Recommendations

- ❖ 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.
- ❖ 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.
- ❖ More disclosure label options should be added to the list, towards providing options for more transparent disclosure.
- ❖ Additional guidelines for influencer advertising should be inserted, pertaining to authentic endorsement, video advertising, etc.
- ❖ The “ready reckoner” guidelines for specific media channels should be made more comprehensive to cover disclosure requirements for different types of posts.

THANK YOU!

Questions?

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