

DIGITAL INFLUENCER ADVERTISING GUIDELINES

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The logo for CONAR, featuring the word "CONAR" in a bold, white, sans-serif font. The letter "O" is stylized with a white circle inside it, and the "C" is partially enclosed by a white arc. The logo is set against a dark purple rectangular background.

Digital Influencer Advertising Guidelines

This Guidelines contains instructions on the application of the rules of the **Brazilian Advertising Self-regulation Code (CBAP)** to the commercial content on social media, in particular, contents generated by Users known as “Digital Influencers” or “Influencers.”

Definitions and recommendations

1 Advertising by Influencer

Under the advertising self-regulation, it is a third party's message to stimulate the consumption of goods and/or services conveyed by the so-called Digital Influencers hired by the Advertiser and/or Agency. In general, three cumulative elements are necessary to characterize that advertising:

- I Promotion of the product, service, cause, or other associated sign;
- II Compensation or commercial relation, even if non-financial, with the Advertiser and/or Agency; and
- III Advertiser or Agency's interference in the content of the message (editorial control of the Influencer's post).

The third requirement, that is, the Influencer or Agency's interference, also called editorial control, constitutes hiring (formal or informal), through which the promotion of the product or service is requested or suggested, with a smaller or bigger detailing of content, time, frequency, or form of posting to be proposed to the Influencer.

The mere contact of the Advertiser with the User, with a simple introduction of the product, guidance on the consumption or necessary care in the case of eventual and uncertain user posting in compliance with the applicable ethical and legal rules, is not considered editorial control.

1.1 Identification

The referred content must be clearly identified as an advertisement. If this is not evident in the content, an explicit mention of the advertising identification by using the following expressions is necessary to ensure compliance with this principle: publicidade [advertisement], publi, publipost, or others, as shown in the table attached, considering the word that may be better understood by the followers to whom the communication is intended. Given the volume and diversity of content on the media, it is emphasized the current need for a standardized adoption of advertising identification terms or tools to ensure a prompt perception of the disclosed message's nature.

1.1.1 Form

Whenever possible, the use of an identification tool made available by the platforms is recommended. Alternatively, it is recommended the explicit mention of the terms indicated in an ostensible and highlighted manner; this mention may be inserted in any element of the posts, including caption, provided that the information about the advertising nature is plainly visible, however without hinder the advertising message.

1.1.2 Children and adolescents

Considering the characteristic of the advertising by Influencers, immersed in or integrated into the editorial content, all participants involved in the advertisement ecosystem must be cautious to enhance the identification of the advertising nature to ensure that children and adolescents recognize the commercial intent, so the advertisement must be clearly and conspicuously distinct from the other contents generated by the Influencer.

1.2 General and specific rules of CBAP

Are applicable to the advertisement by hired Influencers. The Advertiser and/or Agency must exert all efforts and adopt the best practices to inform the Influencer about the care that must be taken to promote the product or service and must ensure compliance with the rules. The Influencer must be aware of and comply with the applicable rules, their testimony depicting a personal experience must be genuine and contain a truthful introduction of the advertised product or service.

2 Activated Message (“gifted”/“received”)

it is the User’s reference to a product, service, cause, or other associated characteristic sign since the connection or non-compensatory benefit offered by the Advertiser and/or Agency, without their editorial control in the reference.

For example, appreciation posts, thanks for (“gifted” / “received”), trips, accommodations, experiences, invitations, etc.

For the purposes of advertising self-regulation, those contents are not considered advertisements, as they do not possess the commercial nature, with the three requirements described above.

However, considering that such contents are submitted to the principle of transparency and the right to information, and since that connection or benefit may affect the message’s content, it is required to mention the relationship that originated the reference. It may also be necessary for the Advertiser and/or Agency to instruct the Influencer in the applicable regulation.

