

## **Information Notice on Influencer Marketing**

1. The Hungarian Competition Authority (hereinafter: GVH) provided detailed guidance on the need to display consideration and the possibilities for appropriate marking in the case of content published by opinion leaders in its *#GVH#Compliance#Opinion Leader* information notice issued in November 2017.
2. In the years since then, influencer marketing has become a common phenomenon and, although GVH and also professional organizations and businesses have taken major steps to increase the knowledge of market participants, GVH still finds that some of the stakeholders – such as opinion leaders who are new entrants to the market – are not necessarily aware of the legal environment governing their operations.
3. Therefore, the Competition Authority has decided to publish this information, in a consolidated structure, to reflect all expectations arising from the jurisprudence<sup>1</sup> and the technological developments of the recent years, by providing examples to help market players develop their law-abiding behaviour and, at the same time, underlining the responsibility of those involved in influencer marketing processes.
4. The information contained herein should not be construed as legal advice in a specific case. The contents of this information note reflect recommendations formulated at the time of publication, in accordance with the provisions of Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers (hereinafter: UCP Act).
5. This Information Notice covers commercial communications that fall within the competence of the GVH and subject to the investigation by the GVH; however, it must be emphasized that other legal regulations are also applicable to the subject (e.g., Act on Advertising Activities,<sup>2</sup> Convention on the Rights of the Child,<sup>3</sup> and the Civil Code,<sup>4</sup> which must be taken into account by advertisers, or Act CVIII of 2001,<sup>5</sup> Act CLXXXV of 2010,<sup>6</sup>

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<sup>1</sup> VJ/110/2016. – Follow-up investigation: VJ/48/2018.; VJ/111/2016. – Follow-up investigation: VJ/5/2019.; VJ/112/2016. – Follow-up investigation: VJ/49/2018.; VJ/44/2019.; VJ/3/2020. – Follow-up investigation: VJ/40/2021.; VJ/35/2020; VJ/45/2020.; VJ/23/2021.; VJ/37/2021.

<sup>2</sup> Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities

<sup>3</sup> Act LXIV of 1991 on the Promulgation of the Convention on the Rights of the Child, signed in New York on 20 November 1989

<sup>4</sup> Act V of 2013 on the Civil Code

<sup>5</sup> Act CVIII of 2001 on Certain Issues of Electronic Commerce Services and on Information Society Services

<sup>6</sup> Act CLXXXV of 2010 on Media Services and Mass Media

and Act CIV of 2010,<sup>7</sup> which may serve as an analogy), and they are not discussed in these guidelines.

## **I. Definitions**

### **I.1. “Influencer” (opinion leader)**

6. An influencer is a person – even a minor –, a thing, or a virtual entity (such as an animal, mascot, digital character, or avatar) capable of exerting influence in the digital environment and shaping consumer opinion who/what – acting as a one-off or as a permanent partner, or even as a dedicated brand ambassador – creates and publishes online content on their own website, social media page, video sharing or other online platform, regardless of whether the content is their own or a guest post; in most cases, an opinion leader has a dedicated follower base.
7. Opinion leaders typically receive consideration for contents created by them. Therefore, their recommendations cannot be considered fully objective and independent, and there is some business consideration behind them, in the vast majority of cases.

GVH has considered any private individual to be an opinion leader who has used their own social media page to promote third party products in return for consideration.

### **I.2. Content**

8. Content may, among others, be an opinion; a comment; an observation; an emoticon shown; a spontaneous reaction; a # (hashtag) sign or a link (<https://www...>) used as a tag; a retweet; a product placement; a sponsored post; an advertisement; a promotional or popularising appearance; or an article, commentary or explanation for raising consumer interest, which are distributed through any medium, including online and various digital channels.

GVH has regarded any post published by an opinion leader in their Facebook or Instagram page as content.

### **I.3. Consideration**

9. Any incentive provided for disclosure is to be regarded as consideration. It is important that benefits are not limited to financial compensation or financial payment. Thus, in addition to a financial benefit, consideration may include, for example, discounts provided; free products or services; invitations to travel; tickets to events; use of vehicles; partnership agreements, i.e. everything for which an opinion leader would otherwise have to pay consideration. Any barter between parties is also regarded as consideration, i.e. when the

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<sup>7</sup> Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content

parties undertake to provide goods or services to each other, for which no payment obligation arises towards each other.

Consideration may take quite abstract and indirect forms, for example, a precondition to a future partnership or the provision of a marketing reference may also qualify as such.

