



**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>0198-22</b>
<b>2. Advertiser :</b>	<b>Treasury Wines Estates</b>
<b>3. Product :</b>	<b>Alcohol</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Instagram</b>
<b>5. Date of Determination</b>	<b>14-Sep-2022</b>
<b>6. DETERMINATION :</b>	<b>Upheld - Modified or Discontinued</b>
<b>7. IR Recommendation:</b>	<b>Panel to Reconsider</b>
<b>8. Date of reviewed determination:</b>	<b>9-Nov-2022</b>
<b>9. Determination on review:</b>	<b>Upheld - Pending Response</b>

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram post shared from the @aisha\_jade account on 4 August 2022 features the caption, "Iconic red wine and beautiful friends to sip on it with, what more could a girl ask for @penfolds [wine emoji, white heart emoji]". The post features six images of the influencer posing, a close up of the tag on the glass of wine, the influencer with friends and wine, and a neon sign saying "Penfolds".

### THE COMPLAINT

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

The complainant was concerned that the story did not comply with the Distinguishable Advertising provision of the AANA Code of Ethics.

### THE ADVERTISER'S ORIGINAL RESPONSE

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



*According to the complaint, the Instagram Post raises issues under Section 2 of the AANA Code of Ethics (the 'Code').*

*As we have been asked to address all parts of Section 2 of the Code, our responses in relation to each section are set out below.*

*2.1 - Discrimination or vilification - In Penfolds opinion, the Instagram post does not contain material that discriminates against or vilifies any section of the community.*

*2.2 - Exploitative and degrading - In Penfolds opinion, the Instagram post does not contain material that employs sexual appeal which is exploitative or degrading to any individual or group.*

*2.3 – Violence - In Penfolds opinion, the Instagram post does not contain material that is violent towards any individual or group.*

*2.4 - Sex, sexuality and nudity - In Penfolds opinion, the Instagram post does not contain material that is sexual in nature.*

*2.5 - Language - In Penfolds opinion, the Instagram post does not contain inappropriate, strong or obscene language.*

*2.6 - Health and Safety - In Penfolds opinion, the Instagram post does not contain any unsafe or unhygienic behavior or other material which is contrary to prevailing community standards on health and safety.*

*2.7 – Distinguishable as advertising – In Penfolds opinion, the post should not be classified as advertising within the meaning of the Code for the reasons outlined below.*

*The AANA Code of Ethics defines an “advertising or marketing communication” as 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.*

*As flagged above, the Instagram Post was not created by Penfolds, nor was it posted on a social media account owned or controlled by Penfolds. As mentioned above, the Instagram Post was generated by a third party ([the influencer]), who independently chose to publish this content on her own personal Instagram account.*

*The Instagram Post was not sponsored, paid for, endorsed or otherwise encouraged by Penfolds. There was no agreement (written or otherwise) in place between Penfolds and [the influencer] in relation to publicising the event, whether via social media or otherwise. Penfolds had no expectation that [the influencer] would post any content relating to the event.*

*We respectfully submit that Penfolds has no “reasonable degree of control” over [the influencer]’s personal Instagram account, to which only she has access. Accordingly, the Instagram Post is not an ‘advertising or marketing communication’ as defined within the Code, and therefore does not contravene section 2.7 of the Code.*



*Further to the above, pages 13 & 14 of the AANA Code of Ethics Practice Note dated February 2021 ('AANA Practice Note') provide a detailed explanation of the requirement to clearly distinguish advertising materials.*

*In particular, page 14 of the AANA Practice Note expressly states that the Code does not apply to user generated content (UGC) on pages and sites which are not within an advertiser's reasonable control even if brands or products are featured. Examples provided in the AANA Practice Note include UGC featuring hashtags that may relate to a brand or brand campaign from platforms such as Instagram or Twitter.*

