

**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*.

**CAP Code** - The Committee of Advertising Practice's UK Code of Non-broadcast Advertising and Direct & Promotional Marketing.

**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*.

**CPRs** - Consumer Protection from Unfair Trading Regulations 2008.

**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/Labelling/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](https://www.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**