

Australian Competition & Consumer Commission
Digital Platform Services Inquiry

By email: digitalmonitoring@acc.gov.au

16 September 2022

Dear ACCC Digital Platform Services Inquiry

Submission to the ACCC Digital Platforms Inquiry – Social Media – Issues Paper

We are pleased to provide our submission in response to the *ACCC Digital Platform Services Inquiry – March 2023, Report on social media services, Issues Paper*.

Effective and efficient advertising regulation

We first wish to take this opportunity to reiterate the effectiveness of Australia's existing advertising regulation system which has delivered numerous benefits for the community, industry and government, over the past 24 years.

Operating at **no cost to government or consumers**, Ad Standards administers an **independent, platform neutral** and **flexible solution** to handle consumer complaints about advertising, which covers a broad range of communications (including social media advertising)

We also keep track of key concerns about advertising and have the flexibility to be **responsive to technological and societal changes**.

Ad Standards therefore appreciates this opportunity to share with the Inquiry, our insights on complaints about advertising on social media.

Responses to Issues Paper questions

Set out below are our comments in response to the Issues Paper questions that seek information about misleading and deceptive content on social media services.

29) Are consumers faced with potentially misleading and/or deceptive claims through advertising on social media (including sponsored advertising or posts featuring influencers)? If so has the incidence of potentially misleading and/or deceptive claims increased or decreased over time?

Yes.

Increase in complaints about social media advertising

As set out in the Ad Standards [2021 Review of Operations](#), complaints about advertising on social media are increasing each year and in 2021 made up 8.43% per cent of all complaints.

Instagram is the most complained about service followed by Facebook. In 2021, Ad Standards also investigated advertising content which appeared on YouTube, TikTok, SnapChat and Twitch.

Complaints by media in 2021



Increase in complaints about misleading or deceptive advertising content

We have seen an increase in consumer complaints raising issues of misleading or deceptive claims in advertising.

As set out in the table below, the number of complaints raising issues of misleading content, truth and accuracy have increased over the past 5 years, and we expect this trend to continue. So far in 2022, of the 65 complaints we received relating to misleading claims, 7 have been about advertisements on social media.

	2017	2018	2019	2020	2021
Misleading, truth and accuracy complaints	143	173	158	179	213

We note that Ad Standards currently considers about misleading or deceptive content that relate to advertising and marketing to children, food and beverages, and environmental claims, as they are specifically covered under the following Australian Association of National Advertisers (AANA) Codes.

- Section 2.1 of the AANA Food & Beverages Advertising and Marketing Communications Code (Food Code)
- Section 2.2 of the AANA Code for Advertising and Marketing Communications to Children (Children’s Code)
- Section 1 of the AANA Environmental Claims Code (Environmental Code)

All the advertising codes we administer are platform neutral, and therefore cover influencer marketing content appearing on social media, including in the form of blogs, vlogs, tweets, posts or other channel specific format. Posts that are advertorial or affiliate ads, as well as influencers promoting their own products or services are all covered.

If a complaint raises issues about misleading or deceptive advertising content, and it falls within one of these codes, the advertiser must provide us with sufficient information to enable the Ad Standards [Community Panel](#) to assess whether the claims or statements can be substantiated.

Distinguishable advertising

Consumers may also be misled or deceived when advertisements cannot be distinguished from other content. While complaints about social media advertising represented only 8.43% of total complaints received by Ad Standards in 2021, the issue of distinguishable advertising is increasingly being raised in the media and wider Australian community as influencer marketing becomes a more popular advertising tool.

In the United States, the [Federal Trade Commission's](#) position is that if an influencer publishes sponsored content without disclosing the existence of a relationship with the advertiser, it is a form of “deceptive” advertising under federal law. This is also the position of the [UK Competition and Markets Authority \(CMA\) and Advertising Standards Authority \(ASA\)](#) where non-disclosure by influencers is considered to be “misleading” and a breach of consumer laws.

Section 2.7 of the AANA Code of Ethics requires that advertising on any medium must be distinguishable as such. Advertisers and the influencers they engage must clearly disclose any arrangement between them. This rule is designed to help consumers distinguish between advertising content and organic content. The rules apply to both timeline posts and temporary content such as Instagram stories.

