

Case Report

1. Case Number :	0018-24
2. Advertiser :	Pretty Little Thing
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Decision:	7-Feb-2024
6. Decision:	Upheld – Not Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram post from the @graciepiscopo page on 1 December 2023 features two images of the influencer posing in a dress. The caption reads, "golden hour [sun emoji] @prettylittlething".



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 advertisement is not distinguishable as such.

The Panel viewed the advertisement and noted the advertiser did not provide a response.

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: "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 promotion of the product in the advertisement and the use of the brand name '@prettylittlething' 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 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 about a clothing label. 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 was not sufficient to satisfy the Code’s requirements and that the Instagram post was 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 DECISION

The advertiser has not provided a response to the Panel's decision. Ad Standards will continue to work with the relevant authorities regarding this issue of non-compliance.