



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0163-21
2. Advertiser :	Suboo
3. Product :	Retail
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	23-Jun-2021
6. DETERMINATION :	Upheld – Not Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram Story on the @brittany_hockley account features a single screen comprising of four images.

The images show a woman posing on a boat wearing a dress and jacket. Text on the image states "@suboostyle 30% off sitewide till wed x".

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.

She added '#collab' in tiny writing on the bottom left hand corner of her post, in the same colour as her background. I could barely see it.

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 story was not distinguishable as it used white writing on a white background.

The Panel viewed the advertisement and noted the advertiser did not provide a 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 use of the brand name's handle and the promotion of the 30% off sale 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 had not provided a response, however the inclusion of the text #collab indicated that there was a relationship of some kind between Ms Hockley and the advertiser.

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 precise nature of the arrangement between the advertiser and Ms Hockley was not known, however the use of #collab indicates that there is some form of arrangement in place between Ms Hockley and the brand, and that this would constitute relevant control over the advertisement.

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 most people viewing the advertisement would not be able to see the hashtag #collab written in white on the white background. The Panel noted that this advertisement was part of a story which only appeared for a brief time. The Panel considered that in the time the advertisement was available, the hidden hashtag would not be enough to clearly distinguish the content as advertising material.

The Panel considered that the use of the brand name and promotion of the sale was not sufficient to satisfy the Code’s requirements and that the placement of the hashtag #collab 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



The advertiser has not provided a response to the Panel's determination. Ad Standards will continue to work with the relevant authorities regarding this issue of non-compliance.