



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0162-21
2. Advertiser :	Daniel Wellington
3. Product :	Retail
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 on the @brittany_hockley account features two images. The caption for the post is, "The Local. I work here in my little corner in the sun most days now because I'm just too distracted at home. I'll just end up Netflixing and eating a tub of icecream. Wearing the new @danielwellington quadro watch here, their first rectangular watch. She's a beauty and I love her. Use HOCKLEY for 15% off at Danielwellington.com #danielwellington #dwquadro #sp".

The first image is of a woman sitting at a cafe with a coffee, holding her arm in a way that the watch is visible. The second image is a close up of the watch.

THE COMPLAINT

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

Because I continuously come across posts from her on her timeline and/or stories where she doesn't disclose sponsored posts in like with the updates to the standard from 1 February 2021.

THE ADVERTISER'S RESPONSE



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

We refer to the email you sent us 28th of May, informing us that you have received a complaint about an Instagram post made by the influencer Brittany Hockley which features Daniel Wellington, posted on 19th of May 2021.

We wish to inform you that Daniel Wellington AB (“we” or “DW”) and Brittany Hockley have entered into a collaboration agreement (the “Agreement”) regarding the promotion of DW and DW’s products by Brittany Hockley (the “Influencer”). According to the Agreement, the Influencer undertakes to not make any false statements regarding DW or the products sold by DW or presenting information that otherwise is misleading towards consumers and complying with applicable regulations regarding marketing and include necessary and sufficient advertisement disclosures. Instructions regarding the advertisement disclosures, such as a personal discount code, #ad and a reference to DW’s website, have also been communicated in a brief sent by DW to the Influencer.

DW’s policy is to always instructs its collaboration partners to use the appropriate wording to make it directly clear for the viewer that the uploaded content is advertising for DW. It would never be our intention to purposely mislead or misinform existing or potential customers. However, even though we try to control our collaborations as much as possible, it must be noted that DW has no final control over the content the Influencer uploads on her social media account, despite any instruction from us. If we discover that a collaboration partner is failing to comply to applicable regulation in any way, we demand the influencer to correct the content of the post. In any case, in the relevant Instagram post it must be considered clear that an individual can easily identify the post as advertisement for our products. In the caption of the post, the Influencer references her personal discount code "HOCKLEY", which can be used to receive a 15% discount on purchases from DW’s official website. Further, the DW watch has a central position in the images, with no other distractions or brands. Consequently, the post is solely dedicated to the DW brand and products. In addition, it must be mentioned that today it is very common for companies to use social media platforms, such as Instagram, to market their products and services. This kind of marketing is particularly common through Instagram accounts with many followers, such as the Influencer's account. The frequent use of Instagram as a marketing channel has made users of the platform aware of this form of marketing and they should therefore better be able to identify what is advertising and what is personal content.

Against this background, it must be clear to the average consumer of the target group that the post is advertising and that there is a commercial relationship between the Influencer and DW.

Nevertheless, we take this very seriously and we have contacted the Influencer and asked her to edit the Instagram post to include the sufficient and necessary advertisement disclosures without undue delay.



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 standard disclaimers to identify it as advertising material.

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, 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 that there was a commercial relationship in place for Ms Hockley to post about the product. The Panel considered that the advertiser has undertaken the activity of entering an arrangement with an influencer, and in choosing to do so they are exercising a degree of control.

The Panel noted that the original post included the hashtag #sp and a discount code for the brand, and this was sufficient to demonstrate that the advertiser had reasonable degree of control over the advertisement.



For these reasons, the Panel considered that the original post did meet the definition of advertising in the Code.

Is the material clearly distinguishable as such?

The Panel noted the advertiser's response that the post would be clearly distinguishable as advertising to the target audience. The Panel noted that as of 1 February 2021 the Code and Practice Note had been updated to remove the reference to relevant audience and to provide new guidelines on what is sufficient to render advertising content distinguishable.

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 noted that the wording of the original post included #sp and that some people would recognize this as short for #sponsored, however in line with guidance in the Practice Note, the Panel considered that #sp was not sufficient to clearly distinguish this post as paid advertising content.

The Panel considered that there was nothing in the wording of the original post and no hashtags which clearly demonstrated the relationship between Ms Hockley and the brand and the circumstances surrounding the posting of the product.

The Panel noted that the original post included the discount Code HOCKLEY and considered that this is an indication to consumers that there was some kind of arrangement in place between Ms Hockley 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, use of a discount Code and the hashtag #sp was not sufficient to satisfy the Code's requirements and that 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

We refer to the final case report and the notification of complaints upheld regarding case number 016221.

Our policy is to always instruct our collaboration partners to use the appropriate wording to make it directly clear for the viewer that the uploaded content is advertising for us. It would never be our intention to purposely mislead or misinform existing or potential customers.

We have had a great collaboration with the influencer, and we wish to confirm that when we first received information about the complaint, on 7th of June 2021, we contacted the influencer who immediately modified the advertisement. Thus, the Instagram post was edited to include sufficient and necessary advertisement disclosures instead of the insufficient disclosure.