



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

**AdStandards.com.au**

Ad Standards Limited  
ACN 084 452 666

## Case Report

<b>1. Case Number :</b>	<b>0315-21</b>
<b>2. Advertiser :</b>	<b>Fluidform</b>
<b>3. Product :</b>	<b>Other</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Instagram</b>
<b>5. Date of Determination</b>	<b>10-Nov-2021</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram Story on the @marthaa\_k account features a woman speaking to camera about her body and recent workouts and referring to the brand (verbally and in text) and a discount code.

### THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*Not forthcoming with audience that she is paid to promote fluidform pilates*

### THE ADVERTISER'S RESPONSE

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

*Just to clarify – we have an arrangement with Martha, which includes the following deliverables:*

*2 x grid posts*

*1 x reel*

*3 x stories*

*All deliverables posted to date have been clearly distinguishable as advertising material. However, anything outside of these deliverables have been posted*



*organically. Any organic posts that sit outside of this agreement have not been advertising material.*

## **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 there is no indication of the commercial relationship between the advertiser and the influencer.

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

### **Section 2.7: Advertising shall be 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 noted the advertiser's response that the material had been posted organically outside of the agreement between the influencer and the brand.

The Panel considered that the focus of the videos was the product, and the purpose of the video was to draw the attention of the public to the product.

The Panel acknowledged that the advertiser may not have direct creative control over the post, however there was an existing relationship between the influencer and the advertiser and that this indicated a reasonable degree of control.

The Panel determined that the Instagram story was 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 the Instagram story appeared to be cut off, however the focus of what was there was clearly on the product. The Panel noted the videos include the influencer saying that she wants to reward herself for finishing the challenge, details the product and recommends that people try it. The videos also had writing promoting the brand superimposed over the top of the image.

The Panel noted that the writing included the brand’s Instagram handle, @fluidformpilates and that this tag appears as soon as the influencer mentions the brand and remains on the screen for the remainder of the video. Towards the end of the video the writing also includes a direct link to the advertiser’s website and a personalised discount code.

The Panel noted that it had considered a similar issue in case 0207-21, after an independent review was conducted, the Panel had found:

*“...the Panel considered that the combination of the themes, visuals and language of the ad and the use of the brand and product name multiple times, did mean that the post was clearly commercial in nature...The Panel considered that the individual use of the brand name, hashtags or product images would not be sufficient to distinguish this material as advertising, but the combination of these elements meant that the commercial nature of this post was clear, obvious and upfront and expressed in a way that is easily understood.”*

Consistent with the determination in case 0207-21, in the current case the Panel considered that the focus of the video and audio on presenting the product, combined with the direct link to the brand page, use of a discount code and tagging of the brand all combined in a way which meant that the commercial nature of the post was clear.

The Panel considered that the relationship between the advertiser and influencer was apparent.

### **Section 2.7 Conclusion**

The Panel considered that the advertisement was clearly distinguishable as such and did not breach Section 2.7 of the Code.

### **Conclusion**

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.