

IAB Europe Guidance

How to Comply with EU Rules
Applicable to Online Native
Advertising

December 2016



ABOUT IAB Europe

IAB Europe is the **voice of digital business** and the leading European-level industry association for the interactive advertising ecosystem. Its mission is to promote the development of this innovative sector by shaping the regulatory environment, investing in research and education, and developing and facilitating the uptake of business standards.

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FOREWORD & ACKNOWLEDGEMENTS

IAB Europe is committed to providing clarity and transparency for consumers in respect of online native advertising and content marketing. In this context, the objective of this guidance is to provide clear and practical information to help advertisers, publishers and marketing practitioners understand the requirements of the relevant legislation in terms of providing transparency to consumers engaging with online native advertising or content marketing.

IAB Europe would like to thank all Members of its Native Advertising and Content Marketing Task Force for their contribution and feedback in the creation of this guidance document. In particular, we would like to thank BBC Worldwide, IAB UK, Mediacom Beyond Advertising, Media Impact Polska, and United Internet Media for their contributions to the guidance.

Disclaimer: The guidance does not constitute legal advice. It is intended to outline a practical approach for businesses around how to think about their compliance with EU rules applicable to online native advertising and content-based advertising. In addition, the EU rules that are covered in this guidance may have been transposed or interpreted differently across EU Member States. Businesses should seek independent legal advice to guide their decisions around compliance.

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SECTION 1: WHAT ARE THE KEY COMPONENTS OF COMPLIANCE?

Summary of EU-level legal requirements

Simply put, EU requirements for online native advertising can be boiled down to this:

1. Commercial communications, including advertising and marketing, should be transparent so as not to mislead the average consumer. In practice, this means that:
 - i. Ads must be clearly identifiable as such;
 - ii. The natural or legal person on whose behalf they are made shall be clearly identifiable;
 - iii. Promotional offers, competitions or games must also be clearly identifiable as such and the conditions which are to be met to qualify for them or to participate must be presented clearly and unambiguously.
2. These requirements do not only apply to advertisers. They can, in appropriate circumstances, cover a party acting on behalf of the advertiser, including publishers, and other marketing practitioners, as well as third parties providing content.

For a more detailed explanation of the legal requirements, see Annex II below.

SECTION 2: IAB EUROPE GOOD PRACTICE RECOMMENDATIONS

The examples given are purely illustrative and are neither intended to be prescriptive nor comprehensive. For more examples, see the Annex.

(1) Identification

The designation should clearly convey the identity of the advertiser whose goods or services are being promoted and, where applicable, of the third party* that has compiled the content.

(2) Label Description

The label should clearly convey that the native or content ad is a commercial communication.

(3) Visual Demarcation**

E.g.: Use of different design such as shading, outlines or borders.

*For native advertising formats and without prejudice to other information requirements prescribed by Article 5 of the E-Commerce Directive.

**For native advertising formats.

SECTION 2: IAB EUROPE GOOD PRACTICE RECOMMENDATIONS

In light of applicable EU law, IAB Europe recommends the following good practice:

Clear and prominent disclosure is necessary to ensure that the average consumer is properly informed and not misled as to the commercial nature of a native or content ad.

Disclosure should, at a minimum, include a **label description** that clearly conveys that the content is commercial and has been paid for. The identity of the advertiser whose goods or services are being promoted should also be disclosed, either through a label, or through the use of **visual cues** such as a brand logo or name. In addition to the above, for native advertising formats, disclosure should also convey the identity of the third party that has compiled the content (where appropriate).

Visual demarcations - such as the use of different design by the publisher like shading, different fonts, outlines or borders - should be used to help mark the content out as being different to other editorial content. This can aid in ensuring that disclosure is clear and prominent.

ANNEX I

Examples of Suggested Good Practice

DISCLAIMER

The examples of suggested good practice shown in this section of the guidance are intended to illustrate how the requirements of applicable EU rules may be met in practice, by showing both graphics and real examples.

The examples are drawn from different EU markets. They may not necessarily be appropriate for every market as self-regulatory rules and precedent, including relating to labelling and language, may vary between Member States and self-regulatory organisations.

As a reminder, the guidance does not constitute legal advice. It is intended to outline a practical approach for businesses around how to think about their compliance with EU rules applicable to online native advertising and content-based advertising. In addition, the EU rules that are covered in this guidance may have been transposed or interpreted differently across EU Member States. Businesses should seek independent legal advice to guide their decisions around compliance.

For specific details on a particular Member State, we advise consulting relevant [national IABs](#)¹ and [self-regulatory organisations](#)².

¹<http://www.iabeurope.eu/membership/member-directory/?type=1>.

²<http://www.easa-alliance.org/members/Europe>.

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Examples of Suggested Good Practice

Native Advertising Formats

Discovery/Recommendation Unit:



Using a 'promoted by' label shows that this is commercial content, and the third party is identified by their logo. A line break below the content of the website, as well as the use of different colours identifies the content as having a different nature.


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Examples of Suggested Good Practice

Native Advertising Formats


Discovery/Recommendation Unit by Outbrain on the Daily Telegraph:

Promoted stories




All Of A Sudden The Crowd Started Cheering [Oops]


AllRookie



Worries Over Health Of This Morning Presenter

Entertainment Daily


Recommended by 




Will Young leaves Saturday Kitchen viewers 'disgusted' after...

OK!


Sponsored



These 7 tips could transform your cycling performance



Enjoy a relaxing overnight cruise as part of the holiday



This is the first step to you realising your business dreams

This example was provided by:



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Examples of Suggested Good Practice

Native Advertising Formats

Example of a Brand Page from Media Impact Polska



MARKI MÓWIA Daj się usłyszeć

Orange Polska
KOMPLEKSOWE ROZWIĄZANIA TELEKOMUNIKACYJNE

Orange Polska jest czołowym dostawcą usług telekomunikacyjnych w Polsce i jednym z największych w Europie Środkowo-Wschodniej. Oferujemy kompleksowe rozwiązania telekomunikacyjne i teleinformatyczne dostępne w całym kraju. Posiadamy największą w Polsce infrastrukturę techniczną, wspierającą świadczenie usług z zakresu telefonii stacjonarnej i komórkowej, przesyłu danych i rozwiązań M2M. Z usług Orange korzysta w Polsce 20 milionów klientów. Naszym priorytetem jest indywidualna obsługa klientów biznesowych. Orange oferuje w segmencie B2B kilkadziesiąt usług i rozwiązań teleinformatycznych. Rozumiemy firmy uwzględniając ich wielkość i potrzeby, dlatego w segmencie dużych i bardzo dużych firm każdy nasz klient posiada dedykowanego opiekuna i wyspecjalizowany serwis obsługi posprzedażowej. Orange Polska, to kompleksowa i w pełni klientorientowana oferta dla klientów biznesowych, stabilność finansowa (jesteśmy częścią Grupy Orange) a w dostarczaniu usług i rozwiązań współpracujemy z renomowanymi i wiarygodnymi partnerami i dostawcami biznesowymi, w tym z ogólnosięciowymi markami. Korzystamy z międzynarodowego doświadczenia i kompetencji Grupy Orange.

O WPLYWOWYCH 2016
[WIDEO]

- Półka nożna to sport skrojony pod nasze czasy
- Reprezentanci Polski odnajdą się w biznesie
- Kto zostanie nową twarzą polskiego sportu
- Budżet PZPN wzrośnie do blisko 200 mln złotych
- Byli sportowcy mogą być świetnymi menedżerami



Client's **logo** and **“speaking” (mówi)** is visible in the top left corner, programme **label** visible in the top right corner.

