

AiMCO Code of Practice

Guide to Gifting and Ad Disclosure



AiMCO has created this guide to provide clarity about when and how disclosure should be made with regard to gifts or value-in-kind products or services linked to influencer/creator content posted on social media.

Content creators have an obligation to disclose where a commercial relationship exists to help consumers distinguish between advertising and user generated (organic) content.

It's important to note that ad disclosure is not just required where money changes hands – gifts, free products or value-in-kind products or services are equivalent to payment and indicate a commercial relationship that should be disclosed.

Advertising disclosure is required in relation to social media posts about brands, products or services that have been part of a gifting, or value-in-kind arrangement.

When is gifting considered advertising?

The AiMCO Code of Practice and this guide align with the Australian Association of National Advertisers (AANA) [Code of Ethics](#) which outlines when their Code applies to advertising and marketing communications.

In short, influencer content will be considered to be advertising when it is shown to consumers or the public in a way that is:

- calculated to promote a service or product, and
- in circumstances where the brand owner has a reasonable degree of control over the content,

In situations where brands seek out known influencers and provide them with free products or services with a view to obtain promotion for the products or services, then the Codes would apply.

It is also pertinent that the Australian Taxation Office consider 'value-in-kind' to be equivalent to payment and hence to income.

It is important to note that when determining complaints about influencer content, the Ad Standards Community Panel have noted that it is not necessary for the brand to have creative control over the material created by the influencer, or a written contract or brief in place with the influencer, for the brand to be considered to have a reasonable degree of control.

Providing known influencers with free products or services has been shown to be enough to constitute a reasonable degree of control in recent Ad Standards cases. Reasonable control means disclosure is required.

How do I disclose?

Below Advertising disclosure must be easily seen by anyone who views the content. Disclosure need not be by way of hashtags but the relationship must be clear.

Below are some easy ways to indicate that a post is part of an arrangement with a brand:

1. Use a hashtag

If using a # for ad disclosure it must be visible on the first view, not buried at the end, or mixed in with other hashtags or links. In video it must appear at the beginning of the video. Also, hashtags must appear in any subsequent appearance of the content.

AiMCO recommends the following hashtags be used:

- #Ad; or
- #Advert; or
- #Advertising; or
- #PaidPartnership;
- #PaidPromotion; or
- #Sponsored

2. Write it in the caption

Disclosure can be as simple as writing that the post is part of a paid partnership (or other type of relationship) between the influencer and the brand. It doesn't have to be complicated, just clear. But it is important to note that writing it in the comments is not considered sufficient.

3. Say it

Verbal disclosure is still disclosure so long as the message is clear and easy for the audience to understand. We advise it be included in the first frame or reveal.

We encourage both advertisers and influencers to also add the disclosure in written form, especially for video content where viewers may not have their audio on.

4. Use the social platform's capabilities

Native paid partnership tools on social media platforms are an easy and clear solution.

On the Instagram tool the label 'Paid Partnership with...' can be attached to a post or story and helps audiences identify that the content is sponsored by an advertiser.

Using a combination of any of these disclosure approaches will help your audience know when you are posting for brands and when your content is your own. It's an important step in the right direction.

If you're unsure of the nature of your relationship with a brand err on the side of caution and disclose the arrangement, whatever it is.

Gifting examples and ad disclosure

Below are some examples of common gifting scenarios that arise in the context of influencer marketing, together with guidance on whether advertising disclosure is likely to be required for resulting influencer posts in each scenario.

Scenario	Is disclosure required?
A brand sends out free sample packs to a number of well-known influencers with no brief or request for the influencer to post about the product. Some of those influencers try the product and decide to post about it to their audience.	Yes. The brands have sent the products to the influencers presumably with the intention of gaining promotion for the products and the brand, and therefore will likely be found to have a reasonable degree of control over the advertising material. The influencer should make it clear in any resulting post that the post is an ad.
A brand organises an event where they invite a number of influencers to attend. The brand gives each of the influencers a sample bag of products at the event. Some of the influencers post from the event and about the products after the event.	Yes. The brand has sought out known influencers and provided them with free products, likely with the intention to promote the brand and its products. Any posts about the event, the brand or the free products provided should make it clear that the posts are ads.
A brand and an influencer agree on a campaign where the influencer will create a series of posts in exchange for free products or services. After the campaign concludes, the influencer continues to post about the products or services.	Yes. The influencer should make the commercial relationship with the brand well known in all posts, both during the campaign and after its conclusion.
An influencer is gifted a product or service from a relative or friend with no connection to the brand. The influencer posts about the product or service but has never had a commercial relationship with the brand.	No. The brand has not provided the influencer with the product or service, nor does the brand have any control over the post.

Advice to brands

It is recommended when gifting to influencers, that the brand first obtains the influencer's acceptance of terms and conditions regarding disclosure, or at the very least, provide the influencer with specific instructions regarding appropriate disclosure together with the gift or value-in-kind provided.

Risks to both influencers and brands

Platform terms of service: Where an influencer has breached the social platform's terms of service, they may find their account blocked or de-activated, and it may or may not be recoverable at any time.

Care should be taken to disclose clearly or use the branded content tools available on the platform (if any) to ensure that neither the influencer, nor the brand, breaches any platform terms of service.

Complaints to Ad Standards: Complaints about any post on social media may be made to Ad Standards by anyone if they suspect the post may be an ad, but the influencer has not clearly disclosed the relationship. This may result in reputational damage to both the influencer and the brand and may also result in further legal issues.

Legal risks: Further significant legal risks ensue if a breach of the Australian Consumer Law was to be identified.

This guide provides supplementary guidance to clause 2. of the AiMCO Code of Practice.

Also refer to [Ad Standards Australia](#) and the [Australian Consumer Law](#) for further guidance on disclosure requirements for influencer marketing generally.

For further information email info@aimco.org.au or visit www.aimco.org.au

Note: This guide is current as at August 3, 2021 and the guidance set out herein is subject to change following any amendments to the AANA Code of Ethics or following decisions made by Ad Standards after this date.