

New Influencer Guidelines Ultimately Toothless

Despite the introduction of social media advertising guidelines last October, influencers rarely face repercussions for breaking them.

“Their instructions didn’t mention labelling it as an ad, the only requirements they had were about how long each piece of clothing should be in the video for.”

“It’s so difficult for me to clearly define what is an ad and what isn’t, and I work in the space”.



On the 23rd of March 2023, Xue Ningjie uploaded a new fashion vlog that was subtly different from the others she had posted previously. Titled “Three items that I can make 10086 outfits with!”, she showed off a fluffy leather bag, a blackish stretch top and a grey fleece garnished with Italian writing. The difference between this video compared to her others is that she had been paid to show off these particular items by the clothing brand GRKC. It had not been labelled as an advertisement. “It was a way for me to earn some money and get free clothes,” said Ningjie. “Their instructions didn’t mention labelling it as an ad, the only requirements they had were about how long each piece of clothing should be in the video for.”

Influencer advertising on social media has always existed in a legal grey area, one that the Competition and Consumer Protection Commission (CCPC) and the Advertising Standards Authority for Ireland (ASAI) have taken notice of in recent years. On the 27th of October 2023, both regulators released a joint statement on fresh guidelines outlining how influencers should label advertisements on social media platforms.¹

¹ Competition and Consumer Protection Commission, ‘Guidance on influencer advertising and marketing - CCPC Business’, *CCPC Business*, 27 October 2023 <<https://www.ccpc.ie/business/help-for-business/guidelines-for-business/influencer-advertising-and-marketing/>> [accessed 6 January 2024].

These guidelines can be summarised in three main points:

- 1) If you receive a benefit by making a post on social media, it is an advertisement. Benefits are not limited to monetary payment, they can also include (but are not limited to) products/services gifted to the influencer, trips or event invitations.
- 2) The only acceptable hashtag to label a paid advertisement is #Ad. #Gifted can be used in some circumstances, but other common hashtags such as #Collab, #BrandAmbassador or #Affiliate are no longer acceptable.
- 3) The Hashtag #Ad must be clearly visible. If you use multiple hashtags, it must be the first hashtag. If your advert spans multiple forms, e.g. an Instagram post and an Instagram story, the hashtag must be present on both.

The guidance is clear, but what happens if you break these guidelines? The CCPC states that you can be found guilty under the Consumer Protection Act 2007 for false advertising and prosecuted, but all their previous prosecutions involve traders selling goods directly to customers.² Influencers are typically advertising a product, not engaged in direct selling, meaning it is highly unlikely for any influencer to be prosecuted in this way. This means that repercussions for influencers typically fall into the ASAI's lap who have adopted a different approach for getting influencers to comply: public shaming.

² Competition and Consumer Protection Commission, 'Consumer Protection List', *CCPC Business*, 6 June 2023 <<https://www.ccpc.ie/business/enforcement/consumer-protection/consumer-protection-list/>> [accessed 6 January 2024].

On the top left of the ASAI's website is the 'Make a Complaint' button. Clicking on it will allow you to make a complaint about an influencer directly to the ASAI themselves after providing information about why you think a post is breaching guidelines and providing screenshots. Previously when making a complaint you had to include your name and address, but after the introduction of the new guidelines in October, they have added a separate form dedicated to reporting influencers. This report is anonymous however, so the ASAI have no way of updating you on the status of your submission.

If a complaint is considered worth investigating, it ends up on the complaints bulletin section of the ASAI's website, a sort of naughty list for advertisers. The ASAI then decides to uphold or not uphold the complaint. Since 2020, 14 complaints have been posted about influencers.³ They have all been upheld.

Within these 14 complaints, one name stands out: Lorna Spaine.

Lorna Spaine currently sits at 170k followers, putting her in the top 20 most followed Irish Instagram accounts alongside names such as The Late Late Show (204k Followers) or Rob Kearney (185k followers). Posting since 2018, Lorna is a fashion influencer and regularly uploads pictures of her outfits and trips abroad. In July 2021, Lorna uploaded four posts that would draw the attention of the ASAI. One post caption read "Ain't it different" and tagged the clothing company PrettyLittleThing while another one read "Yo @vavavoom_ie Jacket linked on stories. LORNA10 for 10% off". None of the posts featured any mention of what it truly was, an #ad.

³ Advertising Standards Authority for Ireland, 'Media: Online – Influencer's Social Media Account + Online – Influencer's Social Media Account', ASAI, 11 December 2023 <https://www.asai.ie/complaint_medium/online-influencers-social-media-account/?bulletin&complaint_batch&complaint_advertiser> [accessed 6 January 2024].

