

Advice for influencers regarding hidden advertising

Social Media is not only for sharing experiences and recommendations between friends with a social relation. Business companies also use Social Media to advertise themselves and their products through famous and regular people.

No matter where you live, and what laws apply to you, it is important that you apply to the marketing law that is in force in your specific country. In the following, the Danish marketing law and its central legal provisions will be discussed. No matter where you live, this can be a central guidance for what fundamental rules you should be sure to obey in order to comply with general marketing rules. However, to be 100% sure that you comply with your own country's marketing law, we recommend that you also look into it in specific.

As users of Social Media it is important that it is obvious when a post is advertising. Hidden advertising is forbidden.
--

It is already stated in the Danish marketing law – just in other words:

§ 6, stk. 4:

“A tradesman must clearly disclose the commercial intention of any trade agreement, including advertising. § 81 is correspondingly useful”

If your content on Social Media reflects any commercial interest, it is important that you **state it clearly** for your followers and others.

In the following you will get advise of what you can do as an influent to be sure, that you comply with the Danish marketing law § 6, stk. 4.

1. When is your publicity of a product advertising?

If a business company wants you to promote them or their products, it is normally caused by the fact that you can help to increase the sales within the company. The company will have a commercial interest in having you mention it or its products.

If you promote a company or its products on your own initiative, without receiving something in return it is not advertising in connection to the marketing law.

If you are in doubt, we recommend that you in the beginning of your promotion of the product/company clearly state what is the reason behind your mention of the product/company.

2. If you have an agreement with a company your promotion of it must be marked as advertising

If you have an agreement with a company that you should mention it or its product, your publicity will be advertising – the intention with the promotion is to increase the knowledge regarding the company/the sales of its products. Because of this there will be a commercial intention, and you have to clearly state that it is advertising.

It is subordinate how you and the company enter into an agreement, and who is the originator of the project. It is also subordinate if the company has raised any demands of the shape or content of the agreement.

The agreement can be written, oral or implied. An implied agreement can be if the company continuously sends you products, and you continuously promote it, even though you haven't had any other contact with the company.

Situations dealing with advertising:

- When a company pays you to mention it or its products
- If you get a discount or other advantages from promoting a company, e.g. as an ambassador
- If a company asks you arrange competitions or “give-aways” in their favour
- If you mention a company/the company's products while you link to the company's web shop, where you are getting paid per click at the link which leads to purchases
- Or if you get a discount when buying products from the company if you mention the company's products in return.

