



GUIDANCE ON INFLUENCER ADVERTISING AND MARKETING



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

1. About this guidance

Influencer marketing on social media can significantly shape consumers' opinions and purchasing behaviours¹. Therefore, it is important that when a consumer views commercial content on social media, they can **instantly** recognise it for what it is.

If you have received a benefit to promote a brand, the nature of your relationship with the brand must be clear to consumers. A brand includes any business or service, including businesses and services owned or part-owned by you.

This guidance provides information on how to correctly label content that you produce or share on behalf of a brand on your social media channels. It will help you to comply with consumer protection law and the Advertising Standards Authority for Ireland (ASAI) Code of Standards for Advertising and Marketing Communications. This guidance has been jointly developed by the CCPC² and the ASAI.³

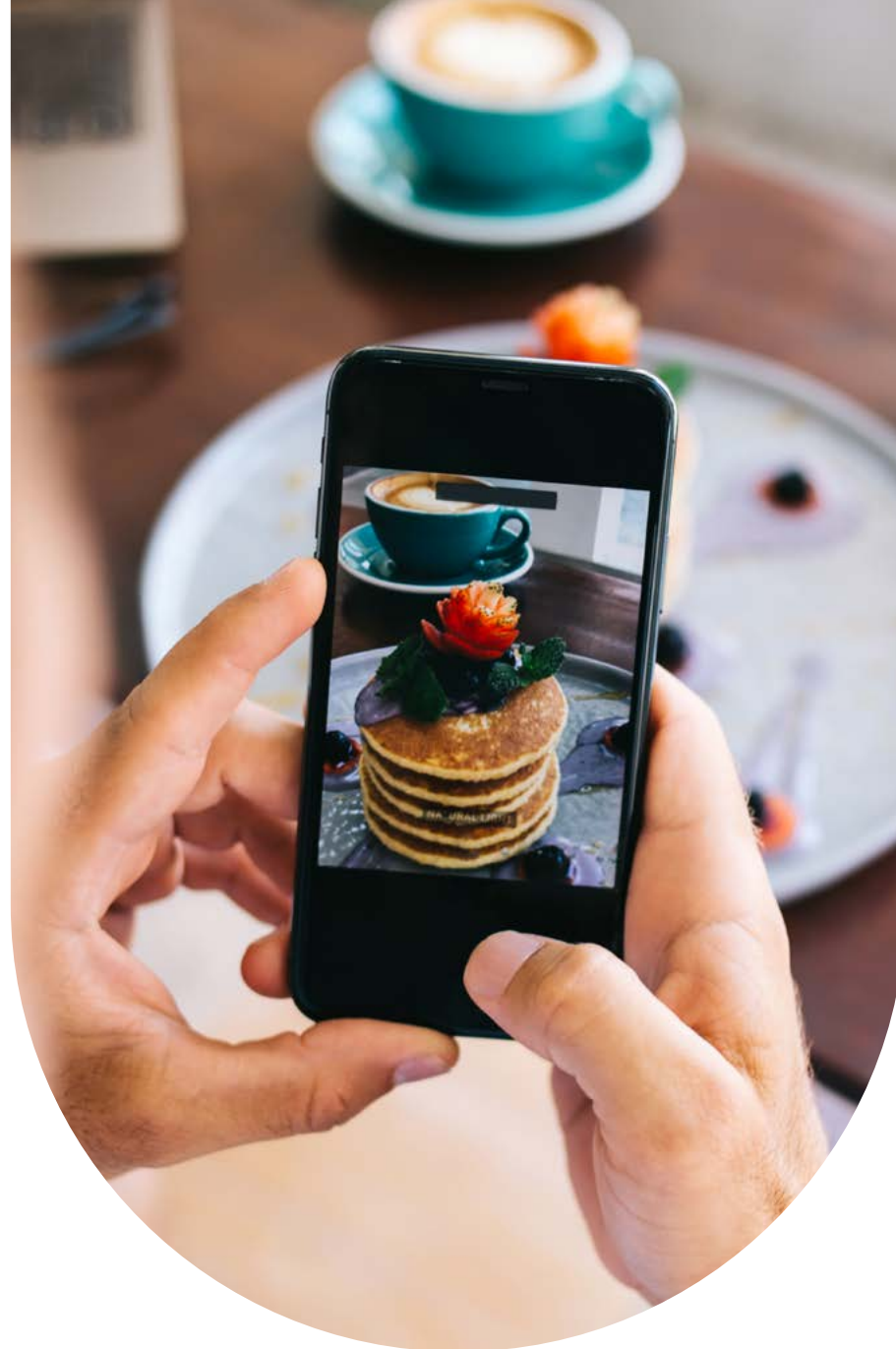
Why comply?

