



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0143-21</b>
<b>2. Advertiser :</b>	<b>ORTC Clothing</b>
<b>3. Product :</b>	<b>Clothing</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Instagram</b>
<b>5. Date of Determination</b>	<b>16-Jun-2021</b>
<b>6. DETERMINATION :</b>	<b>Upheld – Modified or Discontinued</b>

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement features a post with three images posted by @myfriendelias. The caption for the images reads 'Fall breeze. Autumn leaves. Neutral tines and classic styles AW21 by @ortcclothingco, shot by @thesnapsmith.

The first photo features Elias Black standing in an ORTC jumper, the second photo features Elias Black standing in an ORTC hoodie and shorts in front of a horse and the third photo features Elias Black standing in front of a car.

### THE COMPLAINT

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

*This post goes against advertising standards. It does not specify anywhere in the post that it is an advertisement, paid partnership or sponsorship and it violates advertisement codes in line with instagram*

### THE ADVERTISER'S RESPONSE

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

*Thank you for raising this concern with us.*



*We can provide confirmation that there is a commercial relationship agreement between ortc Clothing Co. and Elias.*

*Please see a copy of the invoice provided to us by Elias and the amount he was compensated in exchange for his contents package and post:*

*<https://www.instagram.com/p/COR1eNXHv7S/>*

## **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 specify that the post is 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.***

### **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 with the brand name visible and the brand name tagged in the comments 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 Mr Black had been paid to make the post. The Panel considered that there was an agreement in place between Mr Black and the advertiser and that the advertiser did have a reasonable degree of control over the post.



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 a paid promotion tag.

The Panel considered that there was nothing in the wording of the original post and no hashtags which clearly demonstrated the relationship between Mr Black 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.

### **THE ADVERTISER’S RESPONSE TO DETERMINATION**

At the top of the collection of images it says ‘Paid Partnership with ortc Clothing Co.’