



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0065-21
2. Advertiser :	Dough Store
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	24-Mar-2021
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement appeared on the @rozalia_russian Instagram account and features two images of a pair of shoes being worn. The caption states, "Jordan 1 Quilt Low @doughstore_"

THE COMPLAINT

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

Clearly paid / sponsored ads over a period of time without acknowledgement to audience that it is sponsored. No transparency and no regard to law

THE ADVERTISER'S RESPONSE

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

We cannot control what a third party posts.

We also never paid miss Russian for any posts or stories.



Miss Russian brought a number of goods from us, which we can provide proof of purchase & funds.

We sent her some items for free. She posts and tags all the brands she wears.

There was never any payments made to her.

We since advised her if she was to tag anything from us brought or given to prior to #gifted as clearly someone has it out for our business.

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 have sponsorship transparency.

The Panel viewed the advertisement and noted the advertiser's response.

Section 2.7: Advertising or Marketing Communication shall be clearly distinguishable as such.

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 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 the advertiser's response that they occasionally provide free product to Ms Russian, however there is no paid arrangement and the cannot control what a third party posts. The Panel noted Rozalia Russian is a well-known influencer and although there may be no formal arrangement in place, the brand has provided



free product, presumably in the hope or expectation that she will post with the product, and that this would reasonably be considered to be advertising.

The Panel also noted the advertiser's response that they have advised her to use the hashtag 'gifted' in any future posts. The Panel considered that such a request from an advertiser indicates a relationship and that they do have some degree of control over what this influencer might post.

The Panel determined that the post did meet the definition of advertising. The Panel noted that the Guidance Note to the Code indicates that #gifted would also likely be insufficient.

Is the advertising 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 did not provide a response to the Upheld determination however the Instagram post has been modified to now include #rrpartner.