



**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>0151-20</b>
<b>2. Advertiser :</b>	<b>georgiemane</b>
<b>3. Product :</b>	<b>Beauty Salon</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Instagram</b>
<b>5. Date of Determination</b>	<b>13-May-2020</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement is a two minute video post/story by influencer Ashy Bines. The advertisement depicts Ms Bines in a home setting discussing the benefits of the hair mask product.

### THE COMPLAINT

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

*As per the Australian standards there is no #ad #sponsored on any of her posts regarding this product. It is deceitful from Ms Bines and @GeorgieMane as they are clearly trying to make this look like it's not an advertisement when it clearly is one. Ms Bines is an "influencer" and I have never seen her use these #'s on any of her content. She is a repeat offender.*

### THE ADVERTISER'S RESPONSE

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

*Our case is that we believe the content created to promote the product does not have the intention to mislead. It is clearly a sponsored product with a discount code and a swipe up included. Both these elements are a clear indication that the post is sponsored. This long-standing practice of including the discount code and swipe up is*



*employed by most Australian instagrammers promoting product on their platforms. Therefore, rather than feeling misled the general public both understands and is aware that this practice serves as advertising within this context.*

## **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 concerns that the advertisement is not clearly identified as advertising material and does not feature #spon or #ad.

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

The Panel considered whether the advertisement complied with Section 2.7 of the Code which requires that "Advertising or Marketing Communications shall be clearly distinguishable as such to the relevant audience."

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 to the relevant audience?

With respect to the first question, the Panel noted the definition of advertising in the Code means:

"any 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".

With regards to whether or not the post was promoting a product, the Panel considered that the clear placement of the product in the advertisement and the offer of a discount code did amount to material which would draw the attention of the public in a manner designed to promote the brand.

The Panel then considered whether the material was published 'on behalf of an advertiser; and whether the advertiser 'had a reasonable degree of control' over the published material.

The Panel noted the advertiser's response had acknowledged that the advertisement was sponsored content. The Panel considered that the advertiser had provided a discount code for use and that there was a reasonable assumption that they had a reasonable degree of control over the content.



The Panel determined that the Instagram story did constitute an advertisement. The Panel noted the complainant's concern that the advertisement did not include hashtags to identify it as an advertisement.

The Panel noted that there is no requirement under the Code for advertisements to include hashtags (such as #ad or #spon) to identify the content as advertising material. The Panel noted that the requirement under the Code is that advertising material should be clearly distinguishable as such to the relevant audience.

The Panel then considered whether the advertising material was clearly distinguishable as such to the relevant audience.

The Panel noted the advertiser's response that the inclusion of a discount code and a swipe up was a long-standing practice on Instagram indicating that material had been sponsored.

The Panel noted that the Ashy Bines account has over 900,000 followers on Instagram, and considered that she is a recognised influencer. The Panel considered that followers of the Ashy Bines account would recognise that as an influencer many of her posts and stories would be sponsored content.

The Panel considered that the clear focus of this Instagram story was on the product, with the influencer showing close-up shots of the product and detailing the benefits of the product. The Panel considered that the focus on the product and the inclusion of the discount Code at the end would make it clear to the relevant audience of Ashy Bines followers that this was sponsored content.

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

Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaint.