



Ad Standards Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited  
ACN 084 452 666

## Case Report

1. Case Number :	0154-21
2. Advertiser :	Bondi Boost
3. Product :	Retail
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	16-Jun-2021
6. DETERMINATION :	Upheld – Modified or Discontinued

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram post by @carlyamcdonagh features an image of a woman holding the wave wand. The caption for the image states, "After having my hair in a mum bun 90% of the time, sometimes I don't even recognise myself when my hair is styled. I've been using the @bondiboost wave wand which is perfect for creating relaxed mermaid/beachy waves. The 3 barrels on the wand make it so quick and easy, it literally takes me less than 5 mins to style my hair (as mums we don't have the luxury of time do we?)

See my stories to see how I use the wand to create effortless waves. use CARLY20 for 20% off

@Bondiboost #Boost Your Roots #bondiboostAU

### THE COMPLAINT

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

*I commented on her post and asked if was sponsored #ad and she blocked me. She Has also turned off comments on the post. Influencers need to be accountable for things they actually like vs. ads.*

*The fact she sells it after one use says it is an ad but she won't tell her 75,000 viewers that.*



## **THE ADVERTISER'S RESPONSE**

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

*Advertiser did not provide a response.*

## **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 include #ad.

The Panel viewed the advertisement and noted the advertiser had not provided a 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, the brand name tagged in the comments, the further information provided about the product and the discount code did amount to material which would draw the attention of the public in a manner designed to promote the brand.



The Panel noted the advertiser had not provided a response to the complaint and the nature of the relationship was not known. The Panel noted that the post has since been updated to include #ad and a paid partnership tag and that this is a clear indication of a commercial relationship.

The Panel noted that the precise nature of the relationship between the advertiser and Ms McDonagh was not known (before it was updated), however it appeared likely the advertiser was aware of her position as an influencer. The Panel noted that the advertiser chose to send Ms McDonagh a gift or that there was a commercial relationship in place for Ms McDonagh to post about the product. The Panel considered that the advertiser has undertaken the activity of giving a gift to an influencer or entering an arrangement with an influencer, and in choosing to do so they are exercising a degree of control, and the post did draw the attention to the product.

For these reasons, the Panel considered that the (pre-update) 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 Ms McDonagh and the brand and the circumstances surrounding the posting of the product.

The Panel noted that the original post included the discount Code CARLY20 and considered that this is an indication that there was some kind of arrangement in place between Ms McDonagh and the advertiser. However, the Panel considered that discount codes can often be automatically sent by a brand when a product is purchased, for the purchaser to share with friends, and that the use of a discount code on its own is not enough for the post to be clearly distinguishable as advertising.



The Panel considered that tagging the brand and use of a discount Code 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.

### **Conclusion**

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

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

Confirming that to my best knowledge the post will not revert back.