



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0193/18
2	Advertiser	Mercedes-Benz Aust/Pacific P/L
3	Product	Vehicle
4	Type of Advertisement / media	Internet-Social-Inst
5	Date of Determination	23/05/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

2.7 - Native Advertising Advertising not clearly distinguishable

DESCRIPTION OF THE ADVERTISEMENT

Instagram post by Pip Edwards on 30 March 2018, featured an image of her facing away from the camera standing on hay bales, with a man and child watching her. On the left of the image is a Mercedes parked and facing the camera with the driver's side door open. The post has the caption "The Old Wool Shed. Grass Roots. 100% Pure Merino Wool. Straight off the back @jackmbrennan @thewoolmarkcompany @mercedesbenzau #merrimba #warren #merinowool #farmlife".

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

Because this is a clear ad and the feed doesn't even show how many of the promotions are ads.

THE ADVERTISER'S RESPONSE





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

Re: Complaint 0193/18 – Mercedes-Benz Australia/Pacific Pty Ltd – Internet-Social-Inst

Mercedes-Benz/Pacific Pty Ltd (MBAuP) acknowledges receipt of the complaint regarding a post by social media identity Pip Edwards on 30 March 2018. Although the complaint is not very detailed, it raises a concern that contrary to section 2.7 of the AANA Advertiser Code of Ethics (the Code), the post appears to be a car advertisement without any distinguishable marks that it is an advertisement (eg. #ad).

MBAuP confirms that it has a partnership agreement with Pip Edwards that requires, among other things, Pip Edwards to create social media content on behalf of MBAuP. The partnership has previously been clearly highlighted on both Pip Edwards' and MBAuP's social media channels.

The post subject to this complaint can be found at <https://instagram.com/p/Bg-6eaFF4Hp/> and is accompanied by the copy:

'The Old Wool Shed. Grass Roots. 100% Pure Merino Wool. Straight off the back @jackcmbrennan @thewoolmarkcompany @mercedesbenz #merrimba #warren #merinowool #farmlife'

A screenshot of the post is also included for reference.

MBAuP submits that although it has a partnership agreement with Pip Edwards, the image in question was taken and posted by Pip Edwards without any direction or control of MBAuP. The post was created during Pip Edwards' personal weekend trip and MBAuP did not have any influence regarding the image, content or associated copy.

The Code is very clear in the requirements that must be met in order for the Code to apply to any marketing material:

- 1. The marketer (in this case MBAuP) must have a reasonable degree of control over the material; and*
- 2. The material must draw attention of the public in a manner calculated to promote a product or service (in this case a Mercedes-Benz vehicle).*

MBAuP submits that although it may have partnership agreement with a number of social media identities, it cannot reasonably control nor influence their personal social media content. The post that is subject of this complaint was not commissioned by MBAuP, it is not an advertisement for MBAuP not Mercedes-Benz, and MBAuP did not have reasonable control over the material.

Furthermore, the material is primarily focused on the Australian wool industry, pure



merino wool and the woolmark company. In addition to the image which heavily features a woolshed and sacks of wool, it is also reiterated by the content of the post: "The Old Wool Shed. Grass Roots. 100% Pure Merino Wool. Straight off the back"

The content of the material does not mention MBAuP nor refer to Mercedes-Benz vehicles or the Mercedes-Benz brand in any way. The only reference to MBAuP is the inclusion of the @mercedesbenz handle which links back to the MBAuP Instagram page.

The image itself emphasises the woolshed and the sacks of wool with the Mercedes-Benz vehicle parked in the background and clearly not the focus of the image.

Accordingly, based on the above, MBAuP submits that the Code does not apply as MBAuP did not have a reasonable degree of control over the material and, the material does not draw the attention of the public to promote a product or service.

Should you require any further information, please do not hesitate to contact MBAuP.

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 concerns that the advertisement is not clearly identified as advertising material and is therefore misleading.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel noted that this Instagram post appeared on the account of Pip Edwards and featured an image of her facing away from the camera standing on hay bales, with a man and child watching her. On the left of the image is a Mercedes parked and facing the camera with the driver's side door open. The post has the caption "The Old Wool Shed. Grass Roots. 100% Pure Merino Wool. Straight off the back @jackmbrennan @thewoolmarkcompany @mercedesbenzau #merrimba # warren #merinowool #farmlife".

