

## Guideline of the Media Authorities

# Labelling of advertising in online media

This guideline by the Media Authorities contains assistance on the labelling requirements for advertising in social media offerings (e.g. Instagram, Twitter, Facebook, YouTube, TikTok, Twitch, etc.) and other online media such as blogs and podcasts.

The basis is solely the advertising rules of the Interstate Media Treaty (Medienstaatsvertrag (MStV)) and the Telemedia Act (Telemediengesetz (TMG)), which serve to protect users from being misled and to make commercial content transparent. Different labelling requirements apply to video and audio offerings than to image/text offerings, so that a distinction must be made between the two (see the “Media law basics” box).

First, the guideline contains a labelling matrix. This makes it clear at first glance whether, how and where labelling is required for the respective offer. Important terms and cases of delimitation of the matrix are explained and concretised in the following explanations.



## Fundamentals of media law





**Video and audio offerings:** § 8 and § 10 MStV apply accordingly via § 74 Clause 1 MStV

**Image/text offerings:** § 22 Para. 1 MStV, § 6 Para. 1 Clause 1 TMG

In addition, all offers are, among other things, subject to the requirements of § 6 of the Interstate Treaty on the Protection of Minors in Media (Jugendmedienschutzstaatsvertrag).

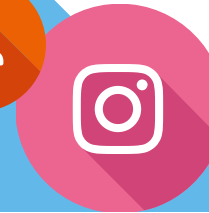
**Further information on lotteries, imprint requirements, etc. are available from the Media Authorities.**

## Labelling Matrix

<b>Scenarios/Contents</b> 	<b>Video</b> 	<b>Audio</b> 	<b>Predominantly Static</b>  (Image/Text)
<b>A</b> Posts about products, services, brands, companies, regions, events, travel, which are made in return for <a href="#">payment or consideration</a> are published.	a) Product plays a <a href="#">main role</a> in the video or in a sequence: <a href="#">clearly legible</a> insertion of a “Werbevideo” (Advertising video) or “Werbung” (Advertisement) label during the entire video or advertising sequence  b) Product plays a <a href="#">secondary role</a> : insertion of “Unterstützt durch Produktplatzierung” (Supported by product placement) or “Unterstützt durch <Produktname>” (Supported by <product name>) label at the beginning of the video	a) Product plays a <a href="#">main role</a> : a set-off at the beginning of the sequence with the announcement “Werbung” (Advertisement) or a <a href="#">jingle</a> that is only used for the announcement of the advertisement; if applicable, an indication of the end of the advertisement can also be added if it is not otherwise clear  b) Product plays a <a href="#">secondary role</a> : insertion of an “Unterstützt durch Produktplatzierung” (Supported by product placement) or “Unterstützt durch <Produktname>” (Supported by <product name>) label at the beginning	Insertion of a <a href="#">clearly legible</a> “Werbung” or “Anzeige” (Advertisement) label at the beginning of the post
<b>B</b> Posts about products, services, brands, companies, regions, events, travel, which have been claimed or received free of charge, if the publication was linked to <a href="#">agreements/conditions</a>	a) Product plays a <a href="#">main role</a> in the video or a sequence: <a href="#">clearly legible</a> insertion of “Werbevideo” (Advertising video) or “Werbung” (Advertisement) label during the entire video or advertising sequence  b) Product plays a <a href="#">secondary role and the value is over EUR 100</a> : insertion of an “Unterstützt durch Produktplatzierung” (Supported by product placement) or “Unterstützt durch <Produktname>” (Supported by <product name>) label at the beginning of the video	a) Product plays a <a href="#">main role</a> : a set-off at the beginning of the sequence with the announcement “Werbung” (Advertisement) or a <a href="#">jingle</a> that is only used for the announcement of the advertisement; if applicable, an indication of the end of the advertisement can also be added if it is not otherwise clear  b) Product plays a <a href="#">secondary role and the value is over EUR 100</a> : Insertion of an “Unterstützt durch Produktplatzierung” (Supported by product placement) or “Unterstützt durch <Produktname>” (Supported by <product name>) label at the beginning	Insertion of a <a href="#">clearly legible</a> “Werbung” or “Anzeige” (Advertisement) label at the beginning of the post
<b>C</b> Posts about products, services, brands, companies, regions, events, travels published on the person’s <a href="#">own motivation</a> without any commercial incentive from third parties	No labelling required	No labelling required	No labelling required
<b>D</b> Posts/representations of own products, services, brands, companies <a href="#">if the own entrepreneurship is clear</a>	No labelling required	No labelling required	No labelling required

