



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 :	0212-22
2. Advertiser :	Brand USA
3. Product :	Travel
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 Instagram stories posted to the @sophiejanemiller account features photos and videos from a day in Santa Monica. They include:

- An image of The Hotel California and the words, "day two in santa monica!! you simply must sing the song"
- An image of a man and woman standing on a beach with a paddle board and the text, "we stand up paddle boarded around the Santa Monica Pier and it was so surreal. We love ryan. @visittheusa @seesantamonica #unitedstories #seesantamonica"
- An image of a woman sitting on the paddleboard on the beach, and the text "Santa monica, California @visittheusa @seesantamonica #unitedstories #seesantamonica. post SUP peak happiness"
- An image of the beach and the words "Santa Monica Beach the beaches are sooo big???! like so much sand wow @visittheusa @seesantamonica #unitedstories #seesantamonica"
- A video of white umbrellas and the words, "a post stand up paddle boarding beach picnic. Santa Monica Beach @visittheusa @seesantamonica #unitedstories #seesantamonica"
- A video of Santa Monica pier with the text, "the to Santa Monica Pier 10 year old me (and 23 year old me x) is hannah montana fangirling hard @visittheusa @seesantamonica #unitedstories #seesantamonica"



- A photo of a hand holding up a strip of photos in front of a Ferris wheel with the text, "So wholesome of us @jadetunchy Santa Monica Pier @visittheusa @seesantamonica #unitedstories #seesantamonica".

THE COMPLAINT

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:

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 material is not distinguishable as advertising.

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 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 tourist photos and tagging of the tourism accounts 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 did not provide a response, but other



information posted to the influencer's page about the trip was posted using the paid partnership tags. The Panel noted that the advertiser had apparently paid for her trip and it was likely the stories and posts were produced as part of this commercial arrangement. As such, 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 stories repeatedly tag the tourism accounts on every post which is promoting a particular venue or location. The Panel considered that the overall impression of the stories was promoting travel to the USA, and in particular Santa Monica. The Panel considered that the combination of elements in the advertisement, including the repeated tagging of the advertiser, did make it clear that this content was advertising.

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.