2.1 Engagement

This modality may comprise the content generated by the User given the gifts or benefits offered through promotional actions, contests, “challenges,” or others that stimulate the User to publish posts after the engagement. It is essential for the compliance of the advertisement promoted by the Advertisers and their brands activating such user’s posts, that it is based on promotional mechanics compatible with the regulation on free prize distribution and take into account the stimulus that arouse the respect to the rules of the Self-regulation Code, as applicable; this is particularly important for the sensitive segments or segments with consumption restriction.

3 Content Generated by the User with no relation to the Advertiser or Agency

in general, a User’s spontaneous mention of products, services, marks, causes and/or characteristic signs (not preceded by any interaction, communication, or contact with the Advertiser and/or Agency) is not an advertisement.

Advertisers and Agencies’ active conduct sharing users’ messages in their own profiles and official channels is an autonomous promotion and not a user’s post; therefore, the Advertiser’s post will be considered a new content of advertising nature subject to all applicable rules.

3.1 Good practices

In the sensitive segments or segments subject to a restriction on marketing, consumption, and commercial promotion, the Advertiser, when notified of a possible irregular content posted by a user, may contemplate sending the post author an educational message about the existing regulation, or, in case of Advertisers that are a member of CONAR, they may avail themselves of that entity to make that contact.

This section also comprises the interactions of the Advertisers' official profiles with contents generated by Users (comments, 'likes,' among others). If it is later verified that the content comprises a potentially harmful promotion involving identifiable brands and products, the Advertisers' official profiles may consider adopting the available measures to change or remove the endorsement (likes, comments, or other forms of interaction), and, also, in this case, Advertisers that are a CONAR member may count on the entity support to make contact with the author of the original post.

4 Awareness actions

The great number of contents that users publish on the network and the increasing relevance of the advertising made by hired Influencers strongly recommend a previous educational action, emphasizing the importance of opening channels for awareness, capacitation and learning about the parameters for a responsible promotion, which may be set by CONAR for the knowledge of the current guidelines, also with the incentive for the adoption of awareness programs by advertisers, agencies, social media, representative entities, experts, and other participants of the digital advertisement ecosystem.

The provisions of this Guide are additional to the Brazilian Advertising Self-regulation Code and Law no. 8,078/90 (Consumer Protection Code); Law no. 9,294/96 (Murad's Law) c/w Law no. 10,167/00; Law no. 10,406/02 (Civil Code); Law no. 12,906/14 (Civil Rights Framework for the Internet); Law no.13,709/18 (General Data Protection Law); Law no. 5,768/71 as amended, Decree no. 70,951/72 and regulation introduced by the federal authority (Legislation on the free distribution of prizes, by lot, gift token, or contest, on account of advertising); Decree no. 7,962/13, and Decree no. 10,271/20 (consumer protection in the context of electronic commerce).

References

Except for the OECD Recommendation concerning the Consumer Protection in the Context of Electronic Commerce, legal instrument with Brazilian adherence, the documents below are not positive legislation in the country, therefore, they are not legally binding. Nonetheless, as they represent fundamental references to rules and best practices adopted internationally, they have been considered when this Guide was prepared.

Guidelines of international bodies

ICAS – International Council for Ad Self-Regulation. *Guidelines for Social Media Influencer* (database). Available at <https://icas.global/advertising-self-regulation/influencer-guidelines/> (accessed in Oct 2020);

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Canada: AD Standards. *Influencer Marketing Steering Committee Disclosure Guidelines.* Updated in 2020. Available at https://icas.global/wp-content/uploads/Ad-Standards-Influencer-Marketing-Steering-Committee-Disclosure-Guidelines_FALL2020_08.11.2020.pdf (accessed in Oct 2020);

Chile: CONAR - Consejo de Autorregulación y Ética Publicitaria. *Articulo 33 Publicidad em Medios Digitales, Interactivos, Redes Sociales e Marketing Directo.* Updated in 2018. Available at <https://www.conar.cl/codigo-etica/> (accessed on Oct 2020);

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KFTC – Korean Federal Trade Commission. *Guideline on Recommendations and Guarantees: Handbook on the Disclosure of Economic Interests (the Handbook)/Guidelines on the examination of indications and ads about recommendations and guarantee.* 2020.

