

need to know

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CAP Guidance on Vlogging Advertising

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The Committee of Advertising Practice (“CAP”) has published new Guidance on vlogging advertising. The guidance provides a non-exhaustive list of “potential vlogging scenarios and how to deal with them”. It is primarily aimed at vloggers to help them better understand when and how the non-broadcast advertising rules apply. But the guidance is also useful for agencies wishing to enter into commercial arrangements with vloggers.

Background

As the popularity and number of vlogs continues to steadily rise, CAP’s new guidance comes in response to demands for greater clarity about when material in video blogs becomes advertising and how vloggers should make this clear to their followers.

The guidance comes in the wake of the Advertising Standards Authority’s November 2014 Adjudication on Mondelez UK Ltd in which various vlogger videos on YouTube promoting Oreos were found in breach of the CAP Code. The ASA said that the references to Oreos did not make clear the marketing nature of the vlogs. Further, the disclosure statements at the end of the content thanking Oreos should have been featured before the consumer engaged with the vlog to ensure consumers understood the content was advertising.

The CAP Code

The CAP Code, which is applicable across media including online and social media channels, states that ads must be obviously identifiable as such. Crucially if a vlogger is paid (whether monetarily or in kind) to promote a product or service and an advertiser controls the message then the content becomes an ad, in which case the CAP Code applies. When that happens, CAP says, like all advertisers, vloggers must be upfront and clearly signal they are, in fact, advertising.

The Guidance

The guidance is clear that whilst there is “nothing wrong with vloggers (or others creating editorial content), marketers or agencies entering into commercial relationships: what’s wrong is if consumers are misled”.

The guidance acknowledges that given the extensive variety of ways in which brands, as the “marketers”, and vloggers can work together, the question of whether a video is an ad or needs to be labelled as one upfront, will depend upon the context in which the video appears and the content it contains. In some circumstances, it may be the ad label needs to encompass the whole video, in other circumstances it may be sufficient to have a label during the video.

As highlighted above, a key pointer (rule 2.4 of the CAP Code) is that if the content is controlled by the marketer, not the vlogger, and is written in exchange for payment then it is an advertisement feature and must be labelled as such.

The new CAP guidance provides a non-exhaustive list of scenarios where vloggers and brands might work together and provides advice on potential practical steps to take where a vlog is a marketing communication.

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Scenarios

Online marketing by a brand

In such a situation a brand collaborates with a vlogger and makes a vlog about the brand and/or its products and the brand shares it on its own social media channels.

This Guidance says that in these circumstances a vlog is very likely to be a ‘marketing communication’ covered by the Code. However, given the context that the vlog is being shared by the brand, the guidance states it is likely to be clear to the public that this is a marketing communication and accordingly, it is unlikely the content will need to be specifically labelled as an “ad”.

Despite being a marketing communication and therefore covered by the CAP Code, because of the way it is shared by the brand, this vlog would not be considered an “advertorial”.

This will not be the case however if the vlog is similar to the vlogger’s usual content, but the content is controlled by the brand and the vlogger has been paid (whether in money or kind) and the vlogger then publishes it within his/her own space. The context has changed and the vlog will be considered an advertorial. See the next scenario below.

“Advertorial” vlogs

This is where a whole video is in the usual style of the vlogger, but the content is controlled by the brand and the vlogger has been paid (not necessarily in money).

The guidance makes it clear that this type of vlog needs to be labelled upfront so that viewers are aware up front and understand that it is an advertorial.

How should such a vlog be labelled? The CAP Code specifically refers to “advertisement feature” as an appropriate label.

The guidance advises against using the label “sponsored” in this context because this could cause confusion and consumers might understand it to refer to vlogs and videos where a brand has sponsored it, but had no control over the content.

Where should the “advertorial” label be placed? The guidance states the label needs to be clearly visible regardless of the device used. Therefore, including an appropriate label early in the title of the vlog or using an appropriate label in the thumbnail are, according to the guidance, “likely to be ways of ensuring that viewers know that the vlog is an advertorial before engaging with it”.

Commercial breaks within vlogs

This relates to a situation where most of the vlog is editorial material, but there is also a specific section dedicated to the promotion of a product/service.

The guidance states in such circumstances it is “unnecessary” to include a label or statement in the title of the vlog and advises against labelling the whole vlog as an ad when the surrounding material is independent editorial content.

The guidance does however highlight the need to be clear as to when the advertisement starts. The guidance gives examples of how to be clear, including onscreen text stating “ad” or “ad feature”, holding up a sign, incorporating the brand’s logo, or by the vlogger simply explaining that they have been paid to talk about the product.

Product placement

This covers independent editorial content that also features a commercial message. A product might be used as a prop along with messages that have been controlled by the advertiser within a vlog that is largely editorial.

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In this scenario, the guidance says that it is “unlikely” that a clarification note in the video title would be required. However, the commercial message should be clear. This can be achieved in the same way as in the scenario where there is a commercial break within a blog.

Vlogger’s video about his/her own product

Where the sole content of a vlog is a promotion of the vlogger’s own merchandise.

Although this would not be considered to be an advertorial, it would still constitute a marketing communication. Therefore, the vlogger would need to ensure that his/her viewers are aware of this before selecting it, the guidance states.

The guidance also says that the video title should make clear that the video is promoting the vlogger’s products.

Editorial video referring to a blogger’s products

This is where a vlogger promotes his/her own product within a broader editorial piece.

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The guidance states in such circumstances the vlog is “unlikely” to need any form of labelling if the fact that it is a marketing communication is made clear within the context.

Sponsorship

In this scenario, a brand sponsors a vlogger to create a video, but has no control over the content.

The guidance reminds vloggers that sponsorship is not covered by the CAP Code and, because there is no control by the brand, the CAP Code would not require the vlog to be labelled as an advertorial.

The CMA would however expect a vlogger to disclose the nature of his/her commercial relationship with a brand in order to comply with consumer protection legislation.

Free items

Here a brand gives a vlogger items for free without any control over the content (or any conditions attached) and the vlogger may or may not choose to include the item(s) in a blog.

The guidance reminds marketers that this sort of PR activity is not covered by the CAP Code. Because there is no control, the video would not, therefore, need to be labelled as an advertorial.

Comment

This guidance is to be welcomed as a useful practical guide. The ASA recognises the scenarios set out in the guide are non-exhaustive and as vlogs adapt and become increasingly sophisticated, then further scenarios not currently covered by the ASA may need to be addressed.

A key take away point in order to avoid complaints and potential adverse rulings, is the need for transparency from both brands and vloggers, so that the public is fully informed of the extent to which a vlog is a marketing communication. It may be obvious from the context in certain circumstances, but if in doubt, label up-front before the viewer accesses the content.

What should I do next?

For further information on this topic or the legal issues involved in advertising online, please contact Julian Ward at Hamlins (jward@hamlins.co.uk) or visit hamlins.co.uk.

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