*Given the wording of the AANA Practice Note, Penfolds does not believe that the AANA Code applies to user generated content such as [the influencer]'s post, since this post was published on [the influencer]'s personal Instagram page – which is clearly not within the reasonable control of the Penfolds brand. The fact that our brand/products are featured is not relevant, this is made very clear in the Practice Note (as set out above).*

*Lastly, both TWE and Penfolds are familiar with the requirements of the Code and have internal guidelines (in the form of a Responsible Marketing Handbook which specifically refers to the Code) to assist our sales, marketing and communication teams to develop marketing campaigns that meet the TWE & Penfolds Responsible Marketing Guidelines. These teams are also trained regularly on responsible marketing, including the requirement to ensure that any advertising is clearly distinguishable as such.*

## **THE ORIGINAL 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 was 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 photos of wine, the reference to “iconic red wine” and the tagging of the brand did amount to material which would draw the attention of the public in a manner designed to promote the brand.

As to whether the advertiser or marketer has a reasonable degree of control, the Panel noted that the advertiser did not state in its response whether it had provided the influencer with an invitation to the event. The Panel considered it was likely that she had been invited to the launch event on the third of August, as the event only appeared to be open to the public to buy tickets from the fourth of August.

The Panel noted that in the case of gifts or invitations to influencers the context in which this occurs 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 apparently chose to invite the influencer, knowing that she has a large social media presence and would be likely to post about the experience. The Panel considered that while there was no direct request or stipulation for the influencer to post about the event or to say anything in particular if she did, it is reasonable to assume that the motivation for an advertiser to provide anything for free to an influencer is that they will post about it or otherwise draw the attention of their followers to the brand as the influencer did in this case.

For these reasons, the Panel considered that the Instagram post 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 members of the public could buy tickets to this event and there was nothing in the influencer's post which suggested that she had not bought a ticket to attend the event. The Panel considered that the post could 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 in a manner which was clear, obvious and upfront as detailed in the Practice Note.

The Panel considered that the advertisement was not clearly distinguishable to the audience.

## **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**

We can confirm that the relevant advertisement (influencer post) has now been removed from the social media account of [the influencer]. We trust that this will be included in the Community Panel's case report before it is published.

We would like to exercise the option to request an independent review of the Community Panel's determination, and look forward to receiving further correspondence from you on this process.

## **REVIEW REQUEST**

### **Substantial flaw in determination – reasonable degree of control**

*In our view, there was a substantial flaw in the Community Panel's determination in case ref 0198-22. In particular, we do not agree with the Panel's finding that the material the subject of case ref 0198-22 (**User Post**) falls within the definition of 'advertising or marketing communication' under the AANA Code of Ethics ('**AANA Code**').*

*The AANA Code defines an 'advertising or marketing communication' as including "any material published... using any medium or any activity which is **undertaken by or on behalf of an advertiser or marketer**, over which (1) the advertiser or marketer has a **reasonable degree of control** and (2) that draws the attention of the public in a manner calculated to promote... a product".*



*The User Post was the subject of one of four complaints made to the Ad Standards Community Panel regarding an event held at Carriageworks on 3 August (Event). All four complaints were made on very similar grounds. Three complaints were dismissed without reasons being provided, but presumably because they were not considered to be an advertising or marketing communication.*

*However the complaint regarding the User Post was upheld using the following rationale:*

- 1. Penfolds likely provided the individual with a free ticket to the Event.*
- 2. Penfolds likely expected the individual to post about the Event on their social media accounts.*
- 3. Penfolds invited the individual because she was an 'influencer' with a large social media presence.*
- 4. Therefore, Penfolds had, through issuing a free ticket to the individual, engaged the individual to market Penfolds products as an 'influencer', and Penfolds could exercise a reasonable degree of control over the activities of the individual at and subsequent to the event to ensure that marketing activity occurred.*

*There are a number of issues with this analysis. First, the Event was a private media preview to which the individual received an invitation. It was not a ticketed public event, so the individual did not receive 'free tickets' as suggested in the Panel's Case Report.*

*Second, there was no existing relationship between the guest and Penfolds, no agreement or understanding between Penfolds and the individual that attendance was conditional on her posting images and favourable commentary about the Event. She was simply invited by Penfolds as one of a number of guests including luxury journalists, celebrities and trade representatives. Penfolds could not and did not exercise any control over the actions of the individual with respect to any form of advertising or marketing communication at or subsequent to the Event. The User Post was published by the guest on her own personal social media account to which only she has access.*

*Because of this lack of control, the User Post therefore falls outside the definition of an 'advertising or marketing communication' under the AANA Code of Ethics and should not be regarded as advertising. Further, according the AANA Code Practice Note on Clearly Distinguishable Advertising<sup>1</sup>, the AANA Code does **not** apply to user generated content (UGC) on pages and sites which are not within an advertiser's reasonable control even if the advertiser's brands or products are featured. The User Post does not fall within the ambit of the AANA Code.*

---

<sup>1</sup> See Page 14



*We note that in recent cases, the Ad Standards Community Panel have stated that it is not necessary for a brand to have creative control over material created by an influencer, or a written contract or brief in place with the influencer, for that brand to be considered to have a reasonable degree of control. According to the Panel, providing 'known' influencers with free products or services can be enough to constitute a reasonable degree of control<sup>2</sup>. Unfortunately, there does not appear to be any guidance or information about what constitutes a 'known' influencer. Beyond the paid influencers who are formally engaged to generate PR content, it is unclear what threshold is applied by the Panel to determine who is a 'known' influencer.*

*If the decision in case ref 0198-22 is upheld, it will create significant uncertainty for advertisers regarding the difference between UGC, and an advertising and marketing communication. On the basis of the analysis in case ref 0198-22, any guest at any event that holds a social media account could potentially put an advertiser in breach of the AANA Code by posting images from the event on their personal account. This would be an onerous outcome for advertisers who would be compelled to require every invited guest at every event to comply with the AANA Code, whatever their role or relationship with the advertiser. It is inconsistent with industry practice and would also be a poor outcome for the administration of the Code, the application of which would become unclear.*

*We believe that a distinction needs to be drawn between 'paid' publicity vs. 'unsolicited' publicity, where the advertiser does not have a reasonable degree of control. Many businesses host large numbers of PR events globally, with hundreds or even thousands of attendees at each event, most of which have social media followings of various sizes. We understand the need for declaring any paid publicity using the relevant handles, however this should not extend to guests who simply receive an invitation without any requirement or encouragement by a business to post about the event.*

### **Additional evidence – paid influencer posts**

*Penfolds did formally engage several social media influencers to attend the Carriageworks event and produce 'paid partnership' content for our brand. All of our paid influencers were required to comply with the Penfolds social media guidelines and ensure any content posted was clearly distinguishable as being advertising (including use of the hashtags #ad or #sponsored). We also require influencers to adhere to all industry codes (including the AANA Code of Ethics and AIMCO Australian Influencer Marketing Code of Practice) as part of their contractual agreements. These requirements are standard for both TPB and Penfolds and have been part of our influencer engagement process for many years. The codes are also included as part of our annual internal compliance training. Please find attached some relevant supporting documentation.*

---

<sup>2</sup> See Section 2.5 - AIMCO Australian Influencer Marketing Code of Practice, August 2021



## INDEPENDENT REVIEWER'S RECOMMENDATION

I recommend that the Community Panel review its determination in this matter, having regard to additional relevant evidence that was not earlier available to the Panel.

### Issue in dispute

The Community Panel considered four cases about four Instagram postings of a promotional event staged by Penfolds at Carriageworks in Sydney in early August 2022. The event publicised new Penfolds wine products.

The event was attended by a sizeable crowd of people, including three influencers who made Instagram postings that gave rise to complaints. The postings each projected a positive (though different) image of the Penfolds event and products. None of the postings declared that it was an advertisement or was sponsored by Penfolds.

The Panel examined whether each posting breached Section 2.7 of the AANA Code of Ethics, which provides:

*2.7 Advertising shall be clearly distinguishable as such.*

The Panel made a separate decision in relation to each case. It decided that one case breached the standard, while three did not. The case that was in breach was posted on 4 August (0189-22). (The cases that were found not to be in breach were 0199-22 posted on 11 August, and 0190-22 and 0199-22 both posted on 3 August).

The advertiser, Treasury Wine Estates (TWE), has requested an independent review of the decision in case 0189-22 that breached the standard.

In essence, the Panel had to decide in each case whether the posting was an 'advertisement' that was not '*clearly distinguishable as such*'. This required the Panel to consider three criteria listed in the Code:

- Whether the Instagram posting was a communication or activity '*undertaken by, or on behalf of an advertiser ... over which the advertiser ... has a reasonable degree of control*'.
- Whether the posting '*drew the attention of the public in a manner calculated to promote ... directly or indirectly a product*'.
- Whether the posting was '*clearly distinguishable*' as an advertisement.

For three of the postings the Panel gave an affirmative answer on each criterion – that is, that the postings were advertisements that were clearly distinguishable as such,





and hence there was no Code breach. (A majority decision was reached on the third question for two of the postings).

As to the 0189-22 case, the Panel gave an affirmative answer to the first two criteria, but a negative answer to the third – that is, that the posting was an advertisement, but was not clearly distinguishable as such. A breach of the Code was therefore established.

TWE has requested review of the finding on the first criterion. TWE disputes that it had reasonable control over the Instagram posting, and hence claims that the posting was not an advertisement within the meaning of the Code. TWE has not sought review of the finding on the third criterion – that the posting was not clearly distinguishable as an advertisement.

This review is not concerned with the Panel decisions on the three complaints that were dismissed – although a similar finding was reached in each case to the effect that TWE had a reasonable degree of control over the Instagram postings.

#### **Review criteria**

There are three grounds on which independent review can be requested of a Panel finding:

- There is *'new or additional relevant evidence'* that was not considered by the Community Panel and that could have a significant bearing on its determination.
- There was *'a substantial flaw'* in the Panel's *process* of determination.
- There was *'a substantial flaw'* in the Panel's *determination*. A substantial flaw exists if the Panel's determination was *'clearly in error'* having regard to the Code of Ethics, or the Panel's determination was *'clearly made against the weight of the evidence'*.

TWE has requested review on the first and the third grounds.

#### **The Community Panel's reasoning**

The Panel's reasoning on the issue of *'reasonable degree of control'* was similar to that adopted by the Panel in other decisions in which influencers have not declared that a product they were posting about was a gift from an advertiser (eg, Case 0323-21).

In the present case the Panel reasoned that in applying the AANA Code in relation to gifts or free invitations to influencers, account should be taken of the business context for influencer postings. Influencers operate as an advertising medium to promote products, for which they may be paid or provided with free products or invitations. An influencer arrangement may be established by an agent or business, and there may be



no relationship context for a posting or direct request for the influencer to post about the event.

It was nevertheless reasonable, the Panel found, to assume that the advertiser's motivation in providing a free invitation to the influencer to attend this event was that she would post about it or otherwise draw the attention of her followers to the Penfolds brand. By giving a gift in those circumstances the advertiser exercises a degree of control over the influencer's posts. Similarly, influencers should be transparent about their relationship with the event and the brand, in line with the purpose of the AANA Code of ensuring that consumers are informed.

### **The advertiser's submission**

The advertiser's submission separately addressed the two grounds on which it sought review.

