



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0251-22
2. Advertiser :	The Iconic
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	9-Nov-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This advertisement consists of three stories posted to the @tigga_natoli account.

- Story one depicts an image of a screenshot from a website with a link stating "Buy here!".
- Story two depicts the influencer wearing the dress with text on screen stating "This dress is such a good festive season linen number! It comes in a few different colours too!" and a link stating "Shop here!".
- Image three depicts a photograph of the influencer wearing an orange dress. Text on screen states "While I'm loving on AERE this dress is one of theirs too! I wear it to death and would be a goodie for preggo belly's! Also comes in other colours! I swear half the stuff I buy is AERE!" and a link stating "Link here!"

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:

We refer to the letter received on 31 October 2022 from Ad Standards in relation to case reference number 0251-22. The letter set out the complaint made to Ad



Standards against THE ICONIC in relation to an Instagram post by [the influencer] (Complaint).

The Complaint claimed that a story posted by [the influencer] that provides links to THE ICONIC's website (Post) was affiliate marketing but was not marked as such. As a result, the Complaint alleged that the Post was deceptive in that it was not distinguishable as advertising and contravened section 2.7 of the AANA Code of Ethics. Images of the Post are enclosed to this letter at Annexure 1.

THE ICONIC takes its obligations under the AANA Code of Ethics seriously and we 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. A content creator using the LTK platform receives a fee or commission for any products purchased through the shoppable link.

We confirm that THE ICONIC did not provide [the influencer] 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. 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.

We note that the Complaint states that a response should address all parts of Section 2 of the AANA Code of Ethics. Notwithstanding that THE ICONIC did not commission the Post, we consider that the Post does not contravene sections 2.1 to 2.6 of the AANA Code of Ethics. Given that the Post did not originate from THE ICONIC, we submit that THE ICONIC has not breached 2.7 of the AANA Code of Ethics. On this basis, we submit 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 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 requested 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 company. The Panel noted that in order for the third-party affiliate company to be able to provide links and commissions to influencers, the advertiser would have needed to undertake an agreement with the affiliate company.

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. As such, the Panel considered 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 noted that all three stories included a reference to the product and a link to where the product could be purchased. The Panel noted that the link was larger than the other text in the story. The Panel considered that the use of a large link was a clear indication that the material was advertising.

The Panel noted that the first story included a photo of the product on the advertiser's website, with information on price and promotions. The Panel noted that this story also had a large link to purchase the product. Overall, the Panel considered the combination of the stylised image and the large link to purchase the product did make the material sufficiently distinguishable as 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.