3. How should it appear in your promotion, that it is advertising?

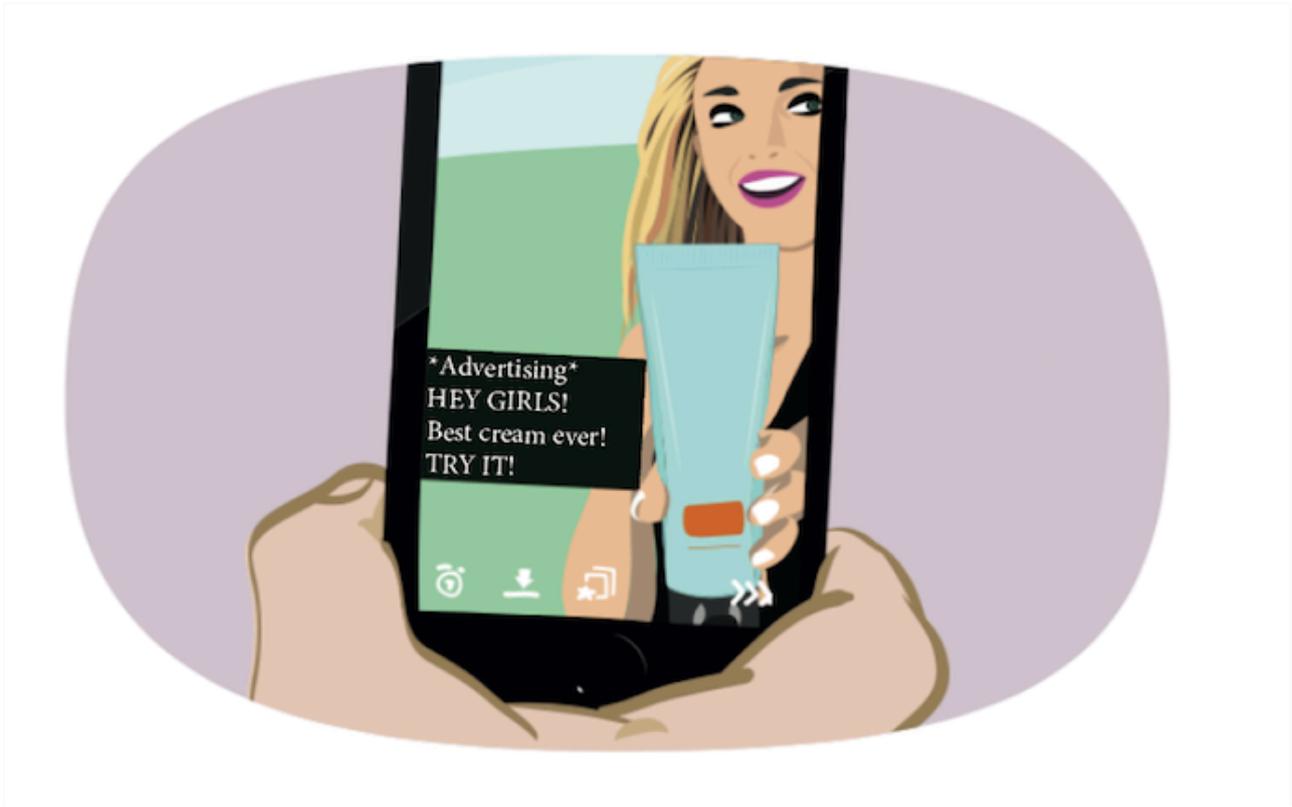
It is up to you how you would like to mark your promotion as advertising. The only requirement is that it is obvious to the viewer of your content that it is advertising. It must not be necessary to look into the promotion to find out, that it is advertising.

Indication of advertising with text/pictures:

You comply with the marketing law, if you in the beginning of the text, on the image itself or in the text that is tied to the picture clearly state, that the promotion is advertising with the following words:

“Advertising” or “Advertisement”

You can also choose to use other words, but it has to be words, which clearly state for your followers and others, that your content is advertising. If you use “advertising” or “advertisement” you are sure to comply with the marketing law.



What you can choose between is therefore limited. Words as “in collaboration with”, is not fulfilling, as it doesn’t state clearly, that it is advertising. A piece of information of where the product can be bought, the name of the company, e.g. “[Name of the company]”, “Affiliate-agreement”, “[Name of the product]”, “Sponsored”, or “Ad” are examples of statements, that don’t clearly state for your followers and others, that it is advertising, which is why these statements aren’t sufficient enough.

Nor is it sufficient to tag the company on a picture that promotes a company or its products – e.g. on Facebook or Instagram.