The ASAI would uphold two separate complaints against Lorna Spaine in October 2021, making her the only influencer to have her content regulated twice by the ASAI.^{4 5} In her response to the ASAI, Lorna stated that she had applied for the ‘Sponsored Post’ tag for the PrettyLittleThing post and was waiting for the company to confirm it. Failure to disclose the Vavavoom post was down to “operational issues”. Both clothing companies replied to the ASAI complaint saying that they had told Lorna to use the correct hashtags when posting the advertisements. Several news outlets including the Irish Times reported on the ASAI’s decision and Lorna updated the posts to include the ‘Sponsored Post’ label before ultimately deleting them.

In essence, a clear-cut example of the ASAI complaints process working as intended. A complaint brought forward by a member of the public, which was then upheld by the ASAI and added pressure from the original advertisers as well as public coverage of the event caused the influencer to amend the post and learn how to properly disclose adverts for the future. Except it didn’t.

⁴ Advertising Standards Authority for Ireland, ‘ASAI » Clothing / Footwear Complaint - 37288’, ASAI – Advertising Standards Authority for Ireland, 12 October 2021 <<https://www.asai.ie/complaint/clothing-footwear-10/>> [accessed 6 January 2024].

⁵ Advertising Standards Authority for Ireland, ‘ASAI » Clothing / Footwear Complaint - 37287’, ASAI – Advertising Standards Authority for Ireland, 12 October 2021 <<https://www.asai.ie/complaint/clothing-footwear-9/>> [accessed 6 January 2024].

Flash-forward to today, and if you glance through Lorna’s Instagram page, nothing has changed. Multiple posts about being invited to the Conrad Hotel for a complimentary stay⁶ (which, since contacting Lorna’s agency about this article, has been updated to include ‘not an ad’) or tickets to the Barbie premiere⁷ in the past few months do not feature any disclosure about receiving said benefits. Lorna also consistently uses AF (standing for affiliate) at the end of her posts, a tag that is now outdated by the new guidelines. Even more damning is that if you look back on her profile to around the time of the advertisements that landed her in hot water with the ASAI, there are still several up without any proper disclosure.⁸

Lorna has shown in the past that she is aware of how to add the ‘sponsored post’ tag to her posts, and yet despite being regulated by the ASAI, she continues to incorrectly label the majority of her sponsored posts. In response to the above claims, a representative from Lorna’s agency stated “As the ASAI guidelines update came into effect mid-October 2023 the posts you are referring to do not come under this stipulation. [Any received gifts] have all been clearly mentioned as gifted in the captions.”

After submitting a complaint about an influencer through the ASAI’s website, you receive a message stating “We fully expect that once we have reached out, there will be compliance. If a situation arises that there is significant ongoing non-compliance, we have the option of carrying out a formal investigation.” This rings hollow in the aftermath of Lorna’s case.

⁶ Lorna Spaine (@lornaspaine, August 22th 2023) ‘We were kindly invited by @conrad_dublin for a night in the Lir Suite and it was such a dream. 🇮🇪 🗨️ ✨ I can’t wait to go back! (Not an ad).’ (Instagram Post) https://www.instagram.com/lornaspaine/p/CwP3WxBM5Xu/?hl=en&img_index=1 [Accessed 6th January 2023]

⁷ Lorna Spaine (@lornaspaine, July 20th 2023) ‘Barbie movie premier with @warnerbrosirl ❤️ 🍷 ✨ The best best night ✨ You neeeeeeed to go see it as soon as it’s out on Friday 🥰❤️’ (Instagram Post) https://www.instagram.com/lornaspaine/p/Cu5Y7v2MBoF/?hl=en&img_index=1 [Accessed 6th January 2023]

⁸ Lorna Spaine (@lornaspaine, July 12th 2021) ‘Heard a heatwave is coming so I’ve got aaaaall the picnic dresses ready from @vavavoom_ie 🛒 ☀️ use LORNAS10 for 10% off #sp’ (Instagram Post) https://www.instagram.com/lornaspaine/p/CROqXreLTIY/?img_index=2 [Accessed 6 January 2023]

The CCPC itself is aware that the ASAI complaints procedure is not enough to tackle the ongoing disclosure problem. In a study published in December 2022, the CCPC found that consumers are more likely to unfollow an influencer than to report them to the ASAI.⁹ Due to this, the study found that minimal complaints were being made in relation to the size of the disclosure problem. However, when the new guidelines were announced in October 2023, over 500 complaints were made within the space of five weeks.¹⁰

