



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0222-21
2. Advertiser :	Go Bare Skin
3. Product :	Health Products
4. Type of Advertisement/Media :	Internet - Social - Other
5. Date of Determination	11-Aug-2021
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This TikTok post on the leahjay_ account features Leah using scissors, clippers and tweezers to trim facial hair.

A voice-over says, "So guys this is pretty much me every single morning and I'm so sick of doing this. And every time I book in for a laser hair removal treatment it gets cancelled.

Leah then is shown looking at a website on her laptop and reacting positively to a product listing.

The voice-over says, "So I'm going to go online and find my very own at home device which I found a good price on the Priceline website".

Leah is then shown entering the store and purchasing the product.

The voice over says, "So naturally I ran into Priceline, found the Go Bare laser hair removal device. And took it straight home with me."

She is then seen using the device.

The voice over says, "The Go Bare device has one to seven intensity level settings and is available from selected Priceline. you get six hundred flashes in one device which is 20 years of laser hair".

THE COMPLAINT

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



The influencer (Leah Jay) and brand (Go Bare Skin) have failed to engaged in disclosure when it is more than likely this is a paid deal where she is directly paid to make posts or receives free products.

THE ADVERTISER'S RESPONSE

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

Response from Leah Johnsen:

The tiktok isn't an ad. I wasn't paid to promote or share it on tiktok. I just wanted to create the content. It was for me and the brand wasn't tagged so I can't add the ad to it.

I can confirm the TIKTOK video was not included in the agreement or paid for.

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 TikTok video did not disclose that it was an advertisement.

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. 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 in a 30 second video with detailed information about the product and the brand name did amount to material which would draw the attention of the public in a manner designed to promote the brand.

The Panel noted documents provided by the advertiser showing that they had engaged influencers to promote the product and that the arrangement with Ms Johnsen related to an Instagram reel. The Panel noted the advertiser’s position that while there was a commercial relationship in place for Ms Johnsen to post about the product on Instagram, the post complained of was outside that agreement and was placed on TikTok on Ms Johnsen’s own initiative. The Panel considered that the motivation for Ms Johnsen to post, although not explicitly under contract, was closely related to the commercial relationship between Ms Johnsen and the brand, and was not organic content created without incentive.

The Panel considered that the advertiser has undertaken the activity of entering into an arrangement with an influencer, and in so doing it is exercising a degree of control.

For these reasons, the Panel considered that the Instagram post did meet the definition of advertising in the Code.

Is the advertisement 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 while it may be clear to some people viewing the material that this was an advertisement, the post could also be interpreted as an organic product promotion. The Panel considered that there was nothing in the wording of the caption to the video and no hashtags which clearly demonstrated the relationship between Ms Johnsen and the brand and the circumstances surrounding the posting of the product.



The Panel considered that referring to the brand in the video was not sufficient to satisfy the Code's requirements and that the Instagram post was 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 provided the following response to the Panel's determination:

The advertiser Leah Johnsen has advised that she has added #ad to the comments of the video and pin to top, as she cannot edit the caption and would prefer not to delete the video.

Ad Standards acknowledges that deleting a video on TikTok results in loss of engagement and notes that the caption is unable to be edited. Ad Standards considers pinning a comment to the top of the comments section to be an appropriate method of disclosure on this occasion however considers that disclosure when posting is required.