



Office of Competition and Consumer Protection

Recommendations of the President of UOKiK

pertaining to the tagging of
advertising content by influencers
on social media

#OznaczamReklamy
[#ITagAds]

Warsaw 2022



RADA REKLAMY



Faculty of Journalism
Information and Book Studies
University of Warsaw



Department of Media Systems
and Press Law WNPiD UAM

Table of contents

1	Introduction	03
2	Definitions	04
3	Legal Regulations	05
4	Commercial Collaborations	06
	The Method of Concluding a Contract	06
	Form of Compensation	06
	Advertiser's Influence on Content	07
	Duration of Collaboration	08
	Examples	09
	Extraordinary Cases	11
5	Self-promotion	13
6	Gifts	14
7	Methods of Tagging	16
	Two-level Tagging	16
	Recommended Terms	17
	Not Recommended Terms	18
	Examples	19
8	Legal Consequences	28
9	Special and Prohibited Categories	30

1 Introduction

Under an obligation stemming from the principles of ethics and law, influencers shall correctly tag advertising content. Consumers should be duly informed as to whether the communication is neutral or commercial. Responsibility in this respect lies primarily with influencers, advertising agencies and advertisers. These are market participants to whom we primarily address the Recommendations of the President of the Office of Competition and Consumer Protection (UOKiK).

This review presents the recommended methods of tagging advertising content on social media depending on the type of commercial collaboration. As a result, consumers will be duly informed as to whether the content presented by in-

fluencers is advertising or promotion of products and services of third parties or of their own undertakings. Concurrently, in case of any doubts, creators should tag the material as advertising.

These recommendations were developed after consulting representatives of the influencer marketing industry: the Internet Industry Employers' Association IAB Polska, the SAR Targeting Communications Association, and the Advertising Council, as well as the academic community: the Faculty of Journalism, Information and Book Studies of the University of Warsaw and the Department of Media Systems and Press Law of the Faculty of Journalism and Political Science of the Adam Mickiewicz University.

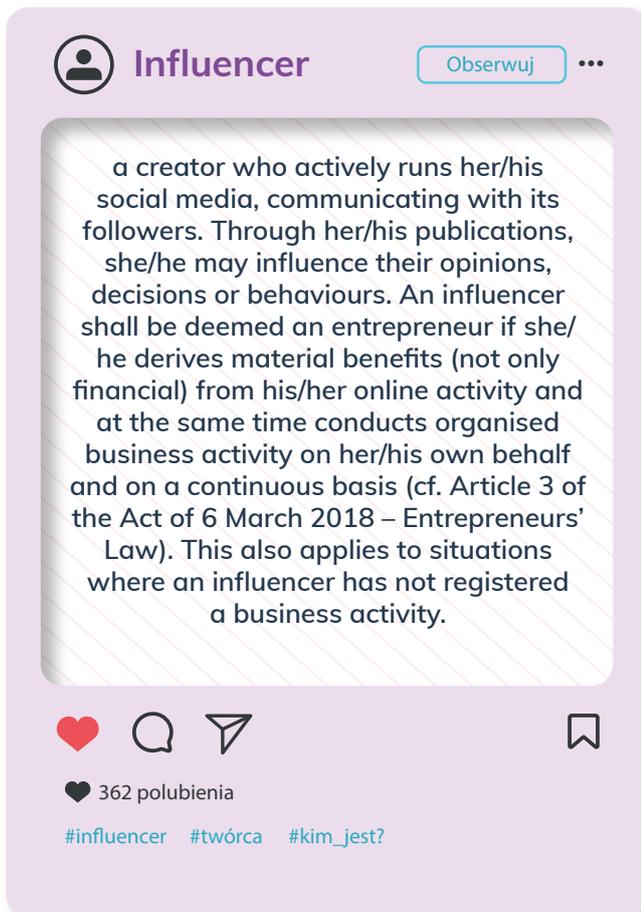
#OznaczamReklamy



2

Definitions

For the purposes of these recommendations, we developed terms that have not been legally defined or whose definitions have to be adapted to the subject matter in question.



Social media

services provided electronically, in particular platforms and websites, which render it possible for users, upon creation of an account, to publish content in multiple forms (text, image, video, sound), as well as to add friends or follow other users through a browser or application for mobile devices. Social media include, for instance, YouTube, Instagram, TikTok, Twitch, Facebook, and Spotify.

Advertisement

commercial communication aimed at promoting the sale or use of goods or services against payment. Advertisement also includes self-promotion, i.e. advertising one's own products or services (cf. Article 4.17 of the Broadcasting Act of 29 December 1992). Advertisement also includes commercial communication promoting the brand.

Advertising agencies

entrepreneurs conducting advertising activity in the name of or on behalf of other entities in the development of advertising concepts, advertising management (concept implementation, marketing) or promotion of products or services. Advertising agencies may also play other roles, e.g. intermediaries between the advertiser and the influencer (e.g. in sponsorship agreements).

Advertisers

entrepreneurs who commission advertising or promotion of their products, services or brands on influencer accounts on social media in return for material benefits (not only financial).

Followers

people who follow or subscribe to influencer accounts on social media. Being a follower need not be permanent. We recognise that they are consumers because they interact with influencers without any connection to their business or professional activity, and based on the instructions and opinions of influencers, they can make decisions regarding, e.g. purchase of a service or product.



Legal Regulations

Currently, there are no regulations that directly govern the methods of tagging advertising material on social media. Nevertheless, the law clearly states that **advertising content must not mislead consumers.**

The consumer should be informed that it is dealing with advertising. It is against the law to not identify advertising materials and not to single them out from non-commercial ones.

As far as **consumer protection** is concerned, we pay particular attention to the following **unfair market practices**:

- **misleading omission**, if a practice

(...) omits essential information needed by the average consumer to make a decision regarding a contract and thus causes or may cause the average consumer to take a contract-related decision that it would not otherwise have made.

Article 6.1 of the Act of 23 August 2007 on Counteracting Unfair Market Practices

- **surreptitious advertising**, consisting in

(...) using publication content in the mass media to promote a product in a situation where the entrepreneur has paid for this promotion, but it does not clearly result from the content or from images or sounds easily recognisable by the consumer.

Article 7.11 of the Act on Counteracting

Failure to tag advertising materials on social media may violate not only the interests of consumers, but also the interests of entrepreneurs who conduct activities that are competitive to the advertised one. We pay particular attention to:

- **an act of unfair competition**, which, in particular, is

(...) a statement which, while encouraging the purchase of goods or services, gives the impression of neutral information.

Article 16.1.4 of the Act of 16 April 1993 on Combating Unfair Competition

The fact of an influencer, advertiser or advertising agency complying with the above provisions we assess individually, based on specific circumstances. This means that influencers, before publishing the material on social media, should each time check whether it is advertising material. If it is, they should also make sure that they have informed their followers sufficiently about it.



#OznaczamReklamy

Commercial Collaborations

There are many types of commercial collaborations, which differ, for example, in the method of concluding a contract, the form of compensation, the advertiser's influence on the material, or the duration of the collaboration.

Regardless of these variables, **each and every advertisement – that is, commercial content or advertising material – should be singled out from neutral information.**

A special type of commercial content is self-promotion, which is a form of advertising one's own brand. The recommendations also distinguish publications concerning gifts (the so-called PR packages).

The Method of Concluding a Contract

The form of how the influencer concludes a contract with an advertising agency or advertiser is not relevant when it comes to recognising the content as commercial. She/he can make appropriate arrangements both on paper and during a conversation, exchange of emails or messages in instant messaging. Under a contract construed as such, an influencer receives compensation in return for publishing commercial content on her/his social media accounts. In the contract or in its appendices (e.g. in the brief), the parties may specify the shape and form of the materials.

DEAR INFLUENCER!

Have you agreed the terms of collaboration on Whatsapp?
This means that you have concluded a contract.

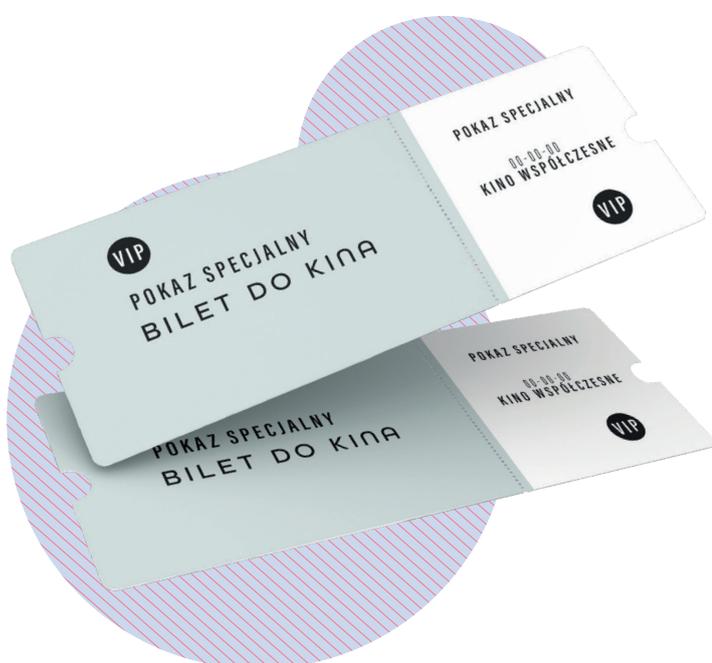
Form of Compensation

The form of how the influencer receives a material benefit is not relevant when it comes to recognising the content as commercial. A material benefit may take the form of cash or material compensation, i.e.

- products or services,
- discounts on the purchase of products or services,
- profits from the publication of discount codes, affiliate links, licences granted,
- promotional vouchers,
- bonuses,
- covering additional costs of participation in an event in addition to an admission ticket.



If the influencer has received a ticket to a cinema, opera or theatre, and wants to publish a story or review of this event – she/he does not have to tag it as advertising material. Informing the followers about receiving a free invitation is sufficient. This is possible provided that the material has been created independently of the will and influence of the advertiser (or an entity associated with it).



[visualisation of Cinema ticket]

In a situation where the advertiser (or an entity associated with it) has incurred additional costs relative to the influencer's participation in the event (apart from the admission ticket), the creator should tag this content as advertising material. Additional costs include but are not limited to payment for accommodation, reimbursement for travel costs.

It is advised to remember that the material benefit also includes an increase in sales of own goods or services. The next chapter raises the issue of own brand advertising, namely self-promotion.

DEAR INFLUENCER!

Are you promoting a new phone in exchange for a discount on this brand's products? Commercial content must be properly tagged and singled out from neutral content, regardless of the form of compensation you have received.

Advertiser's Influence on Content

It does not matter if the advertiser influences the content for the material to be recognised as commercial. The advertiser or advertising agency usually lay down requirements for the final shape and form of the publication. They commission the influencer to create a material based on the so-called brief or accept it directly before the mere publication. It is necessary to tag it as advertising material.

In a situation where neither the advertiser nor the advertising agency has any influence on the material created by the influencer, and the creator posts information about the product or service against compensation on its social media channel, it is also necessary to tag it as advertising material.

This also applies to cases where the influencer expresses only her/his own opinion about the product that she/he has received from the advertiser or its affiliate. It is also the case with the services which she/he has used at their expense.

Commercial Collaborations

If the creator receives a product for testing only (e.g. pre-release) to publish a review on its social media channel, and then returns it – she/he does not have to tag this material as advertising. It is sufficient to inform her/his followers who the product is from, as well as that she/he has received it free of charge and has to return it.

DEAR INFLUENCER!

Regardless of whether the advertiser has had an influence on the published material, if you have been paid for it – you must tag it as advertising material. Be reminded that you can receive compensation in multiple forms, e.g. in cash, in kind, or in product discounts.