A disclosable arrangement exists where any form of benefit is provided in exchange for the content, such as monetary payment, free or discounted products or services, credit, event tickets, travel, product loans, or any form of affiliate commission.

As set out in the table below, the percentage of total complaints received by Ad Standards raising concerns about distinguishable advertising has increased over the past 5 years, with a significant 2.25% increase from 2020 to 2021.

	2017	2018	2019	2020	2021
Code of Ethics Section 2.7 (Distinguishable advertising) % of total complaints received	0.22%	0.41%	0.14%	0.45%	2.68%

Other social media complaints

Ad Standards also accepts complaints about social media and influencer advertising which raise a range of other issues covered by the [AANA Code of Ethics and related Codes](#). These include violence, language, sexual appeal and health and safety.

See [here](#) for a range of recent Community Panel decisions about social media advertisements.

30) Are businesses impacted by potentially misleading and/or deceptive claims through display advertising including sponsored advertising or posts featuring influencers?

Yes.

Impact on business reputation

The aim of the advertising regulation system is to maintain high advertising standards and ensure consumer trust and protection.

The current system of advertising self-regulation was established by the AANA in 1998 following extensive consultation with industry, consumers and government. It recognises that advertisers share an interest in maintaining consumer confidence in and respect for general standards of advertising.

The system provides an effective and efficient way to address consumers' concerns about advertising. It ensures consumer protection by providing a free and fast route for consumers to express their views about advertising and to have an impartial body adjudicate.

It is the responsibility of the advertiser to ensure compliance with the advertising codes. Any breach of the advertising codes on social media or involving an influencer directly affects the reputation of the business and/or brand.

If a complaint is made that an advertisement is misleading or deceptive it is the responsibility of the advertiser to provide Ad Standards with sufficient information to enable the [Community Panel](#) to assess whether the claims or statements made in an advertisement about which complaint has been received are supported. It is also the responsibility of the advertiser to modify or remove the advertising material if it is found in breach of the codes.

A key advantage of the Ad Standards system is that we can quickly resolve complaints about social media advertising, including in certain circumstances within days of receiving the complaint. For example, if an advertiser or influencer agrees with Ad Standards to modify or remove an advertisement after being notified of a complaint, and it does not raise a significant issue of public interest, the complaint may be efficiently resolved without being formally adjudicated by the Community Panel.

Impact on business competitors

Ad Standards also administers [Section 1 of the AANA Code of Ethics](#) under which businesses may complain about misleading or deceptive claims in competitors' advertising. Complaints are heard by the Ad Standards [Industry Jury](#) on a cost recovery basis.

Ad Standards' Industry Jury has adjudicated complaints about misleading or deceptive advertising on social media and traditional media. For example, in a recent Industry Jury matter ([Kimberly-Clark Australia Pty Ltd v Unicharm Australasia Pty Ltd](#)), the representations complained about appeared on the advertiser's website, point of sale promotional material, and social media. In this case the Industry Jury found that the advertisements were misleading and deceptive and in breach of both Australian Consumer Law and Section 1 of the AANA Code of Ethics.

31) What is the process for consumers and business users to report potentially misleading and/or deceptive claims in advertising on social media, and what role do social media platforms play in these processes? How effective are these processes?

Voice for consumers

Ad Standards gives a voice to community concerns about advertising content and guides industry in maintaining decent and honest advertising aligning with community standards and values. Our organisation is recognised and respected by Australian State and Federal Governments, sector regulators and the advertising industry as a reliable platform for consumer protection in advertising content across all mediums.

Our complaints handling system is transparent and accessible to all, with easy-to-follow steps and support throughout the process provided by our staff. Our system is funded by advertisers through a levy based on advertising spend and operates at no cost to the consumer or to government.

