



CLEARLY DISTINGUISHABLE ADVERTISING

INDUSTRY PRACTICE NOTE

This Industry Practice Note is designed for marketers, their agencies and the community, to help them understand what steps should be taken to ensure advertising and marketing communication is clearly distinguishable as such to the relevant audience.

The AANA Codes are platform and media neutral and apply to all advertisers and marketers who promote brands, products or services to Australian audiences. This note provides guidance to help ensure best practice in relation to distinguishing advertising and marketing communication.

Note: A new provision was inserted into the AANA Code of Ethics, effective from 1 March 2017:

2.7 Advertising or Marketing Communication must be clearly distinguishable as such to the relevant audience.

1. WHAT DOES THIS INDUSTRY PRACTICE NOTE APPLY TO?

The AANA Codes apply to advertising and marketing communication where two key criteria are met:

1. Does the marketer have a reasonable degree of control over the material?; and
2. Does the material draw the attention of the public in a manner calculated to promote a product or service?

Both factors need to be present for the material to be deemed advertising under the AANA Codes.

Contextually targeted branded content, integrated content, native advertising – that is, material which seeks to provide content generated by brands which does not look out of place in the habitat within which it is being viewed, heard or experienced – may be included within the definition of advertising and marketing communication.

Context driven advertising and marketing is permitted, but marketers should be cognizant that, in seeking to make their advertising and marketing communication more engaging, they do not camouflage the fact that it is advertising. Advertising or marketing communication should not be disguised as, for example independent market research, user-generated content, private blogs or independent reviews.

The Practice Note to the Code of Ethics should also be considered as the Ad Standards Community Panel will apply the Practice Note in making any determinations. Advertisers and marketers should ensure they comply with the provisions of the Code. This Industry Practice Note

aims to provide guidance to industry by illustrating various scenarios where further consideration of the obligation in the Code may be required. This Industry Practice Note is not binding, however clause 2.7 of the Code of Ethics is binding on all advertising.

2. WHAT IS THE RELEVANT AUDIENCE?

“Relevant audience” is informed by the content of the advertising or marketing communication as well as other material that may be provided by the advertiser, including classification material, audience measurement data and the media placement plan, to determine the audience that the advertiser intends to see the advertising or marketing communication. The Ad Standards Community Panel has regard to the audience or readership composition data for the relevant media where this is provided by the advertiser.

For example, OzTAM data can be used to inform the Community Panel that the relevant audience for commercial free to air and subscription television is grocery buyers between the ages of 20 and 35. In the case of social media, the Community Panel may have regard to the opt-in nature of the medium and the age gating which may apply to some social media sites in determining the relevant audience.

When advertisements are targeted to a specific audience, the relevant perspective is that of a reasonable member of the targeted group.

3. DOES ADVERTISING NEED TO BE LABELLED?

1 Australian Communications and Media Authority, "Contemporary Community Safeguards Inquiry", 2014.

There is no absolute requirement that advertising or marketing communication must have a label. 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.

Advertisers have flexibility as to how to ensure that material is distinguishable as advertising or marketing communication. Advertisers may use logos or brand names combined with other visual or audio cues where appropriate, such as background shading, outlines, borders, graphics, video or audio messages depending on the medium.

In assessing whether an advertisement or marketing communication is distinguishable as advertising to consumers, advertisers should consider the material as a whole, and not just focus on individual phrases, statements or visual elements. The overall appearance is relevant, particularly the similarity with non-advertising content that may appear in combination with the marketing communication. Some advertising or marketing communication may, by its very nature, be understood by viewers, and therefore be distinguishable, as an advertising or marketing communication. This may include infomercials, advertorials, sponsored segments, commercial integrations and product placements.

