

**Alert | Intellectual Property Litigation/  
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## **Major Influencers Under the Loupe – Dutch Media Authority Publishes New Policy Rule Effective July 1**

Success comes with a price. As of July 1, 2022, influencers with more than 500,000 followers (“Major Influencers”) will be under Dutch Media Authority (*Commissariaat van de Media*) supervision due to a new **Policy Rule**. As such, Major Influencers will be required to comply with additional advertising rules from the Dutch Media Act (*Mediawet*). This GT Alert reviews the reason for the new Policy Rule (*Beleidsregel kwalificatie commerciële mediadiensten op aanvraag 2022*)<sup>1</sup>, the conditions to qualify as a Major Influencer, and the additional advertising rules and implications.

### **Background**

Notwithstanding the buzz surrounding the new Policy Rule, the regulation of influencers is not a new phenomenon in the Netherlands. According to the Advertising Code for Social Media & Influencer Marketing, influencers, regardless of the number of followers, already must be transparent about paid collaborations.

In 2018 the European Commission adopted the revised Audiovisual Media Services Directive (AVMSD) to place online content under supervision of member state authorities. The revisions specifically aimed to

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<sup>1</sup> Published May 17, 2022.

regulate influencers. However, both the revised AVMSD and the implementations in the Dutch Media Act left unsaid when the Dutch Media Act applies to influencers.<sup>2</sup> As a result, the Dutch Media Authority, which supervises compliance with the Dutch Media Act, issued the Policy Rule. The Netherlands is one of the first EU member states to issue guidance on how to qualify influencers with respect to the revised AVMSD.

### **How to Qualify as a Major Influencer**

According to the Policy Rule the Dutch Media Act shall also apply to influencers:

1. with more than 500,000 followers;
2. who publish at least 24 videos per year;
3. on YouTube, TikTok or Instagram;
4. who are registered with the Dutch Chamber of Commerce (*KVK*) for the purpose of publishing videos for economic benefit; and
5. who earn money or receive products from their videos.

As of July 1, 2022, Major Influencers must comply with the same advertising rules as on television and must register with the Dutch Media Authority. Besides the 500,000-follower threshold, the limitation of supervision to YouTube, Instagram and TikTok is notable. This is part of the Dutch Media Authority's incremental approach, where it first targets the group with the most significant impact on viewers. Over time, it plans to place more influencers under scrutiny, including those with less followers and/or different video platforms.

### **Additional Rules**

The Media Act makes an additional distinction between advertising, sponsoring and product placement with different labelling requirements for each:

- In case of advertising, the video must clearly and visibly include the words “advertisement” or “promotion” or words of a similar meaning.
- In case of product placement, the following statement is required (i) at the beginning and end of the video, and (ii) at the beginning and end of a commercial message: “This video/program contains product placement.”
- In case of Sponsoring, the following statement is required at the beginning or end of the video: “This video/program is (also) brought to you by” or “This video/program is sponsored by [the name or logo of the sponsor].”

Furthermore, product placement is no longer permitted in videos consisting of news programs, programs about consumer affairs, programs of a religious or spiritual nature, and programs intended for children under 12 years of age. In addition, sponsoring of videos consisting of news, current events, or political information is no longer allowed.

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<sup>2</sup> See also our contribution to the [Chambers Trends and Developments](#) from earlier this year.

## Risk of Non-Compliance

In order to force the Major Influencer to comply with these additional advertising rules, the Dutch Media Authority has the power to (i) impose fines up to a maximum of EUR 225,000 per violation, (ii) impose an order under threat of penalty, and (iii) use the general powers under the Dutch General Administrative Law Act (*Algemene wet bestuursrecht*).

## Conclusion

The new Policy Rule is a doubled-edged sword. On the one hand it clarifies which influencers must adhere to the Dutch Media Act's additional advertising rules. On the other hand, as the Policy Rule is only step one of the Dutch Media Authority's incremental approach, it remains unclear how supervision of influencers will develop over time. Major Influencers should fasten their seatbelts because the new Policy takes effect July 1.

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