## Labelling Matrix

<b>Scenarios/Contents</b> 	<b>Video</b> 	<b>Audio</b> 	<b>Predominantly Static</b>  (Image/Text)
<b>E</b> Posts/presentations of one's own products, services, brands, companies – <a href="#">without own entrepreneurship being clear</a>	a) Product plays a <a href="#">main role</a> in the video or a sequence: clearly legible insertion of “Werbvideo” (Advertising video) or “Werbung” (Advertisement) label during the entire video or advertising sequence  b) Product plays a <a href="#">secondary role</a> : insertion of an “Unterstützt durch Produktplatzierung” (Supported by product placement) or “Unterstützt durch <Produktname>” (Supported by <product name>) label at the beginning of the video	a) Product plays a <a href="#">main role</a> : a set-off at the beginning of the sequence with the announcement “Werbung” (Advertisement) or a <a href="#">jingle</a> that is only used for the announcement of the advertisement; if applicable, an indication of the end of the advertisement can also be added if it is not otherwise clear  b) Product plays a <a href="#">secondary role</a> : insertion of an “Unterstützt durch Produktplatzierung” (Supported by product placement) or “Unterstützt durch <Produktname>” (Supported by <product name>) label at the beginning	Insertion of a <a href="#">clearly legible</a> “Werbung” or “Anzeige” (Advertisement) label at the beginning of the post
<b>F</b> Discount codes	Clearly audible/legible “Werbung” or “Anzeige” (Advertisement) label in the immediate temporal or spatial vicinity of the discount code	A set-off at the beginning of the sequence with the announcement “Werbung” (Advertisement) or a <a href="#">jingle</a> that is only used for the announcement of the advertisement; if applicable, an indication of the end of the advertisement can also be added if it is not otherwise clear	<a href="#">Clearly legible</a> “Werbung” or “Anzeige” (Advertisement) label in immediate vicinity of the discount code
<b>G</b> Affiliate links	Symbol (*) and <a href="#">explanation</a> in the immediate vicinity of the link		Symbol (*) and <a href="#">explanation</a> in the immediate vicinity of the link
<b>H</b> <a href="#">Promotional links</a>	Clearly legible “Werbung” or “Anzeige” (Advertisement) label in the immediate vicinity of the link		<a href="#">Clearly legible</a> “Werbung” or “Anzeige” (Advertisement) label in immediate vicinity of the link
<b>I</b> Links/tags to friends, source references, location references if no agreement is underlying	No labelling required		No labelling required
<b>J</b> Retweets/reposts of content with a commercial background, provided that <a href="#">no cooperation</a> or no own commercial interest exists	No labelling required		No labelling required
<b>K</b> Company/brand (financially) supports content or the overall offer, but is not itself the object of the content ( <a href="#">sponsoring</a> )	Short note at the beginning of the video; additionally possible before and after commercial breaks and at the end	Short note at the beginning of the audio content; additionally possible before and after commercial breaks and at the end	
<b>L</b> Political advertising	Not allowed	Not allowed	Clearly indicate at the beginning of the post in whose interest it was produced (e.g. “financed by”)



## Explanations of the labelling matrix

### Advertising cooperation

The mention or representation of products, brands, services, companies, regions, events, travel, etc. on the basis of an agreement/cooperation is always advertising. An agreement is to be assumed if consideration is provided for the mention or representation. It is irrelevant whether this takes the form of a monetary payment or some other benefit. The provision of products (e. g., cosmetics, jewellery), the assumption of travel costs or the invitation to events can also constitute consideration within the framework of a cooperation.

### Advertising in videos and podcasts

For videos (at least YouTube videos, IGTV content, on-demand videos in media libraries), podcasts and similar audio content, the advertising regulations for broadcasting apply. Therefore, the correct labelling of advertising content depends on the manner and the intensity in which advertising is inserted into the post.

### Product placement

If a product is only mentioned or shown in a post in passing (secondary role), an “Enthält Produktplatzierung” (Contains product placement), “Unterstützt durch <Produktname>” (Supported by <product name>) or “Enthält bezahlte Werbung” (Contains paid advertising) label at the beginning of the post is sufficient. This labelling is only required for products received free of charge

if the value of the product (or the sum of the products of a brand) is higher than EUR 100. It is not product placement, but advertising, if the product of the corresponding sequence is in the foreground and its positive highlighting is the core of the sequence, even if this placement and highlighting only make up a small proportion of the time compared to the rest of the video.

The insertion of discount codes, discount promotions or purchase opportunities in the video also leads to the fact that there is no product placement, but the video or the corresponding sequence is to be judged as advertising.

### Advertising

If, on the other hand, the post focuses on the product, the company or the brand, i. e., if the advertising character dominates the content (main role), it is an overall advertising post. This circumstance must therefore be indicated in the video with a permanent overlay of “Werbung” (Advertisement) or similar (e. g. “Werbevideo” (Advertising video)). The lettering must be sufficiently large and clearly visible without being overlaid by other image elements and in a colour that is easily perceived.

In the case of audio content, the labelling is carried out in advance by means of a corresponding acoustic indication. It is also possible to use a suitable jingle (specific sequence of tones or a sound) that is only used for the announcement of the advertisement.



If advertising content is inserted in the style of an “advertising block” in the editorial contribution, this part must be clearly announced in videos by means of a lettering/graphic with the word “Werbung” (Advertisement) (or similar) for a sufficiently long time or by means of an announcement. Alternatively, the corresponding advertising sequence can be permanently marked with the overlay of “Werbung” (Advertisement).

For podcasts, this announcement can also be indicated by an acoustic cue or jingle. The continuation of the editorial part of the post is also to be made clear, if necessary, by an announcement or the jingle, insofar as this is not already clear from the design of the transition.

