



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0159-21
2. Advertiser :	Jacquemus
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	23-Jun-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram Post on the @saskiawotton account features four images and is dated 02/05/2021. The post does not have a caption.

The first image is of a woman posing in a dress. The second image shows the woman posing with a man. The third image shows the sky with part of a house visible. The fourth image is the same as the first but in black and white.

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:

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 specify that it is an advertisement.

The Panel viewed the post and noted the advertiser had not provided a response.

Section 2.7: Advertising or Marketing Communication shall be 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 post did not have a caption or comments which mention the advertiser. The Panel noted that the advertiser was tagged in the first of four images, however this is not immediately visible to people viewing the advertisement. The Panel noted that a viewer needs to specifically click on the image to view the tagged brand.

The Panel considered that the dress worn by Ms Wotton in the first and fourth image was the main focus of the post, however there was no direct call to action in the post or caption for people to purchase the dress. The Panel noted that the tag in the image was to the advertiser's Instagram page, and was not specifically identifying the product or where to purchase it.

The Panel noted that it is common practice for Instagram users interested in fashion to tag the brands they are wearing in their posts, and that this in itself is not an indication that they had received the product for free, or that they were paid to post about the product.

The Panel noted that Ms Wotton did not have a manager or contact information for product partnerships available in her Instagram bio, and did not appear to regularly engage in paid promotions for brands.

The Panel considered that the post did not clearly identify the advertiser or product in a way which would draw the attention of the public in a manner calculated to promote the brand or product, and that there was no clear indication that the advertiser had any involvement with, or control over, the post.



The Panel considered that the post did not meet the definition of advertising in the Code.

2.7 conclusion

In the Panel's view the material did not meet the definition of advertising in the Code, and therefore Section 2.7 of the Code did not apply.

Conclusion

Finding that the material was not an advertisement, the Panel determined that the provisions of the Code did not apply.