

**Seldia Guide on
disclosure and
recognisability of the
commercial nature of
direct selling social
media content**



This document is for Seldia members, Direct Selling Associations as well as companies, to guide them on issues related to disclosure and recognisability of the commercial nature of direct selling social media content.

It builds on existing guidance available from enforcement authorities and advertising self-regulatory organisations, in Europe and beyond, while aiming to address the specificities of the direct selling channel on social media.

It aims to serve as guidance for members. National rules and regulation will always prevail.

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CHAPTER I: INTRODUCTION

All commercial communications must be legal, decent, honest and truthful.

As per EU law, communications of a commercial nature should be transparent and not to mislead the average consumer. In practice, this means that:

- 1** Commercial content must be clearly identifiable as such;
- 2** The natural or legal person on whose behalf communications are made must be clearly identifiable;
- 3** Promotional offers, competitions or games must also be clearly identifiable as such and the conditions which are to be met to qualify or to participate must be presented clearly and unambiguously.

In order to lay down the appropriate principles regarding digital and social media for the direct selling sector, Seldia has introduced Article 2.7 to its Codes.

“ Article 2.7 Marketing Communications:

Companies and Directs Sellers must take the necessary measures with the aim of ensuring that all forms of advertising and marketing communications, including on digital and social media, are compliant with the applicable laws, the present Code as well as the International Chamber of Commerce Marketing Code and applicable national advertising self-regulatory codes.

The marketing communications must not contain product descriptions, claims or illustrations which are untruthful, inaccurate or misleading or unfair in any other way. They shall be easily recognisable as marketing communications and must disclose their commercial intent.

Companies shall take clear and reasonable steps to ensure that marketing communications and related material that they produce, or is produced on their behalf, - including by Direct Sellers - are compliant.

Promotional literature and mailings shall contain the name and contact details of company and may include the contact details of the Direct Seller.”



The purpose of this document is to provide a practical guide to direct selling companies, parties acting on behalf of the company, direct sellers, and third-party content providers they engage with, such as influencers, on how to best implement this article. It focuses on the aspect of identification and recognisability of a commercial communications as such.

This guide considers existing guidelines that have been developed by other national authorities and self-regulatory bodies across Europe¹ and around the globe.

¹ See Annex 1



CHAPTER II: DEFINITIONS

“Marketing communications”

means “advertising as well as other techniques, such as promotions, sponsorships and direct marketing, and should be interpreted broadly to mean any communications produced directly by or on behalf of companies or direct sellers intended primarily to promote products or to influence consumer behaviour”².

“Advertising” or “advertisement”

means “any form of marketing communications carried by any media, usually in return for payment or other valuable consideration”³. This includes digital marketing communications.

“Sponsorship”

on social media can take different forms. The two main common ones are:

- “program sponsorship” means when an advertiser sponsors a program as opposed to buying a few ad placements during the program. With a program sponsorship, the advertiser takes on a stronger partnership with the program and medium. This typically means the advertiser pays a certain fee for a sponsorship package in exchange for a certain number and type of sponsorship mentions throughout the program.
- “event sponsorship” means when an advertiser takes on a portion, or all, of the costs of an event in exchange for a prominent mention as a sponsor.

² In line with the International Chamber of Commerce – ICC Advertising and Marketing Communications Code
³ International Chamber of Commerce – ICC Advertising and Marketing Communications Code



“Influencers”

means independent third-party endorsers who shape audience attitudes through blogs, posts, tweets, and the use of other social media. Influencer marketing traditionally involves elements of identification of such individuals by the advertisers and engaging them in marketing activities and promotion of the brand and/or its products⁴.

“Average consumer”

means any person “who is reasonably well-informed and reasonably observant and circumspect, considering social, cultural and linguistic factors”⁵.

“Disclosure labels”

means any label that is used to highlight advertising and other marketing communications.

“Blanket disclosures”

means a one-time disclosure made in the influencer’s or direct seller’s social media account profile or bio.

“Material connection”

means any connection between a company or direct seller providing a product or service and an endorser, reviewer, influencer, or person making a representation that may affect the weight or credibility of the representation, and includes: 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

⁴ EASA Best Practice Recommendation for influencer marketing
⁵ Recital 18, Directive 2005/29/EC



CHAPTER III: DO AND DON'T



1. DO: State the nature of the relationship with the direct selling company

You should always disclose in a prominent and upfront manner that you are (company), market and sell (direct seller) or promote (influencer) the products of direct selling company X.



