



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0113-22
2. Advertiser :	Bakers Delight Holdings Pty Ltd
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	8-Jun-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement posted as a story to the @emmylouloves account features a video of a woman looking at a gift basket from Bakers Delight. She describes it as 'a gorgeous little package from Bakers Delight' and reads out the card with the basket. She then unpacks the items from the basket.

The text "Thank you @bakersdelight" and "What a delivery @bakersdelight" appears over the video.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

It is misleading as she is not declaring that she has been paid to advertise the new range of Bakers Delight bread.

THE ADVERTISER'S RESPONSE

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

alt/shift/ engaged Emmylou (@emmylouloves) to promote the release of Bakers Delight's new Cape Seed Loaf.



Emmylou agreed to provide one post and one story for alt/shift/ and Bakers Delight's approval prior to posting. The one story posted on Friday 20 May on Emmylou's Instagram account that has received the complaint was not part of these agreed deliverables and was posted without alt/shift/'s and Bakers Delight's knowledge. It appears that Emmylou posted this story as a simple thank you for the receipt of material that was to be used for the paid content, and separate to her deliverables within our agreement.

The Instagram story in question captures Emmylou receiving and unboxing product provided by alt/shift/ on Bakers Delight's behalf. This product was provided for inclusion within the agreed paid content, once approved by alt/shift/ and Bakers Delight. We did not anticipate that Emmylou would post material relating to the receipt of the product and we were surprised that the content was posted without our consent or knowledge.

This particular recording is not a paid advertisement, as it did not form part of the deliverable. It is clearly disclosed by Emmylou that it is a gift from Bakers Delight. Emmylou was thanking Bakers Delight, clearly tagging the company's Instagram account @bakersdelight for a picnic basket delivery containing bread and vegetables.

The paid content was set to go live w/c 6 June (please find the contract attached with dates and key messaging outlined).

Emmylou and her management team were directed to submit content to alt/shift/ and Bakers Delight for review on Monday 30 May, with the live posting date of a story set (3 frames) and one post for w/c 6 June.

THE DETERMINATION

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

The Panel noted the complainant's concern that the advertisement is misleading as it does not disclose the stories as an advertisement.

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

Section 2.7 Advertising or Marketing Communication shall be clearly distinguishable as such to the relevant audience.

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 noted the advertiser’s response that the product was provided to the influencer for the purposes of an Instagram post which was intended to be pre-approved by the advertiser before posting. In this case, the content was posted without the advertiser’s consent and approval.

The Panel considered that the post did draw attention of the public to the product through the unboxing and detailing of items, highlighting of product features etc.

The Panel acknowledged that the advertiser did not have direct creative control over the video, however there was an existing commercial relationship between the content creator and the advertiser and that this constituted a sufficient degree of control to satisfy the definition of advertising under the Code.

The Panel determined that the Instagram story was an advertisement.

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 Instagram stories totalled 1 minute 30 seconds and focussed clearly on the product, with the influencer describing each product in the basket. The video also included text promoting the brand superimposed over the video . The Panel noted that this text included the brand’s Instagram handle, @bakersdelight and that this tag appears twice for a reasonable period of time during the stories: ‘Thank you @bakersdelight’ and ‘What a delivery @bakersdelight’. The product’s brand name both on the cap and on the card from which the influencer reads reinforces that the post’s content is commercial in nature.

The Panel noted that it had considered a similar issue in case 0207-21, after an independent review was conducted, the Panel had found:

“...the Panel considered that the combination of the themes, visuals and language of the ad and the use of the brand and product name multiple times, did mean that



the post was clearly commercial in nature...The Panel considered that the individual use of the brand name, hashtags or product images would not be sufficient to distinguish this material as advertising, but the combination of these elements meant that the commercial nature of this post was clear, obvious and upfront and expressed in a way that is easily understood.”

Consistent with the determination in case 0207-21, in the current case the Panel considered that the presentation of the product on the video and through the influencer’s commentary, along with the direct link to the brand page/tagging of the brand all combined in a way which pointed to an apparent commercial arrangement between the advertiser and influencer.

Section 2.7 Conclusion

The Panel considered that the advertisement was clearly distinguishable as such.

Conclusion

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.