



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

1. Case Number :	0323-21
2. Advertiser :	Prada Australia
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	24-Nov-2021
6. DETERMINATION :	Upheld – Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram story posted by the @laurajadestone account features a person opening a Prada box to reveal a bag. The caption "Wow wow wow. How cute is this Mini Cleo!! @prada". She is then shown posing with the bag and the brand is tagged.

THE COMPLAINT

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

Laura Jade Stone did not show #ad for Prada handbag. This happens a lot in her stories with high end designer brands, hair cuts, other items she posts about.

THE ADVERTISER'S RESPONSE

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

Prada is aware of and takes seriously its obligations to comply with the AANA Code of Ethics, including the requirement to clearly distinguish advertising as such.



We understand that in this case, the complaint received relates to paragraph 2.7 of the Code relating to distinguishable advertising, and there is no question of possible breach of any other section of the Code.

The background to the case is that the item in question, a Prada Cleo bag, was gifted to the influencer Laura Jade Stine without any formal arrangement in place which required her to post about it, which may have led the influencer to believe she was not obliged to label her posts. The Instagram posts made by the influencer which are the subject of the complaint, which were made on 4th November 2021, were created by the influencer, and not by Prada, and they are no longer available to view. We do not have a copy of these posts, but we are able to provide the screen shots attached to this response.

However, on becoming aware of the issue, Prada discussed it with the influencer's agent and following our request, in subsequent posts relating to the Prada item in question, she has added the word "#gift" in the caption.

Furthermore to avoid similar issues in future, we will, going forward, provide clearer guidance in relation to gifts provided to influencers to the effect that, even if they are not contractually bound to post about them, if they decide to do so, they must clearly label them in accordance with the Code.

Since the posts which are the subject of the complaint are no longer available to view, we trust that the above will address the complaint.

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 sponsored.

The Panel viewed the advertisement and noted the advertiser's 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 combination of four Instagram stories 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 advised they had given the product to the Ms Stone with no formal arrangement requiring her to post about it

The Panel noted that in the case of gifts to influencers the context in which the product is given cannot be ignored. 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 noted that influencers are sometimes paid, and sometimes provided with free product. The Panel noted that influencers’ posts may also be created in circumstances in which there is no relationship context. 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 advertiser chose to send Ms Stone a gift. The Panel considered that while there was no direct request or stipulation for Ms Stone to post about the gift, it is reasonable to assume that the motivation for an advertiser to provide free product to an influencer is that they will post about the product or otherwise draw the attention of their followers to the brand as Ms Stone did in this case. The Panel considered that the advertiser has undertaken the activity of giving a gift to an influencer, and in choosing to send the gift they are exercising a degree of control, and the post did draw the attention to the product.

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 brand was tagged on each story and that in the third story a card addressed to Ms Stone was visible, however considered that there was no other reference to the context in which Ms Stone had obtained the bag.

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 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 did not respond to the upheld determination, however Ad Standard's notes that in their initial response they stated, "on becoming aware of the issue, Prada discussed it with the influencer's agent and following our request, in subsequent posts relating to the Prada item in question, she has added the word "#gift" in the caption."