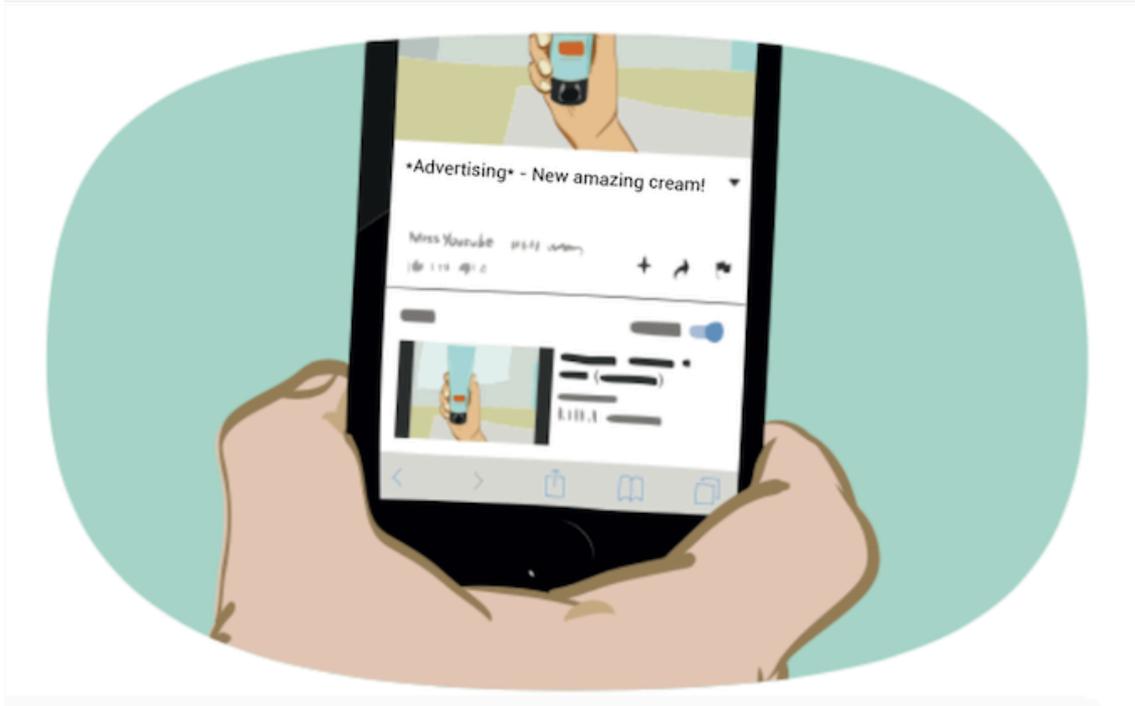
Indication of advertising with videos:

Advertising with videos will be sufficient marked, if you mark every video clearly with:

“Advertising” or “Advertisement”

E.g. in the headline of the video. It is important, that people know, that the video is advertising before they choose to watch it. This is due to the fact, that the prohibition of hidden advertising includes all parts of the marketing, which also include the presentation of the video, e.g. in the headline of the video.

You can also choose other words, but it has to be words, that your followers and others clearly understand as advertising marks. Your scope is therefore not big.



If more videos are shown in extension to each other where it isn't possible to state, that the videos are advertising before people see it e.g. on Snapchat or Instagram Stories it has to be clearly stated in the beginning of the videos, that the following will be advertising! And it is important that every video is clearly marked as advertising.



Indications of advertising with affiliate links:

Advertising links have to be marked as advertising.

An advertising link will be sufficiently marked, if you above or in direct extension to the link clearly mark:

“Advertising link” or “Advertisement link”

You can also choose to use other words, but it has to be words, that your followers and other readers clearly understand as advertising. Your scope is therefore not big.

Advertising links wont be sufficiently marked, if the followers and readers first in the end of the promotion are told that it is advertising, or if the concerned links are only marked as “affiliate-agreement”, “affiliate link” or that it appears of the promotion, that “the content can contain advertising links”.

The crucial thing is, that the readers are aware, that the link is an advertising link before or meanwhile they watch the link. If you have written a promotion, where you have put in an advertising link it has to be clear, that both the written promotion and the link are advertising. It also has to appear clearly, whom you are advertising for.

If you already clearly stated, that the promotion is advertising and it therefore clearly shows, that the inserted links are advertising, you don't have to mark every link as advertising. If the reader can be in doubt, you would on the other hand have to add “advertising link” above or in extension to the link.

4. When you receive gifts from a company, you have to state in your promotion of the product, that it is a gift

The marketing law can very well cover your promotion of a product even though you don't have an agreement with the company regarding advertising of the product.

