

Advice for influencers on hidden advertisement

Not only is social media used to share inspiration, experiences and recommendations between family and friends, it is also used by companies to advertise their businesses.

Users of social media shall be able to easily see, when they are being presented to advertisement. Hidden advertisement is forbidden.

The marketing law states that hidden advertisement is illegal, thus in other words:

§ 6(4):

“A tradesman must clearly disclose the commercial intention of any trade agreement, including advertisement. § 8 is correspondingly useful”

If commercial interests have led to your post on social media, it is your responsibility to clearly state this to your followers and others. Throughout this paper, you will get pieces of advice on how you can be sure to be compliant with the Danish marketing law § 6(4).

When is your promotion of a product advertisement?

If a company wants you to mention them or their products, the reason will usually be that your mention will increase the company's sales. They will have a commercial interest in having you promoting them or their products.

If you promote a company or their products on your own initiative, without getting something in return, it will not be advertisement in connection to the marketing law.

If you are in doubt, we recommend, that you in the beginning of your caption clearly state, what the reason for the post is.

If you have an agreement with the company, you will have to mark your promotion as advertisement

If you have an agreement with the company about promotion of them or their products, it will be advertisement as the intention with the post is to increase the knowledge of the company/the sales of the product. There will be a commercial interest, that you clearly have to mention.

It does not matter how the agreement has been entered into, or who took the initiative for the agreement. It is also subordinate, whether or not the company has set up rules for the design or the content of the promotion.

The agreement can be written, oral or tacit. It can e.g. be a tacit agreement, if the company continuously sends you products, and you continuously promote the products positively, even though you have not been in contact with the company.

It will be advertisement, if:

- A company pay you to promote them or their products.
- If you get a discount or other benefits for promoting the company, e.g. as an ambassador.
- If you arrange a competition or arrange “give-aways” for a company.
- If you mention a company or its products with a link to their webshop, and receive payment per click on the link, that leads to a purchase.
- Or if you get a discount when purchasing products from the company, in return of promotion of the company’s products.

How should it appear in your promotion, that it is advertisement?

It is up to you how you want to mark your promotion as advertisement, as long as it obvious to the viewer of your content that it is an advertisement. It must not be necessary to look into the content to find out if it is advertisement or not.

Indication of advertisement in text/pictures:

You are compliant with the rules in the marketing law if you in the beginning of your caption or directly on the picture clearly inform that the content is **advertisement**. You can also use other words, but it has to be clear and obvious to followers and others that it is advertisement, which significantly limit the choices.

If you choose to mark the post with “in cooperation with” it does not clearly indicate, that it is advertisement. The same applies if you choose to mark the post with information about where a product can be bought, the name of a company, sponsored etc., as it will not be sufficiently clear and easy for your followers and others to understand that it is advertisement. Neither is it sufficient to tag the company on the content.

Indication of advertisement in videos:

Videos will be sufficiently marked, if you clearly mark every video with **advertisement**. Receivers of the video have to know, that it is an advertisement before they choose to watch the video. This is due to the fact, that the prohibition of hidden advertisement includes all parts of the advertisement – also the presentation of the video, e.g. in the headline of the video.

You can also choose other words than advertisement, but it has to be words that your followers and other clearly perceive as advertisement, which significantly limit the choices.

If a series of videos are being shown in extension of each other, where it is not possible to inform that the videos are advertisement, before people choose to see them (e.g. on Snapchat or Instagram Stories) it has to be clearly marked in the first video, that the following videos will be advertisement. Every video will also have to be clearly marked as advertisement.

Indication of advertising links (affiliate links):

Affiliate links have to be marked as advertisement. An affiliate link will be sufficiently marked if you above the link or in direct extension of the link clearly mark that it is **advertisement**.

You can also choose other words than advertisement, but it has to be words that your followers and other clearly perceive as advertisement, which significantly limit the choices.

If the viewers of an affiliate link aren't informed that the link is an advertisement before the end of the promotion, the link is not sufficiently marked. The same applies if the links are marked as "affiliate agreement", "affiliate link", or if it appears that "the content can contain advertising links".

The viewers must know that the link is an advertisement link, before or meanwhile they watch the link. If you have written a promotion, that is an advertisement, where you have put in affiliate links, it has to be clear that both the written promotion and the affiliate links are advertisement. It also has to clearly appear, who you are making the advertisement for.

If you clearly have marked the promotion as advertisement, and it is clear that the links are advertisement, you will not have to mark every single link as advertisement. If you decide that it is not clear to the reader, that it is advertisement, you will have to mark every link with affiliate link above or in direct extension of the link.

If you receive a gift from a company, and you use it in a promotion, you will have to inform that it is a gift

If you get a gift from a company, there will be a presumption that it has been given to you in the hopes of a promotion from you. The company will have a commercial intention with giving you the gift. Because of that you will have to clearly mark that you received the product from the company, if you promote it.

How should it appear in your promotion, that you received a gift?

If the company have given you a product as a gift, you will be compliant with the marketing law if you clearly mark: **"I have received the product as a gift"** or **"I have received the product for free"**.

If you mention the product in a text, the mark has to be in the beginning of the text. If you show the product in a picture, you will have to mark the picture or the caption. If you promote the product in a video, you will have to mark the video, so that it is clear to the viewer that you received the product as a gift.

You are only allowed to use these marks, if you have not had a prior agreement with the company regarding promotion of the products, and if the company have not earlier given you products, that you have positively promoted. If so, you will have to mark the posts as advertisement, as you and the company are considered having a tacit agreement about promotion of the products, that you receive from the company.

What do I have to pay special attention to in regard to children and teenagers?

If you target your advertisement to children and teenagers under 18 years old, the requirements for the clarity of the advertisement are tightened. The same goes if the advertisement are targeted to both children and adults.

When the advertisement is targeted to children and teenagers, you have to mark it, so the target group understand. The younger the group, the clearer it has to be that the promotion is an advertisement. You can use **ADVERTISEMENT**, for both pictures and videos. It is important that you state it clearly.

If your advertisement is through a video, you will have to mark **ADVERTISEMENT** in the headline of the video. What matters, is that the target group is aware that the video is an advertisement, before they choose to see the video. This is due to the fact, that the prohibition against hidden advertisement include all parts of the marketing, also the presentation of the video.

If a company sends presents such as samples to an influent under 18 years old in the hopes of promotion, it could infringe good marketing practice. This depends of the influent's age, who the influent's target group is and if the company have had previous contact with the influent's parents.

Information of who you promote for

It also has to be clear who you promote for. It is sufficient if it is explained in the promotion, or if it clearly appears from the context. If you are in doubt about whether or not is clearly appears who you promote for it is recommended, that you inform it in direct extension to the promotion.

When do I risk being held accountable for having violated the prohibition of hidden advertisement?

Violation of the prohibition against hidden advertisement can be punished with fines cf. the danish marketing law § 37(3).

If a promotion of a product or a company does not appear as advertisement, even though it is, the influent will possibly be held accountable.

The company that you promote will also risk being held accountable for a violation of the Danish marketing law § 6(4).

The company have to do what is possible in regard to secure, that promotions are clearly marked as advertisement. It is recommended that companies work out contracts with standards of how promotion of the company and its products should be marked, and that the companies continuously check, that the promotions are following the standards. If a company notice that promotions aren't sufficiently marked, the company have to do what it can, to get the influent to correctly mark the content or remove it.

Agencies, that advice influents and establish contact between influents and companies will also possibly be held accountable. Advertising agencies and pr-agencies can be held accountable if they are hired by a company to enter into an agreement with an influent regarding promotion of the company or its products.