



Ad Standards Community Panel  
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Ad Standards Limited  
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## Case Report

1. Case Number :	0160-20
2. Advertiser :	Runaway The Label
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	13-May-2020
6. DETERMINATION :	Dismissed

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement contains two posts.






Image one depicts a woman in a white singlet top and white skirt. The caption is “  @runawaythelabel”.

Image two depicts a woman in a floral bandeau top and white skirt with a brown handbag. The caption is “Feelin fruity    wearing @runawaythelabel”

### 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:

*Our agreement with Sophie Batzloff and her agent, ZOOZ, was a business to business transaction made in December 2019 and finalised in January 2020. She was to choose any outfit that she likes from our (then) current lookbooks and our requirements were that she would take photos in which the garments could be clearly seen. We procured her services, however we let each person we collaborate with choose their own outfit, creative direction and caption. We do this so that we don't impede on or control their personal style and artistic vision. If their personal style and artistic vision does not align with ours, we won't collaborate in the first place.*

*In the future, we will specify in our contracts the need to mention that it's a paid post. We have also notified Sophie and her agent of this complaint as we don't have control or access to her Instagram account. (The posts in question are on her Instagram account.) Her agents have said they have "strong contact with Instagram about any changes that are made and this isn't a firm guideline as yet" but they are happy to ensure the paid posts are distinguishable moving forward. Please understand we are only able to pass this information on as we have no control over Sophie Batzloff's account. This is a separate business but we do appreciate you passing on the new guidelines and as mentioned above, from now on we will include your new provisions from Section 2.7 in our contract.*

## **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 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 tagging of the brand 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 the advertiser’s response had acknowledged that the advertisement was sponsored content. The Panel noted the advertiser’s response that they had no control over the Sophie Batzloff account and the influencer had been allowed to choose their own outfit, creative direction and caption. The Panel considered however that given a contract was in place there was a reasonable assumption that they had a reasonable degree of control over the content.

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 brand was tagged prominently in the caption for both posts. 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.