



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0118-22
2. Advertiser :	Cygnett
3. Product :	Information Technology
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	8-Jun-2022
6. DETERMINATION :	Upheld - Not Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram story posted to the @sophiecachia_ account features a woman holding up a charging cable with the words, "Found my baby!!!! @cygnett Nobody charges my phone like this cord here. Whenever I lose it, it's devastating (aka Bobby steals it for his iPad) I will neverrrrrrr go back to any other cord. Not spon, just simply life changing when you need your phone constantly & charged SO fast." and a link to Cygnett.com.

THE COMPLAINT

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

Sophie is obviously getting paid to be an ongoing ambassador for this product/brand (Cygnett) and should clearly display that it is a paid post.

THE ADVERTISER'S RESPONSE

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



This promotion by Sophie Cachia was created and published without Cygnett having any prior knowledge, nor was it financially supported by Cygnett in anyway.

Cygnett openly acknowledges the company has an agreement with Sophie Cachia regarding paid Cygnett brand endorsements on social media. This agreement includes Sophie posting an agreed number of social media posts/reels each month. As per Ad Standards, Sophie Cachia is required to acknowledge these posts as paid Brand sponsorships. All of these posts are planned ahead of schedule with Sophie Cachia and her team. This is the first time to our knowledge that Sophie has ever posted about Cygnett outside her paid agreement. Every paid post is covered in the Cygnett agreement with Sophie Cachia. There is no agreement for Sophie to post about Cygnett randomly, every paid post is strategically timed/calculated.

The post highlighted in your Ad Complaint is not included in the content calendar and was not requested or supported in anyway by Cygnett. As per above, Cygnett has zero knowledge of this post and it was completed by Sophie Cachia without any financial support from Cygnett.

I do understand the idea of a 'grey area' when a brand such as Cygnett has an ongoing agreement with an influencer like Sophie Cachia. I will instruct Sophie's team to ensure all future Cygnett brand posts call-out her partnership, however in this specific case, the promotion was not supported or paid for by Cygnett, so it cannot be deemed a paid post. If an influencer decides to post without permission or knowledge of a brand, why is the brand held responsible?

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 considered that the clear placement of the product, the brand name tagged in the comments and the strong recommendation 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 the advertiser’s response that there was an existing arrangement in place between Ms Cachia and the advertiser, and Ms Cachia is an ambassador for the brand, but that this post was not a post within that agreement.

The Panel noted that the Code does not define ‘reasonable degree of control’. The Panel noted that influencers operate as an advertising medium utilised by businesses to promote their brands and products. The Panel noted that many influencers have agents and that businesses exist which put brands and influencers in touch with each other. The Panel noted that influencers are sometimes paid, and sometimes provided with free product. The Panel noted that influencers’ posts may also be created in circumstances where there is no commercial relationship context. The Panel considered that the Code’s requirements should be interpreted with its purpose in mind, that is to ensure that consumers are informed, and that influencers should be transparent about their relationships with brands.

The Panel noted that the advertiser had an existing relationship with Ms Cachia and was aware of her position as an influencer. The Panel considered that while there was no direct request or stipulation for Ms Cachia in relation to this specific post, it is reasonable to assume that the motivation for an advertiser to provide product to an ambassador is that they will post about the product or otherwise draw the attention of their followers to the brand as Ms Cachia did in this case. The Panel considered that while it was not known whether Ms Cachia had received the advertised product for free, the post was in line with her existing relationship with the advertiser. The Panel considered that in choosing an ambassador who is an influencer they are exercising a degree of control, and the post did draw the attention to the product.

The Panel considered that the post did meet the definition of advertising in the Code.

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 noting the context of Ms Cachia’s existing relationship with the brand, the product specific post with the image being solely of the product held by the influencer’s hand, the tagging of the brand, the strong endorsement in the text along with the product’s website placed on the right side of post, were all indicators that the post is an advertisement.

However the Panel considered that the ambiguity created by the inclusion of “not spon”, meaning not sponsored, is confusing to viewers and undermines the viewers’ understanding of the nature of the commercial agreement, such that it is no longer clear whether or not the post is advertising. The Panel considered that whether intentional or not, the advertisement’s distinguishability is obscured by “not spon” and therefore the Panel determined that the relationship with the advertiser for this post was not clear and the post was not clearly distinguishable as advertising.

Section 2.7 Conclusion

The Panel considered that the advertisement was not clearly distinguishable as such.

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.