Duration of Collaboration

The duration of collaboration does not matter for the recognition of material as advertising. Commercial collaboration may be long-term or concern a single advertisement. It may be related to the promotion of specific products or services, or it may refer to a specific brand. The influencer can become a brand ambassador and build its image, associations with the advertiser or its products and services through its social channels. This type of collaboration (one of the forms of sponsorship) should also be tagged as advertising material each time.

DEAR INFLUENCER! ARE YOU A BRAND AMBASSADOR?

Be reminded that all commercial content related to it must be singled out from neutral content each time.

Examples

Example 1

Monetary compensation, the advertiser does have an influence on the publication

A TV producer has commissioned an influencer operating in the technology sector to prepare a special video material on modern image processing methods.

The creator has presented the indicated issue as wished by the advertiser, using its products. The advertiser has had an influence on the content creation process and asked for minor changes to the material. After the collaboration, the influencer has received a transfer from the TV producer.

This must be tagged as advertising material and indicate the promoted brand

Example 2

Monetary compensation, the advertiser does not have an influence on the publication

A cosmetic brand – through the agency – has commissioned an influencer who deals with hair care to present the latest colouring shampoo. As part of the collaboration, the creator has dyed her hair with this shampoo, prepared photo materials along with a description, and then posted them on its Instagram. For the collaboration, the influencer has received compensation from the cosmetics producer paid with BLIK.

This must be tagged as advertising material and indicate the promoted brand

Example 3

Compensation in the form of a service, the advertiser does have an influence on the publication

A travel agency organises and pays a couple of influencers with overseas holidays, in return asking them to prepare a story regarding their trip. Before heading out, the company has agreed with the creators on Whatsapp on a minimum list of benefits in the form of the number of posts and stories, as well as indicated keywords that should appear in the content.

This must be tagged as advertising material and indicate the promoted brand

Example 4

Compensation in the form of a product, the advertiser does not have an influence on the publication

A creator of the channel dedicated to reviews related to new technologies has received a pre-release phone from the distributor. In return for the product, the influencer has prepared material about it and published it on her/his channel. She/he does not have to return the phone and may keep it.

This must be tagged as advertising material and indicate the promoted brand

Commercial Collaborations

Example 5

Compensation in the form of covering additional costs of participation in the event, the advertiser does not have an influence on the publication

A car manufacturer has invited an influencer to the premiere of the latest car model. The brand has covered the costs of accommodation and meals on the spot. The influencer has created a story on the event on her/his channel.

This must be tagged as advertising material and indicate the promoted brand

Example 6

Compensation in the form of a discount on the purchase of the product, the advertiser does not have an influence on the publication

A phone manufacturer has asked for a review of the new smartphone model. An influencer has received a 75% discount as compensation for publication, for the purchase of equipment that can then be used for private needs.

This must be tagged as advertising material and indicate the promoted brand

Example 7

Compensation in the form of a discount on the purchase of the product, the advertiser does not have an influence on the publication

An automotive influencer has launched a new series of materials dedicated to electromobility. She/he has been inspired to take up this topic by a photovoltaic producer, who has undertaken to provide the creator with discounts on its services in the future. In return for discounts, the influencer creates its materials based on the principal's products.

This must be tagged as advertising material and indicate the promoted brand

Example 8

Compensation in the form of profit from the sale of the affiliate link, the advertiser does not have an influence on the publication of the client

A DIY influencer is advertising a seasonal discount offer at a power tool store. For this purpose, she/he posts a direct link to the offer in her/his materials – along with information about a twenty-percent discount that will be activated after entering a special discount code provided by the creator. For each purchase with the code, she/he receives a percentage of the sale.

This must be tagged as advertising material and indicate the promoted brand

Example 9

Compensation in the form of profit from the grant of a licence

A group of influencers – in return for a monetary compensation and an additional share in sales profits – has made their logo available to a computer equipment manufacturer (licence). The company has prepared a new model of accessories signed with a special catchphrase and the creators' logo. The influencers promote a new product on their profiles and encourage to buy it.

This must be tagged as advertising material and indicate the promoted brand

Example 10

Sponsoring

A brand that produces photographic equipment has become a sponsor of a travel cycle in which an influencer visits different countries in search of outdoor photo shoots. In each of over a dozen materials, the creator informs the recipients that a brand she/he collaborates with has sponsored her/his expedition. In the process, she/he also uses its equipment to take photos and produce content, which she/he indicates in her/his stories

This must be tagged as advertising material and indicate the promoted brand

Extraordinary Cases

The following examples relate to the publication of materials that we do not recognise as advertising material. However, we do believe that it is worth singling them out from the neutral content concerning the creator's everyday life.

Example 11

Making the product available for the time of testing, the brand does not have an influence on the publication

A car manufacturer has made a new car model available to an influencer for testing. The influencer has prepared a review for her/his channel. After the tests, the car has been returned. She/he has not received any additional material benefits.

She/he must inform that the product has been made available for the duration of the tests

Example 12

Free-of-charge participation in an event, the organiser does not have an influence on the publication

An influencer has received a concert invitation from the organiser. She/he has decided to attend it, so she/he has covered the costs of transport and accommodation herself/himself. During the concert, she/he has been adding videos and photos with her/his friends, and after the event, she/he has published a post in which she/he has described her/his views related to the show.

She/he must inform about receiving a free-of-charge invitation

the golden rule

#OznaczamReklamy

DEAR INFLUENCER!

**If you have any doubts
as to whether your
material about
a product or service
constitutes commercial
communication and
whether it should be
tagged as advertising,
well... tag it!**

**In this way, you prove
that you act in
adherence to the law
and respect your
followers.**



Self-promotion

Self-promotion, namely advertising of one's own brand, including one's products and services, is a special type of commercial content.