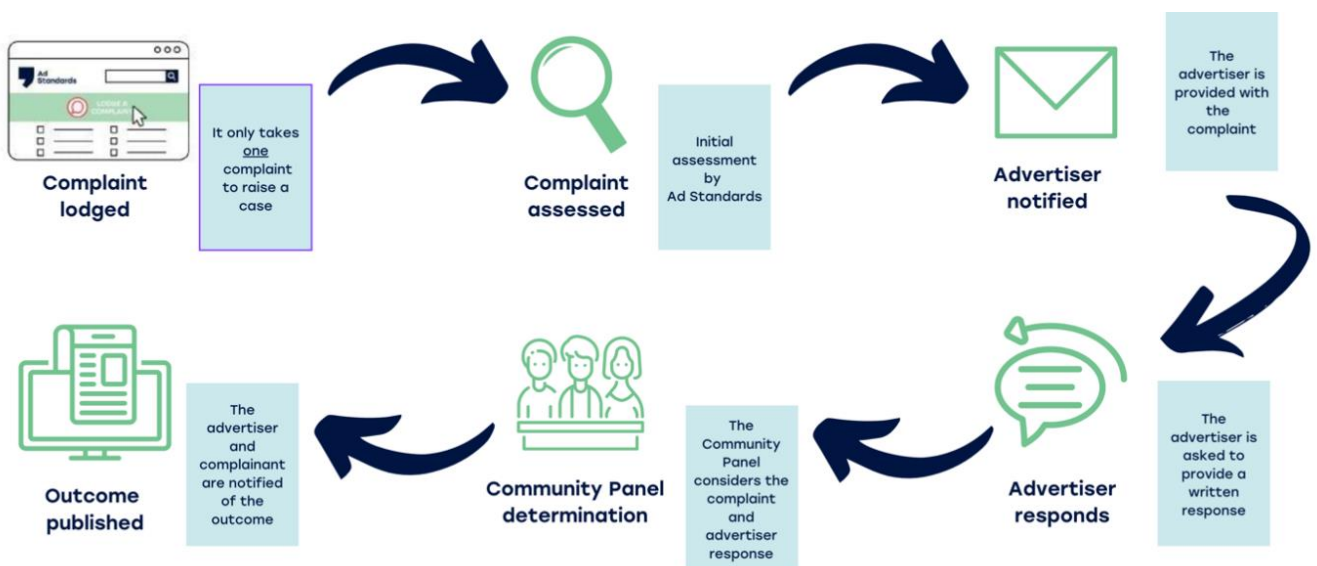
When required, Ad Standards is supported in enforcing compliance with Community Panel determinations by the media and media industry associations, and we engage regularly with social media platforms as part of our complaint resolution and industry education processes.

Our advertising regulation system has demonstrated its effectiveness during the past 24 years - with a record of nearly 100 per cent (average of 96% over the past 10 years) compliance by industry with Ad Standards Community Panel determinations.

Ad Standards also has processes in place for referral of non-compliance (or serious matters warranting immediate resolution) to relevant government bodies. Ad Standards has only had to seek the support of government bodies in very rare instances.

Process for consumer complaints

Consumers may lodge a complaint quickly and easily via [Ad Standards' website](#), free of charge. Below is an overview of the process. Further details are set out [here](#).



If a complaint is made about an ad on social media that raises an issue relating to misleading or deceptive claims that fall within the codes, Ad Standards will open an investigation. The Ad Standards Community Panel will review the complaint and make a formal decision on whether the ad is misleading and/or deceptive.

Ad Standards communicates with advertisers whenever a complaint is made about an ad on any of the social media or posted by an influencer which may breach the Codes.

Depending on the circumstances, the cooperation of the social media service on which the advertisement was published is sometimes sought.

If a complaint is upheld by the Community Panel, the advertiser is required to take down or modify the advertisement. An example of a recent upheld case in relation to a misleading ad on social media is linked [here](#).

In conclusion

Ad Standards is pleased to continue to engage with the Inquiry about ways that we can respond to community concerns about advertising content and to support constructive reform through our trusted and effective advertising regulation system.

We would be happy to elaborate further on the information provided in this submission and look forward to continuing to work with the ACCC to ensure that advertising on all media meets community standards.

Yours sincerely

Richard Bean
Executive Director