



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0212-21
2. Advertiser :	Tropeaka
3. Product :	Health Products
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	28-Jul-2021
6. DETERMINATION :	Upheld – Not Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This series of stories posted to the @sarah's_Day Instagram account features:

- a woman's hand holding a bottle ladled 'hair complex' moving it from side to side. Text on the screen says, "I feel like my hair has already come such a long way! I've been taking these of over a month now! @tropeaka"
- a close up of the bottle with the ingredient list circled, a line of raised hands emoji's and the words "Based off Chinese medicine".
- two pictures, one of a woman holding her hair out and the other pushing her hair back to show the hair line. Text on the screen states, "BEFORE I'll share after a in a few more week (I want to keep taking them for a little longer) So I've always had thin hair EXCEPT when I get pregnant so it showed me that hormones can play suuuuch a huge role in my hair health!!"

THE COMPLAINT

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

Sarahs Day did not disclose in any capacity that this post was sponsored by the brand (with #ad, #paidpartner or #sponsored) she is misleading her audience and consumers.

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 stories did not disclose that they were sponsored.

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 placement of the product, highlighting the product's ingredients and sharing before photos did amount to material which would draw the attention of the public in a manner designed to promote the brand.

The Panel noted that the advertiser had not provided a response to the case. The Panel therefore was unable to confirm whether the advertiser had arranged for the Instagram stories. However, the Panel proceeded on the presumption that the Instagram stories were authorised by the advertiser, on the basis that Sarah's Day is a well-known influencer who would be likely to post such material under an arrangement with the brand.



For these reasons, the Panel considered that the Instagram stories 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 wording of the original post included pictures of the product, tagging of the brand and highlighting the product ingredients.

The Panel considered that while it may be clear to some people viewing the material that this was an advertisement, the stories could also be interpreted as an organic product review. The Panel considered that there was nothing in the wording or pictures of the material which identified the natures of the relationship between the influencer and brand.

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

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 advertiser and other industry bodies regarding this issue of non-compliance.