This applies to situations where an influencer runs a business or holds shares in an enterprise that produces (e.g. clothes), provides services (e.g. dietary services) or other activities (e.g. creates audiobooks or e-books), and advertises this on her/his own channels on social media

Self-promotion as an advertisement also must be tagged. Content on social media cannot appear neutral if it is advertising material, and the purpose of its publication involves increasing the sale of own goods or services. Promoting one's own brand falls within the commercial sphere of an influencer's activity.

DEAR INFLUENCER!

Do you write books, record audiobooks, provide dietary services or produce natural cosmetics? If you encourage people to buy them on your channel – tag it as self-promotion. Be reminded that self-promotion does not involve a situation where you advertise a product of another brand, even if you have provided it with your image or logo. If this is the case, we call it commercial collaboration.

Example 13

Self-promotion

An influencer has decided to independently produce a series of t-shirts and sweat-shirts and began selling them in her/his own online store. Using her/his Instagram account, she/he encourages people to buy these products and places a direct link to the store.

Must be tagged as self-promotion

Example 14

Self-promotion

A writer, who is also an influencer, has just released her/his latest crime novel. In her/his channels, she/he informs about the new book, shares the emotions that have been accompanying it in the creative process, and talks about the availability of the novel in bookstores.

Must be tagged as self-promotion

DEAR INFLUENCER!

If you have any doubts as to whether your material about a product or service constitutes commercial communication and whether it should be tagged as advertising, well... tag it!

In this way, you prove that you act in adherence to the law and respect your followers.

the golden rule #OznaczamReklamy

6

Gifts

One of the forms of collaboration with an influencer is sending her/him gifts by an advertising agency or directly by the advertiser, the so-called PR packages.

The gifts are of **low value**, the creator does not have to return them or pay for them, and at the same time, she/he does not receive extra compensation for their potential promotion. The donor has not concluded a contract with the influencer in any form and does not commission the creator to publish materials on social media about the gift received. Not does it have an influence on their content, nor does it accept these materials in any way. The decision about possible publication and its form rests with the influencer herself/himself.

If the influencer decides to make publication after receiving her/his **first gift from a given brand**, she/he does not have to tag this content as **advertising material**. However, the creator should **inform his/her followers that the product has been received as a gift**.

Example 15

The first gift

An advertising agency sent gifts with samples of the new brand's cosmetics to several influencers from the beauty sector. The PR package was of little value. The agency has not specified the requirements for publishing or presenting products. The package only includes a greeting card. After receiving the package, some influencers have decided to share their opinion about the received gift with their followers.

Must be tagged as a gift

DEAR INFLUENCER!

Have you received a bamboo thermos flask as a gift from the new brand? Do you want to share this on your social media accounts? Be reminded not to forget to mention that you have received the product as a gift. If the same brand sends you more products – any publications about them must be tagged as advertising material.



Any publications regarding re-gifts from the same brand (or its affiliates) should be tagged by the influencer as advertising material. The donor, by giving subsequent gifts to the influencer, may thus reward her/him for its hitherto actions, even though the parties have not concluded any contract whatsoever. At the same time, the creator can publish positive materials about the gifts received, hoping that she/he will receive further gifts or conclude a collaboration contract with compensation. The communication addressed to the followers is no longer neutral.



Example 16

Compensation in the form of a product, another gift

One of the influencers from example 15. "The first gift" after some time has received another package from the advertising agency with products of the same brand. She/he has once again published a recording about them, describing the products she/he has received, even though the agency neither has expected nor has it accepted the published materials.

This must be tagged as advertising material and indicate the promoted brand

DEAR INFLUENCER!

If you have any doubts as to whether your material about a product or service constitutes commercial communication and whether it should be tagged as advertising, well... tag it!

In this way, you prove that you act in adherence to the law and respect your followers.

the golden rule #OznaczamReklamy



Methods of Tagging

An influencer should tag advertising materials published on her/his social media channels in a way that is clear, unambiguous and understandable for every recipient.

The tagging should be visible both to her/his regular followers and to those who get acquainted with her/his channels for the first time. The followers should be able to recognise the advertising nature of content at an early stage of getting acquainted with it, both on mobile and desktop devices.

The influencer should also tell them what brand is advertised.

Two-level Tagging

By publishing advertising material, the influencer may use the functionality provided by the social platform for tagging commercial content. At the same time, the creator should make sure that the information about the advertising nature of the content is sufficiently visible to the followers.

We recommend two-level tagging, namely using both the platform's functionality and tagging it single-handedly (e.g. in the description, in a photo or video, in the narration of the material).

Social media are constantly changing, and their tagging solutions. Not all changes have to positively affect the clarity and legibility of the tagging. This type of tagging may differ depending on a given platform, its functionality or the method of publishing materials, and may relate to the form of the tag, its location or text.

Accordingly, the use of only the tools offered on a given platform may not protect the influencer (or other entity) from the consequences of incorrect tagging of advertising materials – especially if it is invisible or non-understandable to the recipient.



**LEGIBLE, UNAMBIGUOUS,
UNDERSTANDABLE**

We recognise the tagging of advertising materials to be legible, unambiguous and understandable if it is:

- in a visible place, e.g. at the beginning of the description or recording,
- standing out from the rest of the content,
- written in a clear and large enough font,
- in Polish, as long as the profile is run in that language,
- using terms that clearly indicate the commercial nature of the publication.

DEAR INFLUENCER!

Before publishing the material, check that your tags are unambiguous and understandable. Make sure that the creation of your content (e.g. a light background) does not affect the legibility and visibility of the tag.



Recommended Terms

Advertising material ...

#reklama or [reklama]
#materiałreklamowy or [materiał reklamowy]
#współpracareklamowa or [współpraca reklamowa]
#postsponsorowany or [post sponsorowany]
#materiałsponsorowany or [materiał sponsorowany]
#płatnawspółpraca or [płatna współpraca]
#video #relacja #post #materiał + #reklamowy
#sponsorowany = e.g. #wideoreklamowe,
#relacjasponsorowana
Reklama marki XYZ
Płatna współpraca z marką XYZ

The influencer should tell what name the name the brand she/he is advertising.

Self-promotion ...

#autopromocja or [autopromocja]
#autoreklama or [autoreklama]
#markawłasna or [marka własna]

Gift* ...

#prezent or [prezent]
#podarunek or [podarunek]

*When publishing materials with subsequent gifts from the same advertiser, we recommend using the terms as for advertising materials.

Exceptional cases include, e.g. invitation and tests ...

Followers have the right to determine whether receiving an invitation to an event or product for testing may affect the neutrality of an influencer's publication. They should be reliably informed about the circumstances of the creation of such material.

The creator can do this, for example, in the description or in the narrative, by verbally confirming it in the material itself (if it is a video or audio material).

Methods of Tagging

Not Recommended Terms



**ILLEGIBLE, AMBIGUOUS,
UNUNDERSTANDABLE**

The tagging of advertising materials may be recognised as illegible, ambiguous, non-understandable, namely misleading, if it is, for instance:

- placed in an invisible place, e.g. against the background of another text, after using the “more” or “see more” options, at the edge of the image,
- in a colour that blends with the background,
- written in a faint or too small font,
- with spelling errors,
- in a language other than Polish, as long as the profile is run in Polish,
- using ambiguous terms that do not indicate the commercial nature of the content, e.g. collaboration.

DEAR INFLUENCER!

If the advertiser requires you to incorrectly tag advertising materials, you have the right to object to collaboration. Be reminded that you are responsible for the content you publish.

Incorrect tags, namely those that may mislead followers

In a language other than Polish

#advertisement or [advertisement]
#collaboration or [collaboration]
#commercial or [commercial]

In short form

#ad or [AD]
#promo or [promo]
#spons or [spons]
#autopromo or [autopromo]
#rek or [rek]

In an ambiguous form

(which does not emphasise the fact that the influencer has enjoyed benefits)

#współpraca or [współpraca]
Materiał powstał we współpracy z...
It means #collaboration or [collaboration], the material was created in collaboration with...

Examples

Please find below some **examples of recommended and incorrect tagging of advertising materials in various social media. The tagging methods used should be appropriately referenced and adapted to other platforms not listed below, such as Facebook, Twitter, Twitch and others.**

DEAR INFLUENCER! CHECK IF YOUR ADVERTISEMENT IS TAGGED CORRECTLY ACCORDING TO THE LIST BELOW:

- USING THE PLATFORM FUNCTIONALITY** – If a given platform allows of highlighting commercial content, check whether such a tagging is legible and visible in your material. Use a two-level tagging and tag the material single-handedly, e.g. in the post description.
- TAGGING THE COMMERCIAL NATURE OF THE CONTENT** – Check if the terms you use are unambiguous for each recipient.
- INDICATING THE PROMOTED BRAND** – Check if you have named the brand you are presenting.
- LEGIBLE AND UNDERSTANDABLE FOR RECIPIENTS** – Check if the font size or background colour of the material does not make it difficult for the recipient to read the tag. Verify that the tags are visible to both who play your content using a mobile phone and a computer.



DEAR INFLUENCER!

We have created an AR filter for Instagram and Facebook to help you make your advertisement, self-promotion and gift stand out. Take advantage of it!
#OznaczamReklamy

Spotify and other audio-publishing platforms (e.g. in the form of podcasts)

Information about the advertising nature of a given podcast should be provided at the beginning of the recording or immediately before the sponsored fragment (containing an advertisement) as well as in the description of the podcast.

Methods of Tagging

Instagram and other platforms allowing to post photos or stories

RECOMMENDED TAGS INSTAGRAM STORIES



I check the following

- ✓ Using the platform functionality
- ✓ Tagging the commercial nature of the content
- ✓ Indicating the promoted brand
- ✓ Legible and understandable for recipients

The influencer has used the functionality offered by the platform, thanks to which the inscription "Post sponsorowany" has appeared under the name of her account. However, due to the natural white background, the tag has become difficult to read. Therefore, the influencer has used a two-level tagging and independently put the term "Reklama" also on the material itself. She has tagged the advertiser in the story.



I check the following

- ✓ Using the platform functionality
- ✓ Tagging the commercial nature of the content
- ✓ Indicating the promoted brand
- ✓ Legible and understandable for recipients

The influencer has used the functionality offered by the platform, thanks to which the inscription "Post sponsorowany" has appeared under the name of her account. However, due to the natural, white background, the inscription has become difficult to read. Therefore, she has used a two-level tagging and single-handedly included information about the nature of the collaboration also on the material itself – she has used the clear phrase "Reklama marki XYZ".

INSUFFICIENT TAGS INSTAGRAM STORIES



I check the following

-  Using the platform functionality
-  Tagging the commercial nature of the content
-  Indicating the promoted brand
-  Legible and understandable for recipients

Tagging the information as advertising is illegible because the phrase “Reklama” has been placed by the influencer in the corner of the story. In addition, she has used a font that is too small and does not indicate the name of the advertised brand.



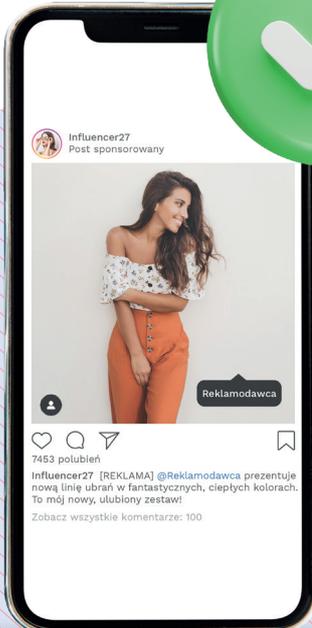
I check the following

-  Using the platform functionality
-  Tagging the commercial nature of the content
-  Indicating the promoted brand
-  Legible and understandable for recipients

At first glance, it is not apparent that the story is commercial in nature. The influencer has not described the advertising nature of the story – she has failed to use unambiguous terms, e.g. “Współpraca komercyjna” or distinguishing this content as profitable. The only thing added to the material is a discount code.

