



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0055-21</b>
<b>2. Advertiser :</b>	<b>Runaway The Label</b>
<b>3. Product :</b>	<b>Clothing</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Instagram</b>
<b>5. Date of Determination</b>	<b>10-Mar-2021</b>
<b>6. DETERMINATION :</b>	<b>Upheld – Not Modified or Discontinued</b>

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram post made by Anna Heinrich includes an image of Ms Heinrich in a green dress, and the text "Turning my apartment into a Runway [green heart emoji] Then back to my PJs I go! Wearing: @runawaythelabel".

### THE COMPLAINT

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

*Lack of regard to Australian law. Advertising with no transparency re sponsorship  
No sponsorship transparency  
Not using the proper wording for sponsorship*

### 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 complainant's concern that the Instagram post does not exhibit sponsorship transparency.

The Panel viewed the advertisement and noted the advertiser did not respond.

**Section 2.7: Advertising or Marketing Communication 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: "any 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 clear placement of the product in the advertisement and the use of the brand name Runaway The Label did amount to material which would draw the attention of the public in a manner designed to promote the brand.

With regards to whether the advertiser or marketer has a reasonable degree of control, the Panel noted that the advertiser had not provided a response to the case. The Panel therefore was unable to confirm whether the advertiser had arranged for the Instagram post. However, the Panel proceeded on the presumption that the Instagram post was authorised by the advertiser, on the basis that Anna Heinrich is a well-known influencer who would be likely to post such material under a commercial arrangement.

**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 considered that while some followers of the influencer may be able to recognise that this post is most likely advertising, there was nothing in the wording of the post and no hashtags which clearly demonstrated that this is advertising material.

The Panel considered that tagging the brand on its own was not sufficient to clearly and obviously show that there was an arrangement between the brand and influencer.

## **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 did breach Section 2.7 of the Code, the Panel upheld the complaint.

## **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.