If the company gives you a product, there will naturally be a supposition, that the company gives it to you in the hopes of getting you to mention the product in your social media accounts. The company will have a commercial intention with giving you the product. This is why you have to clearly state, that you got the product from the company, when you show the product.

If you review books, movies, music, art or theatre your reviews wont be advertising if you get the books you review or your ticket to the theatre play for free in return. This is due to the fact that there is a tradition for critical reviews in the print media, and that the media in itself isn't decisive as to whether there are commercial intentions behind the review.

5. How should you state in your promotion, that you received a gift?

If the company has given you a product as a gift, the Consumer Ombudsman in Denmark considers the marketing law to be complied with, if you clearly disclose:

“I received the product as a gift” or “I received the product for free”



If you mention the product in a text, the marking has to be in the very beginning of the text. If you show the product in a picture, the marking has to be on the image itself, or in the beginning of the text that is tied to the picture. If you mention a product in a video, the marking has to be clear, so the ones that choose to see the video are aware, that you received the product as a gift.

You can only use these markings, if you haven't had any prior agreement with the company to promote the product, and if the company has not previously provided you with products that you have repeatedly promoted. If the company continuously have provided you with products, that you have promoted positively, your promotion has to be marked as an advertising or advertisement, because you and the company are considered to have an implied agreement that involves you to promote the products that the company gives you.

6. What should I in particular pay attention to in regards to children and young people?

If you make advertising for children and young people under the age of 18 you have to be aware, that the requirements for clarity of the advertising are sharpened.

The same is in force, if an advertising both addresses children and grown ups.

When the advertising addresses children and young people, you have to use a marking that the target group understands. The younger the target group is, the more clear it has to be, that the mention is advertising,

If a text/a picture with advertising is addressed towards children and young people, you comply with the marketing law if you clearly mark the picture or the beginning of your text with:

“ADVERTISING” or “ADVERTISEMENT”

If a promotional video addresses children and young people, the marking will be sufficient, if you clearly mark the video with:

“ADVERTISING” or “ADVERTISEMENT”

e.g. in the headline of the video. The crucial thing is, that the target group is aware that the video is advertising, before they choose to see it. This is because the prohibition on hidden advertising includes all parts of the promotion, including the actual presentation of the video, such as the headline.

If a company sends gifts such as samples e.g. to an influent under the age of 18 in the hopes of promotion of their products and firm, this would be considered against good marketing practice. Whether it is against good marketing practice or not depends on the age of the influent, who the influent has as a target group and if the company has been in contact with the influents parents.

7. Information about who you advertise for

It also has to be clear whom you advertise for. It is enough that it is explained in the promotion or if it clearly appears in the context, e.g. if it clearly appears from the product you are promotion. If you are in doubt whether it appears clearly who you are advertising for, the Consumer Ombudsman recommends, that you state it in direct extension of the mark of the advertising.

8. When do I risk being held responsible for violating the prohibition of hidden advertising?

Violating the prohibition on hidden advertising is punished with a fine cf. § 37, stk. 3. in the Danish marketing law

If a promotion of a product or a company doesn't show as advertising, even though it is, you will, as an influencer be able to be held responsible.

The company you promote will also be able to be held responsible for a violation of the Danish marketing law § 6, stk. 4.

The company has to do what is possible to secure, that promotion of itself or its products are clearly marked as advertising. The Danish Consumer Ombudsman recommends, that companies work out contracts with standards for how advertising of the company's products should be marked and continuously check whether promotions are marked in agreement with the standards. If a company is aware that promotions of the firm aren't sufficiently marked, the company has to do what's in its power to get the influencer to correctly state the company's commercial intention or as a last resort make the influencer remove the promotional material.

Agencies that advise influencers and arrange contact between influencers and companies may be held liable too. Advertising agencies and PR-agencies will be able to be held liable, if they e.g. are hired by a company to enter into an agreement with an influencer regarding the fact that the influencer should promote the company or the company's products.