Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	**0261-21**
2. Advertiser :	**Eco Tan**
3. Product :	**Health Products**
4. Type of Advertisement/Media :	**Internet - Social - Instagram**
5. Date of Determination	**22-Sep-2021**
6. DETERMINATION :	**Upheld – Not Modified or Discontinued**

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram story posted by the @georgiestevenson account features an image of two tanning products on a bathroom sink and the captions, "last of the baby shower prep", "Two layers of my fave cacao tanning mousse & face tan water", "@ecotan" and "DC: georgieloves for 20% off".

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

It's illegal to not to disclose advertisements on social media

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.

Ad Standards Community Panel

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 and the inclusion of a discount code specific to the influencer 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 had not provided a response. 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 a discount code specific to the influencer was included and that Georgie Stevenson is a well-known influencer who would be unlikely to post such material without 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 story was captioned with the brand tag and included a discount code (georgieloves).

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 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, including a discount code 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.