

From: Jon Riley  
*Project Director*

11 August 2016

Dear Sir/Madam

**An open letter to marketing departments, marketing agencies and their clients**

You may be aware that the Competition and Markets Authority (CMA) has been investigating the [use of online reviews and endorsements](#) to ensure that they are being used in accordance with consumer protection law.

Checking online reviews and endorsements, including those made by bloggers or on social media, has become part of everyday life and can significantly influence people's buying decisions. It is therefore crucial that people are able to distinguish between genuine, unbiased opinion and paid-for advertising.

This letter addresses our concerns in the following two areas:

- (i) Clearly labelling or identifying paid promotions, including on social media; and
- (ii) Writing, commissioning and publishing fake reviews.

**Online endorsements – paid promotions**

The CMA has recently concluded an investigation into a social media marketing company after the CMA identified concerns that the company had arranged for widely-followed social media personalities to promote businesses' products on social media sites, without readers being informed that the content was paid-for advertising. This follows a previous investigation in which two marketing companies arranged for endorsements in online articles and blogs on behalf of a short-term loan provider, without making it clear to readers that they were advertising. You can read more about these investigations on the [CMA's webpages](#).

The use of editorial content<sup>1</sup> in the media to promote a product where a trader has

---

<sup>1</sup>'Editorial content' includes, but is not limited to, articles, blog posts, video blogs, commentary, Tweets and advertorials in any medium, including online and digital channels.

paid (financially or otherwise) for the promotion, without making this clear to the reader, is unlawful and may lead to enforcement action.

*What does this mean for you?*

Businesses that pay for promotions on social media or in articles or blogs should ensure this has been made clear to readers/viewers, for example by:

- clearly identifying or labelling paid promotions;
- providing instructions to marketing agencies and anyone else involved in the publication of paid promotions on how to implement this; and
- ensuring that their policies on paid promotions reflect the requirements of consumer protection law and that their marketing staff are aware of the requirements of the law.

Marketing agencies and other intermediaries which arrange for paid promotions to be published – including via social media – should ensure that they are clearly identifiable by readers/viewers, for example by:

- instructing online publications, bloggers and social media personalities to clearly label or identify paid promotions and ensuring this is put into practice;
- clearly identifying paid promotions they create themselves;
- ensuring their policies reflect the requirements of consumer protection law and that their staff are aware of the requirements of the law; and
- turning down requests from businesses to arrange paid promotions which are not clearly labelled or identified.

It is our view that everyone involved in online endorsements is responsible for ensuring that paid promotions are clearly labelled or identified. This includes people who instruct, facilitate, arrange or publish paid promotions. This content is read by consumers, who may rely on the information to inform their purchasing decisions. If it is not correctly labelled or identified, consumers may be misled into thinking it represents the author's genuine opinion when a business has in fact paid to influence the content.<sup>2</sup>

---

<sup>2</sup> Businesses and marketing / media agencies should also comply with the [UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing](#), in particular Section 2 on the Recognition of Marketing Communications (including any subsequent amendments). The Advertising Standards Agency (ASA) has provided guidance on labelling, including in social media. The Committee of Advertising Practice (CAP), the ASA's sister body, also has a Copy Advice Team that advertisers and publishers can use if they want expert guidance on the CAP Code rules.

The CMA has produced a [brief guide](#) for businesses summarising how to comply with consumer protection law in relation to online endorsements.<sup>3</sup>

## **Fake reviews**

In March 2016 the CMA concluded an investigation into fake online reviews posted by an online marketing company on behalf of its clients. You can read more about the investigation on the [CMA's webpages](#).

Writing or commissioning a fake review – in relation your own products or someone else's – is a breach of consumer protection law and may lead to civil or even criminal action.

*What does this mean for you?*

Businesses, and anyone acting on their behalf, should:

- not offer inducements to customers in return for writing positive reviews about their businesses; and
- not pretend to be a customer and write fake reviews about their own or other businesses' products.

The CMA has produced a [brief guide](#) for businesses and marketing agencies, summarising how to comply with consumer protection law in relation to online reviews.

## **In conclusion**

Social media posts, blogs, videos and other online publications influence people's buying decisions.

While it is perfectly legal to market products through social media, blogs, videos and other online publications, it is important that this is done honestly, openly and in compliance with consumer protection law.

Misleading readers or viewers falls foul of consumer protection law and could result in enforcement by either the CMA<sup>4</sup> or Trading Standards Services, which may lead to civil and/or criminal action.<sup>5</sup>

---

<sup>3</sup> The International Consumer Protection and Enforcement Network of 60 consumer protection authorities has also published three sets of guidelines around online reviews and endorsements, including one aimed specifically at [digital influencers](#).

<sup>4</sup> In deciding whether to take forward any such future action, the CMA will have regard to its published [CMA Prioritisation Principles](#).

<sup>5</sup> Further guidance on the CPRs can be found on the [CMA's webpages](#) or by visiting the [Business Companion](#).