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By post and email

Reminder of trader obligations under Consumer Protection Legislation

Dear *****,

I am writing to you in my capacity as an Authorised Officer of the Competition and Consumer Protection Commission ("CCPC"). The purpose of this letter is to bring to your attention concerns identified by the CCPC regarding social media content published on *********.

The CCPC is a statutory body established pursuant to the Competition and Consumer Protection Act 2014. It has a broad mandate with statutory responsibility for the enforcement of competition and consumer protection legislation. As part of this mandate, the CCPC is charged with monitoring compliance with consumer protection legislation, and one of its key functions is to ensure compliance with the relevant statutory provisions.

Bloom House,
Railway Street,
Dublin 1, Ireland.
+353 1 402 5500

CCPC & ASAI Guidance on influencer marketing and advertising

In October 2023 the CCPC together with the Advertising Standards Authority for Ireland (ASAI) published guidance on influencer advertising and marketing. This guidance intends to help influencers correctly label the content they produce or share on behalf of a brand on their social media channels. The aim is to promote compliance with consumer protection law, and with ASAI's Code of Standards for Advertising and Marketing Communications.

Please find below the link to this guidance:

https://www.ccpc.ie/business/wp-content/uploads/sites/3/2023/10/CCPC-ASAI-Guidance-on-Influencer-Advertising.pdf

Concerns

The CCPC is aware of posts that appear on your social media platforms, which we are concerned may be in breach of Consumer Protection law. The CCPC's concerns relate to failure to display #ad, missing labels on advertisements, labels or hashtags not visible at the start of your content, and incorrect label or hashtag use.

Examples of the posts are contained in Annex I at the end of this letter.

In light of the above, I would like to draw your attention to the following:

Section 2 (1) of the Consumer Protection Act 2007 states a " trader " means

(a) a person who is acting for purposes related to the person's trade, business or profession, and

(b) a person acting on behalf of a person referred to in paragraph (a)

'Commercial practice' means any conduct (whether an act or omission), course of conduct or representation by the trader in relation to a consumer transaction, including any such conduct or representation made or engaged in before, during or after the consumer transaction

'Representation' includes—

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(a) any oral, written, visual, descriptive or other representation by a trader, including any commercial communication, marketing or advertising

Section 55 1 (q) of the Consumer Protection Act 2007 - using editorial content in the media to promote a product (if a trader has paid for that promotion) if it is not made clear that the promotion is a paid promotion, whether in the content itself or in any oral, written, visual or descriptive representation in the promotion.

To support you to comply with the requirements of consumer protection law when engaged in influencer marketing and advertising, we have detailed a number of resources below to assist you:

European Commission Online Influencer Legal Hub

The European Commission has developed an online Influencer Legal Hub, a collection of materials including video trainings and legal resources, aimed at influencers, agencies, and brands to gain more familiarity with EU consumer protection standards that apply in advertising and in the sale and promotion of goods, services, and digital content. You can find more information on the link below:

https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/influencer-legal-hub_en

Consumer Protection Act 2007 and Consumer Rights Act 2022

A link to relevant legislation is provided below:

- Consumer Protection Act 2007

  http://www.irishstatutebook.ie/eli/2007/act/19/section/43/enacted/en/html#sec43

- Consumer Rights Act 2022

  https://www.irishstatutebook.ie/eli/2022/act/37/enacted/en/html

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Recommendation

It is the responsibility of a social media influencer to ensure that all content and activity comply with consumer protection legislation. We therefore recommend that you carefully review not only your internal policies, practices and procedures, but also all social media content currently published across your platforms to ensure it meets the requirements set out in this letter and in all applicable consumer protection laws. You should also ensure that any future content you publish, or that is published on your behalf, is fully compliant. If you require further guidance regarding your obligations under consumer law, we recommend that you seek independent legal advice.

Conclusion

For information, the Consumer Protection Act 2007 ("the 2007 Act") gives the CCPC a wide range of enforcement powers to ensure that traders comply with their legal obligations. The remedies available to the CCPC are set out in Part 5 of the 2007 Act and include civil and criminal sanctions. To date, the CCPC has taken enforcement action against several influencers for breaches of consumer law, details of which can be found at Consumer Protection List | Competition and Consumer Protection Commission

Please note that while the above does not intend to provide a fully comprehensive analysis of your business and should not be construed as legal advice, we trust this information will prove of assistance when reviewing it to ensure that you are compliant with consumer protection legislation.

Where breaches of consumer protection legislation are detected, the CCPC may take appropriate action in accordance with our powers under the legislation. The CCPC reserves its position regarding any potential future enforcement action.

Bloom House,
Railway Street,
Dublin 1, Ireland.
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www.ccpc.ie

Yours faithfully,

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Authorised Officer

Competition and Consumer Protection Commission

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