Methods of Tagging

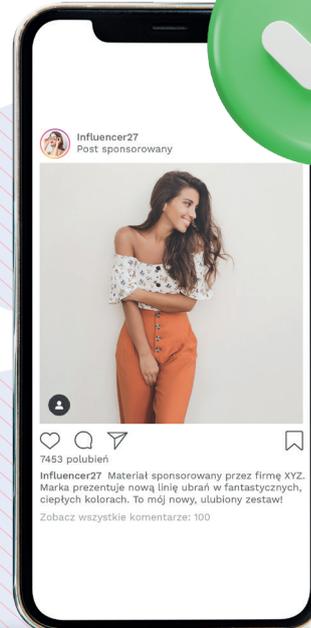
RECOMMENDED TAGS INSTAGRAM POST



I check the following

- ✓ Using the platform functionality
- ✓ Tagging the commercial nature of the content
- ✓ Indicating the promoted brand
- ✓ Legible and understandable for recipients

The influencer has applied a two-level tagging – she has used the functionality offered by the platform, thanks to which the inscription “Post sponsorowany” has appeared under the name of her profile, and in the description, in a visible place, she has provided the information [REKLAMA] and the brand name @Reklamodawca. Additionally, she has tagged the advertiser in the photo.

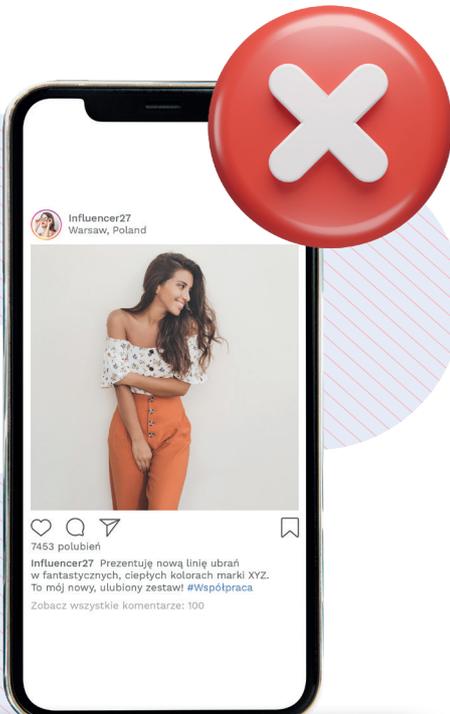


I check the following

- ✓ Using the platform functionality
- ✓ Tagging the commercial nature of the content
- ✓ Indicating the promoted brand
- ✓ Legible and understandable for recipients

The influencer has applied a two-level tagging – she has used the functionality offered by the platform, thanks to which the inscription “Post sponsorowany” has appeared under the name of her profile, and in the content of the post, she has described its commercial nature – in a visible place, she has provided the information “Materiał sponsorowany przez firmę XYZ”.

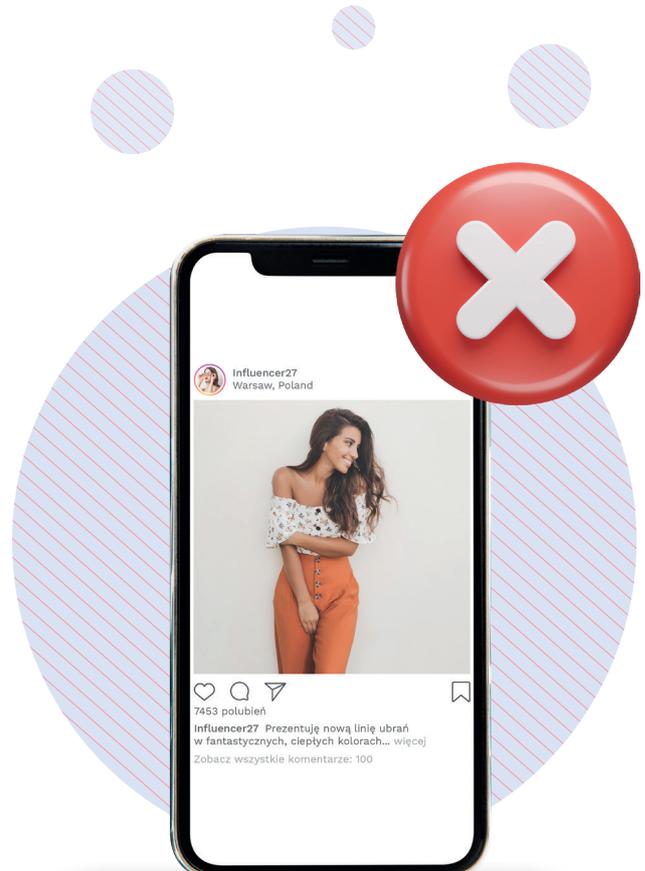
INSUFFICIENT TAGS INSTAGRAM POST



I check the following

-  Using the platform functionality
-  Tagging the commercial nature of the content
-  Indicating the promoted brand
-  Legible and understandable for recipients

At first glance, it is not apparent that the post is commercial in nature. The use of “#współpraca” is insufficient. It is not clear what the nature of the collaboration is or with whom it is established. The influencer has not used the platform’s functionality, nor has she indicated what the advertiser is.



I check the following

-  Using the platform functionality
-  Tagging the commercial nature of the content
-  Indicating the promoted brand
-  Legible and understandable for recipients

At first glance, it is not apparent that the post is commercial in nature. The influencer has not used the platform’s functionality, and information about the commercial nature of the material and the promoted brand is visible to her followers only after expanding the description of “more”.

