



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

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Ad Standards Limited
ACN 084 452 666

Case Report

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| 1. Case Number : | 0232-21 |
| 2. Advertiser : | HommeY |
| 3. Product : | House Goods Services |
| 4. Type of Advertisement/Media : | Internet - Social - Instagram |
| 5. Date of Determination | 11-Aug-2021 |
| 6. DETERMINATION : | Upheld – Modified or Discontinued |

ISSUES RAISED

AANA Code of Ethics\2.5 Language
AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram Post dated 22/07/2021 is on the @sophiapafitis account and features a video. The caption on the post is "If you HAVE to be home this much, do it with @hommeY [cloud emoji] #lockdown #gethommeY #hommeY.

The video shows a woman receiving a delivery, opening the box and using the cushion product in various locations in the home.

THE COMPLAINT

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

Lack of ad disclosure - there is no declaration that it's an ad, no use of #ad, and no use of paid partnership tool

THE ADVERTISER'S RESPONSE



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

We refer to your letter of 3 August 2021 and subsequent email correspondence regarding a complaint lodged on 22 July 2021 flagging an Instagram post on the account of Sophia Pafitis for lack of ad disclosure and failure to use the paid partnership tool.

We respond to each concern as follows.

Ad Disclosure

In the Code of Ethics dated February 2021 (Code), advertising is defined as “...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...”*

Hommey did not exert any reasonable degree of control in the post’s inception and creation. I was not involved in any material aspect of the creation, design or editing of the post in question.

In operating our business we adhere to best practice and will continue to do so.

Paid Partnership

As director of Hommey Pty Ltd (Hommey), I confirm that there is no commercial arrangement between Hommey and Ms Pafitis. Ms Pafitis did not receive payment or free product in exchange for her post.

If required, both Sophia and I would be happy to provide statutory declarations to this effect.

The Practice Note for the Code states, emphasis added:

“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.”

As noted Ms Pafitis did not accept payment of money or free products or services from the brand in exchange for her the reel that she created and has previously advised in correspondence with your office that Ms Pafitis loves the Hommey product, noting



that it is a huge part of her life. This was an organic, customer generated post, sharing her experience with the brand.

Without admitting any fault, since your office contacted myself & Ms Pafitis, Ms Pafitis has attached '#notsponsored' in the comments section of her reel post for additional transparency and for the avoidance of all doubt. As I am sure you are aware, you cannot edit reels and captions once posted.

I trust this is sufficient to illustrate the reasons why we did not declare the post to be sponsored or used the paid partnership tool and resolves the complaint you have received.

If you have any further queries, please do not hesitate to reach out to either myself or Ms Pafitis.

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 did not disclose that it was an advertisement.

The Panel viewed the advertisement and noted the advertiser's response.

Section 2.5: Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

The Panel noted that the advertisement uses the song "Lockdown" by Anderson .Paak and that the selected section of the song features the word "nigger". The Panel considered that the word is not used in a manner that is aggressive or demeaning. The Panel considered that the word is not prominent in the advertisement, and is relevant to the song used as the backing track. The Panel noted that the context of the advertisement is that if a viewer has to be at home during lockdown than being at home with the advertised product is preferable. The Panel considered that the audience for this advertisement would be predominately adult.

The Panel considered that the use of the word in a song titled "Lockdown" in the context of advertising a business selling cushions and cushion covers is not inappropriate for the relevant adult audience of the Instagram post.

Section 2.5 conclusion

The Panel determined that the advertisement did not breach Section 2.5 of the Code.



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 45 second video with the brand name tagged in the caption 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 the advertiser’s response that he had not been involved in the creation of the post. However the Panel noted Ms Pafitis had provided a response as the influencer when advised of the complaint, stating that Hommey was her partner’s brand. The Panel considered that the Instagram post was authorised by the advertiser, on the basis that Sophia Pafitis is the partner of the owner of Hommey and would therefore be likely to have disclosed the creation of the post to the owner of the brand.

For these reasons, the Panel considered that the Instagram post 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 Instagram post is a 45 second video showing Ms Pafitis appearing to receive a package containing the product, unboxing the product and her using the product in various locations in the home.

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 or pictures of the material which identified the nature of the relationship between the influencer and brand.

The Panel considered that tagging the brand in the caption 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:

We have communicated with Ms Sophia Pafitis and confirm the content in question has been updated amended with the hashtags #notsponsored and #brandcontent.