

Case Report

1. Case Number :	0284-22
2. Advertiser :	Lounge Underwear
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	7-Dec-2022
6. DETERMINATION :	Upheld – Not modified or discontinued

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram post from the account @tammyhembrow on 3 October 2022 features two images of three women in underwear, two of whom are holding babies. The caption reads "
"Sisters [fingers crossed emoji] [heart emoji] my soulmates & best friends. All in @loungeunderwear nurture collection. This is their first nursing bra & it is sooo comfy & buttery smooth.

Having my big sisters by my side always has made my life what it is. To have someone you can trust no matter what. They have wiped my tears many times and been there cheering at every success. And now being able to raise our babies beside one another means the world. An unbreakable bond".

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 Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the Instagram post does not clearly communicate that it is advertising.

The Panel viewed the advertisement and noted the advertiser did not respond.

Section 2.7: Advertising or Marketing Communication shall be clearly distinguishable as such.

Is the material advertising?

Does the material constitute an 'advertising or marketing communication'?

The Panel noted the definition of advertising in the Code: "any 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 clear placement of the product in the advertisement and the use of the brand name '@loungeunderwear' 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 to the case. The Panel therefore was unable to confirm whether the advertiser had arranged for the Instagram post. However, the Panel proceeded on the presumption that the Instagram post was authorised by the advertiser, on the basis that the influencer is well-known and would be likely to post such material under an arrangement with the brand.

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 post included two pictures of the product and tagged the product brand.

The Panel considered that while it may be clear to some people viewing the material that this was an advertisement, it could also be interpreted as an organic post detailing where the women purchased their underwear. The Panel considered that there was nothing in the wording or pictures of the material which clearly identified the nature of the relationship between the influencer and brand.

The Panel considered that in this case tagging the brand 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 did breach 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 relevant authorities regarding this issue of non-compliance.