



Ad Standards Community Panel  
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Ad Standards Limited  
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## Case Report

1. Case Number :	0130-21
2. Advertiser :	Unilever Australasia
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	26-May-2021
6. DETERMINATION :	Upheld - Modified or Discontinued

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram post features a video of a woman eating ice-cream. The caption states "@magnum has created all my favourite things in one tub! My tip, just add two spoons for the illusion of sharing. But best to eat tub to oneself to reach ultimate satisfaction #MAGNUMluxegOLD #delicious Available at Woolworths, Coles and IGA".

### THE COMPLAINT

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

*Advertising undisclosed by the influencer, Nikki Phillips*

### THE ADVERTISER'S RESPONSE

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

*We acknowledge that the original sponsored Instagram post by our paid Magnum influencer Nikki Phillips on 7 May 2021 was not compliant to the AANA Code of Ethics as the relationship between Unilever and the influencer was not clear. We apologise for this non-compliance and have advised Nikki Phillips to edit the post clearly to highlight that it is a sponsored post. The word #ad now appears in the post. We will work with our marketing agency and influencers to ensure they understand the obligations under the AANA Code of Ethics.*



## **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 disclose that it is advertising.

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

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

#### **Is the material advertising?**

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 noted the advertiser's response that this was a paid promotion and the Panel considered that this was advertising.

#### **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 caption for the advertisement included information relating to where the product could be purchased and considered that this would be an



indication to some members of the community that this was a commercial post. However, the Panel considered that not all members of the community would be able to identify this as advertising based on this description alone.

The Panel noted that since the complaint had been received the advertiser had added #ad and a paid promotion tag to the advertisement.

The Panel considered that before these additions the post was not clearly distinguishable as advertising.

## **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**

Unilever confirms that the influencer post has been modified to comply with the determination and the obligations under the AANA Code of Ethics.