



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0160-21
2. Advertiser :	Mercedes-Benz Aust/Pacific P/L
3. Product :	Vehicle
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	23-Jun-2021
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram post from the account @stevecordony features two images of the influencer with a Mercedes car. The caption for the post is: Holiday. Mode, After the craziest few months, we're heading on a little trip by road, plane and then boat for some R&R and inspiration. First stop, a road trip to Melbourne through the country, then onto Tasmania for my first time! be back soon...@mercedesbenzau #roadtrip

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

This person has multiple posts advertising brands, clearly he is being gifted, or paid. These brands then make money from his advertising and as readers we are not informed that it's a partnership or paid advertisement.

THE ADVERTISER'S RESPONSE

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



Thank you for drawing to our attention the Instagram post of Steve Cordony dated 12 May featuring Mercedes-Benz vehicle bearing registration EIH 49N (Post). An extract of the two images that make up the Post can be found at Annexure A.

MBAuP's involvement with Mr Cordony

Generally speaking, there is an informal, verbal arrangement in place between Mercedes-Benz Australia/Pacific (MBAuP) and Mr Cordony whereby MBAuP lends Mr Cordony Mercedes-Benz vehicles on an ad-hoc basis which arose after we first featured Mr Cordony in our magazine in mid-2020.

On occasion, MBAuP enters into vehicle loan agreements with Mr Cordony, which are written, bare leasing agreements that do not contain marketing or promotional obligations or consideration.

The Code

We refer to section 2.7 of the AANA Code of Ethics effective 1 February 2021 (Code) regarding Clearly Distinguishable Advertising.

MBAuP understands that pursuant to section 2.7 of the Code, the responsibility for developing content that is aligned to the Code falls to the advertiser, being the brand owner who 'has control over the relevant material and whose products or services are being promoted.'

The Post was not made at the behest or suggestion of MBAuP, and does not form part of a Mercedes-Benz Australia campaign.

The Post was taken on Mr Cordony's property at his own initiative. As such, MBAuP do not believe that it had the requisite degree of 'control over the relevant material' for the purposes of section 2.7 of the Code.

Notwithstanding the above and in the interests of upholding the spirit of the Code, without any admission of liability whatsoever, we would be very willing to reach out to Mr Cordony to suggest that he add the 'Paid Partnership' Instagram banner or certain hashtags to the Post to make our affiliation clearer, or if the Panel would prefer, to suggest that Mr Cordony permanently delete the Post.

Friends of the Brand

Although as stated above, our relationship with Mr Cordony is not governed by a formal written contract, please be assured that where MBAuP holds the requisite degree of control over content produced on our behalf for the purposes of the Code, our contracts with Friends of the Brand contain the following clause:



...any advertising which may relate to MBAuP and/or its products or services, will comply with all relevant industry advertising codes, including but not limited to the FCAI Voluntary Code for Motor Vehicle Advertising and the AANA Code of Ethics...

Other

MBAuP do not believe that the Post is in breach of the following:

- *Sections 2.1 to 2.6 (inclusive) of the Code;*
- *the AANA Code for Advertising and Marketing Communications to Children; or*
- *the AANA Food and Beverages Marketing and Communications Code.*

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 has not made it clear that this is a paid advertisement.

The Panel viewed the advertisement and noted the advertiser's 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 and the further information provided about the product did amount to material which would draw the attention of the public in a manner designed to promote the brand.



As to whether the advertiser or marketer has a reasonable degree of control, the Panel noted the advertiser's response that there is no formal agreement in place between Mr Cordony and the brand, however there is an informal verbal arrangement where Mr Cordony is occasionally lent vehicles. The Panel also noted the advertiser's response that there is no requirement for Mr Cordony to post about the product in this agreement.

The Panel noted that the Code does not define 'reasonable degree of control'. The Panel noted that there is no indication of timeframes around which the advertiser can be seen to exert control. The Panel noted that in the case of gifts to influencers the context in which the product is given cannot be ignored. The Panel noted that influencers operate as an advertising medium utilised by businesses to promote their brands and products. The Panel noted that influencers are sometimes paid, sometimes provided with free product and sometimes post about products in the context of longer term relationships without immediate incentive. The Panel noted that influencers' posts may also be created in circumstances in which there is no relationship context. The Panel considered that the Code's requirements should be interpreted with its purpose in mind, that is to ensure that consumers are informed, and that influencers should be transparent about their relationship with a brand, whatever form it takes.

The Panel noted that the advertiser chose to lend Mr Cordony vehicles as part of an ongoing relationship. The Panel noted that although there is no specific agreement in place for Mr Cordony to produce social content for the brand it is reasonable to assume that the motivation for an advertiser to provide free product to an influencer with whom they have a positive relationship is that they will post about the product or otherwise draw the attention of their followers to the brand as Mr Cordony did in this case. The Panel considered that the advertiser has undertaken the activity of entering into an arrangement with an influencer, and in choosing to lend vehicles to the influencer they are exercising a degree of control, and the post did draw the attention to the product.

The Panel considered that the post did meet the definition of advertising in the Code.

Is the material clearly distinguishable as such?

The Panel noted the current 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 considered that there was nothing in the wording of the original post and no hashtags which clearly demonstrated the relationship between Mr Cordony and the brand and the circumstances surrounding the posting of the product. The Panel considered that prominently featuring the product and tagging the brand on its own was not sufficient to satisfy the Code's requirements and that the wording of the post was not sufficient to make it clearly distinguishable as advertising.

2.7 conclusion

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

Conclusion

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

THE ADVERTISER'S RESPONSE TO DETERMINATION

We thank AdStandards for the opportunity to explain our position in this matter and we are grateful for the detailed reasoning and guidance provided by the Community Panel in their Case Report, given that section 2.7 of the Code only came into effect 5 months ago.

We have asked Mr Cordony to amend the Post by adding the following hashtag: #ad. The amended post can be accessed at [\(https://www.instagram.com/p/COwBxuahipg/\)](https://www.instagram.com/p/COwBxuahipg/).

Be assured that MBAuP will continue to work closely with anyone to whom we loan a vehicle or have attend our events to ensure that the content that they post on social media is compliant with the Code.

Once again, we thank you for bringing this matter to our attention.