It is in everybody's interest that you are honest with your audience and ensure that when you publish commercial content, you do so in a manner that is clear and transparent. Otherwise, you run the risk of reputational damage, and you could end up losing followers and damaging your relationship with brands.

You may also be in breach of:

- Consumer protection law
- The ASAI's Code of Standards for Advertising and Marketing Communications

Breaches of consumer protection law may result in enforcement action, while breaches of the ASAI's Code may result in publication of an adjudication against you, naming you and the brand.



¹ See, <https://www.ccpc.ie/business/research/market-research/ccpc-online-behaviour-influencer-marketing-research/>

² The Competition and Consumer Protection Commission (CCPC) is the statutory body responsible for promoting compliance with, and enforcing, competition and consumer protection law in Ireland.

³ The ASAI is the independent self-regulatory body set up and financed by the advertising industry and committed, in the public interest, to promoting the highest standards of marketing communications, that is, advertising, promotional marketing and direct marketing.

2. Who does the guidance apply to?

This guidance applies to all those who promote or recommend products or services on social media for a benefit (monetary or non-monetary). This includes but is not limited to influencers, content creators, online personalities, online streamers, bloggers/vloggers, celebrities, or media personalities. This includes human, virtual or animal personas.

For the remainder of this guide, we use the term 'influencer' to cover all the above terms.

The guide applies to all social media platforms where it is possible to generate and share content from your profile for the purposes of promoting and/or recommending products or services to consumers.

It should also serve as information to agents, brands and anyone else working in the industry.

3. What rules apply?

Influencers in Ireland must label commercial content to comply with the Consumer Protection Act 2007 (the 2007 Act) and the ASAI's Code.

Consumer Protection Act 2007

Influencers must make it clear if their posts are of a commercial nature, or they could be breaching the law. This is because the 2007 Act bans certain commercial practices that are deemed to be unfair or misleading to consumers. Traders⁴ engaging in such practices may face enforcement action. The CCPC has a range of enforcement tools to ensure that consumer protection law is adhered to, including compliance notices, fixed payment notices, undertakings, prohibition orders and prosecution.

Even if you use the recommended advertisement labels, the post may still breach consumer protection law if, in the overall context, the post is false or misleading. The CCPC publishes these enforcement actions periodically in its online Consumer Protection List.

⁴ Influencers may fall under the definition of 'trader' in the 2007 Act, irrespective of whether they act for purposes related to their own business or professional activity, or on behalf of a brand.

ASAI's Code of Standards for Advertising and Marketing Communications

The ASAI Code requires that it is clear when content is a marketing communication. The ASAI reviews complaints from any person or body who considers that a marketing communication may be in breach of its Code. The ASAI may also investigate issues identified through its monitoring programme. The outcome of these reviews can include a recommendation to remove or amend the post. The outcome may also be made available on the ASAI website and published in the media.

4. When do I need to disclose advertising?

Remember: If in doubt, label it!

If you benefit from mentioning a brand on your social media channels, the resulting content is commercial content and this must be obvious to viewers. This includes mentioning your own products or services (applies in the case of whole or partial ownership of a brand).

What is a benefit?

Benefiting can mean monetary payment, commissions, proceeds from sales, discounts, company shares, offers of future business contracts, products/services gifted or lent to you for use, trips, event invitations or experiences, or any other type of benefit. It also applies where you requested a free product or service from the brand or where a brand has sent you a free product or service as a gift without any expectation that you post about it.

Gifts

Gifting can take the form of free products or services, temporary usage of a product, trips, hotel stays, event invitations or experiences.

