



ONLINE ADVERTISING THE RULES FOR “INFLUENCERS” AND ADVERTISERS

Recently, the “Information Guide on rules and good practices in commercial communication in the digital environment” was published by the General Directorate of Consumer Affairs (DGC), a public entity of the Ministry of Economy, whose purpose is to carry out consumer protection policy in Portugal. The Guide has as its “main targets the influencers and the advertisers”.

This Guide arises from the discussion currently being held in Europe, notably the United Kingdom and Italy, on the “new” way of promoting commercial brands. The Guide provides a practical approach to the issue of advertising on the various digital platforms, by enabling advertisers and influencers to internalize the obligations inherent in such commercial communications and to become aware of the obligation to comply with the applicable law.

Nowadays, advertising has occupied new spaces of diffusion - digital platforms - and assumed a new language - with different players as main actors - substituting, progressively, the traditional channels. Influencers’ ability to influence grows stronger every day over consumer’s decisions, and advertisers have embraced social networks, either through these influencers or themselves, as a preferred vehicle in their marketing and commercial communication strategies.

Inevitably, the debate about how the basic requirements of commercial communication in digital media - delivered clearly, transparently and responsibly - should be efficiently implemented in the marketing and promotion of sales spread by social networks also reached Portugal.

The Guide does not exactly create new rules on the matter, but instead compiles those that are applicable (at least the most obvious ones), remembering that the digital channels are also subject to them. One of the innovations of the Guide is the definition of what we should understand by “influencer”: “a person or character in the digital environment who has the potential to influence others, regardless of the number of consumers that are his followers and that accompany his publications. Influencers are also digital content creators and an important source of information and influence for the consumers that trust in them.”

The activity of the influencers translates into commercial content publications, which have an underlying commercial relationship between the influencer and the item or brand that is being promoted. This commercial relationship, associated with some type of consideration or benefit, immediately determines that the disclosure of the content is not ultimately free, spontaneous and impartial.

Generally, the consumer establishes a relationship of trust with the contents shared by the influencer, absorbing them with reduced scrutiny. For this reason, the obligation to inform that it is advertising is indisputable and must be identified clearly and unequivocally as such to the consumer - at the beginning of its publication - achieving visibility over the content. The identification must correspond to the type of benefit received (pub, sponsorship, partnership, offer). Commercial communication must also be accompanied by mandatory legal disclaimers.

It would have been interesting for the Guide to promote information regarding the applicable penalties regime in case of violation of these rules, which is notoriously a risk element often unknown by influencers and advertisers who use digital means to promote their activity. Financial penalties are high and can amount to around 45,000 euros (fines), applicable to both influencers and advertisers, communication agencies, among others.

Currently, the digital platforms that make social networks available are mostly adapted to the legal reality in which they are framed, with tools that easily allow users to mark the commercial content of their own publications. As such, there is no justification for the existence of the risks and disagreements that we regularly see in this kind of advertising.

The Portuguese Advertising Code was approved in 1990 and has already undergone 13 changes.

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