Undertakings to the Competition and Markets Authority (pursuant to Section 219 of the Enterprise Act 2002 (EA02)) relating to the Consumer Protection from Unfair Trading Regulations 2008:

Facebook of 4 Grand Canal Square, Grand Canal Harbour, Dublin 2, D02 X525, Ireland has, pursuant to section 219 EA02, voluntarily provided the undertakings below to the Competition and Markets Authority to address concerns raised by its investigation into Instagram and the alleged failure of Creators using Instagram to comply with the requirements of the CPRs regarding Prominent disclosure of Incentivised Endorsements to Users of Instagram.

Facebook has fully co-operated and constructively engaged with the CMA and makes no admissions, express or implied, to any breaches of the law in giving these undertakings.

The CMA accepts these undertakings on the basis of Facebook’s assurances as to:

(i) its future conduct in relation to undisclosed Incentivised Endorsements on Instagram; and

(ii) the steps it has already taken to comply with these obligations.

Definitions

For the purposes of these undertakings, the terms below have the following meanings:

Brand – any trader within the meaning of the CPRs.

Branded Content Policies - Facebook rules governing incentivised content, which includes Posts made on behalf of Brands by Creators (whether as a result of a general Commercial Relationship or following a specific contract between them to Promote their Products via Posts on Instagram).

Branded Content Tool - any Instagram tool which enables a Creator to disclose when a Commercial Relationship exists between a Creator and a Brand, for example, “Paid partnership with [business partner]” in the Post’s header.

Business Partner - any Brand which is a User.

**CMA** - Competition and Markets Authority.

**CMA’s Guidance** - guidance published by the CMA from time to time in respect of compliance with the CPRs or any other requirements governing the Clear disclosure of Incentivised Endorsements.

**Clear/Clearly** - text which is timely, intelligible, transparent, unambiguous, non-misleading and complete.

**Commercial Relationship/s** - a contractual arrangement entered into by a Creator in respect of any Brand or its Products, in return for any consideration, and which may include a long-term relationship (such as where a Creator acts as an ambassador for the Brand).

**Community Guidelines** - behavioural guidelines, which prescribe the content that Users are allowed to post, or are prohibited from publishing, on Instagram.


**Creator/s** – Users of Instagram who also Promote any Brand or any Product by means of Posts.

**Easily Accessible** - located on the Instagram domain; available to the User within a reasonable number of steps; and clearly navigable and/or signposted with headings and/or other design functions that accurately reflect the substance of the content to which they relate.

**Enforcer** - includes the CMA and any local authority Trading Standards Service.

**Facebook** - Facebook Ireland Limited acting in its capacity as the provider of Instagram to Users.

**GDPR** - the EU General Data Protection Regulation.

**Incentivised Endorsement** - content appearing on Instagram which occurs where:

(a) a Brand (whether directly or through any intermediary) makes a Payment to a Creator to Promote itself or its Products on Instagram via a Post; and/or

(b) there is a Commercial Relationship between the Creator and the Brand; and in either case
(c) the Creator’s Post depicts or refers to the Brand or its Products in any way.

**Instagram** – a social media service and platform offered to Users by Facebook, in which Users sign up primarily to share and/or receive and/or view content posted by other Users on the platform.

**Instagram Information** - the Terms of Use, Community Guidelines, Branded Content Policies and all other guidance, policies, advice, web pages, help pages, instructions, data and particulars relating to Incentivised Endorsements that are provided by Facebook to assist Users to navigate and utilise Instagram, or which Facebook proposes to uphold against Users if necessary.

**Label/Labelled** - words which identify a Post as an Incentivised Endorsement.

**Payment** - includes any form of monetary payment, a gift of a Product, a loan of a Product, commission or any other form of incentive, which a User has actually received, or has been promised in the year before the date of publication of a Post.

**Post/s** - any communication published on Instagram by a User, including images, photos, text and video content.

**Product/s** - includes goods, services and digital content and has the meaning set out in the CPRs as at the date of these undertakings.

**Prominent/ly** - Clear and immediately visible, without the need for the User to click for more information, irrespective of the type of device used to view the Post.

**Promote/d/s** - to review, endorse, advertise or otherwise publicise Brands and/or Products and includes the use of hyperlinks (including any affiliate links), hashtags, promotional codes, symbols, images and/or tags.

**Terms of Use** - contractual terms governing the relationship between Facebook and Users and which form part of the Instagram Information.

**Unlabelled** – where a Label is not used to identify a Post as an Incentivised Endorsement.

**User/s** – persons in the UK, including Creators and Brands, who sign up to use Instagram, and Creators and Brands who direct their activities towards persons in the UK.

**The Undertakings:**
In accordance with section 219(4) of EA02, Facebook undertakes that it will:

General commitments

1) Not:

(a) engage in any conduct which contravenes paragraphs 2 to 22 below.