“I reported a few ads to the ASAI for greenwashing,” says sustainability influencer Shannen who goes by @_Greengal on Instagram. “To be honest, the process is so complicated, and I never heard anything back. [After my previous attempt] I wouldn’t try it again.” Shannen has previously collaborated with Supervalu Tidy Towns and HelloFresh to create sponsored content, which she believes includes a moral responsibility to label the content as an advertisement. Her problem with the ASAI complaints procedure is a lack of communication, but also a failure to update the response time in line with modern social media advertisements. “Social media can often only be live for 24 hours. I have seen a few stories that are clearly ads or sponsored posts that are not labelled, but they would be gone in 24 hours before the report to the ASAI.”

⁹ Competition and Consumer Protection Commission, *Online Behaviour: Influencer Marketing* (Dublin: 2022), p.7 <<https://www.cpc.ie/business/wp-content/uploads/sites/3/2022/12/2022.12.12-172837-CCPC-Influencer-marketing-report.pdf>> [accessed 6 January 2024].

¹⁰ Meave McTaggart, ‘More than 800 complaints made in five weeks about influencers’ potential failing to declare ads on social media’, *Independent.ie*, 1 January 2024 <<https://www.independent.ie/irish-news/more-than-800-complaints-made-in-five-weeks-about-influencers-potential-failing-to-declare-ads-on-social-media/a1839655348.html>> [accessed 6 January 2024].



Of the 14 complaints made to the ASAI about influencers, 8 involved advertisements being posted to Instagram stories. This means the advertisements were gone within 24 hours after they were uploaded. Regulating these complaints, the ASAI decided that the advertisements “Should not reappear in their current form”, which prompts the question, why would an influencer re-upload an old story anyway? The advertisement has served its purpose, and the influencer has already received the benefits associated with posting the advertisement. This form of repercussion may work on companies who have spent money on physical advertising such as billboards or magazine adverts and must recall said adverts, but an influencer who advertises primarily on stories has to make zero changes to comply as the offending advert has already deleted itself.

As it stands, only 10% of consumers in Ireland say they trust influencers.¹¹ For those influencers who were trusted, the trust was earned not through having relevant qualifications or knowledge in the area they cover but ‘ethical’ qualifications such as being environmentally friendly or having standards in regard to what brands they choose to work with. Sustainability Influencer Shannen agrees with this assessment, saying that her sponsored posts when working with environmentally focused companies typically do better than her regular posts. “They are happy to engage with the post because it makes sense for me to be working with the brand. However, I think there’s a fine line in this. If I did a post for H&M it would not do well for example. I will only ever work with brands that my audience want to see.”

Shannen also agrees that trust with influencers is currently at an all-time low. “It’s so difficult for me to clearly define what is an ad and what isn’t, and I work in the space. I don’t see the point in not disclosing it if I’m being honest- you only build distrust with your audience. You’re nothing without those following you. The social media landscape is changing rapidly, and engagement is now overtaking follower numbers. If your audience doesn’t trust you, then you’ll have no engagement.”

¹¹ Competition and Consumer Protection Commission, *Online Behaviour: Influencer Marketing*, p.4

Bibliography:

Advertising Standards Authority for Ireland, 'Complaints Bulletins', ASAI, 11 December 2023 <<https://www.asai.ie/complaints-bulletins/>>

Competition and Consumer Protection Commission, 'Guidance on influencer advertising and marketing - CCPC Business', CCPC Business, 27 October 2023

<<https://www.ccpc.ie/business/help-for-business/guidelines-for-business/influencer-advertising-and-marketing/>>

+ 'Consumer Protection List', 6 June 2023

<<https://www.ccpc.ie/business/enforcement/consumer-protection/consumer-protection-list/>>

+ Online Behaviour: Influencer Marketing (Dublin: 2022)

<<https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/12/2022.12.12-172837-CCPC-Influencer-marketing-report.pdf>>

Lorna Spaine - @lornaspaine <<https://www.instagram.com/lornaspaine/>>

Meave McTaggart, 'More than 800 complaints made in five weeks about influencers' potential failing to declare ads on social media', Independent.ie, 5 January 2024

<<https://www.independent.ie/irish-news/more-than-800-complaints-made-in-five-weeks-about-influencers-potential-failing-to-declare-ads-on-social-media/a1839655348.html>>