GVH has regarded watches appearing in Facebook posts as consideration when an opinion leader has been allowed to keep them for publishing those posts.

#### **I.4. Commercial practice**

10. Commercial practice is a concept defined in legal regulations. It includes any conduct directly related to the sale, supply or promotion of goods to consumers and thus also any communication of information directly related to the self-employed occupation or economic activity of an undertaking.

#### **I.5. Editorial content**

11. Any profile pages operated by opinion leaders and any posts (texts, images, links, opinions, etc.) produced and published by them, as well as the sequence and processes thereof will be considered as editorial content.<sup>8</sup>
12. The essential content and the structure (the nature, the standard, as well as the quality as relevant to the target audience) of posts found on profile pages are designed, selected and compiled by opinion leaders through editorial activities. In these editorial activities, what is of significance is whether consumers can distinguish between content for the different purposes (independent or paid) on a given interface edited by an opinion leader (e.g., Instagram page), where consumers basically expect to find independent, entertaining content.

## **II. Indicating the fact of consideration**

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<sup>8</sup> Within the framework of the UCP Act, independent of the conceptual system of the traditional media regulation, but using it as an analogy.

## **II.1. How to correctly indicate when content is published in return for consideration?**

13. It is not possible to establish a uniform method for indicating consideration received, since different methods may be appropriate when using only image or video elements or when textual content is concerned, and the display modes available on or even defined by different platforms (e.g. Instagram post, story, IG TV or Facebook post) and also tags have different characteristics.

However, along with diversity, some general principles may be established relevant to all interfaces, and they must be kept in mind by any disclosing party when publishing content in return for consideration:

- any kind of business relationship or form of cooperation with the advertiser must be clearly and precisely identifiable for consumers;
  - ✓ clear, prominent, conspicuous,
  - ✓ simple, unambiguous and comprehensible

text must be used to indicate when the disclosing party has received consideration for the published content.

- as far as possible, consumers should encounter identical indications of the existence of a business relationship within a platform.

The above rules also apply even if an opinion leader uses appearances to promote their own business, products or services.

## **II.2. Is it acceptable to provide reference to an advertising nature by using a foreign language?**

14. As any reference to the advertising nature in a language other than Hungarian will fail to comply with the basic principle of using a comprehensible and unambiguous disclosure of the reference, therefore, it must be avoided. In connection with textual indication, the terms “*Promotion*”, “*Advertisement*”, and – when it arises from the nature of cooperation – “*sponsored by ...*”, “*Sponsored content*” may be appropriate. The so-called advertising tag, which serves to indicate content as provided by the platform used, must also be in Hungarian.

15. Indication in a foreign language may only be accepted if it is in the language of the content published by the influencer.

## **II.3. How to indicate the fact of consideration when received for text-only content?**

16. If the platform used allows it, the requirement may also be fulfilled by using some (unambiguous, comprehensible, conspicuous) text, intended for indicating the related

content, as an advertising tag (e.g., in the case of Instagram: “*paid cooperation with the partner*”). In the absence of tagging, or next to an unclear tag, in the case of content that only displays text, it is recommended to place words, as adjusted to the length of the text,

- ✓ conspicuously,
  - ✓ separately from the text, at the beginning of the text, and, if the disclosing party uses a #, before any additional tags marked with a #,<sup>9</sup>
  - ✓ before any clicking or scrolling that requires some consumer intervention,
  - ✓ by using the same, uniform mark within a given platform, if possible,
- as a reference to consideration received.



**Influenszer Ibolya**  
26th March, 10:50 - 🌐

#ad  
“Water! No taste, no colour, no flavour, you cannot be defined, you are tasted without being known. You are not necessary in life: you are life itself.” 🍷💧

What do you think about this quote? To me, it expresses the need to live a healthy life, and water is a big part of that. That's why I thought I'd introduce you to the latest innovation, the healthy GlassOfWater. I am happy to share my experience with you and with it a 15% coupon for your first drink. Take this fantastic opportunity now!

