



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0132-21
2. Advertiser :	Alya Skin
3. Product :	Toiletries
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	9-Jun-2021
6. DETERMINATION :	Upheld – Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram post from @_bonnierose features an image of a woman holding an alya skin product, with some of the product on her cheek. The caption to the post reads, "Honestly I haven't known myself since I copped the @alyaskinaus pink clay mask. My skin feels brighter, tighter and just right-er. Plus we loveee a good vegan find. #alyaskin #alyaskinbabe #pinkclaymask

THE COMPLAINT

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

Instagram posts not disclosing that they are paid advertisements

THE ADVERTISER'S RESPONSE

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

This product was gifted to Bonnie Rose.

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 have sponsorship transparency.

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. 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 further information provided about the product 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 Ms Rose had been sent the product as a gift. The Panel noted it was not known whether the advertiser had requested that the influencer post about the product.

The Panel noted that the Code does not define 'reasonable degree of control'. The Panel noted that there is no indication of timeframes around which the advertiser can be seen to exert control. The Panel noted that in the case of gifts to influencers the context in which the product is given cannot be ignored. 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, sometimes provided with free product and sometimes post about products in the context of longer term relationships without immediate incentive. The Panel noted that influencers' posts may also be created in circumstances in which there is no 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 relationship with a brand, whatever form it takes.

The Panel noted that the precise nature of the relationship between the advertiser and Ms Rose was not known, however it is likely the advertiser was aware of her position as an influencer. The Panel noted that the advertiser chose to send Ms Rose a gift. The Panel considered that it is not known whether there was a direct request or stipulation for Ms Rose to post about the gift, however it is reasonable to assume that the motivation for an advertiser to provide free product to an influencer with whom they have a positive relationship is that they will post about the product or otherwise draw the attention of their followers to the brand as Ms Rose did in this case. The Panel considered that the advertiser has undertaken the activity of giving a gift to an influencer, and in choosing to send the gift they are exercising a degree of control, and the post did draw the attention to the product.

For these reasons, 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 noted that since the complaint had been received the post had been updated to include #ad and #gifted.

The Panel considered that there was nothing in the wording of the original post and no hashtags which clearly demonstrated the relationship between Ms Rose and the brand and the circumstances surrounding the posting of the product.

The Panel considered that tagging the brand on its own was not sufficient to satisfy the Code's requirements and that the wording of the original post was not clearly distinguishable as advertising.

2.7 conclusion



In the Panel's view the advertisement as it was originally posted 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

The influencer whom this complaint was made against has edited her caption to include the hashtag #ad.