This example was provided by:



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Examples of Suggested Good Practice

Native Advertising Formats

Example of a Native Article from Media Impact Polska

The programme label, “brands speaking”, is visible in the top right. The brand’s logo is visible in the top left.

Material powstał przy współpracy z marką

At the bottom of the article, information about the cooperation with the brand is given.

This example was provided by:



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Examples of Suggested Good Practice

Native Advertising Formats

Newsfeed:



Infeed/Instream:



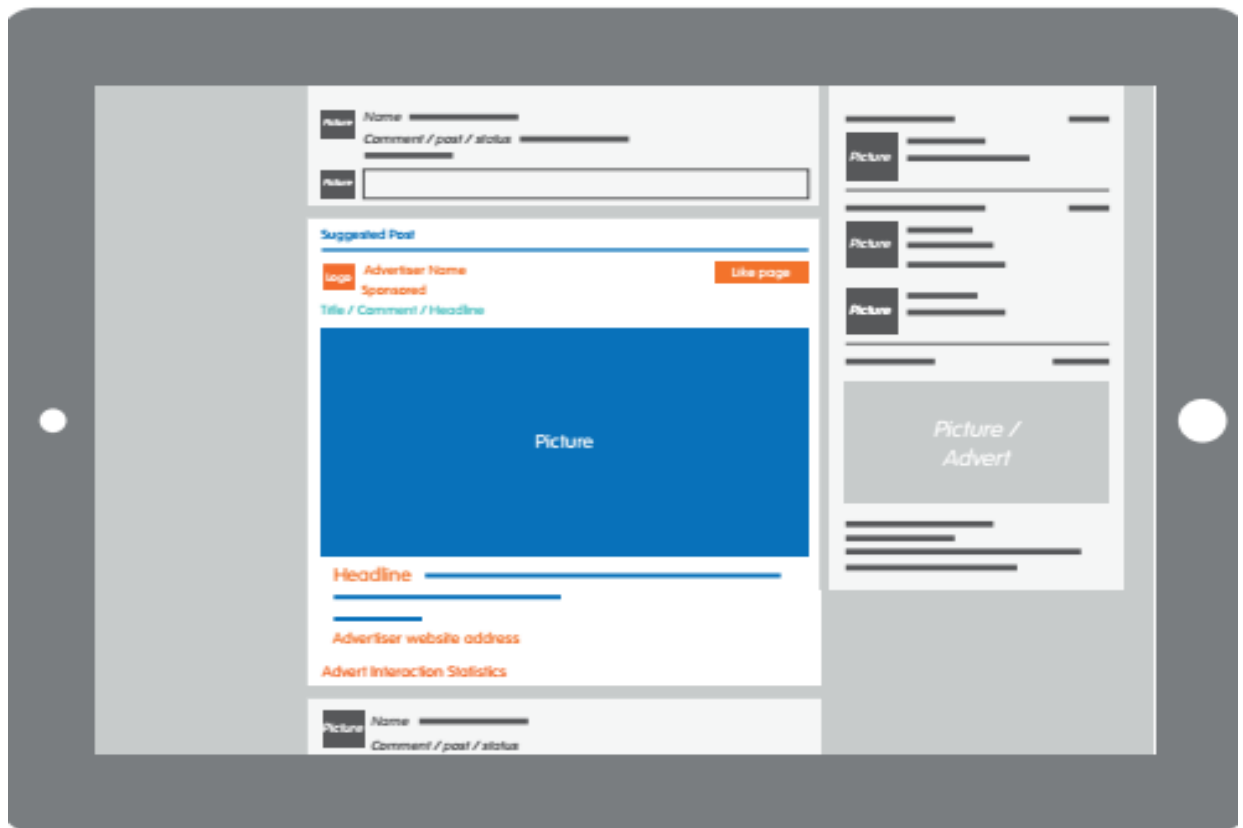
Using different colours to the rest of the site helps the native ad stand out, making it clear that it is of a commercial nature. The disclosure at the bottom identifies who paid for the content to be included on the site.

