



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0182-22
2. Advertiser :	The Iconic
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	14-Sep-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This series of stories posted from the @jessdempsey account on 5 August features images of different blazers available to purchase, a link to buy them and the text "#affiliatelink".

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

The complainant was concerned that the story did not comply with the Distinguishable Advertising provision of the AANA Code of Ethics.

THE ADVERTISER'S RESPONSE

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

The post that is the subject of the Complaint was published on Instagram stories and depicted a series of photos of [the influencer] in different blazers and each photo was accompanied by the tag, #affiliatelink (Post). A copy of the Post is available for view via this link and static images are enclosed in Annexure 1. The Complaint claimed that the tag #affiliatelink does not clearly denote that the post is an advertisement and as such, the Post is deceptive and contravenes section 2.7 of the AANA Code of Ethics.



THE ICONIC takes its obligations under the AANA Code of Ethics seriously and we have promptly investigated the claims made in the Complaint. The Post was made using LTK, a platform which allows registered content creators to provide shoppable links on their Instagram post to any products shown in the post. I understand that a content creator using the LTK platform receives a fee or commission for any products purchased through the shoppable link. THE ICONIC has reached out to LTK in relation to the Post and LTK confirmed that when a content creator makes a post with LTK, the app or site marks the post as having affiliate links.

We confirm that THE ICONIC did not commission the Post and did not provide Ms Dempsey with any monetary payment or other form of compensation such as gifted products in return for the publication of the Post.

Accordingly, THE ICONIC denies that the Post is an advertisement for THE ICONIC's products or services. In fact, the Post also provides links to products sold by our competitors such as ASOS.com and Witchery.com.au. Given that the Post is not an advertisement commissioned by THE ICONIC, we do not have any control over the content of the Post, including requirements for the content creator to clearly delineate if they are receiving payment for the promotion of a product or service.

As such, we submit that THE ICONIC has not breached section 2.7 of the AANA Code of Ethics and that the Complaint should be dismissed.

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 material is not distinguishable as 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 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 draw attention of the public to the products through the depiction of the product, and link to purchase the products. The Panel noted that the link in particular is a call to action to viewers and goes beyond simply providing information to followers by promoting the product and where to purchase.

The Panel noted the advertiser's response that a commercial relationship did not exist between the advertiser and influencer, and that the affiliate links were provided through a third party. The Panel noted that in order for the third party to be able to provide links and commissions to influencers, the advertiser would also need to have an arrangement with the third party.

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 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 motivation for brands to sign up with third-party affiliate companies is to have their products promoted by influencers who in turn make use of the third party affiliate aggregators. The Panel considered that these arrangements meant that for the purposes of the Code the advertiser did have a reasonable degree of control over the material posted by influencers using the affiliate links.

The Panel determined that the Instagram stories were 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 considered that the focus on the product, links to the products and use of the hashtag "#affiliatelink" all combined in a way which meant that the commercial nature of the post was clear.

Section 2.7 Conclusion



The Panel considered that the advertisement was clearly distinguishable as such.

Conclusion

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