



Ad Standards Community Panel
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Case Report

1. Case Number :	0142-22
2. Advertiser :	Paradise Resort
3. Product :	Tourist Attractions
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\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram post was share to the @sophiecachia_ page on 25 June 2022 and features four images with the caption "5 years later & she's back! [sun emoji] Mummy and minis winter getaway to kids heaven @paradiseresortgc - thanks for inviting us back! X #invited

THE COMPLAINT

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

Sophie Cachia did not clearly identify that this was a paid advertisement. It was deceptive.

I was unsure if the post was actually an ad. The tag invited was used but that is misleading as it doesn't indicate if the accommodation was provided at a discount or for free or if payment was received in exchange for the post on Instagram.

THE ADVERTISER'S RESPONSE

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



Here are some of the links to the posts made by Sophie Cachia referencing her collaboration with Paradise Resort & clearly stating she was invited to the resort to discuss her experience with our Stay & Play package using the hashtags #collab #invited

*https://www.instagram.com/reel/CfIEF5zpD9U/?utm_source=ig_web_copy_link
https://www.instagram.com/p/CfQiZj_pskX/?utm_source=ig_web_copy_link
https://www.instagram.com/p/CfN4FQWJ8F6/?utm_source=ig_web_copy_link*

I also wanted to make clear that Sophie has stayed at the resort on multiple occasions in the past as a paying guest and was more recently invited back to collaborate and share her honest opinion of our renovations and our current package. Everything included in Sophies posts were a true representation of the resort and I cannot identify anything that was misleading or falsely advertised.

We as a resort pride ourselves on being as transparent and open in our advertising as we possibly can so if we have done anything that goes against advertising standards I apologise in advance and will do whatever is required to have it rectified.

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 did not disclose that it was sponsored.

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 photos of the resort, the tagging of the resort, and the reference to it as ‘kids heaven’ 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 advertiser had advised they had invited Ms Cachia to stay and give an honest review of her experience.

The Panel noted that in the case of gifts or invitations to influencers the context in which this occurs 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, and sometimes provided with free product. 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 relationships with brands.

The Panel noted that the advertiser chose to invite Ms. Cachia, knowing that she has a large social media presence and is likely to post about the experience. The Panel considered that while there was no direct request or stipulation for Ms. Cachia to post about the gift or to say anything in particular if she did, it is reasonable to assume that the motivation for an advertiser to provide anything for free to an influencer is that they will post about it or otherwise draw the attention of their followers to the brand as Ms. Cachia did in this case. The Panel noted that after the advertiser was notified of the complaint the post had been updated to include #collab and that this was further indication that the advertiser had a degree of control over the post.

For these reasons, the Panel considered that the Instagram stories 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 the post had been updated to include ‘#collab’, however the role of the Panel is to consider the post at the time a complaint was received. The Panel noted that the original advertisement had included pictures of the resort, the resort was tagged and the hashtag ‘#invited’ used.

A minority of the Panel considered that the most likely interpretation of the hashtag ‘#invited’ would be that she had been asked to attend by the resort at no cost, or a discounted cost and that this was sufficient to indicate to the audience that the post was advertising material.

The majority of the Panel considered that while it may be clear to some people viewing the material that this was an advertisement, the hashtag was unclear and could be interpreted as an organic product promotion. The Panel considered that there was nothing in the wording or pictures of the material which identified the nature of the relationship between the influencer and brand in a manner which was clear, obvious and upfront as detailed in the Practice Note.

The Panel considered that the less-clear label ‘#invited’ on the original advertisement meant that the advertisement was not clearly distinguishable to the audience.

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 breached 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, however the Panel notes the original response which confirmed that the advertisement had been modified to include #collab.