

## Case Report

1. Case Number :	0007-24
2. Advertiser :	Lounge Underwear
3. Product :	Lingerie
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Decision:	7-Feb-2024
6. Decision:	Dismissed

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram post on the @graciepiscopo page from 28 November 2023 features an image of the influencer posing in lingerie with the caption, "don't forget to shop @loungeunderwear Black Friday sale".



### THE COMPLAINT

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

*Influencer Gracie Piscopo appears to be continually posting sponsored or gifted content without declaring it. She has a number of post where she has tagged a brand without indicating it's an ad.*

## 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 DECISION

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 the material is not distinguishable as 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?

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 promotion of the sale 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.

The Panel noted that the advertiser had not provided a response and therefore it was not clear whether the advertiser had arranged for the Instagram post. The Panel noted however that the post was published by a very well-known influencer and so it was likely that she did have some form of commercial arrangement with the brand. On this basis the Panel considered that the advertiser had a reasonable degree of control over the post, and therefore it was advertising, as defined under 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 product is prominently featured in the image, and that the brand was tagged in the caption.

The Panel considered that the reference to a Black Friday sale in the caption was also a strong indicator of the post being an advertisement, and considered that most people viewing the post would recognise that it was promoting a sale for that specific brand.

The Panel considered that the combination of elements, including the brand tag, reference to the Black Friday sale, and focus on the product, meant that the material was clearly distinguishable as advertising.

## **Section 2.7 Conclusion**

The Panel considered that the advertisement was clearly distinguishable as such.

## **Conclusion**

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