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Examples of Suggested Good Practice

Native Advertising Formats

Newsfeed:



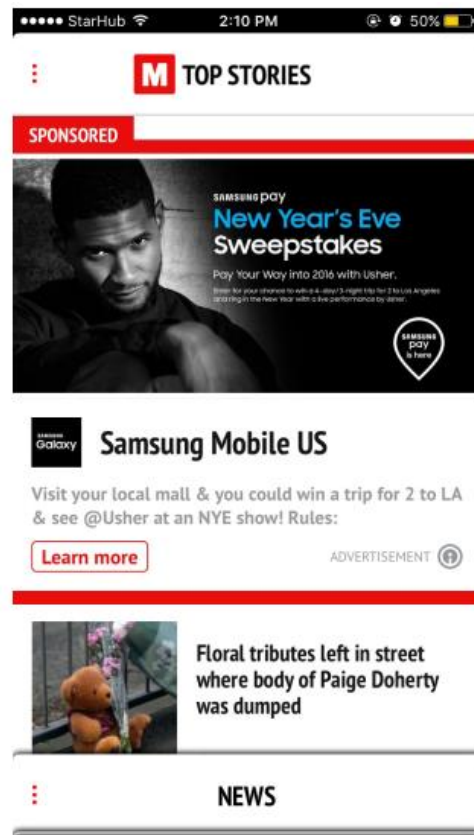
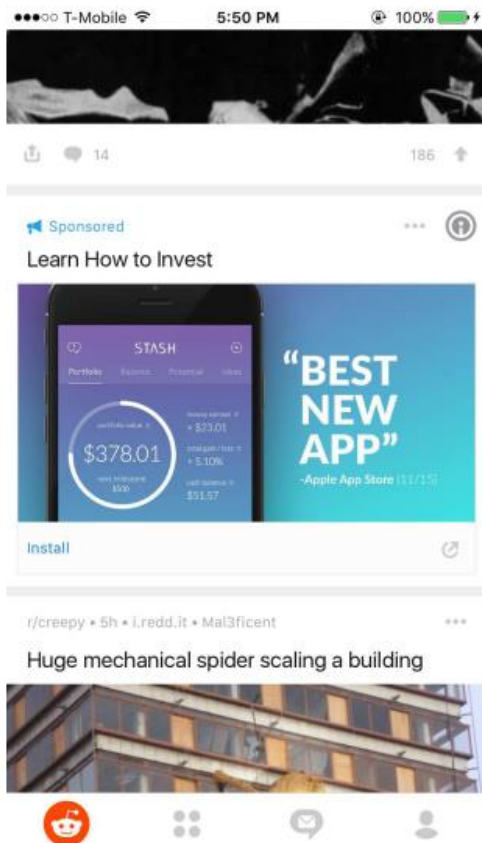
Terminology like ‘suggested post’ indicates that while the post looks and feels like a normal post on the website, it is in fact an advertisement. In some Member States, terminology has to be unambiguous and clearly state that such content is advertising.

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Examples of Suggested Good Practice

Native Advertising Formats

Infeed Ads on the 'Reddit is Fun' app and the 'Trinity Mirror' app, by MoPub:



This example was provided by:



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Examples of Suggested Good Practice

Native Advertising Formats

Video Infeed / Instream:



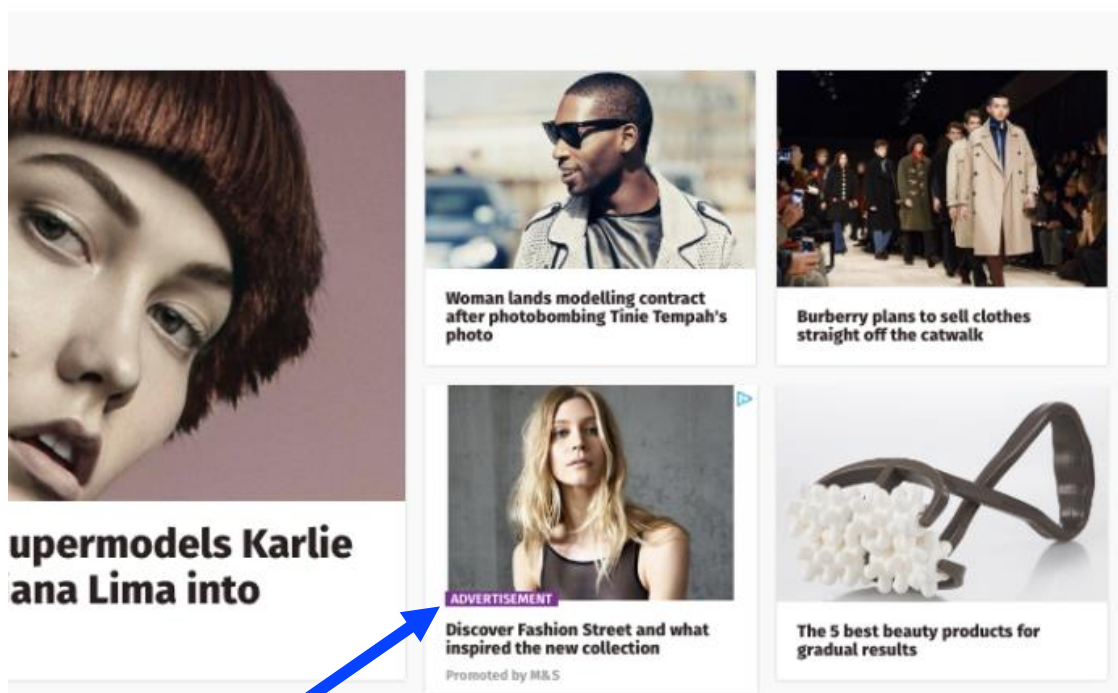
Using different colours to the rest of the site helps the native ad stand out, making it clear that it is of a commercial nature. The disclosure at the bottom identifies who paid for the content to be included on the site.

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Examples of Suggested Good Practice

Native Advertising Formats

Heading by AdYouLike for the M&S brand, published on the Independent:



In some Member States, terminology has to be unambiguous and clearly state the nature of content. In this example the nature of the content is clearly identified by the label 'advertisement'.

This example was provided by:

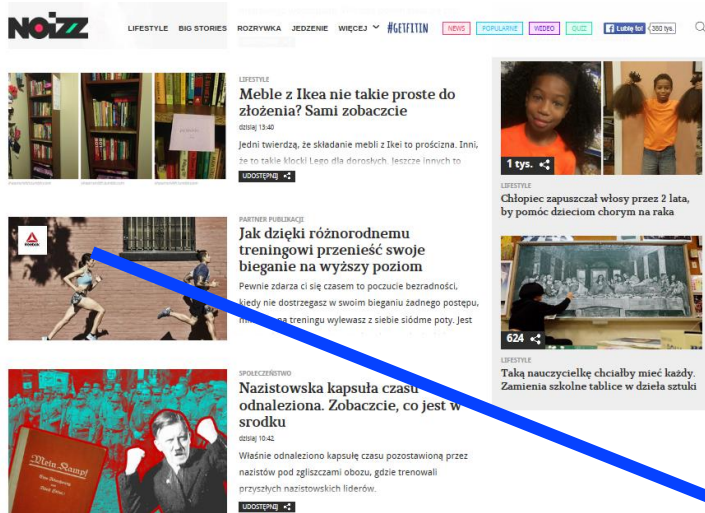


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Examples of Suggested Good Practice

Native Advertising Formats

Branded content presented in newsfeed, from Media Impact Polska.



The brand's **logo** is visible on the photograph, each brand is **labelled “Partner of publication”**.



This example was provided by:

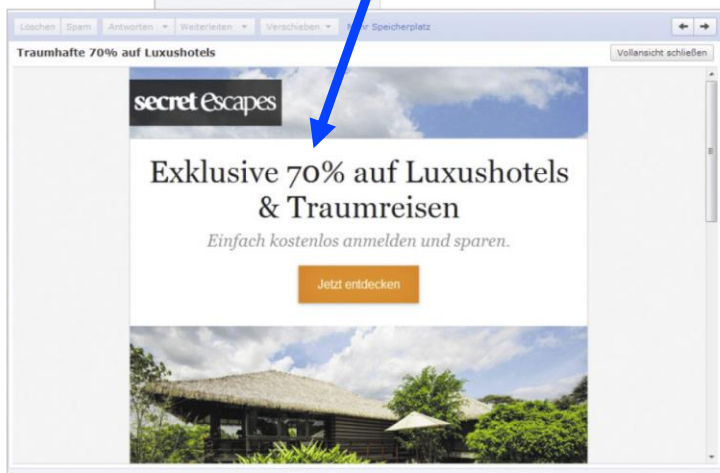
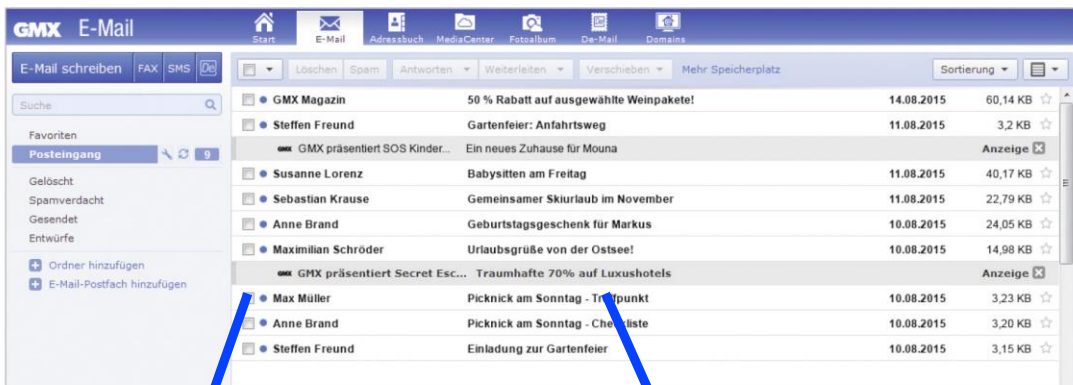


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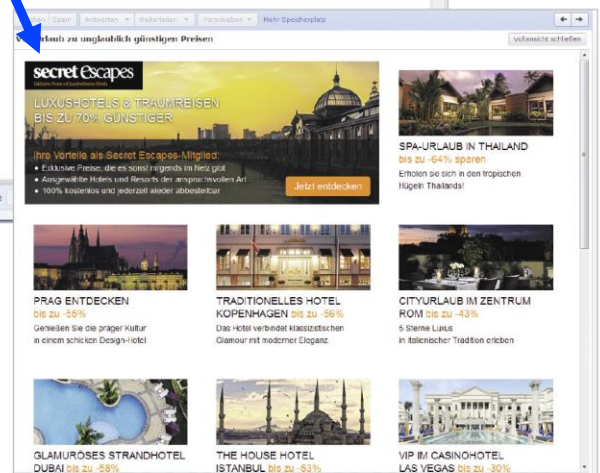
Examples of Suggested Good Practice

Native Advertising Formats

Inbox Ad for Secret Escapes on GMX:



↑ A/B-Test
Non-Responsive-Version



↑ A/B-Test
Responsive-Version

This example was provided by:



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Examples of Suggested Good Practice

Content Marketing Formats

BBC Partnered Content by HSBC:

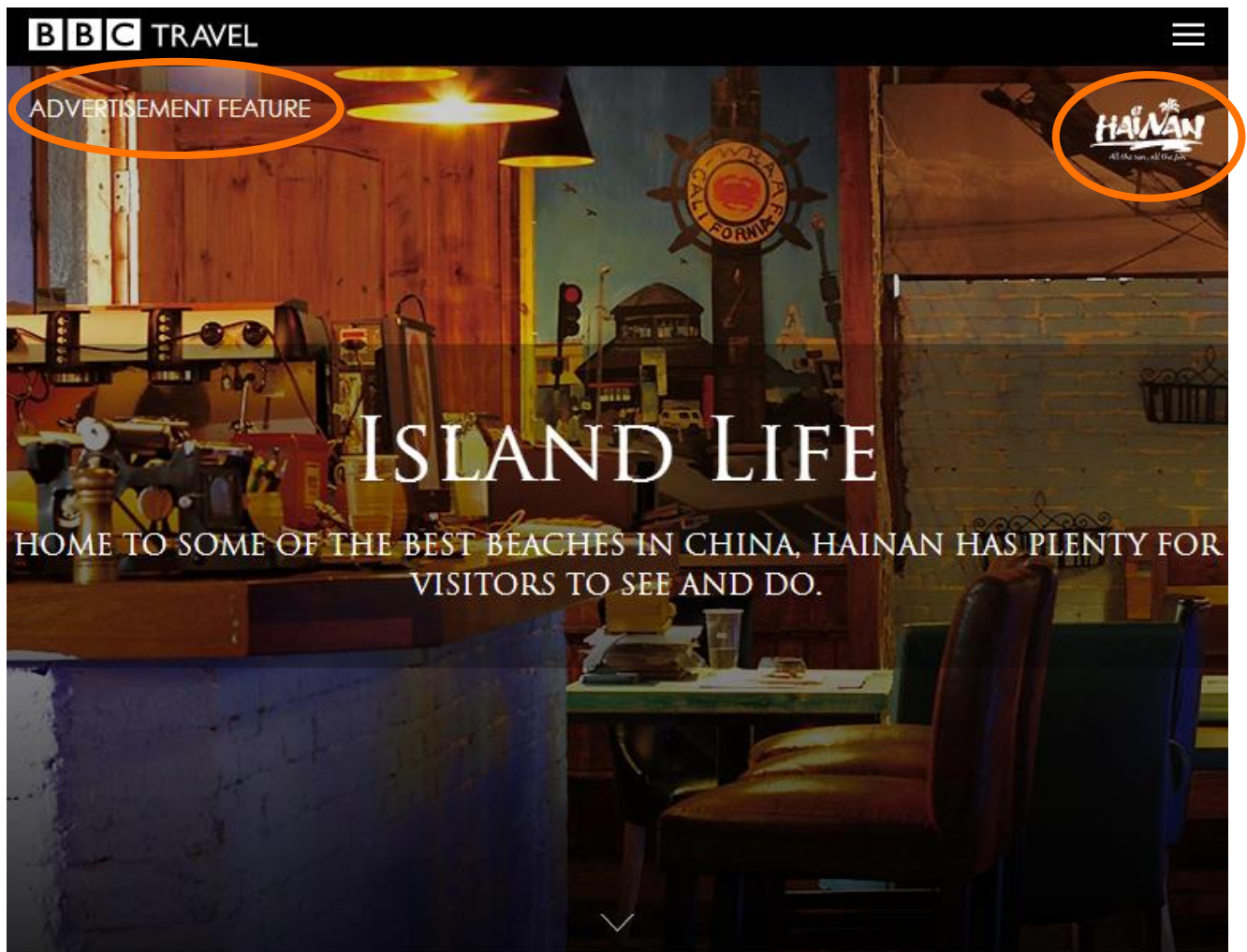
The image shows a screenshot of a BBC Capital website. The header includes the 'capital' logo and a navigation bar with links: Home, Columns, Personal Finance, Careers, and a 'GO INSIDE: Expat Guides' button. The main headline is 'The World is My Oyster' followed by 'Going the distance'. The background image shows a couple running through shallow water, creating large splashes. At the bottom of the article, there is a dark grey box with the text 'PARTNERED CONTENT PRESENTED BY HSBC' and the HSBC logo. This box is circled in orange. Below the article, a light grey bar contains the text 'Love knows no bounds, so the saying goes. But what if your' on the left and 'ADVERTISEMENT' on the right.