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Reasons

Whereas

- I CONAR's Board recommended the creation of the Digital Working Group with the main purpose of proposing a guide for the application of the rules of the Advertising Self-regulation Code to the new digital formats, including, but not limited to, advertising by content creators, irrespective of the number of their followers, that are active on the online social networks, known as "Digital Influencers" or "Influencers;"
- II The Brazilian Advertising Self-regulation Code establishes the principle of application of its rules to the content of the advertising messages in their different formats and means of dissemination; and
- III The Ethics Council's authority to "monitor, try, and decide on matters related to the obedience of and compliance with the Brazilian Advertising Self-regulation Code", provided in art. 41 of such entity's Regulation, therefore its autonomy to examine concrete cases brought to it is safeguarded.

The Digital Working Group presents the guide for applying the rules under the Brazilian Advertising Self-regulation Code to advertising through users of the social networks, particularly the so-called Influencers.

It should be noted that, given the rapid changes and evolution of technology and digital media, additional recommendations may be made in the future and admitted as the best practices to promote responsible advertising.

Digital advertising has been expanding the number of participants and formats, including third parties that started to endorse products and services to consumers. Known as Digital Influencers, these agents became of relevance to the commercial communication on networks.

In general, the Influencers address subjects of different natures, and the organic character of the content generated by each of them is the base of the relation of trust between Influencers and their followers. This is why this relation must be transparent in all its aspects, especially concerning the advertising content and why a post disseminated as a result of an interaction with the Advertiser and/or Agency must be revealed. Clarifying this relation promotes simultaneously correct and loyal communication with the public and compliance with the duty of clearness and advertising identification provided in the Brazilian Advertising Self-regulation Code.

The Guide analyzes the generation of commercial content on social media seeking the participants' best performance. Therefore, it integrates the strategy for the relevance of measures adequate to the commercial communication's contemporary characteristics, focusing on improving the implementation of the rules by its various actors.

Aiming at responsible and transparent advertising, the main situations and measures proposed to be considered by the Ethics Council at the time of the actions and confirmation of compliance with the rule have been classified. It is worth emphasizing that the suggested groups are for exemplification and must be applied on a case-by-case basis, keeping in mind the principle of transparency, which must be the main guideline of the advertising communication between Influencers and their followers. Thus, CONAR will analyze such formats in each context to verify if the communication between the Influencer and its followers has been sufficiently transparent.

This work's development was based on the analysis of consumers' complaints and decisions rendered in Complaints brought to CONAR's Ethics Council after examining a vast number of advertisements by influencers. There was an increase in the inquiries and analyses of advertisements on the Internet, representing 69.5% of the ethical complaints brought to CONAR in 2019, reaching 73.5% in 2020.

There has been widespread debates among specialists and the parties involved in the commercial communication by influencers, at CONAR Work Groups, with the participation of representatives of the Interactive Advertising Bureau Brazil (IAB); Brazilian Association of Advertisers (ABA), Brazilian Association of Advertising Agencies (ABAP); Brazilian Association of Radio and TV Stations (ABERT); representatives of civil society and CONAR Ethics Council and Technical Body; also, a hearing was held with the Influencers' Agency.

The starting point of the proposed text is the necessary compliance with the Brazilian legislation in effect and the application of the rules of the Brazilian Advertising Self-regulation Code to the online environment. Surveys and the accurate comparative study of several countries' regulations have been considered for implementation in harmony with the international standards.

Concerning children and adolescents, given that human beings' protection in this development phase is widely recognized, special care was dedicated to the contents that involve this public. In this regard, we highlight that the fundamental contribution for the adoption of this section of the Guide was the initiative of the National Consumer Protection Office (SENACON) , which formally voiced its concern about the new technologies and the intensification of the advertisement actions through the digital platforms, with the analysis of the updating of the advertisement regulation, for children accessible in the online

environment and considering the text such authority submitted to public consultation to bring to the digital media the ethical advertisement rules.