Methods of Tagging

TikTok and other short video-publishing platforms

RECOMMENDED TAGS SHORTS



I check the following

- ✓ Using the platform functionality
- ✓ Tagging the commercial nature of the content
- ✓ Indicating the promoted brand
- ✓ Legible and understandable for recipients

The influencer has used a two-level tagging. He has used the platform's functionality "Płatna współpraca", and in the description of the material, he has provided information about the advertiser, preceded by the phrase "Materiał sponsorowany przez markę @Reklamodawca".



I check the following

- ✓ Using the platform functionality
- ✓ Tagging the commercial nature of the content
- ✓ Indicating the promoted brand
- ✓ Legible and understandable for recipients

The influencer has used a two-level tagging. He has used the platform's functionality "Płatna współpraca", and in the content of the material, he has provided information about the commercial nature of the content and about the advertiser "Reklama marki XYZ" – in a visible place of the video and in a contrasting colour. In addition, he has also tagged the advertiser.

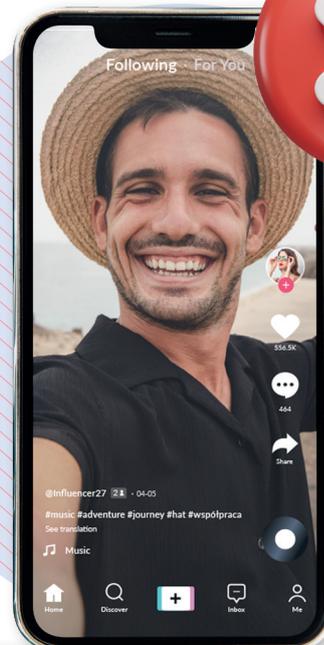
INSUFFICIENT TAGS SHORTS



I check the following

-  Using the platform functionality
-  Tagging the commercial nature of the content
-  Indicating the promoted brand
-  Legible and understandable for recipients

At first glance, it is not apparent that the post is commercial in nature. The influencer has not used the platform's functionality, nor has he clearly pointed out in the description that it is a sponsored video. He has only communicated the advertiser's brand and the advertised product.



I check the following

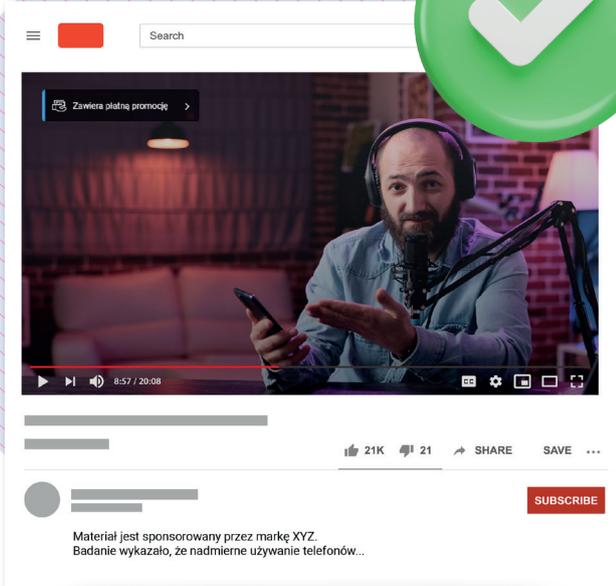
-  Using the platform functionality
-  Tagging the commercial nature of the content
-  Indicating the promoted brand
-  Legible and understandable for recipients

At first glance, it is not apparent that the post is commercial in nature. The influencer has not used the platform's functionality, nor has he clearly pointed out in the description that it is an advertisement. The use of "#współpraca" is insufficient – It is not clear what the nature of this collaboration is or with whom it is established.

Methods of Tagging

YouTube and other video-publishing platforms

RECOMMENDED TAGS VIDEO



I check the following

- ✓ Using the platform functionality
- ✓ Tagging the commercial nature of the content
- ✓ Indicating the promoted brand
- ✓ Legible and understandable for recipients

The influencer has used a two-level tagging. He has used the platform's functionality "Zawiera płatną promocję", and in the description of the film, in the first lines (without the need to expand it), he has provided the name of the advertiser and the information that the material is sponsored.



I check the following

- ✓ Using the platform functionality
- ✓ Tagging the commercial nature of the content
- ✓ Indicating the promoted brand
- ✓ Legible and understandable for recipients

The influencer has used a two-level tagging. He has used the platform's functionality "Zawiera płatną promocję" and explained verbally that the material has been commissioned by the advertiser. He could have included it in the form of subtitles on the video as well.

Methods of Tagging

INSUFFICIENT TAGS FILM



I check the following

- ✓ Using the platform functionality
- ✓ Tagging the commercial nature of the content
- ✓ Indicating the promoted brand
- ✓ Legible and understandable for recipients

The influencer has used a two-level tagging. He has used the platform's functionality and provided information about the advertiser verbally at the beginning of the advertisement, as well as he has displayed a frame with the "Fragment sponsorowany" throughout the duration of the advertisement.



I check the following

- ✗ Using the platform functionality
- ✗ Tagging the commercial nature of the content
- ✓ Indicating the promoted brand
- ✗ Legible and understandable for recipients

At first glance, it is not apparent that the post is commercial in nature. The use of the phrase "Material powstał we współpracy z XYZ" is insufficient and ambiguous, as it does not explain the nature of the collaboration. This information is included only in the description of the video.



Legal Consequences

Incorrect tagging of advertising content may entail legal consequences for the influencer, advertising agency and advertiser. This applies to both liability based on the provisions presented in this section and recourse liability.

For example: an influencer who has borne financial liability for incorrect tagging of advertising materials may have further (recourse) claims towards the advertising agency or advertiser in connection with the concluded contract, unless there is an appropriate exclusion of liability in this regard.

We can distinguish the following legal consequences against entrepreneurs (influencers, advertising agencies, advertisers).

