



**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>0158-20</b>
<b>2. Advertiser :</b>	<b>Tropeaka</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>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 contains two posts.

Image one depicts a woman on the beach in a white sports top and bottoms, holding a large drink bottle. The caption is "eek I love home 🐱💕💕 back home means back into routine 📷📷 loving my @tropeaka lean protein smoothies to help with post workout recovery! || code: SOPHIE15 for 15% off first orders ✨".

Image two depicts a woman in front of ricks wearing a tan sports top and pants and holding a large drink bottle. The caption is "Nothing better than a good workout to change your mood 🐱💕 always loving my @tropeaka products to maximise my fitness results 🐱 code: SOPHIE15 for 15% off first orders 🧘♀️ "

### THE COMPLAINT

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

*The content is in breach of the newly introduced provisions under clause 2.7 of the AANA Code of Ethics which states Advertising or Marketing Communication must be clearly distinguishable as such to the relevant audience.*

*The conduct is misleading and deceptive to followers of this advertiser/influencer on the basis that the posts do not clearly present themselves as paid sponsorships or advertisements, rather the posts attempt to portray genuine and authentic endorsement of the products by the advertiser. This is even more relevant in the context of the target audience / following of this advertiser on the basis that they are*



*a particularly young demographic who are impressionable, susceptible to influence to a higher degree and are less likely to possess the requisite analytical / critical skills to discern advertised posts where such advertisement is not made clear to them. In the interests of making advertising clearly distinguishable to this particularly young and impressionable audience and to avoid undue influence being exerted over a vulnerable target audience, there should not be any doubt as to whether these sponsored posts by advertisers / influencers (in contravention of clause 2.7 of the Code) are in fact sponsored, which is clearly the case in respect of this advertiser.*

## **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 concerns that the advertisement is not clearly distinguishable as such to the relevant young audience.

The Panel viewed the advertisement and noted that the advertiser did not provide a 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, the tagging of the brand and the provision of a discount code in the comments 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 that the advertiser had not provided a response and it was not known what kind of arrangement existed between Ms Batzloff and the brand. The Panel noted that in case 0160-20 it had considered other posts by Ms Batzloff, and in this case the advertiser had acknowledged a commercial arrangement between the influencer and the brand. The Panel noted that Ms Batzloff was a client of an influencer management agency and that it was reasonable to assume that this post had been created as part of a commercial agreement.

The Panel determined that the two Instagram posts did constitute an advertisement. The Panel then considered whether the advertising material was clearly distinguishable as such to the relevant audience.

The Panel noted that the Sophie Batzloff account has over 150,000 followers on Instagram, and considered that she is a recognised influencer. The Panel noted that her contact information on her page indicated that she was represented by an influencer management agency. The Panel considered that followers of the Sophie Batzloff account would recognise that as an influencer many of her posts and stories would be sponsored content.

The Panel considered that the photographs in the two posts were highly stylised and professional looking with a focus on the product. The Panel noted that the product name had been carefully positioned so as to be visible in the posts. The Panel noted that the brand was tagged prominently in the caption for both posts and that a discount code had been provided. The Panel considered that the focus on the product and the inclusion of the brand tag would make it clear to the relevant audience of Sophie Batzloff 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.