

Article Information

Authors: Lis Boyce, Jamin Li

Service: Corporate & Commercial

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It's still advertising! Therapeutic goods and social media

The Therapeutic Goods Administration (TGA) has recently issued updated guidance for advertising therapeutic goods on social media. The updated guidance is an important reminder that anyone, including business, health services and social media influencers, promoting therapeutic goods online through social media channels, must comply with the regulatory requirements under the Therapeutic Goods Act 1989 (Cth) (the Act).

When does advertising occur on social media?

Under the Act, any statement or representation that is intended to promote the use or supply of therapeutic goods is likely to be considered advertising. Even material that might be said to promote use or supply in an indirect way will be considered an "advertisement" under the Act.

Social media is any group interaction enabling tool that allow internet users to connect and interact with each other. These include:

- Social communities such as Facebook
- Social messaging platforms such as Whatsapp
- Social publishing platforms such as online blogs
- Discussion networks such as Reddit, Discord and online forums
- Microblogging sites such as X
- Social photo and video sharing platforms such as Instagram, YouTube and TikTok
- Social audio sharing platforms such as Spotify and podcasts
- Professional networking sites such as LinkedIn

The advertising can occur through posts, such as texts, images, videos, links, profile content, sponsored advertising and on comments on posts.

Importantly, social media platforms can also include closed channels or private groups.

Liability for social media advertising

The creator or manager of the social media content is responsible for any social media advertising. Ordinarily, this will mean that the creator of the social media content (or the person responsible for publishing the content), such as the business or the holder/owner of the social media account is responsible for complying with the advertising requirements under the Act.

However, businesses may also be responsible for any non-compliance of any influencers or content creators where the business has engaged the influencer or content creator to post social media content on behalf of the business.

Restrictions on content that can be included on social media

In addition to ensuring any advertising content complies with applicable requirements under the Act, anyone using social media to advertise therapeutic goods should ensure that:

- any mandatory statements and other required information under the Act is included with any advertising; and

- any prohibited or restricted representations are not included in any advertising (for example, social media should not be used to advertise prescription medicines or unapproved therapeutic goods).

If you are unsure of your regulatory obligations and requirements for advertising therapeutic goods, our experts at Piper Alderman can provide you with tailored guidance and advice.