(b) consent to or connive in the carrying on of such conduct with a body corporate with which it has a special relationship within the meaning of section 222(3) of the EA02.

2) Ensure that:

(a) Undertakings 5 to 10 (inclusive), 11(a), 12, 13, 14, 15, 16 and 18 are complied with irrespective of the type of device used by a User to view Posts; and

(b) All undertakings are implemented promptly and without undue delay and, in any event, by no later than:

i) 30 June 2021 in respect of Undertakings 14, 18, 19(a), 20 and 21; and

ii) 31 December 2020 in respect of all other undertakings.

3) Provide to the CMA regular reports on the work conducted by Facebook pursuant to all of these undertakings, setting out its progress in respect of implementation, including the development and utilisation of technology as required by Undertakings 16 and 21, and also sharing insights as to any learnings Facebook has derived in relation to inadequately Labelled or Unlabelled Incentivised Endorsements. These reports shall:

(a) be provided every three months from the date of these undertakings with the final report being received no later than 30 June 2021; and

(b) include the evaluation methodology and a summary of the outputs of this work; and

(c) not be required to include raw data; or personal data within the definition of Art 4 GDPR.

4) Uphold its Terms of Use, Community Guidelines, Branded Content Policies and any other published policies relating to Incentivised Endorsements on Instagram.

Transparency and clarity
5) Ensure that all Instagram Information is Easily Accessible.

6) Ensure that all Instagram Information is Clear and set out in concise language, which is readily intelligible to Users, including those who are under eighteen. The Instagram Information must be recognisable as applying to the provision of Instagram and shall therefore be delineated from all other Facebook services.

7) Amend the Terms of Use in order to inform Users more Clearly that advertising is a central feature of its business model and that, accordingly, they should expect to see direct advertising posted on Instagram by Business Partners and Incentivised Endorsements posted by Creators on behalf of Brands.

Education and awareness raising

8) Amend Instagram’s:

(a) Terms of Use to refer Creators to the Branded Content Policies when publishing Incentivised Endorsements; and

(b) Branded Content Policies to include a requirement that any Incentivised Endorsement must be given a Clear and Prominent Label on the face of the Post in a form and manner prescribed by Facebook.

9) Amend the Instagram Information to provide Users with a Clear explanation regarding:

(a) what constitutes an Incentivised Endorsement, including providing an illustrative table of examples;

(b) the circumstances in which disclosure of an Incentivised Endorsement is required; and

(c) how to Label an Incentivised Endorsement.

10) Partner with a non-profit education programme to review and, if necessary, make more accessible the Branded Content Policies and:

(a) launch a campaign targeting the programme’s network of schools, parents, and young people to raise awareness of Incentivised Endorsements.

(b) make available any of the Branded Content Policies, which have been reviewed and made more accessible by the programme, along with its content tips and educational material, at the well.instagram.com ‘programs page’.
(c) provide to the programme advertising credits on Instagram in order to allow it to publicise its Incentivised Endorsement content tips and educational material.

11) Raise awareness and understanding amongst Business Partners and Brands of the need to Prominently Label Incentivised Endorsements, including:

(a) making available a series on Incentivised Endorsements on its ‘IG for Business Blog’ and ‘IG for Creators Blog’.

(b) conducting a research project to understand better what prevents or inhibits some Creators and Brands from using the Branded Content Tool.

(c) periodically reminding Business Partners about the Branded Content Policies and their obligations to ensure compliance by any Creator with whom they have a Commercial Relationship.

Facilitating legal compliance by Creators

12) Expand access to the Branded Content Tool to all Users, subject to reasonable exemptions made in good faith, such as security and integrity requirements.

13) Implement automated technology and algorithms which are designed to enable it to classify certain Posts as suspected Incentivised Endorsements. In this regard:

(a) Use appropriate means to refer Creators of such Posts to Instagram’s Branded Content Policies every time they attempt to publish a Post which tags or links to a Brand or a Product, or uses a trigger word from a list compiled by Facebook and kept relevant by it over time.

(b) Use appropriate means to prompt Creators to confirm whether or not the relevant Post contains an Incentivised Endorsement which needs to be disclosed for them to comply with the Branded Content Policies and their obligations under the law. Such appropriate means should include on-screen notifications, providing links to the Branded Content Policies, and requiring the Creator to confirm that they have not received Payment and are not in a Commercial Relationship before they can publish their Post, unless it is Labelled Clearly and Prominently.

(c) Provide the CMA with regular updates on the progress of its development and utilisation of the automated technology in accordance with Undertaking 3.