The Guide reinforces the care measures and urges all those responsible for disseminating the messages to respect the rules set out in the legislation and the Self-regulation Code; the starting point is the emphasis on the advertising identification, ensuring that children and adolescents recognize its commercial nature and the distinction of the advertising from the other contents generated by the influencers.

The proposal of the Guide on the application of the rules of the Brazilian Advertising Self-regulation Code to the advertising by Digital Influencers was submitted to the Superior Council of CONAR, approved on December 2, 2020, and published on December 8, 2021, to take effect immediately.

Practical

Table

for Influ_
encers

To make it clear when a post is an advertisement and clarify the relationship with the companies responsible for the brands advertised

In order to configure a correct Digital Influencer advertisement and to provide the respect to the principle of transparency, it is fundamental to clarify in the postings the relationship with the Advertisers and/or Agencies.

If there is no advertising identification or information about the connection with Advertiser and Agency, the message may be partial (omitting essential information), and the consumer's assessment of the purchase decision will be harmed.

Clear expressions (recommended)

Hashtags – highlight the information, therefore they are recommended.

Influencer Advertising

#advertising
#advertisement
#sponsored
#paid content
#paid partnership

Activated message

#gifted / #received
[trip/show/event] invited by [brand]

Thanks to [brand] for [product, trip, invitation]

#promotion , #promo (activations upon gifts or prize);

Understandable expressions according to the context

Influencer Advertising

#ambassador
#publipost
#publi

Activated message

Thanks [brand]

Non-clarifying expressions for the public in general

Influencer Advertising

#ad*
#adv*
#advertisement*
#ambassador*
#partner
#brandXYZ
#collaboration
#colab

Activated message

Mere mention of brand
(or tagging the brand profile)

* Terms in a foreign language: analysis of understanding depends on the context, segment and subjects approached by the Influencer.

Thus, below are examples of how to inform appropriately about this relationship:

How to disclose the Form of the presentation of the advertising identification

The advertising identification should be inserted together with the first advertisement screen, immediately visible (with no need to activate search for more information or the button “more content”), appropriate to the channel, and compatible with the potential devices, allowing view in access also through cell phones and apps. Whenever possible, the use of an identification tool made available by the platforms is recommended

On Image sharing platform

The advertising identification should be inserted near the advertisement;

It may be applied to the images, taking into account time, position, size, and colors to allow reading;

It may be inserted with the text accompanying the posting; it is recommended to be among the first hashtags. If there are many hashtags, the recommendation is that the advertising identification should be the first or highlighted in relation to the other hashtags;

The mention of sites, offers, discount coupons, promotions, and marking (tag) of the brand profile are not considered enough to clarify the relationship among Influencer, Advertiser, and Agency;

On the platforms where the content is visible only for a limited period (such as Snapchat and stories of Instagram), the identification must be visible during the time the content

will be available. In the case of a sequence of postings, the identifications must be included close to the advertising reference, and its inclusion in the first image is recommended.

On Video sharing platform

The applying of the advertising identification may be in the video, via text and/or audio, and an option for only one of the formats must observe the context of the publication (ex. if the communication is basically visual, the advertising identification via audio only may not be sufficient); alternatively or in addition, it may be presented on the description immediately below the video, provided that it is highlighted and visible on all devices and platforms on which it may be viewed;

The advertising identification may appear in the beginning of the video (written and/or audio) or at the moment of the insertion of the advertising endorsement by the influencer, in order to create contextual meaning to the information regarding the nature of the endorsement;

The mention of sites, offers, discount coupons, promotions, and marking (tag) of the brand profile are not considered enough to clarify the relationship among Influencer, Advertiser, and Agency;

In real time (live): if the advertising is presented on platforms of social media offering live streaming, the advertising identification must be via text and/or audio, repeated periodically, to be sufficiently clear for the audience, whether full or sporadic, that there is a relevant connection among the Influencer, the Advertiser, and the Agency.

These are not prescriptive indications of conduct but examples of terms that clarify the connections and tendencies of the posting. This table may be updated periodically given the fast changes in the formats of social media and the users and influencers' habits. This text is a complement to the Guide on the application of the CBAP to the Advertising by Digital Influencers.



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