In submitting that there was a substantial flaw in the Panel's determination, the submission argued:

- The influencer was invited to a private media preview, along with other guests that included luxury journalists, celebrities and trade representatives.
- There was no existing relationship between the influencer and Penfolds, and no agreement or understanding that her attendance was conditional on posting images and favourable commentary about the event.
- The posting was made to the influencer's own personal social media account. Penfolds could not and did not exercise any control over the influencer's actions.
- It is impractical to suggest that Penfolds had a reasonable degree of control because the invitee was a 'known' influencer. There is no guidance or test for deciding who falls within that group. Any guest at the event who had a social media account could have posted about the event.
- It would be an onerous outcome for an advertiser if it bore responsibility for ensuring that all invitees to every event complied with the AANA Code of Ethics. This would be inconsistent with industry practice.
- For those reasons, a distinction should be drawn in applying the Code between 'paid' and 'unsolicited' publicity. TWE accepts that paid publicity should be declared.

In submitting that there was additional relevant evidence, the advertiser explained that it had formally engaged several social media influencers to attend the Carriageworks event and to produce 'paid partnership' content for the Penfolds brand. The paid influencers were required to comply with the Penfolds social media guidelines and the AANA Code of Ethics and ensure that any content posted was clearly distinguishable as advertising. The TWE submission provided copies of postings made by several of those influencers about the event that included 'sponsored' hashtags.



### **Analysis of the application for review**

In my view, the reasoning of the Panel and the submission of the advertiser are evenly balanced.

There is a strong common sense element in the Panel's reasoning. It is reasonable to assume that an advertiser has extended an invitation or a free product to an influencer in the expectation that it may benefit the advertiser to do so. The business of the influencer is to endorse or draw attention to products or brands, and may acknowledge the advertiser's gift or invitation by doing so. There is a mutual self interest between the influencer and the advertiser. In that business context it is reasonable to speak of the advertiser as having a degree of control or influence over the actions of the influencer.

On the other hand, as the advertiser has submitted in this case, a large and diverse group were invited to this promotional event. Any one of them could have made a favourable posting about the event – either for their own benefit or to curry favour with Penfolds. As the advertiser submits, it would be onerous to require it to assume that every invitee to the event may advertise it in a way that came within the AANA Code of Ethics. Such an assumption would not fit comfortably with the terms of the Code, which apply to a communication or activity that is *'undertaken by, or on behalf of an advertiser'*.

Nor would such an assumption fit comfortably with the terms of the Practice Note on 'Clearly Distinguishable Advertising'. It refers to a relationship existing between an influencer and an advertiser when an influencer *'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 advertiser has submitted that Penfolds formally established such a relationship with some influencers at this event, but not with the three influencers about which complaints were made to Ad Standards.

In those circumstances, where the points are reasonably balanced, I do not think it can be said that there is a substantial flaw in the Community Panel's reasoning. The Panel's reasoning may be contestable, but was not clearly in error or made against the weight of the evidence before the Panel.

However, in my view the advertiser's submission draws attention to two additional matters that were not mentioned by the Panel:

- The influencers were among a large and diverse group of people invited to this event. In some other cases in which the Panel has found a breach of section 2.7 of the Code, an advertiser had gifted a product directly to an individual who had then posted about the product without disclosing that it was a gift. That is arguably distinguishable from the present situation in which the influencer was one of many people invited to a promotional event, many of whom were probably not 'known' influencers.



- Penfolds had formally engaged some influencers to attend this event, and required them to comply with the AANA Code of Ethics. Arguably, a distinction can be drawn between those influencers and the ‘unpaid’ influencers about whom complaints were received in this instance.

In my view those two matters constitute additional relevant evidence, not considered by the Panel, that could affect its determination. I therefore recommend that the Panel reconsider its decision having regard to those two matters.

### **THE DETERMINATION ON REVIEW**

The Ad Standards Community Panel (Panel) noted the request for review of its decision and the findings of the Independent Reviewer.

The Panel noted that the Independent Reviewer considered that there was no substantial flaw in the Panel’s determination, however that the Panel should review the determination with regard to the additional evidence provided by the advertiser.