The Panel considered whether the advertisement complied with Section 2.7 of the Code which requires that "Advertising or Marketing Communications shall be clearly distinguishable as such to the relevant audience."

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 to the relevant audience?

With respect to the first question, the Panel noted the definition of advertising in the Code means:

“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 the references to two companies in the post: Woolmark and Mercedes.

The Panel noted that the Woolmark Company had confirmed there was no contractual relationship between it and Pip Edwards or her company at the time of the post. The Panel considered that this post was therefore not an advertisement for the Woolmark Company.

The Panel noted the advice provided in the Practice Note to Section 2.7: “If it is clear to the relevant audience that the content is commercial in nature (for example by the nature of the content, where the content is placed, how consumers are directed to the content, the theme, visuals and language used, or the use of brand names or logos), then no further disclosure or distinguishing element is needed.”

The Panel noted the response from Mercedes stated that they have a partnership agreement with Pip Edwards that requires, among other things, Pip Edwards to create a prescribed amount of social media content on their behalf over a set period. The Panel also noted the advertiser’s response that the vehicle in this advertisement was provided to Pip Edwards for the long weekend, and there was no formal agreement in place that Pip Edwards would post about this vehicle.

The Panel noted the advertiser’s response that this image was taken and posted by Pip Edwards without any direction or control from them, that they did not have a reasonable degree of control over the image, and that the image was not calculated to promote Mercedes.

The Panel considered that while the advertiser may not have control over what Pip Edwards posts about their product, in the Panel’s view Mercedes had an agreement in place for Pip Edwards to create social media on its behalf and this provided the company with a level of control over the posts.

The Panel noted that a Mercedes vehicle was clearly shown in the advertisement, and considered that the vehicle appeared to be deliberately placed in the shot so that the Mercedes badge was visible. The Panel considered that in conjunction with the ‘@mercedesbenzau’ tag in the caption, this post did appear to be promoting



Mercedes motor vehicles.

The Panel considered that even if the advertiser does not approve each post individually Mercedes does have the ability to request the post be taken down. In the Panel's view the advertiser had an agreement in place with Pip Edwards, and had the power to remove posts, and this does constitute a reasonable degree of control over the material in question.

The Panel therefore considered that in response to the first question, the advertiser had a reasonable degree of control over the Instagram post under complaint, and that the post did draw the attention of the public in a manner designed to promote the Mercedes vehicle. The Panel therefore determined that the advertisement does meet the criteria of advertising and marketing communications.

The Panel then considered the second question, which is whether the material is clearly distinguishable as advertising material to the relevant audience.

The Panel considered that the relevant audience for this post would be people who follow Pip Edwards on social media.

The post in question contained an image of a Mercedes motor vehicle and, among other handles, contained '@mercedesbenzau'

The Panel noted the post was one of a series of five posts made over the Easter long weekend that featured Pip Edwards and her family travelling, the first of which featured Pip Edwards standing in front of the Mercedes vehicle with the caption "From Beach to Bush.... in the Beast @mercedesbenzau #roadtriptoWarren #bushcountry #mercedesbenz #easterlongweekend".

In addition to this the Panel noted a post by Pip Edwards on the 2nd of March 2018 which featured Pip Edwards and a Mercedes with the caption "It's been a big week Thank you to @mercedesbenzau for welcoming us into their stable, as Friends of the Brand! Super excited about this friendship...."

The Panel considered that the relevant audience for this post would be familiar with the commercial relationship between Pip Edwards and Mercedes.

The Panel noted they had previously considered another Instagram advertisement under section 2.7 of the Code in case 0360/17, in which:

"The Board noted the hashtag used in the advertisement, #ecotan, and considered that the advertisement is clearly promoting a tanning product as well as directing people to the advertiser's own social media presence. Overall the Board considered that the relevant audience of followers of Kat Risteska and other users of Instagram



would be aware that this is a sponsored post for Eco Tan and is therefore clearly distinguishable as advertising material.”

Similar to its determination in case 0360/17, in the current advertisement the Panel considered that the followers of Pip Edwards would be aware this post was part of a commercial relationship between Pip Edwards and the brand, and would recognise that this post was likely an advertisement for Mercedes.

The Panel considered that this Instagram advertisement is clearly distinguishable as advertising material to the relevant social media audience and determined that the advertisement did not breach Section 2.7 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaint.

