



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

1. Case Number :	0181-21
2. Advertiser :	Tuchuzy
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	23-Jun-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram Post dated 05/04/2021 is on the @saskiawotton account and features three images. The caption on the post is "Easter Monday [rabbit emoji].

The first image is of a woman posing in a dress. The second image shows a meal. The third image shows a bag, sunglasses and shoes on the beach.

THE COMPLAINT

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

This post goes against advertising standards. It does not specify anywhere in the post that it is an advertisement, paid partnership or sponsorship and it violates advertisement codes in line with instagram

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 post does not specify that it is an advertisement.

The Panel viewed the post and noted the advertiser had not provided a response.

Section 2.7: Advertising or Marketing Communication shall be 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 post did not have a caption or comments which mention the advertiser. The Panel noted that the advertiser was tagged in the first of four images, however this is not immediately visible to people viewing the post. The Panel noted that a consumer needs to specifically click on the image to view the tagged brand.

The Panel considered that the dress worn by Ms Wotton in the first image was the main focus of this image, however there was no direct call to action in the post or caption for people to purchase the dress. The Panel noted that the tag in the image was to the advertiser's Instagram page, and was not specifically identifying the product or where to purchase it.

The Panel noted that it is common practice for Instagram users interested in fashion to tag the brands they are wearing in their posts, and that this in itself is not an indication that they had received the product for free, or that they were paid to post about the product.

The Panel noted that another brand had been tagged in the fourth image, and another brand was pictured with the label clearly visible. The Panel noted that both these brands had confirmed that Ms Wotton had purchased the products and that there was no arrangement between them and Ms Wotton for her to post.

The Panel noted that Ms Wotton did not have a manager or contact information for product partnerships available in her Instagram bio, and did not appear to regularly engage in paid promotions for brands.



The Panel considered that the post did not clearly identify the advertiser or product in a way which would draw the attention of the public in a manner calculated to promote the brand or product, and that there was no clear indication that the advertiser had any involvement with, or control over, the post.

The Panel considered that the post did not meet the definition of advertising in the Code.

2.7 conclusion

In the Panel's view the material did not meet the definition of advertising in the Code, and therefore Section 2.7 of the Code did not apply.

Conclusion

Finding that the material was not an advertisement, the Panel determined that the provisions of the Code did not apply.