[#water](#) [#health](#) [#innovation](#) [#coupon](#) [#DrinkWater](#) [#discount](#)  
[#beconscious](#) [#gogirls](#) [#healthylifestyle](#) [#showmewhatyoudrink](#)  
[#glassofwater](#) [#cleanwater](#)

👍❤️ Vera Influencer, Bob Competition and more 523 people



**Influenszer Ibolya**  
26th March, 10:50 - 🌐

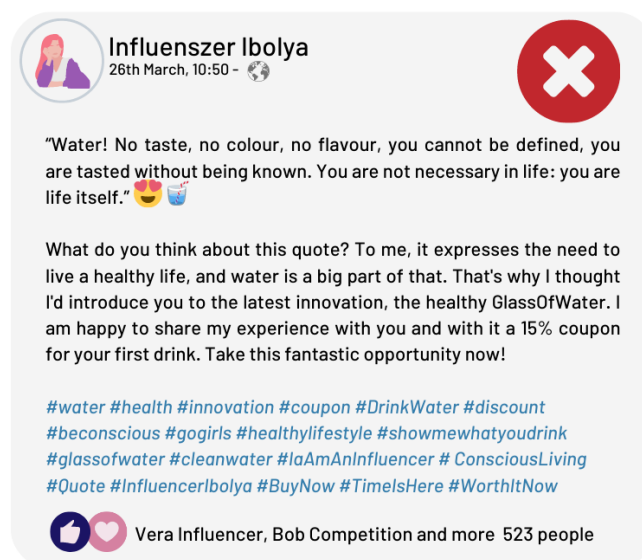
Paid partnership

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[#glassofwater](#) [#cleanwater](#) [#IaAmAnInfluencer](#) [#ConsciousLiving](#)  
[#Quote](#) [#InfluencerIbolya](#) [#BuyNow](#) [#TimeIsHere](#) [#WorthItNow](#)

👍❤️ Vera Influencer, Bob Competition and more 523 people

<sup>9</sup> Using a # for marking a tag is not required; this common solution used in practice stems from the fact that other (thematic search) tags and markings are also highlighted by using a # as a prefix

## II.4. How to indicate consideration when received for content combining images and texts?

17. For contents combining images and texts, it is recommended to use

- ✓ a textual description surrounding the image, by taking into account Section 16, or
- ✓ an advertising tag indicating the content associated with the interface, if the given interface allows it,

for indicating a financial interest.

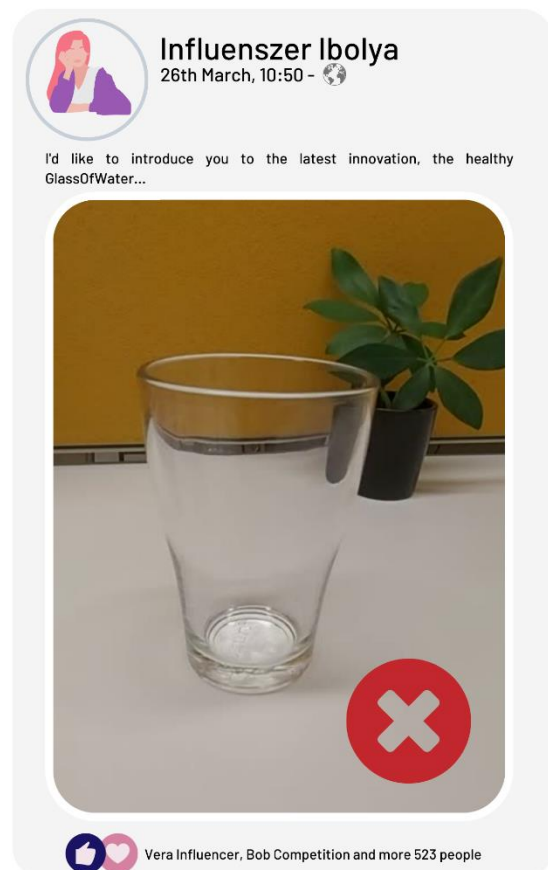
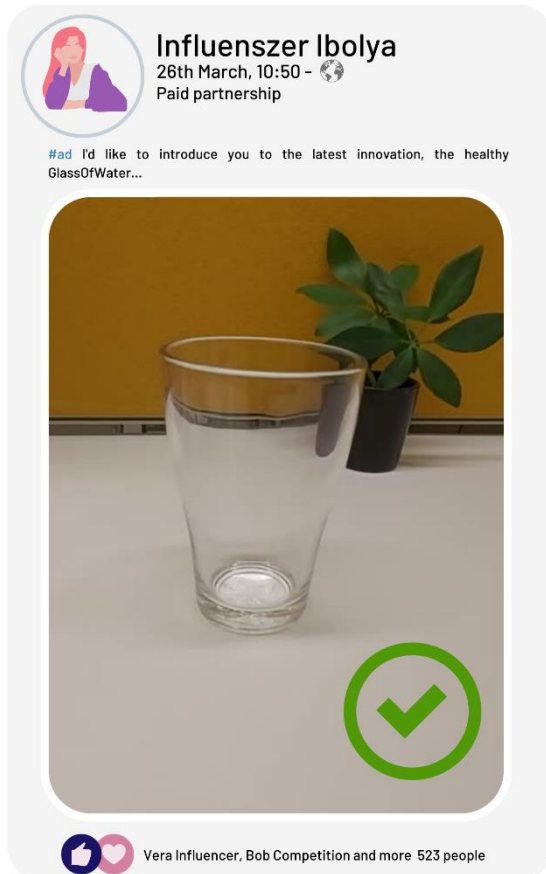


