



Ad Standards Community Panel
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Case Report

1. Case Number :	0145-22
2. Advertiser :	Global Ballooning Australia
3. Product :	Tourist Attractions
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	13-Jul-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram story was posted to the @EmmyLou account on 13 June 2022 and features a woman asking three children if they trust her. She then reveals that she's taking the kids on a hot air balloon ride. The hashtag "#invited" and the tags, "@globalballooningaustralia @seehighcountry @visitmansfieldmtbuller" appear over the video. As she speaks the words also appear on the screen, "So what the kids don't actually know is they're going on a hot air balloon ride this afternoon here in Mansfield over the mountains, and...yeah. We're very excited. I've been invited as a guest by Global Ballooning and you know I'm a massive fan of these guys because they fly all over Melbourne and I see them during the season every morning. So they invited me for an afternoon balloon ride which they offer from Mansfield for these few months. The weather is absolutely magical. So yeah when they invited me I went and bought an extra few tickets so I can take the kids along as well and give them an amazing experience. So can't wait to surprise them.

THE COMPLAINT

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

EmmyLou claimed she was "invited" when she was given two tickets in lieu of money (tickets are \$399 per person) to promote the company. She heavily promoted the trip



with several stories that have been saved to her instagram page under Hot Air Balloons and also as a reel. She did not clearly distinguish the trip as an advertisement.

THE ADVERTISER'S RESPONSE

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

The flight with Emmylou was 2 x tickets gifted & 2 x tickets paid for – this is precisely what Emmylou said in her post so there was no reason for anyone to think otherwise. There was an agreement between us that in lieu of the 2 free tickets she would share her flight with her audience. No money whatsoever was paid for her to advertise us which is why it wasn't an advertisement. Whatever she wrote about her experience was 100% her words, not ours.

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 influencer did not disclose that the Instagram story 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 series of stories discussing the business and their services and the tagging of the brand 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 provided Ms Maccarthy with two free tickets, with no instructions on needing to post about her experience.

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 used 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 provide Ms. Maccarthy with two free tickets, 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. Maccarthy to post about the gift, 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. Maccarthy did in this case.

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 Ms Maccarthy did say that she was invited as a guest to participate in an afternoon hot air balloon ride, and she further stated that she bought an extra few tickets in order to take her children along.

The Panel considered that while it was not specified how many tickets were provided free of charge and how many were purchased, the relationship was disclosed to viewers of the story. The Panel considered that the series of Instagram stories was clearly distinguishable to the audience.

2.7 conclusion

In the Panel's view the advertisement was clearly distinguishable as such and did not breach Section 2.7 of the Code.

Conclusion

Finding that the advertisement breached Section 2.7 of the Code, the Panel dismissed the complaint.