Gifting of products or services by a brand to an influencer can create a commercial relationship if you post about this specific brand as a result. The post must be labelled, regardless of whether the brand has influenced any aspect of the post or has requested that you post.

If you post about the gifts received and the brand has influenced any aspect of the post's content or has requested that you post, this must be labelled as '#Ad'. Otherwise, '#gifted'⁵ is an acceptable label.

Types of content

The content used to promote the brand or product can take many forms including posts, images, videos, audio or expiring media.⁶ Note that for the remainder of the guidance, the word "post" is used to refer to all of the above.

Examples of commercial content include:

- Ads
- Advertising your own brand
- Reviews resulting from a benefit
- On-going sponsorship
- Brand ambassador role
- Discount codes
- Affiliate links
- Dedicated pages on retailer websites
- Promotional content (including self-promotion)
- Sponsored competitions (including gifted prizes)
- Sharing of content originally posted by a brand (reposts)
- Content about free products, services, trips, event invites or experiences

Do I need to have a formal agreement with the brand?

You do not need to have a formal contract or agreement in place with the brand for these rules to apply. If you receive a benefit, regardless of whether it is ongoing or once-off, you must clearly label your post. Remember, this also applies where you are advertising your own brand.

Other posts that should be labelled

The requirement to label your posts also applies where:

- You have an ongoing agreement with a brand to publish a certain number of posts and you post outside of your contractual obligations
- You have personal ties to the brand. For example, if the brand is owned by a member of your family or a friend
- Your employer pays a commission or some other benefit for you to post about their brand

Your own brand and products

If you have a commercial interest in a brand (e.g. a wholly owned business or a business of which you own a share) and use your **personal** social media accounts to advertise its products or services, this content should be clearly labelled in the same manner as other ads.

This includes products (such as clothing, beauty, books) and services (such as online/in-person classes or other events run by you). It should be instantly obvious to your audience what the relationship is between you and the brand. You must label a post even where your name or face is used on the products.

It is not enough to only disclose your commercial interest in a brand in the bio of your social media account.

Labels such as '#ownbrand' should be avoided unless they are used in conjunction with a primary label listed in Table 1 below, with the primary label used first (e.g. '#Ad – own brand').

5. Reposts, affiliates and links to commercial sites

Based on research and experience of the CCPC and ASAI the following areas are highlighted as needing specific guidance:

Reposts

Reposted content refers to other social media accounts' content which you then post on your account(s). This can occur in various circumstances including but not limited to:

- Sharing content originally shared on a brand's page (including your own brand or a brand of which you own a share)
- Sharing content from other pages that promote your own brand or products

If there is a commercial relationship between you and the brand whose content you are reposting, this should be clearly labelled as '#Ad'. It should be instantly obvious to your audience what the relationship is between you and the brand.

⁵ Consumer protection law and the ASAI's Code may have different requirements in this regard depending on the individual post. The CCPC advises that '#gifted' be used where a gift is received without the brand requesting a post in exchange, whereas the ASAI's Code does not require labelling unless the brand has influenced the content of the post or requested a post in exchange for the gift.

⁶ Expiring media refers to content that is only available for a certain period of time and/or disappears after it has been viewed.

Affiliate marketing

Affiliate marketing is when you earn a commission for every sale made through someone clicking on a link in your post. The link might be a discount code or some other promotion, but this doesn't have to be the case.

If you use affiliate marketing in your social media content and/or other online content such as your website or blog, this should be clearly labelled as '#Ad' so that it is instantly recognisable for your audience. It is not enough to only include a link to the product or service. You should also be aware of your other responsibilities under consumer protection law in relation to affiliate marketing.⁷