The Panel noted that it needed to reconsider the case under Section 2.7 of the AANA Code of Ethics (the Code) taking into account the Independent Reviewer’s recommendations and comments and the additional evidence that:

- The influencers were among a large and diverse group of people invited to this event.
- Penfolds had formally engaged some influencers to attend this event, and required them to comply with the AANA Code of Ethics.

### **Section 2.7: Advertising shall be clearly distinguishable as such.**

The Panel noted that in its previous consideration of the advertisement it had determined that the material met the definition of advertising finding that the advertiser had a reasonable degree of control over the post.

The Panel noted the advertiser’s submission that the advertiser did not have control over the post as they had invited a large number of people to the event, and could not control whether or not those with whom they had no contractual relationship chose to post, or what they chose to post.

The Panel noted the additional evidence that the advertiser had formally engaged some influencers to post about the event, and that these posts had been clearly disclosed. The Panel considered that the advertiser had taken the right steps in ensuring disclosure through such agreements, however considered that this did not affect whether the non-paid influencer post was also advertising. The Panel noted that it has consistently determined that the existence of a contract or formal engagement is not the only indicator of control or whether material is advertising, and the practice note clearly outlines the intent for the Code to also apply to material



where there is no formal agreement in place, and that provision of free product can establish a relationship between an advertiser and influencer as if payment had been made. As such, the Panel considered that while the advertiser had done the right thing in ensuring paid posts were disclosed, this did not release them from the obligation to ensure that other non-paid posts made by invited influencers also contained appropriate disclosure.

The Panel then considered the additional evidence supplied by the advertiser that the night had been a VIP only public relations event and there was a large and varied guest list. The Panel acknowledged the advertiser's comment that there is no definition of what is a 'known' influencer, and as such any person invited to an event might post and put them in breach of the Code.

The Panel considered that the advertiser had provided the examples of journalists and celebrities as being other people invited to the VIP event. The Panel considered that there are many reasons to invite people to PR events, and that in the case of celebrities and influencers this would likely be to attract the attention of their followers or fans to the brand being promoted. The Panel noted that Journalists may write about the event, and typically disclose that they attended "as a guest of" or similar. The Panel considered that PR events are by nature a form of advertising, and that the event and guest list are firmly within the advertiser's control. The Panel further noted that the PR event had included booths and signage which encouraged people to take photos and share pictures, and this was another way the brand could draw attention to their product.

The Panel noted that the advertiser had not provided any indication as to why the influencer in this case had been invited to the event, if not for the potential she had to draw the attention of her followers to the brand. The Panel noted that the influencer had nearly three hundred thousand followers and would be by any reasonable person's definition a 'known' influencer. The Panel considered that while the advertiser had no direct contractual control over whether or not the influencer had chosen to post, and what they posted, the advertiser had had control over choosing to invite the influencer to the PR event, thereby creating opportunities which encouraged posting at the event. It could have provided instructions to or made requests of all invitees.

Finding that the advertiser did have a reasonable degree of control over the material, the Panel determined that the stories did meet the definition of advertising under the Code.

Consistent with the original determination, the Panel determined that the advertisement was not clearly distinguishable as such.

### **Section 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**

On review, the Panel determined that the advertisement breached Section 2.7 of the Code and the Panel upheld the complaint.

## **ABAC**

The Panel noted that advertisements about alcohol products may be considered against the provisions of the AANA Advertiser Code of Ethics as well as the Alcohol Beverages Advertising Code Scheme (ABAC). The Panel noted that complaint/s in this case were referred to ABAC for assessment. The Panel noted that the ABAC Responsible Alcohol Marketing Code (ABAC Code) is an alcohol specific code of good marketing practice and has specific standards which apply to the promotion of alcohol products. The Panel further noted that it can only consider complaints about alcohol advertising under the concept of prevailing community standards as set out by the AANA Code of Ethics. The Panel noted that the advertisement may be considered by the ABAC Chief Adjudicator or the ABAC Adjudication Panel applying the ABAC Code, as well as this determination under the Code of Ethics.