



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

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| 1. Case Number : | 0117-21 |
| 2. Advertiser : | La'Bang Body |
| 3. Product : | Toiletries |
| 4. Type of Advertisement/Media : | Internet - Social - Instagram |
| 5. Date of Determination | 12-May-2021 |
| 6. DETERMINATION : | Dismissed |

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:

La Bang Body did not provide a response, however Sarah's Day provided a response to this complaint in case 0116-21 which stated:

"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.

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.

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 included 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.

With regards 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. The Panel noted that this post was found to be an advertisement by Sarah’s Day in case 0116-21 and in this case the advertiser had noted that Sarah’s Day is a part owner of the product.

The Panel considered that it was reasonable for Sarah’s Day to advertise their own product and where it is available to purchase, and that there is no indication that La’Bang Body had any control over the creation or publication of the post.

The Panel determined that the post was an advertisement by Sarah’s Day, and was not an advertisement by or for La’Bang Body.

2.7 conclusion

In the Panel’s view the post was not advertising or marketing material for La’Bang body and as such the Section 2.7 of the Code does not apply.

Conclusion

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