



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0139-22
2. Advertiser :	Shein
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	13-Jul-2022
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.2 Exploitative or Degrading
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This video advertisement posted to the @blondiesophtia Instagram page on 24 June 2022 features a teenage girl posing in a black dress with cut-outs. The voice-over features a woman saying, "Darling I always wear black. Black is such a happy colour. And my favourite colour too, black.

The caption to the post states, "Darling I always wear Black it's such a Happy colour [eyes crossed emoji, black heart emoji, black heart emoji, fire emoji, black heart emoji] Dress @sheinofficial @shein_au Use my special code SSA2333 (Enjoy an extra 15% off any purchase on SHEIN) #blackdress #lbd #blackfriday #reelsinstagram #funny #blondiesophtia).

THE COMPLAINT

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

The video is highly sexualised, featuring a young teen dressed in porn-inspired adult wear. She is filmed running her hands up her thighs, front and breasts.

It is reprehensible for Shein to use kidfluencers like this young teen girl to promote its products. Kidfluencers are at high risk of being exploited by child predators. The video has had over 13k views, with engagement from extremely concerning accounts where young + pre teen girls are sexualised and connected to more predators.



The ad can be viewed here: <https://www.instagram.com/reel/CfKfuNJBoGW/>

THE ADVERTISER'S RESPONSE

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

The Instagram post described in your complaint is not our advertisement. SHEIN did not sponsor this post nor did we ask for this post to be created. The swimsuit worn was not provided by us.

We do not know the influencer's age but she does not appear to be 14 years old, as you contend. We also draw your attention to her other posts, all of which appear to be similarly revealing.

We trust this resolves the matter. SHEIN reserves all rights and remedies.

ADVERTISER ADDITIONAL RESPONSE

As our earlier response mentioned, SHEIN did not sponsor the post. We did not know that this influencer would make such a post. With all due respect, there is no basis to assume the existence of any such control by SHEIN over this post by the mere fact that she, on her own volition, included a code or that she was wearing our product in the post.

SHEIN reserves all rights, defenses and remedies. Thanks.

I cannot emphasize more on the fact that we don't have control over the post. Nor did we sponsor the SHEIN product that she was using in the post. Therefore, if the post is an advertisement of our brand, it would be an advertisement that we did not ask for. And we should not be accused for such ad that we did not ask for. To this end, whether such arrangement exists should not be of the concern of our discussion here. While we do share the concern over the risk of kidfluencers being exploited by child predators, the real question and risk in our case should remain the content of the video posted, over which, again, we do not have any control.

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 advertisement sexualises a teenage girl.

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

Does the material constitute an 'advertising or marketing communication'?



The Panel noted the advertiser's response that they did not request this post be made and did not have control over it, and therefore that it is not advertising.

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 noted that the Practice Note for the Code provided some additional guidance around User Generated Content:

"User Generated Content (UGC) is material which has not been created by the brand owner but by a person interacting on the brand owner's digital marketing platform. A brand owner has reasonable control of user generated content when it becomes aware of the material. An advertiser becomes aware of material when:

- *it has posted or published material;*
- *it becomes aware of UGC through reasonable review;*
- *a user notifies the advertiser/marketer of the UGC; or*
- *a complaint is lodged with Ad Standards about the UGC.*

The Code does not apply to: UGC on pages and sites which are not within an advertiser's reasonable control even if brands or products are featured.

Examples include:

- *A user posting a brand's TVC on YouTube with additional footage/comments;*
- *A user posting footage on YouTube using a brand or product but with no involvement from the advertiser marketer;*
- *UGC featuring hashtags that may relate to a brand or brand campaign from platforms such as Twitter and Instagram;*
- *A tweet from a brand re-tweeted with added content by a user, over which the advertiser/marketer has no control;*
- *UGCs that are reposted by a person other than the brand."*

The Panel noted that the material was posted on the influencer's own page and was not shared by the brand. However, the Panel noted that the advertiser had not provided information on how the influencer had been provided with a code and what benefit she was getting from sharing it.

The Panel noted that many of the influencers that had been reposted by Shein used individual Codes beginning with SSA and it was likely that these codes were provided to influencers by the brand in order to track engagement and provide some kind of reward or payment to the influencers. The Panel considered that Shein provides these codes as a marketing tool in order to draw attention to the brand.



The Panel considered that while the advertiser may not have had direct control over the individual post, it did have control over the provision of the discount code to the influencer. In this instance, once the advertiser was made aware of the post and the influencer's age by Ad Standards, under the UGC guidelines referred to above it had some control over the post. The Panel considered that the advertiser could have asked the influencer to remove the post, and/or could have taken away the influencer's individual discount code. The Panel considered that the advertiser does have control over who it provides discount codes to, and the terms on which they allow this code to be shared. As such, the Panel considered that the advertiser does have a reasonable degree of control over the advertisement.

The Panel noted that the post was drawing the attention of the public in a manner designed to promote the brand, through the featuring of the dress, tagging of the brand and sharing of the discount code.

For these reasons, the Panel considered that the Instagram post did meet the definition of advertising in the Code.

Section 2.2: Advertising or marketing communications should not employ sexual appeal where images of Minors, or people who appear to be Minors, are used.

Does the advertisement use sexual appeal?

The Panel noted that the influencer was 14 years old at the time the post was made. The Panel considered that the influencer was wearing a revealing dress and was seen running her hands over her hips and breasts in a sexualised manner. The Panel considered that the advertisement did contain sexual appeal.

Does the advertisement use images of Minors, or people who appear to be Minors?

The Panel considered that the influencer is a Minor and she is depicted in a manner which treats her as an object of sexual appeal. The Panel determined that the advertisement did use sexual appeal where an image of Minor is used.

Section 2.2 conclusion

The Panel found that the advertisement did employ sexual appeal of a minor and did breach Section 2.2 of the Code.

Section 2.4: Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel noted the Practice Note for the Code states:

"Models who appear to be minors should not be used in sexual poses."



Similar to the comments discussed in Section 2.2, the Panel considered that the post amounted to a depiction of a young person which is sexualised and is therefore not appropriate.

The Panel considered that the image did not treat sexuality with sensitivity to the relevant audience.

Section 2.4 Conclusion

The Panel found that the advertisement did not treat sex, sexuality and nudity with sensitivity to the relevant audience and did breach Section 2.4 of the Code.

Conclusion

Finding that the advertisement did breach Section 2.2 and 2.4 of the Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Regarding the compliant 0139-22, we have contacted the influencer and asked her to take down such post. We have also deactivated the code quoted in such post.

We would like to draw your attention to the fact that SHEIN neither sponsored the post nor the product the influencer used in the post, SHEIN do not have ANY control at all. However, SHEIN cares, and is committed to protecting minors from potential exploitation as always.