Links to external websites and applications with commercial content

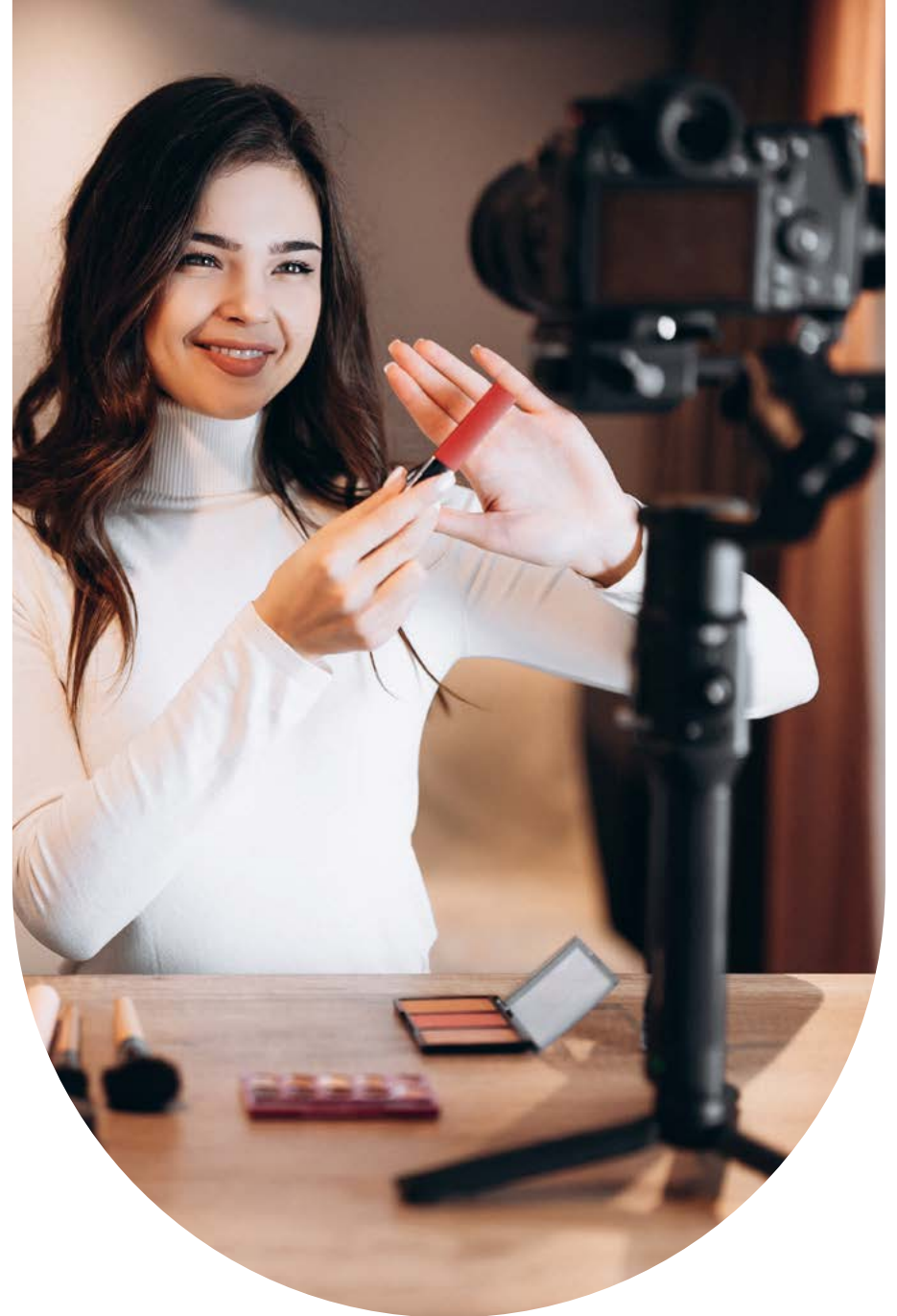
If you provide a link on your social media channels to external websites, blogs or apps that contain advertising and you receive a benefit from this, your post should be clearly labelled as '#Ad'. Your audience should know that they are being directed to advertising content before they click the link.

In addition, where you are linking to your own website, blog or app where there is advertising content you should use the '#Ad' label on your external sites as well as on your original post.

We know there will be instances where you are simply linking to an external website, blog or app just to show where a product or service is available. So long as you have received no benefit for doing this, this is organic content and may not need a label.

Other areas of commercial content

The above areas are not exhaustive and any instance in which there is a commercial aspect to the post it needs to be appropriately labelled.



⁷ More information on your responsibilities under consumer protection law is available at: <https://www.ccpc.ie/business/selling-to-consumers/>

6. How do I make it clear for consumers?

Think:

- Instantly recognisable
- Clear
- Prominent
- Honest

When labelling commercial content, you must use:

- A clear primary advertisement label such as **#Ad** (or equivalent) (See Table 1) and/or
- Platform provided label if available

You can also use secondary advertisement labels in conjunction with a primary label (see Table 2).

Clear labels:

You should use clear advertisement labels so that your audience can instantly recognise and understand that a post is advertising before they engage with it. The labels listed in Table 1 below are 'primary advertisement labels' and at least one of these labels must be included in every commercial post. This label should be the most prominent label in the post.

Examples of additional 'secondary advertisement labels' are listed in Table 2 below. These labels are not mandatory and should only be used in conjunction with a primary advertisement label (e.g. **#Ad**). It is recommended that you limit the number of secondary labels used as this may confuse your followers.

Table 1: Primary advertisement labels – At least one must be present in all commercial posts

#Ad (or #Fógra for Irish language posts)
Platform provided label (e.g. Paid partnership)
#Gifted (or #Féirín for Irish posts) – Use only when you receive unsolicited products or services, and the brand has not directly influenced your post

Table 2: Secondary advertisement labels – Only use in addition to (and following) primary label

#Collaboration
#BrandAmbassador
#Sponsored
#Affiliate
#PRstay
#PRinvite
#PressDrop
#OwnBrand
#BrandInvestor
#PreviousCommercialRelationship
Custom labels (e.g. #IWorkWith[Company])

Non platform-provided advertising labels should always start with "#". It is recommended that, where possible, you include the brand handle on the post.

When disclosing a personal relationship between you and a brand, a recommended approach is using the format **#Ad** – [description of relationship] (e.g. **#Ad** – familybusiness).

Platform provided labels:

If a platform provides labels, you should make sure that this is enough to guarantee that the advertising is instantly recognisable for your audience. If not, you should use an additional primary advertisement label in the post (i.e. **#Ad** or **#gifted**).

Making your labels visible

Labels should be clearly positioned using an appropriate colour that stands out from the background and in a large font size so that they are instantly visible to consumers.

You should bear in mind how content will be displayed across different platforms and on different devices. Your audience should be able to instantly recognise advertising, regardless of the platform and device they are using. You may need to amend the post for different platforms.

Follow these guidelines to make your label visible:

Posts

- The label should be the first word in any text block
- Do not put the label at the end or at the bottom of a post (or where a reader must click 'see more' to find the label)
- Do not place the label in the same corner as your profile picture as it may be obscured
- Consider any platform features that might obscure the label

Videos

- Use a clear visual advertising label at the start of your video
- In addition, tell your audience that you are advertising at the appropriate point in the video
- The text accompanying the video must be clearly labelled
- For expiring media, you must label each individual post

Multiple posts

If you use multiple posts to advertise a product or service these should all include a primary advertisement label. This includes where you link to advertising content on the same platform (e.g. content on expiring media alerting a consumer to advertising content in a post on your personal profile).

If you are using more than one platform you must clearly label each post.

Where you mention multiple brands, it should be clear which brands you have a commercial relationship with.

7. What else do I need to be aware of?

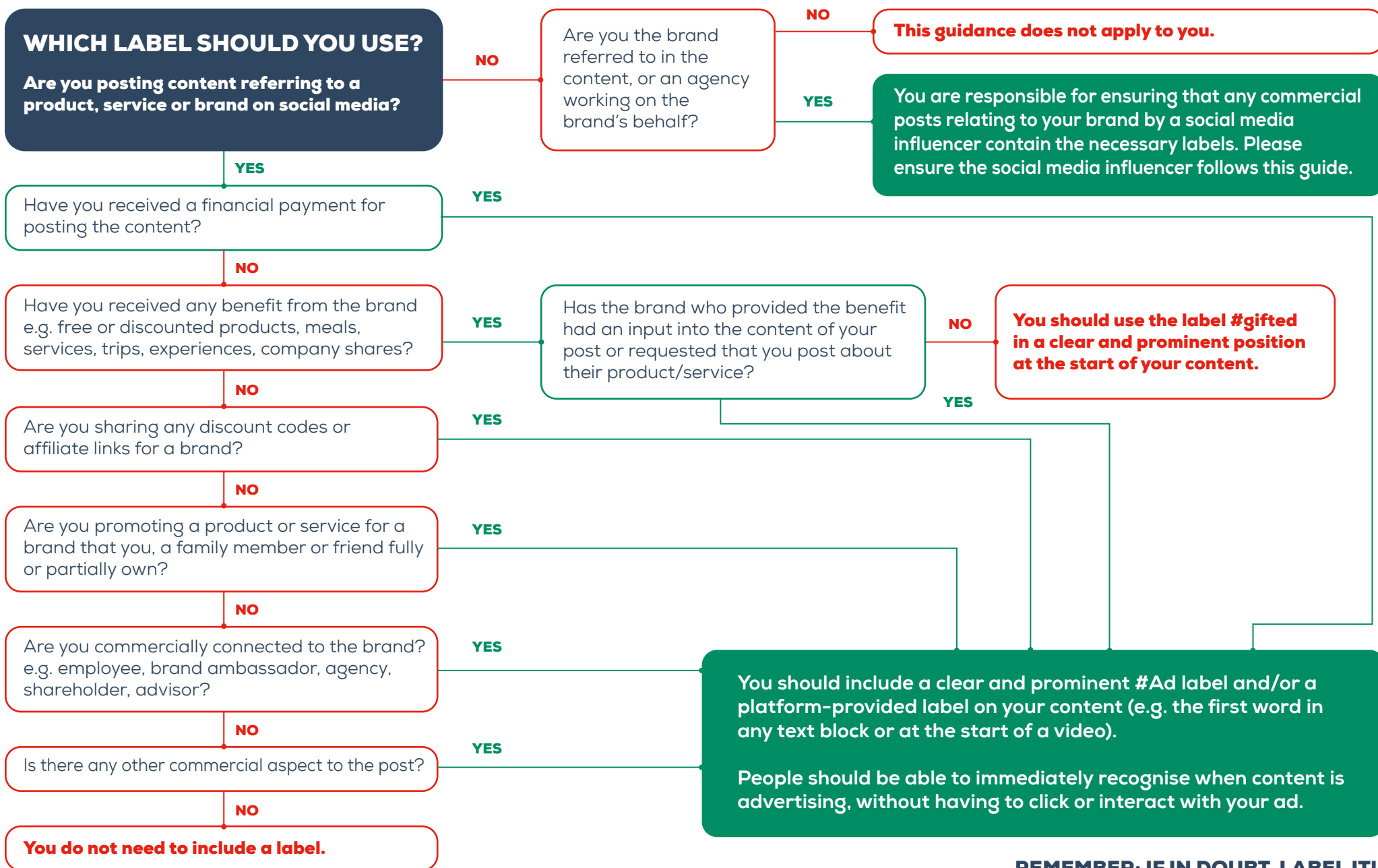
In addition to correctly labelling commercial content on your social media channels, you should also be aware of your other obligations under consumer protection law. This includes a prohibition on advertising that amounts to a direct appeal to children to buy a product or persuade their parents or other adults to buy a product for them.⁸

You should also be aware of the ASAI's Code.⁹ In addition to its general provisions, the Code contains specific provisions in relation to alcoholic drinks, advertising to children, health and beauty and others, which are of relevance to influencers.

This document provides guidance only, and does not constitute legal advice. While we have made every effort to ensure that the information contained in this guidance document is accurate and reliable, the CCPC and ASAI are not responsible for any errors or omissions, or for the results obtained from the use of this information. To fully understand the legal obligations that apply to traders, you should seek independent legal advice. These guidelines reflect the views of the CCPC and ASAI as of October 2023. The CCPC and ASAI reserve the right to amend this guidance as necessary.

⁸ Consumer Protection Act 2007, Section 55(3)(e)(i) and (3)(e)(ii).

⁹ Available at: <https://www.asai.ie/code>



REMEMBER: IF IN DOUBT, LABEL IT!