Public and legal consequences (administrative and legal)

The President of the Office of Competition and Consumer Protection may find that an entrepreneur who engages in unfair market practices exercises a practice that violates collective consumer interests. This applies, *inter alia*, to misleading omission in connection with the tagging of advertising materials or the use of surreptitious advertising (cf. Article 24 of the Act of 16 February 2007 on Competition and Consumer Protection). In such a situation, the President of the Office of Competition and Consumer Protection may command the entrepreneur to:

- pay a fine of up to 10% turnover,
- abandon the practice violating collective consumer interests,
- remove the ongoing effects of the violation (including publishing statements in the form and content indicated in the decision of the President of the Office of Competition and Consumer Protection),



- publish the decision of the President of the Office of Competition and Consumer Protection.

Article 26–27 and 106 of the Act of 16 February 2007 on Competition and Consumer Protection

Private and law consequences (civil-law)

Those consumers against whom the entrepreneur has exercised an unfair market practice related to the tagging of advertising materials may request:

- repairing the damage caused on general terms, in particular requesting the cancellation of the contract with the obligation of mutual reimbursement for benefits and reimbursement by the entrepreneur for costs related to the purchase of the product,
- abandoning this practice,
- removing the effects of this practice,
- making one or multiple declarations with appropriate content and in an appropriate form,

- adjudicating an appropriate amount of money for a specific social purpose related to supporting Polish culture, protection of national heritage or consumer protection.

Article 12 of the Act on Counteracting Unfair Market Practices

Entrepreneurs (competitors), in connection with exercising an act of unfair competition in the field of advertising, may, in particular, request:

- repairing the damage caused on general terms, in particular requesting the cancellation of the contract with the obligation of mutual reimbursement for benefits and reimbursement by the entrepreneur for costs related to the purchase of the product,
- abandoning this practice,
- removing the effects of this practice,
- making one or multiple declarations with appropriate content and in an appropriate form,
- adjudicating an appropriate amount of money for a specific social purpose related to supporting Polish culture, protection of national heritage or consumer protection.

Article 18 of the Act on Combating Unfair Competition

Be noted that commencing public-law actions does not exclude the possibility of taking private-law actions (and vice versa). This means that consumers or competitors may individually enforce claims against entrepreneurs, irrespective of the possible proceedings of the President of the Office of Competition and Consumer Protection.

Moreover, actions against entrepreneurs who has incorrectly tagged advertising materials may also be taken on the basis of existing self-regulations (in particular before the Ethics Committee of the Advertising Council).

IMPORTANT NOTE!

- We recommend that each and every contract between the influencer and the advertiser or advertising agency includes appropriate provisions on the need to tag advertising materials published on social media in accordance with the recommendations.
- We recommend that the advertiser or advertising agency includes in contracts concluded with influencers appropriate verification procedures regarding the correct tagging of advertising materials in accordance with the recommendations and the concluded contract. If any irregularities have been identified, the influencer should be obliged to immediately introduce the correct tags, under pain of paying the consequences indicated in the contract, including its termination.
- The advertising agency and influencer have the right to refuse to collaborate if the advertiser does not require any tagging of advertising materials published on social media or requires tagging inconsistent with the recommendations.

#OznaczamReklamy

Special and Prohibited Categories

There are certain categories of products or services whose advertising is governed by specific legal provisions.

Accordingly, before publishing commercial content, it is necessary to make sure that advertising is permitted and find out under what conditions. Examples of products and services whose advertising is subject to specific regulations include:

- **alcohol products** – the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism,
- **tobacco products** – the Act of 9 November 1995 on the Protection of Health Against the Consequences of Using Tobacco Products,
- **drugs** – the Pharmaceutical Law of 6 September 2001,
- **dietary supplements** – the Act of 25 August 2006 on Safety of Food and Nutrition,
- **financial products and services** – including the Act of 29 August 1997 – Banking Law, the Act of 19 August 2011 on Payment Services, the Act of 12 May 2011 on Consumer Credit,
- **gambling games** – the Gambling Act of 19 November 2009.

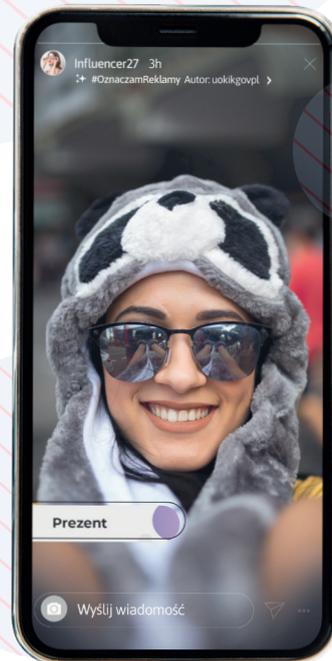
An influencer (as well as an advertising agency and advertiser) should verify each time whether the prepared material is addressed to minor followers (persons under 18 years of age). Children are particularly protected against inappropriate content in advertising (due to inexperience and natural credulity). Influencers who address their content to minor consumers should remember about the applicable regulations in this area, including:

- lack of possibility to include in broadcasts commercial communications concerning food products or beverages containing ingredients not advisable in excessive amounts in the daily diet – in accordance with Article 16b.3a of the Broadcasting Act,
- prohibition of placing products in broadcasts for children – pursuant to Article 17a.1.5 of the Broadcasting Act,
- prohibition of placing in an advertisement a direct calling of children to purchase advertised products or to persuade parents or other adults to buy advertised products for them – in accordance with Article 9.5 of the Act on Counteracting Unfair Market Practices.

It is also worth following the rules of the “Child Protection Charter in Advertising”, which is an appendix to the Advertising Code of Ethics, the Advertising Council.

DEAR INFLUENCER!

Advertising of certain products or services is prohibited or restricted. Before publishing – make sure that your advertising is legal. If you have any doubts, do not establish collaboration!



#OznaczamReklamy

1

Use the AR filter for Instagram and Facebook

2

Search for it by the name #OznaczamReklamy

3

Highlight ads, self-promotions and gifts