

Case Report

1. Case Number :	0163-24
2. Advertiser :	O Bar & Dining Pty Ltd
3. Product :	Food/Beverages
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Decision:	19-Jun-2024
6. Decision:	Upheld – Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram post on the @2hungryguys page from May 14 2024 features a video of people eating a five course meal at O Bar and Dining, with a voice-over explaining the menu and experience.

The caption for the post included:

"[star eyes emoji] REVOLVING SYDNEY RESTAURANT

{star eyes emoji} you need to visit. For \$290 per person, you'll get 5 course and matching wine! Highly recommended for your next special occasion.

This is O Bar & Dining @obardining

Full Menu:

ONE

YELLOWFIN TUNA CARPACCIO & FRASER ISLAND CRAB

Koshihikari rice, golden sesame, ginger, charred mandarin ponzu

TWO

WAKAME CRUSTED AQUANA MURRAY COD

White miso braised daikon, wild rice tobiko, shaved bonito dashi

THREE

HOT SMOKED & CRISP SKIN DUCK BREAST

Golden barley, fennel & black pepper, preserved baby apples

FOUR

SLOW COOKED BLACK OPAL BEEF MS 6+

Salt baked celeriac & roasted mushrooms, sweet glazed cabbage, shaved chestnut

FIVE

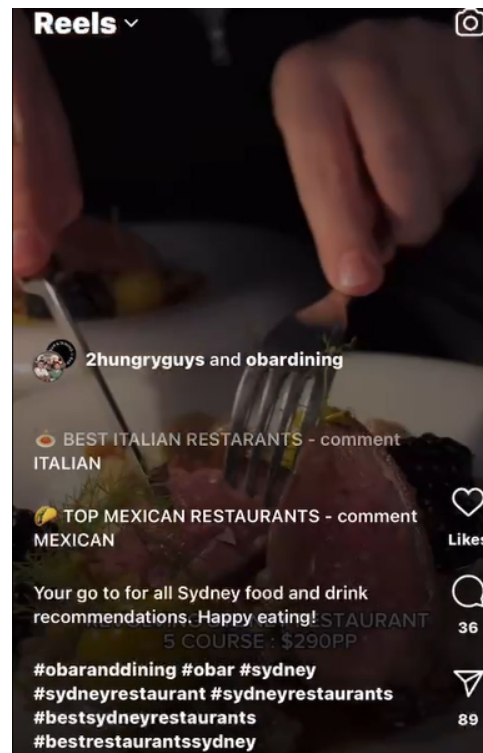
AUTUMN FRUITS 'NITRO' PAVLOVA

Spiced toffee apples, pear & juniper sorbet, cinnamon sugar meringue

...

Your go to for all Sydney food and drink recommendations. Happy eating!

#obaranddining #obar #sydney #sydneyrestaurant #sydneyrestaurants
#bestsydneyrestaurants #bestrestaurantssydney"



THE COMPLAINT

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

They don't disclose any paid partnership or sponsored content, as a viewer I feel it's clear whether they are promoting a restaurant because they got paid to say so or they really like it.

THE ADVERTISER'S RESPONSE

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

O Bar and Dining invited social media content creators "@2hungryguys" to experience a meal at our venue in exchange for a mention on their social pages. We like the content they have posted on behalf of other hospitality venues in Sydney and hoped to achieve something similar. After their visit we were given no opportunity to approve the content nor did we have any control over what was actually posted on their social

pages. We have since learnt that their post mentioning O Bar and Dining should have disclosed that the meal was free of charge and a simple mention like #gifted or #ad would have clarified the arrangement between both parties. Please see attached email correspondence for the invite.

We contacted '2hungryguys' after we received the complaint email from AdStandards but they weren't aware of any AdStandards and did not response back to us in relations to their social post.

In light of this, we have will ensure things are tightened up with future influencers and the agreements we enter into. All posts that are subject to a commercial arrangement, eg complimentary food and drink will be disclosed using the relevant hashtags like #gifted

THE DECISION

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 advertisement featured undisclosed advertising.

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 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 noted that the advertiser had provided the meal to the influencer for free. The Panel considered that the advertiser had chosen to provide the meal to the influencer, and that it was reasonable for advertisers to expect such gifts to be posted about on social media accounts. The Panel considered that providing these types of gifts are a form of marketing for the brand. The Panel considered that the brand had control over providing the meal for free and considered that the advertiser had a reasonable degree of control over the post.

Is the material clearly distinguishable as advertising?

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 reflecting the influencer’s recommendation of the restaurant. 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

The Panel concluded that the advertisement 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

O Bar and Dining had already notified 2hungryguys for the complaint and requested them to modify the contents of their post and follow the code in Section 2.7. We are aware that they have changed the contents of the post last week already.