## II.5. How to indicate the fact of consideration when received for content displaying video and text?

18. In the case of any content appearing in video format, in addition to what is described above, attention may be called more strongly by including a reference in the spoken narration; however, the fact of the consideration must be continuously displayed in text format. In view of this, the reference in the narration is an optional rather than a mandatory element of the content.

19. In the event that the presentation on a specific product/service does not cover the entire video or several different products/services are presented, then, whenever possible,

- ✓ reference to the fact of consideration received should be made simultaneously with mentioning the given product/service.



## II.6. How to indicate the fact of consideration when received for content (story) appearing for a short period of time, for instance, up to 24 hours?

20. In the case of stories, it is recommended to include

- ✓ some textual reference directly in the given image or video, and
- ✓ a call for attention in the narration,

for indicating the fact of consideration received.

It is important that the textual indication appearing in the image or video

- ✓ must be highlighted at least as much as other text elements, both in terms of placement and format (e.g. font, colour, size), in order to be noticed.

21. In the case of stories that consist of several short, connected parts, references to cooperation are required in the same way in all parts.
22. GVH emphasises again that these guidelines do not affect the provisions set out in the regulations specified in Section 5 above. Businesses must also comply with them (e.g. in relation to the paid nature of video posts embedded in online magazines); however, as far as the UCP Act is concerned, consumer perceptibility and comprehensibility are the most important aspects based on the expectations formulated by jurisprudence, and the examples presented herein may help market players to comply with them.

### **III. Expectations beyond the indication of compensation**

23. In addition to the above principles regarding indications, it is highly important that the content published by an opinion leader conveys a true, fair and authentic image of the product or service concerned, i.e. it must comply with all additional provisions of the UCP Act. Therefore, the opinion leader may not embellish the reality by not telling the truth about a product or by remaining silent about an important feature thereof. Likewise, advertiser contents will conflict with the requirements of good faith and fairness if the advertiser uses their own page to display any posts as if independent opinions, while such posts are based on financial interest, sponsored, and published by opinion leaders.
24. Opinion leaders are expected to actually know and try out any products or services promoted, and to express opinions that reflect their individual experiences related to such products, thereby presenting a true image to their followers. Along with features emphasised by opinion leaders, information in posts must also cover other relevant information related to the use or application of the product or service concerned (e.g. fees to be paid, conditions to using a discount, health risks).
25. It is also worth keeping in mind that it will be regarded as a so-called blacklisted<sup>10</sup> infringement if false consumer evaluations or recommendations are submitted in order to promote products or services, or another legal or natural person is entrusted to do so, or consumer evaluations, or recommendations in social media, are falsely presented.
26. Increased attention must be paid, among others, to the fact that contents including a direct call to buy must not be aimed at children, as it may also be regarded as a blacklisted infringement.
27. Contents must also comply with the rules applicable in the relevant industry to the product category of the products promoted, so, for example, when a food product is promoted by

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<sup>10</sup> Facts listed in the Schedule to the UCP Act, in which cases it is not necessary to examine a consumer's transactional decision or the issue whether a commercial practice had influenced such transactional decision, because these commercial practices are unfair by virtue of the law, without the fulfilment of any additional conditions.



opinion leaders, their posts may include only claims regarding the effect of such product that comply with regulations for food products.<sup>11</sup>

28. When creating content, many legal regulations must be taken into account, therefore, in view of the above, advertisers must also think about choosing a media interface suitable for the nature of the given product or service and also the appropriate display method within it, since each commercial communication device has a different information transmission capacity.

### **III.1. May anyone recommend any products?**

29. It is necessary to point out, that promotion through recommendation by well-known persons or health professionals is not allowed in relation to certain products (e.g., OTC medicines, or medical aids for which no subsidies are available).<sup>12</sup> Whether it is carried out free of charge (e.g., for “purposes of public interest”) or in return for consideration and, for example, by displaying the term “#advertisement”, it will be regarded as a practice that violates the law.

## **IV. Liability for any infringement resulting from the creation and disclosure of some content<sup>13</sup>**

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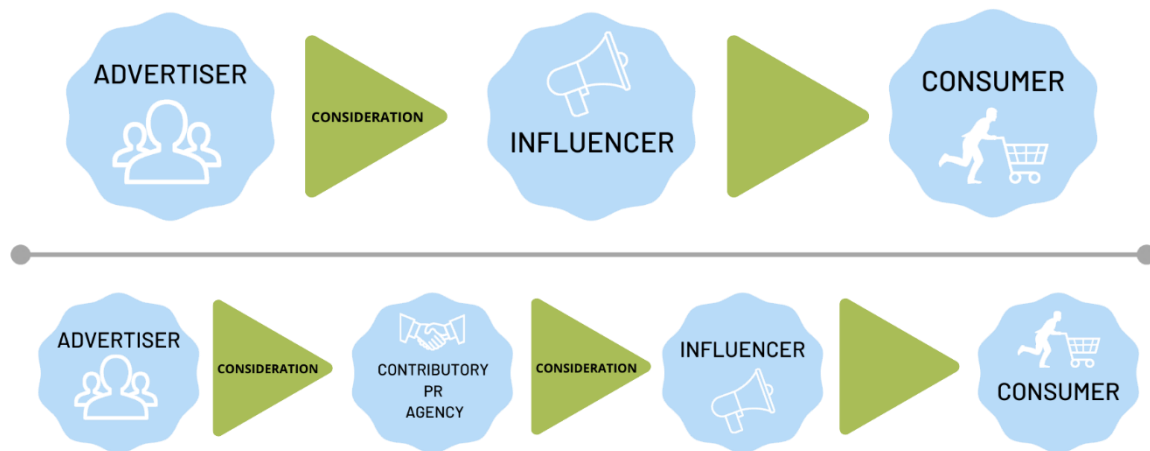
<sup>11</sup> Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods.

<sup>12</sup> Section 17 (2) g) of Act XCVIII of 2006 on the General Provisions Relating to the Reliable and Economically Feasible Supply of Medicinal Products and Medical Aids and on the Distribution of Medicinal Products prohibits any recommendation by scientists, health professionals or celebrities.<sup>13</sup> According to Section 9 (1) of the UCP Act, liability for any violation of the prohibition of unfair commercial practices shall lie with the business entity directly interested in the sale or promotion of the sale of the goods affected by the commercial practice in question.

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(2) The business entity referred to in paragraph (1) shall be held liable also if the commercial practice is carried out under contract by another person in the interest or to the benefit of such business entity.

(3) In contrast to paragraph (2), liability for any infringement arising in connection with the display mode of any commercial communication shall also lie with any person who makes such commercial communication available to the public by using devices suitable for it, and any person who creates the commercial communication within the scope of their independent economic activity or provides other services in connection with it, unless the infringement results from the execution of some instructions of the business entity referred to in paragraph (1). Such persons and the business entity referred to in paragraph (1) shall be jointly and severally liable for any damage caused by such unlawful commercial practices.



#### **IV.1. Liability of those who order advertisements**

30. Section 9 (1) of the UCP Act considers the so-called “principle of interest” to be the basis for establishing liability, so liability for any published advertisements may primarily be established in the case of the business entity that has ordered them and is directly interested in the sale or the promotion of the sale of the product or service concerned.

#### **IV.2. Liability of business entities or persons involved in designing advertisements**

31. Based on jurisprudence, several business entities may be held liable for the same conduct: either based on the principle of direct stakeholder liability (pursuant to Section 9 (1) of the UCP Act), or based on the nature of the contribution (pursuant to Section 9 (3) of the UCP Act).

#### **Liability of opinion leaders**

32. In addition to advertisers, opinion leaders will have a direct interest in sales if they receive some incentive, such as commission, related to the sale of the promoted product or service.

33. In the absence of a direct interest, the liability of a disclosing opinion leader will be based on the rules pertaining to the liability of disclosing parties according to Section 9 (3) of the UCP Act.

The GVH has established that, under his agreement with the watch retailer to promote the given product, the opinion leader would have had a contractual obligation to mark the posts as advertisements.

34. Any disclosing opinion leader may be exempted from liability if they can prove that they acted on the basis of precise and clear instructions received during the promotion of the product or service concerned. However, if such opinion leader or the agency concerned is

aware of the unlawful nature of such instructions, they are expected to indicate that fact to the client and to make a proposal for a lawful solution.