14) Develop and maintain additional functionality of the Branded Content Tool to allow Prominent Labelling of Incentivised Endorsements where more than one Brand’s Products are Promoted within a single Post.
15) Implement technology to allow the Labelling of Incentivised Endorsements in live video.

16) Implement technology which is designed to enable Creators easily to search for Brands to Label when publishing a Post including an Incentivised Endorsement.

Facilitating legal compliance by Brands and Business Partners

17) Implement automated technology and algorithms which are designed to assist in classifying as Incentivised Endorsements Posts which have not been Prominently Labelled in the form required by Instagram pursuant to Undertaking 8(b). This includes endeavouring to identify Posts which have been incorrectly described as not containing Incentivised Endorsements, pursuant to Undertaking 13(b); and, where possible, to identify the Creators of those Posts and to make such information available to Business Partners in accordance with Undertaking 19.

18) Investigate the feasibility and effectiveness of developing a reporting tool to allow Users to report suspected inadequately Labelled or Unlabelled Incentivised Endorsements, and, if feasible and effective, to provide that tool to Users.

19) Assist Brands to increase legal compliance by:

(a) taking appropriate steps to make available information to Business Partners where Facebook becomes aware (for example, through the automated technology described in Undertakings 13 and 17 above) that their Brand and/or Products are being promoted via a suspected inadequately Labelled or Unlabelled Incentivised Endorsement. Such information should include the Creator’s Instagram identity and the content of the relevant Post (where the Creator’s privacy settings permit); and

(b) taking appropriate steps to educate Brands as to how they can file notices with Facebook or Creators to request the prompt removal of any Posts which they identify as unauthorised or inadequately Labelled or Unlabelled Incentivised Endorsements; and

(c) reporting to the CMA at the end of each quarter the number of instances in which Facebook has made information available to Business Partners pursuant to Undertaking 19(a) and the requests made by Brands pursuant to Undertaking 19(b) during the preceding three months. The first such report is to be made three months after the date of these undertakings, and the last such report is to be made 18 months from the implementation date of this Undertaking.

20) Enable Brands to increase legal compliance by:
(a) implementing technology designed to enable Business Partners easily to detect Posts which Promote their Brand and/or Products; and

(b) using best efforts to educate Brands who are not Business Partners how they can file notices with Facebook or Creators to request the prompt removal of any Posts which they identify as unauthorised Incentivised Endorsements.

(c) promptly considering requests made by Brands and Business Partners for the removal of Posts alleged to be inadequately Labelled or Unlabelled Incentivised Endorsements, and removing those Posts where appropriate.

(d) reporting to the CMA at the end of each quarter the numbers of such requests made to Facebook during the preceding three months, the number of such requests which resulted in removal of the Post, and if there was no removal, the reasons that Facebook declined to remove the Post. The first such report is to be made three months after the date of these undertakings, and the last such report is to be made 18 months from the implementation date of this Undertaking.

21) Implement technology designed to grant Brands additional insights (such as conversion and brand-lift metrics) to encourage them to require Creators to use the Branded Content Tool to disclose the Commercial Relationships that exist between them and to monitor their compliance.

BY SIGNING THESE UNDERTAKINGS, FACEBOOK IRELAND LIMITED IS AGREEING THAT IT WILL BE BOUND BY THEM.

THESE UNDERTAKINGS REPRESENT A COMMITMENT BY FACEBOOK IRELAND LIMITED IN RELATION TO FUTURE COMPLIANCE WITH CONSUMER PROTECTION REGULATION AND PRACTICE. THESE UNDERTAKINGS DO NOT AMOUNT TO AN ADMISSION THAT ANY PERSON HAS COMMITTED ANY CRIMINAL OFFENCE OR OTHERWISE INFRINGED THE LAW.

IF, HAVING SIGNED THIS DOCUMENT, FACEBOOK IRELAND LIMITED BREACHES ANY OF THE ABOVE UNDERTAKINGS, IT IS AWARE THAT IT MAY BE THE SUBJECT OF AN APPLICATION TO THE COURT FOR AN ENFORCEMENT ORDER UNDER SECTION 215 OF THE EA02.

THE CMA WILL CONSIDER VARYING OR TERMINATING THE UNDERTAKINGS, EITHER UPON REQUEST FROM FACEBOOK
IRELAND LIMITED OR UNDER THE CMA’S OWN INITIATIVE, WHERE THERE HAS BEEN A CHANGE OF CIRCUMSTANCES SUCH THAT THE UNDERTAKINGS ARE NO LONGER APPROPRIATE IN DEALING WITH THE ISSUES THEY WERE DESIGNED TO REMEDY (E.G. IF THE UNDERTAKINGS ARE AFFECTED BY NEW LEGISLATION OR CHANGES IN MARKET CONDITIONS).

Signed on behalf of FACEBOOK IRELAND LIMITED:

Date: 1 October 2020