



**Ad Standards** Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

**AdStandards.com.au**

Ad Standards Limited  
ACN 084 452 666

## Case Report

<b>1. Case Number :</b>	<b>0172-22</b>
<b>2. Advertiser :</b>	<b>Luniva Collection</b>
<b>3. Product :</b>	<b>Retail</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>Upheld – Modified or Discontinued</b>

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement posted to the @sophiecachia\_ account consisted of two stories.

The first featured a picture of a woman's hand and the text 'my everyday'. Objects in the picture have been labelled, including:

- Maddie's scent @louisvuitton 'Attrape-Reves'
- a ring Mads gave me when we first dated in 2019
- my mums ring
- my scent @louisvuitton 'Nouvea Monde'
- diamond bracelet I got for my 30th
- custom 'M' bracelet from @lunivacollection \*gift

The second story features a video close up of the M bracelet with the text, "we spend SO much time apart with careers (and now with Mads moving overseas) but I always have her with me. Was the most thoughtful & lovely gift to receive! [crying emoji] Thank you @lunivacollection"

### THE COMPLAINT

A complaint was received that this material was not distinguishable as advertising.

### THE ADVERTISER'S RESPONSE



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

*I gifted the bracelets to Sophie months ago at an event and she shared them on her social media without me knowing.*

*It was not paid advertising at all and she did note on the photo that they were gifted.*

*Hope that clears it up.*

## **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 does not clearly communicate that it is advertising.

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: "any 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 in the story and the use of the brand name '@lunivacollection' did amount to material which would draw the attention of the public in a manner designed to promote the brand.

With regards to whether the advertiser or marketer has a reasonable degree of control, the Panel noted that the advertiser had advised they had provided the influencer with the jewellery as a gift.



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 many influencers have agents and that businesses exist which put brands and influencers in touch with each other. The Panel noted that influencers are sometimes paid, and sometimes provided with free product. 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 relationships with brands.

The Panel noted that the advertiser chose to provide the influencer with a free bracelet, knowing that she has a large social media presence and is likely to post about the experience. The Panel considered that while there was no direct request or stipulation for the influencer to post about the gift, it is to be expected that when an advertiser provides something for free to an influencer they will post about it or otherwise draw the attention of their followers to the brand as in this case.

For these reasons, the Panel considered that the Instagram 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 noted that the post included two pictures of the product and tagged the product brand.

A minority of the Panel considered that the first image included "\*gifted" and the use of the asterisk would be understood by most consumers to mean that the product had been given as part of a commercial relationship.

The majority of the Panel considered that there is a lot of text and branding in the first image, and considered that the "\*gift" would not be immediately noticeable. The Panel noted that the first story lasted only for a few seconds and there was a lot of information on the screen. The Panel noted that the text "diamond bracelet I got for



my 30<sup>th</sup>” also suggested that this was a birthday present from a friend rather than a gift from a brand.

The Panel considered noted that the second story featured a comment that the custom bracelet was a way to have her partner with her when they spend time apart and that the gift was thoughtful and lovely. The Panel considered that the second story further created the impression that the bracelet was a gift from her partner.

The Panel considered that while some people may recognise that the gift was from the brand, the references to it being a birthday gift and the discussion around it being a way to always have her partner with her would create confusion about who the gift was from. The Panel noted the Practice Note requirement that the relationship between the brand and influencer must be clear, obvious and upfront. The Panel determined that in this instance the use of the term gift was not clear and that the Instagram stories were 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 did breach Section 2.7 of the Code, the Panel upheld the complaint.

## **THE ADVERTISER’S RESPONSE TO DETERMINATION**

Ad Standards notes that the advertisement was a one-off story which is no longer visible.