35. If, for example, an opinion leader appears in the form of digital entities or pets on social media sites, it is necessary to act with special care regarding any contents published in this way. While the presentation by such opinion leader of a current price discount of a product may be acceptable, the sharing of opinions gained from experience, such as, for instance, the truth and authenticity of a report related to a drink or a food supplement or some cosmetics tried out, may be questionable and may therefore be classified as unlawful content.

### **Liability of agencies**

36. Agencies tend to increasingly function as professional content filters. For example, they select the appropriate opinion leader for a specific content and for preparing it, participate in the definition of each content, hold consultations with opinion leaders, and perhaps check posts, so agencies actively intervene in any content prepared by opinion leaders that is published. In the event that a given agency receives a financial benefit under a contract, neither opinion leaders nor advertisers find the idea and expectation to be unrealistic that such agency may, in return for such consideration, provide them with some professional assistance, a filter, or substantial added value, even as formulated under contract.
37. A particularly important role is played by the so-called influencer agencies in the case of content prepared and published by child opinion leaders, the so-called kidfluencers.
38. Business entities involved in the creation of advertisements (entities which create the relevant commercial practices or provide other marketing services, i.e. business entities engaged in various agency activities) will be held liable (pursuant to Section 9 (3) of the UCP Act) only for infringements that
- are related to the display mode of the relevant commercial communications and
  - go beyond the execution of instructions from the business entity ordering such advertisements.
39. For example, it may be deemed as an infringement arising from a reason related to the display mode of commercial communication when
- paid appearances are disguised as editorial content, due to the nature of the service and the characteristics of the applied advertising tools (appearing on social media platforms) (e.g. freedom of using text, language adapted to the style of influencers or the characters in videos, use of words),
  - the paid nature, i.e. the advertisement function, is not clearly indicated, or

- direct calls to buy are aimed at children (e.g., phrases – such as “*Get them all!*”, “*Find!*” – used in advertisements address children directly, and the nature of advertisements – their music that arouses children’s interest, their colourful visual world and dynamics – is suitable for attracting children’s attention).

40. Any contribution will go beyond the execution of instructions from the business entity ordering the advertisement concerned, when the participating agencies are not passive intermediary platforms, but participate in the process through negotiations, discussions and active intermediary activities; and, therefore, they have been able to actively intervene in the published content, which has been established within the framework expected by the client and prepared by opinion leaders, which is why they are paid for.

### **IV.3. Liability according to industry rules**

41. In addition to the above, advertisers must also pay attention to compliance with the industry rules for communication governing the product category of the promoted product.
42. An example may be the cosmetics market, where a designated responsible person must ensure compliance with the obligations defined in the governing Regulation 1223/2009/EC, including compliance with the advertising ban set out in Article 20 of the Regulation.
43. At the same time, it is also worth mentioning that, as of June 2020, Act CVIII of 2001<sup>14</sup> is applicable also to video-sharing platform services, and it sets out special rules for liability and other rules. In order to protect users of services, video sharing platform service providers are obliged to apply appropriate, proportionate, and economical data management measures (that provide age control and a parental control system) as well as effective technical solutions, if a commercial notice published by a user of the video sharing platform service fails comply with the relevant industry regulations.

### **V. How to ensure compliance?**

44. Advertisers and agencies that help them may find it worthwhile to develop contractual conditions and create processes and so-called compliance programmes that may enable them to ensure that both their own employees and their business partners (including any additional agencies helping them, as well as opinion leaders acting under assignments from them or maintaining contact with them) are familiar with the relevant legal requirements.
45. Although training provided to participants in individual processes is an important part of compliance programmes, it is also necessary that, by developing a monitoring system and a reporting process tailored to the company’s structure and operation, it may be ensured indeed that the adequacy of any published content can be monitored and, if necessary, intervention can be made.

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<sup>14</sup> Act CVIII of 2001 on Certain Issues of Electronic Commerce Services and on Information Society Services

46. It may be very important to design control points that may be used for revealing possible deficiencies and thereby preventing and eliminating infringements, or recognizing them in a timely manner and, if necessary, sanctioning them (even by terminating the relevant contract).
47. It is worth considering the establishment of industry standards that are applied to ensure compliance with the above. Either in designing those standards or in processes for further increasing the knowledge of market participants, an important role may be played by advertising organizations, which are important forums for the self-regulation of market participants.