



Ad Standards Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited  
ACN 084 452 666

## Case Report

1. Case Number :	0037-22
2. Advertiser :	Tropeaka
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	23-Feb-2022
6. DETERMINATION :	Upheld - Not Modified or Discontinued

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement is two stories on the @sarahs\_day account. The first story includes a photo of a coffee cup with branded packages in the background and the text "so many questions about the clean @tropeaka coffee! We are currently using the BEANS (not the pre-ground beans) as we have a coffee machine and grinder. I'm LOVING it! It's a beautiful rich flavour, not bitter but also not too weak. I genuinely didn't expect it to be this good."

The second story features a close up of the product packaging and the text "Ok, there are so many reasons why we are deciding to swap our coffee over to the new clean coffee by @tropeaka but mostly because we have reason to believe [sic] Kurt has been unwell for years and a number of specialists have highlighted mold [sic] as a trigger. Many coffee beans can actually harbour mold [sic] and Kurt has immediate reactions/responses to various beans we've tried. I'm so excited for us to finally have access to beans we both truly trust and know are premium quality!"

### THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*Sarahs day has breached the code of ethics and conduct whilst advertising Tropeka's new product; coffee beans. Sarahs Day she has failed to disclose a paid partnership in the ad.*



*As well as this, it is clear she is using unqualified health advice to also sell the product, which she is being paid to promote. This is unethical, and very dangerous to the consumer.*

*This undisclosed advertising and paid partnership has now happened twice in a 48 hour period related to the product mentioned*

*The Ad was not disclosed.*

*It is known that sarahs\_day is in commercial partnership with Tropeaka.*

*She was advertising the new coffee product and it was not disclosed as an ad or paid partnership.*

*Sarah has once again not disclosed her ad, making it look like she is genuinely using this product when she is in fact getting paid by Tropeaka to advertise their product. Sarah has done this several times in the past and always get away with it. She has tried selling hair and nails pills, protein powders and more products by lying and not disclosing the fact that she was in fact being paid to do so.*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*Advertiser did not provide a response.*

## **THE DETERMINATION**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainants' concern that the Instagram stories did not disclose that they were sponsored.

The Panel viewed the advertisement and noted the advertiser had not provided a response.

### ***Section 2.7: Advertising shall be clearly distinguishable as such.***

#### **Is the material advertising?**

The Panel noted that it must consider two matters:

- Does the material constitute an 'advertising or marketing communication', and if so
- Is the advertising material clearly distinguishable as such?

#### **Does the material constitute an 'advertising or marketing communication'?**



The Panel noted the definition of advertising in the Code. Advertising means: “any advertising, marketing communication or material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct”.

The Panel considered that the placement of the product, highlighting the product’s benefits and sharing photos of the product did amount to material which would draw the attention of the public in a manner designed to promote the brand.

The Panel noted that the advertiser had not provided a response to the complaint. The Panel therefore was unable to confirm whether the advertiser had arranged for the Instagram stories. The Panel also noted that Sarah’s Day appeared to have a relationship with the advertiser selling some products on their website, and that this was a strong indication that the advertiser would have a reasonable degree of control over posts and stories the influencer made about their products.

For these reasons, the Panel considered that the Instagram stories did meet the definition of advertising in the Code.

### **Is the material clearly distinguishable as such?**

The Panel noted the Practice Note for the Code states:

*“Influencer and affiliate marketing often appears alongside organic/genuine user generated content and is often less obvious to the audience. Where an influencer or affiliate accepts payment of money or free products or services from a brand in exchange for them to promote that brand’s products or services, the relationship must be clear, obvious and upfront to the audience and expressed in a way that is easily understood (e.g. #ad, Advert, Advertising, Branded Content, Paid Partnership, Paid Promotion). Less clear labels such as #sp, Spon, gifted, Affiliate, Collab, thanks to... or merely mentioning the brand name may not be sufficient to clearly distinguish the post as advertising.”*

The Panel noted that the stories included pictures of the product, tagging of the brand and highlighting the product benefits in relation to the influencer’s personal life.

The Panel considered that while it may be clear to some people viewing the material that this was an advertisement, the stories could also be interpreted as an organic product review. The Panel considered that there was nothing in the wording or pictures of the material which clearly identified the nature of the relationship between the influencer and brand.



The Panel considered that in this case tagging the brand and featuring the product was not sufficient to satisfy the Code's requirements and that the Instagram stories were not clearly distinguishable as advertising.

### **2.7 conclusion**

In the Panel's view the advertisement was not clearly distinguishable as such and did breach Section 2.7 of the Code.

### **Conclusion**

Finding that the advertisement breached Section 2.7 of the Code, the Panel upheld the complaints.

### **THE ADVERTISER'S RESPONSE TO DETERMINATION**

The advertiser has not provided a response to the Panel's determination. Ad Standards will continue to work with the advertiser and other industry bodies regarding this issue of non-compliance.