



Ad Standards Community Panel  
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Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0171-22</b>
<b>2. Advertiser :</b>	<b>Osmo</b>
<b>3. Product :</b>	<b>Education</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Instagram</b>
<b>5. Date of Determination</b>	<b>10-Aug-2022</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram reel posted to the @ainsley\_osullivan\_ account on 10 July 2022 features a video with images of children in school uniforms and playing with toys. Writing over the video reads, "Some choices in life can be really challenging to make. Such as whether or not sending your April baby to school at 4 was a good idea. And then there are others that will be the easiest choice you have ever made! Play Osmo is a great way to incorporate healthy screen time whilst at the same time educating your children. They have a huge range available that cover all different topics from maths, creativity, reading, writing, coding and much much more! The #ToyrifficDeals sale is on now. With you to 30% off until July 16th!"

The caption to the reel reads, "At times the life we live and the choices we need to make for our children can feel overwhelming. I know I felt that way when trying to decide what to do regarding Audrey and starting school. I struggled with the decision for months. Chopped and changed. And I still feel like I'm not sure if I've made the right decision.

Luckily not all choices are that complicated. Some, like using @playosmo\_anz are really easy! My kids absolutely love it. It's educational and I feel better that they're using their screen time to learn.

Osmo is the easiest choice, and, with the #ToyrifficDeals sale, there has never been a better time to buy.

The #ToyrifficDeals sale promotion has up to 30% off on select Osmo products on playosmo.com between June 16th to July 15th).

#ToyrifficDeals #PlayOsomo #TheEasiestChoice"



## **THE COMPLAINT**

A complaint was received about whether the reel was clearly distinguishable as advertising.

## **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 the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement is not distinguishable.

The Panel viewed the advertisement and noted the advertiser did not provide a response.

### **Section 2.7: Advertising shall be clearly distinguishable as such**

#### **Does the material constitute an 'advertising'?**

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 noted the advertiser had not replied and the nature of the relationship or agreement between the brand and influencer was not known.

The Panel considered that the focus of the video and caption was on promoting the products sold by the brand and the purpose of the video was to draw the attention of the public to the products.



The Panel acknowledged that the advertiser may not have direct creative control over the post, however there were strong indications of a relationship between the influencer and the advertiser and that this indicated a reasonable degree of control.

The Panel determined that the Instagram post was an advertisement.

### **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 noted that the focus of both the reel and the caption was on the benefits of the product and the current sale. The Panel noted the video had writing promoting the brand superimposed over the top, and the caption to the post was also promoting the brand.

The Panel noted that the writing included the brand’s official Instagram handle, @playosmo\_anz, information on the sale, and has repeatedly named the brand and used the brand hashtag ‘#ToyrifficDeals’.

The Panel noted that it had considered a similar issue in case 0207-21, after an independent review was conducted, the Panel had found:

*“...the Panel considered that the combination of the themes, visuals and language of the ad and the use of the brand and product name multiple times, did mean that the post was clearly commercial in nature...The Panel considered that the individual use of the brand name, hashtags or product images would not be sufficient to distinguish this material as advertising, but the combination of these elements meant that the commercial nature of this post was clear, obvious and upfront and expressed in a way that is easily understood.”*

Consistent with the determination in case 0207-21, in the current case the Panel considered that the focus of the video and caption on promoting the product, combined with the promotion of the current sale and tagging of the brand all combined in a way which meant that the commercial nature of the post was clear.

The Panel considered that the relationship between the advertiser and influencer was apparent.



### **Section 2.7 Conclusion**

The Panel considered that the advertisement was clearly distinguishable as such and did not breach Section 2.7 of the Code.

### **Conclusion**

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.