## Sponsoring

If a programme is supported by a sponsor, this must be indicated at the beginning in reasonable brevity. The reference may only be image-promoting for the sponsor but may not work towards the sale of products by appealing to purchases. If, on the other hand, products and their purchase options are presented or discount codes are announced, this is not a sponsorship reference, but rather an advertising section preceding the broadcast, which must be marked accordingly as advertising.

## Advertising in social media posts and on blogs

If posts on social media or blogs (static image/text posts, individual short videos such as Instagram stories or TikTok clips) contain advertising, this circumstance must be clearly marked. Users must be able to recognise that a post is advertising at first glance. Therefore, advertising labelling must already be provided at the beginning of a post and on each story slide.



Even in the case of promotional blog articles, a marking must be made at the beginning of the text, i. e. above or immediately below the headline.

If it is a pure image contribution without text, a clearly visible graphic reference is required in the image. An indistinct, small or transparent marking is not sufficient in each case.

In addition to the labelling with “Werbung” or “Anzeige” (Advertisement), the labelling can also consist of the prefix “Bezahlte Werbepartnerschaft” (Paid advertising partnership). However, unclear word creations (“Infomercial”, “Advertorial”), abbreviations (“AZ” (Ad)) or other, possibly foreign-language paraphrases such as “Sponsored by”, “PR sample”, etc. are not sufficient.

The advertising post itself is subject to labelling. A blanket reference that an offering contains advertising as a whole does not exempt from the requirement to identify individual posts containing advertising.

## No cooperation, no advertising?

Provided that there is neither a cooperation with a company nor a corresponding commercial incentive by a third party, the mention and presentation of products etc., which may have been purchased themselves at the usual market conditions or are shown for purely editorial motives, does not generally constitute advertising. This refers in particular to the presentation of products with advantages and disadvantages (e.g. haul videos, reviews), but also a positive product presentation from one’s own motivation without advertising intention. Even the tagging of acquaintances, places or other accounts as editorial information and without advertising cooperation does not require advertising labelling.

**Attention:** However, advertising intent can be assumed if the product or service is advertised in such a way that, when viewed objectively, the impression is created that sales are to be promoted. Indications for this circumstance can be, for example, an overly positive presentation, invitation to purchase, advertising language, constant thematisation of the same products/services/brands, lack of reason for publication, mention of prices and sources of supply, combination with affiliate links.

**Note:** If the tagging or mentioning of trademarks is done solely for information purposes, no advertising labelling is required in the opinion of the state media authorities. This guideline is based on media law provisions that aim to create transparency about why a post was published. If posts without any advertising intention are also labelled as advertising, the advertising marking loses its effect. After all, it is no longer possible to distinguish between advertising and non-advertising. It should be noted, however, that courts have ruled with regard to competition law provisions that a “commercial act” requiring labelling may also be given when tagging self-purchased products if an account is also used commercially.



## Own brands and products, merchandise

Content in purely commercial offers/channels that are clearly and unambiguously recognisable as such do not require advertising labelling (e.g. channels of well-known companies/brands, online shops).

In offers that are not clearly recognisable as commercial, advertising references and links to own products, brands, companies or services (e.g. merchandise articles, clothing or cosmetic labels) must be marked as advertising. This also applies to the sharing of corresponding posts from other offers or channels (reposts, retweets, etc.), as an own commercial goal is usually being pursued in such cases.

For references to own publications, events or products that have a clearly recognisable connection with the person's own personal or a professional activity (e.g. album, book, film, tour), no advertising labelling is usually required in the opinion of the state media authorities. In the case of product branding in cooperation with a brand/company (product by X, Y product in cooperation with Z), advertising labelling is still required.

## Promotional links, affiliate links and discount codes

In case of a mention of or a link (also tag) to a commercial offer, a company profile or a web shop out of commercial interest or within the scope of an advertising cooperation, this must be labelled as advertising. The same applies to the publication of discount codes.

If a link is made to an advertising article, it must already be recognisable in the teaser (article overview) that the linked article is advertising. Otherwise, users will not be able to recognise that, when they select a (supposedly) editorial article, they will be directed to a text with advertising content.

The publication of affiliate links also has a commercial character that must be made transparent. This can also be done by providing an explanation for such affiliate models, such as, “Die mit \* gekennzeichneten Links sind sogenannte Affiliate Links. Kommt über einen solchen Link ein Einkauf zustande, werde ich mit einer Provision beteiligt. Für Dich entstehen dabei keine Mehrkosten. Wo, wann und wie Du ein Produkt kaufst, bleibt natürlich Dir überlassen.” (The links marked with \* are so-called affiliate links. If a purchase is made via such a link, I will receive a commission. There are no additional costs for you. Where, when and how you buy a product is of course up to you.) The reference is to be placed in the immediate vicinity of the link.

These advertising links are to be distinguished from simple (editorial) references and links without cooperation or affiliate reference, for example, to a photographer who took the picture or technical equipment that was used. As a rule, such a mention for the pure purpose of informing users without an economic background does not require any labelling (cf. explanation “No cooperation, no advertising?”).



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