



**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>0116-21</b>
<b>2. Advertiser :</b>	<b>Sarah's Day</b>
<b>3. Product :</b>	<b>Toiletries</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Instagram</b>
<b>5. Date of Determination</b>	<b>12-May-2021</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram is a post by Sarah's Day and features an image of a woman in a white robe holding a jar. Text on the post states:

GO! GO! GO!

Ahhh your response to our new bicarb-free Pitty Party campaign had me smiling all day!! I love that we have a community here that can laugh at ourselves and see the humour in everything. Thank you for being the most incredible supporters and always embracing our silliness [heart emoji].

If you would like to get your hands on my natural deodorant the now's your chance! Head to @labangbody website and make the change to this natural based deodorant putty! Yes - you can apply this one straight after shaving!! Woohooo

### THE COMPLAINT

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

*This product is made by Labang Body in collaboration with Sarah under commercial agreement.*

*There is no mention of the paid partnership in the advertisement.*

### THE ADVERTISER'S RESPONSE





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

*We act for and provide this response on behalf of Sarah's Day Pty Limited ("Sarah's Day"). Paragraphs of this response which are commercial in confidence are preceded with the acronym "CIC." Please ensure the entirety of those paragraphs is kept confidential.*

*The complaint is made in respect of an Instagram post ("the Post") by Sarah's Day on its own Instagram page - sarahs\_day – in respect of a natural deodorant product ("the Product").*

*The complaint incorrectly refers to the Product as "the new LaBang product called Pitty Party." The statement is incorrect for two reasons:*

*1. The name of the Product is "Sarah's Day Pitty Party Natural Deodorant." The name appears on the Product itself and on all pages of the Sarah's Day and La'Bang Body websites from which it can be purchased.*

*2. The Product is not solely owned by La'Bang Body. Ownership rights in the Product are shared between Sarah's Day and La'Bang Body under a commercial agreement.*

*The complaint characterises the Post as "calling for her 1.1m followers to purchase the product." Sarah's Day does not consider this an accurate characterisation of the Post but does not consider this to be material to the issues being considered. Sarah's Day does not dispute that the Post is an 'advertising or marketing communication' in respect of the Product.*

*Sarah's Day strongly disagrees that the Post is not clearly distinguishable as advertising of the Product.*

*As set out above, Sarah's Day is a part owner of the Product. The Product name, packaging, and all online points of sale prominently feature the registered Australian trade mark SARAH'S DAY, which is owned by Sarah's Day. In the Post itself, Sarah's Day refers to the Product as "my natural deodorant" and to the marketing campaign for the Product as "our new ... campaign." No consumer viewing the Post or visiting the point of sale suggested in the Post could have any doubt that Sarah's Day is an owner of the Product.*

*Sarah's Day considers the Post to be the exact situation described in the Practice Note to Section 2.7 of the Code of Ethics as "where a brand is advertising their own product on their own channel (e.g. the brand's Facebook or Instagram account), no specific labels are required where it is clear to the audience that the brand is advertising their own product or service."*



*Sarah's Day does not consider the Post to breach Section 2.7, or any other part of the Code of Ethics, but requests the opportunity and reserves the right to respond to any other specific concerns raised by the Community Panel.*

## **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 mention the paid partnership agreement between the poster and the website.

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 caption includes a website link and instructions on how to purchase which did amount to material which would draw the attention of the public in a manner designed to promote the brand.

As to whether the advertiser or marketer has a reasonable degree of control, the Panel noted that the post was on the Sarah's Day Instagram page and was for a product created by Sarah's Day and as such the marketer had direct control over the post.

#### **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 post was by the advertiser, and was not by a third party influencer. The Panel noted that the caption for the post referred to "our new bicarb-free Pitty Party campaign" and "my natural deodorant" and considered that this wording made it clear that the product was made by Sarah's Day and that she would be profiting directly from its sales.

The Panel considered that most people viewing the advertisement would understand it to be an advertisement for Pitty Party deodorant.

## **2.7 conclusion**

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

## **Conclusion**

Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaint.