



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0165-21
2. Advertiser :	Newcastle Distilling Co
3. Product :	Alcohol
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 @thetimberlina account features an image of a person holding up an alcohol bottle. Text on the image states "Thank you for my spiced rum just in time for the cooler months! @newcastledistillingco".

THE COMPLAINT

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

This was not marked as an Ad required by influencer advertising guidelines.

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 marked as an ad.

The Panel viewed the advertisement and noted the advertiser had not provided 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 and the use of the advertiser's Instagram handle did amount to material which would draw the attention of the public in a manner designed to promote the brand.

The Panel noted the advertiser had not provided a response to the complaint and the precise nature of the relationship was not known. The Panel noted that the influencer had stated to Ad Standards that they had received the product for free.

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 send the influencer a gift. The Panel considered that the advertiser has undertaken the activity of giving a gift to an influencer or entering an arrangement with an influencer, and in choosing to do so they are exercising a degree of control, and the post did draw the attention to the product.

For these reasons, 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 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 Instagram story and no hashtags which clearly demonstrated the relationship between the influencer and the brand and the circumstances surrounding the posting of the product.

The Panel considered that featuring the product and the brand’s Instagram handle was not sufficient to satisfy the Code’s requirements and that the Instagram story was not 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 breached Section 2.7 of the Code, the Panel upheld the complaint.

ABAC Code

ABAC Code The Panel noted that advertisements about alcohol products may be considered against the provisions of the AANA Advertiser Code of Ethics as well as the Alcohol Beverages Advertising Code Scheme (ABAC). The Panel noted that complaint/s in this case were referred to ABAC for assessment. The Panel noted that the ABAC Responsible Alcohol Marketing Code (ABAC Code) is an alcohol specific code of good marketing practice and has specific standards which apply to the promotion



of alcohol products. The Panel further noted that it can only consider complaints about alcohol advertising under the concept of prevailing community standards as set out by the AANA Code of Ethics. The Panel noted that the advertisement may be considered by the ABAC Chief Adjudicator or the ABAC Adjudication Panel applying the ABAC Code, as well as this determination under the Code of Ethics.

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.