2. DO: Make sure that your disclosure statements are clear, simple and straightforward and contextually appropriate.

The average consumer should be able to recognise marketing and commercial content. This means that the average consumer should consider them as obviously identifiable as such, and shouldn't have to work to figure this out. The disclosure label should be well understood by the average consumer who is viewing the marketing communication.

You should use clear language and syntax and avoid legalese or technical jargon. The disclosure label must be in the language of the communication or in English.



3. DO: Use labels that are widely understood and accepted as highlighting commercial content

Labels should be easily identifiable and should be easily understood by the average consumer. To be sure that your marketing communication is easily identifiable as such, the following labels are considered explicit:

- Ad / Advert / Advertising / Advertisement
- Sponsored / Sponsorship
- (name of brand/company) Distributor / Seller
- (name of brand/company) Consultant
- (name of brand/company) Representative
- Independent (name of brand/company) Brand Partner

Abbreviations and jargon should be avoided. As the following labels may not be clearly understood by consumer, we recommend against using them⁶:

- Spon
- #Spon
- #Sp
- Collab
- Thanks to [brand/company] for making this possible
- Just @ mentioning the brand



4. DO: Use prominent and upfront disclosure labels

The disclosure of commercial intent of the influencer's message could be made in a variety of ways, but, most importantly, it should appear instantly. Any disclosure labels used to disclose a marketing communication should:

- Be displayed as early as is reasonably possible so that they are noticeable to consumers with minimal scrolling or clicking. For example, it is more likely that a disclosure at the end of the video will be missed, especially if someone does not watch the whole thing;
- Be reasonably visible and readable on a variety of devices. A key consideration is how viewers see the screen when using a particular platform;
- Be placed on the same page as the marketing content;
- Be superimposed over the picture/video if the consists only of a picture or very short video only (such as Instagram stories, tiktok or Snapchat);
- Be easily read without referring the consumer elsewhere to obtain the information;
- Convey and clearly show that the content is of commercial nature and/or has been paid for or that there is any other material connection.

⁶ As these would not meet the requirements for example of UK "ASA's influencer guide to making clear that ads are ads" and "Influencer Marketing Steering Committee".



5. DO: Disclosures should be specific about the brand, product, and what was given

When partnering with third party content providers (such as influencers), companies and direct sellers should ensure they state the nature of the material connection (i.e. free products, monetary compensation, exclusive invite to an event), name the brand, and list the specific products they are promoting. Blanket statements that are not product and brand-specific are not transparent for the viewers.



6. DO: Use the solution provided by the social media platforms themselves to label your content

Compliance solutions provided by social media platforms constantly evolve. Companies, direct sellers and influencers should make the best use of them. Tagging the business partner doesn't absolve you of all legal responsibility to disclose commercial content. Even with the use of the tag, all parties involved remain responsible for their legal disclosure obligations, including those needed to indicate the commercial nature of content that they post.



7. DON'T: Use blanket disclosure only

The relationship between the company and the direct seller or influencer should be clearly understood at all times. While blanket disclosures are necessary, they are not sufficient. A direct seller's or an influencer's profile/about section does not meet mandatory disclosure criteria. Viewers may access individual reviews or watch individual videos without seeing the disclosure on another page.



8. DON'T: Simply "tag the brand"

Some content creators only tag their sponsors, some tag brands with which they have no relationships, and some do a bit of both. Viewers cannot be sure that simply tagging a brand indicates material connection. If there is a material connection between the brand and influencer, it needs to be specifically mentioned.



9. DON'T: Use disclosure labels in a way that could result in hidden disclosure

If you use a lot of hashtags/mentions, then the disclosure should always be prior to those hashtags/mentions. Otherwise, there is a risk that the disclosure is buried in the long list of hashtags/mentions.



10. DON'T: misrepresent the products or the business opportunity

Rules and laws related to the content of messages always apply, no matter the medium or format. The use of filters and other image editing options should be done responsibly, and never be misleading.



11. DON'T: Engage in spam communications

Spam communications are defined as communications sent to consumers, without having a pre-existing, personal relationship with them. Excessively tagging and repetitively commenting are considered spamming.

Spam communications also include sending communications to consumers that have "opted out" or have not "opted in" receiving direct marketing messages.



12. DON'T: Post derogatory or negative comments about other persons, companies, or products of other companies

You should be respectful towards others. You should avoid personal attacks and you should not engage in online fights.









CHAPTER IV: BASIC GUIDANCE FOR DISCLOSURE LABELS ON SOCIAL MEDIA

Always remember that national guidance regarding influencer marketing issued by the national advertising self-regulatory authority will define:

- The placement of disclosure
- The timing of disclosure
- The labelling of disclosure (such as particular hashtags which are accepted as a clear identification of marketing communications and the ones that are likely to confuse consumer and not be considered as sufficient by the Self-Regulatory Organisations).
- The wording of appropriate disclosure (such as phrases used to correctly identify the nature of the agreement with the advertiser, e.g. “these products have been sent for free to give a review”, “the trip was sponsored by”) in the local language.

Companies and direct sellers should always consult the latest applicable national guidance.

The elements listed below are generic and indicative and should be read in conjunction with the rules applicable locally:

-  **Instagram:** The disclosure label should appear in the caption as part of the main message. If only the image/video is seen, the image/video should include the label e.g. Instagram stories
-  **Facebook:** The disclosure label should appear in the title of the post. If only the /video is seen, the image/video should include the label e.g. Facebook stories
-  **Twitter:** You should place the disclosure label or tag at the beginning of the message
-  **Youtube and other video platforms:** You should place the disclosure label in the title/description of the post
-  **Snapchat:** Disclosure labels should appear at the beginning of the story
-  **TikTok:** Disclosure labels should appear in the caption as part of the main message



CHAPTER V: REFERRAL PROGRAMMES

When a company or direct seller asks a third-party (an influencer or consumer directly) to make a post on their behalf, the reader of that post should understand if the third party received or will receive something of value in exchange. In other words, if the influencer/consumer will get a discount for posting, or a discount for each new customer who signs up using that consumer's code, the reader should understand this clearly. It is material for viewers to know that the consumer chose to post in order to get something in return. For example: "I will get 10€ off if X people subscribe / click on the link below"



CHAPTER VI: ACTIVE & EFFECTIVE COMPLIANCE

All Direct selling companies should ensure effective compliance by their direct sellers and the third-party content providers they engage with. Therefore, it is important that Seldia member direct selling companies effectively engage in training, monitoring and enforcement.

A. Training

Seldia member direct selling companies are expected to:

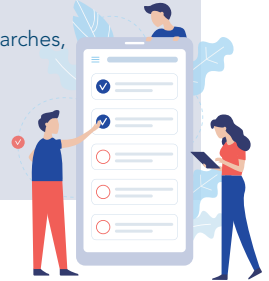
- 1** Establish clear rules of conduct for their sellers and third-party content providers
- 2** Implement training about key areas (eg. products, earning claims etc)
- 3** Document and implement periodic refreshers (when rules or services on social media platforms evolve for example)



B. Monitoring

Seldia member direct selling companies are expected to:

- 1 Identify high-risk claims (COVID, earnings etc...)
- 2 Check on the content shared on their behalf by conducting manual searches, implementing third-party solution and considering field monitoring
- 3 Establish a course of action for resolution when identifying non-compliant content



C. Enforcement

Seldia member direct selling companies are expected to:

- 1 Impose meaningful consequences based on the severity of the action
- 2 Consider relevant factors (level of experience, number of offences)
- 3 Be consistent in their enforcement
- 4 Track and keep a record of the violations and the actions taken
- 5 Use this experience to improve training programmes



ANNEX 1 - National Self-Regulatory Organisations Guidelines on Influencer Marketing in the EU

Country	Guidelines	Date	Language
Austria	Part of Ethik-Codex der Werbewirtschaft (section 1.8)	2019	DE
Belgium	Belgian Advertising Council Recommendations on Online Influencers FR NL	2018	FR, NL
France	Part of Recommendation on digital advertising communication and other relevant resources regarding influencer marketing regulation	2017 2019	FR, EN
Germany	Influencer Marketing & Recht Leitfaden zur Kennzeichnung von Werbung auf Instagram	2019	DE
Ireland	ASAI GUIDANCE NOTE Recognisability of marketing communications	2016	EN
Italy	IAP DIGITAL CHART (social network and content sharing section) IT EN	2016	IT, EN
Netherlands	Social media & influencers marketing code	2019	NL
Portugal	Under development by auto-regulacaopublicitaria.pt	/	PT
Romania	Part of The Code of Advertising Practice (Ch.1, Art.4)	2018	EN, RO
Spain	Code of conduct on the use of influencers	2020	ES
Sweden	The Swedish Consumer Agency Guidance on marketing in blogs and other social media	2018	SE
UK	Influencers' guide to making clear that ads are ads and Other resources regarding influencer marketing regulation	2020	EN

Source: EASA (European Advertising Standards Alliance) and ICAS (International Council on Advertising Self-Regulation)



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