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Examples of Suggested Good Practice

Content Marketing Formats

Advertisement Feature on BBC for Hainan:



ANNEX II: APPLICABLE EU LAW

At EU level, native online advertising is subject to the requirements of:

- Directive [2005/29/EC](#) concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive);
- Directive [2000/31/EC](#) on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (E-Commerce Directive).

Unfair Commercial Practices Directive

Article 5 of the Unfair Commercial Practices Directive (UCPD), prohibits unfair commercial practices committed by traders in their relations with consumers.

Article 2(d) of the UCPD defines “business-to-consumer commercial practices” (referred to as commercial practices) as *“any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers”*.

Under point (b) of the same Article, a “trader” is defined as *“any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader”*.

The following are notably considered unfair:

1. In all circumstances, *“[u]sing editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial)”* (Annex I, item 11 of the Directive).

ANNEX II: APPLICABLE EU LAW

2. 'Falsely claiming or creating the impression that the trader is not acting for purposes related to his trade, business, craft or profession or falsely representing oneself as a consumer' (Annex I, item 22).

3. Misleading actions under Article 6.

Under this provision, a commercial practice is to be regarded as misleading *“if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to [certain] elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise”* (§ 1), including, notably:

- *“(a) the extent of the trader’s commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product; (...)*
- *(f) the nature, attributes and rights of the trader or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;”*

4. Misleading omissions as set out in Article 7.

Under this provision, a commercial practice is a misleading omission if, notably, *“in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise”* (§1).



ANNEX II: APPLICABLE EU LAW

“Information requirements established by Community law in relation to commercial communication including advertising or marketing, a non-exhaustive list of which is contained in Annex II, shall be regarded as material.” (§5). Annex II notably refers to Articles 5 and 6 of Directive 2000/31/EC (E-Commerce Directive – see below).

“It shall also be regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.” (§2).

However, “[w]here the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted.” (§3).

ANNEX II: APPLICABLE EU LAW

E-Commerce Directive

Pursuant to Article 6 of the E-Commerce Directive:

“In addition to other information requirements established by [European Union] law, commercial communications which are part of, or constitute, an information society service must comply at least with the following conditions:

- a) The commercial communication must be clearly identifiable as such;*
- b) The natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable;*
- c) Promotional offers, such as discounts, premiums and gifts, where permitted in the Member State where the service provider is established, shall be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be easily accessible and be presented clearly and unambiguously;*
- d) Promotional competitions or games, where permitted in the Member State where the service provider is established, shall be clearly identifiable as such, and the conditions for participation shall be easily accessible and be presented clearly and unambiguously.”*

Article 2(f) defines “commercial communication” as “any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession.

ANNEX II: APPLICABLE EU LAW

According to the same provision, “[t]he following do not in themselves constitute commercial communications:

- information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an electronic-mail address,
- communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration”

Pursuant to Article 5 of the E-Commerce Directive, information society service providers shall notably “render easily, directly and permanently accessible to the recipients of the service and competent authorities, at least the following information:

- (a) the name of the service provider;
- (b) the geographic address at which the service provider is established;
- (c) the details of the service provider, including his electronic mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner;
- (d) where the service provider is registered in a trade or similar public register, the trade register in which the service provider is entered and his registration number, or equivalent means of identification in that register;
- (e) where the activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority;”

“Information society services” are defined under Article 1(2) of Directive 98/34/EC as amended by Directive 98/48/EC as “any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services”.