For example, where advertisers have made commercial arrangements for the branded products to feature as a product placement, and no other claim is made about the products, no label or disclosure may be required. Even though consumers may not realise the advertisers have made a commercial arrangement for their products to appear, the use of the branded products may be sufficient to distinguish the material as an advertisement or marketing communication. Further disclosure of product placement may not necessary because there is a prevailing community view that audiences do not need to be notified of this sort of product placement.¹

However, it is for the Ad Standards Community Panel to make a determination as to whether the advertising or marketing communication was clearly distinguishable as such to the relevant audience so advertisers are advised to exercise caution if considering not making an explicit disclosure.

4. DOES PAYMENT NEED TO BE MADE?

The definition of advertising or marketing communication in the AANA Codes does not require payment to be made for the broadcast or publication of the material. The AANA Codes apply equally where other arrangements have been made in place of direct payment (for example, where the brand owner provides free product to an independent third party in exchange for them to produce content). Where the examples refer to payment, this should not be taken as a requirement that financial payment must be made to activate the application of the AANA Codes.

5. DOES THE MEDIUM USED MAKE A DIFFERENCE?

The definition of medium in the AANA Codes means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies. This means that the requirements of the AANA Codes apply in the same way, regardless of the medium. Where an example given below uses a particular medium, this is illustrative only.

6. WHAT ISSUES SHOULD BE CONSIDERED?

The first step is to consider whether the material falls within the definition of advertising and marketing communication under the AANA Codes. Consider whether the advertiser has a reasonable degree of control over the material and whether the material is calculated to promote a product or service.

Where the material is advertising and marketing communication, the second step is to consider whether the material is clearly distinguishable as such to the relevant audience. This will involve an assessment of the nature of the content, where the content is placed, how consumers are directed to the content, the theme, visuals and language used, the use of brand names or logos as well as the relevant audience in the context of the medium used.

Below are a range of scenarios and guidance to assist in considering these issues.

SCENARIO	GUIDANCE
<p>A sport website "OnlySports" features articles about different sports and product reviews. An article on the main page is titled "The 10 best cities for active holidays". Just Boots paid the site to create this article – it says "Presented by Just Boots" and includes the JB logo.</p>	<p>In this case the article is not a form of advertising as it doesn't promote any of Just Boots' products.</p>
<p>A hotel pays the "OnlySports" site to feature an image of their hotel within the Just Boots article. The photo has the same look and feel as other photos used in the article.</p>	<p>While the overall article is not advertising, care should be taken to ensure that the photo of the hotel is distinguishable as advertising material to the relevant audience.</p>

<p>Ripperz sells running shoes and places an ad for its new 'shock absorber' range on a news site. The ad contains an image of the shoe, a headline slogan and a hyperlink to learn more about how the shoe can relieve the impact from running.</p>	<p>While the colour and font of the ad look like the format of the news that appears on the site, the slogan and hyperlink are likely to distinguish the material as advertising and convey to consumers the commercial nature of the content.</p> <p>Advertising in print or online that may resemble news should be clearly distinguishable as advertising by the relevant audience. This may be achieved by referencing the brand and/or delineating the material by way of a border, font or other device.</p>
<p>Beaut Bathrooms pay an online magazine to create an article "5 Essentials for a New Bathroom". The article shows a series of bathroom images, mostly showing Beaut Bathrooms products.</p>	<p>Where the article appears in the same layout as other articles on the magazine site, the advertiser should take care that the article is distinguishable as advertising and not appear to consumers that the article represents the independent views of the magazine writer.</p>
<p>An online technology magazine publishes a headline in its feed "Mix it Up: Technology in the kitchen". The text and image are formatted like other articles in the magazine's feed and the link takes readers to an infographic with facts about kitchen appliances and their technological features. One feature listed is the 'Insta-mash' which is able to chop and then mash vegetables with the one blade. An appliance company has paid the magazine to create and publish the article.</p>	<p>When viewed in the feed of the magazine, care should be taken that the material is distinguishable as advertising prior to clicking on the link.</p>
<p>A radio advertisement which begins with music in the style of a news bulletin. An announcer refers to a 'news update' and another announcer provides a news style report featuring a brand with a call to action.</p>	<p>Where advertising or marketing features elements associated with a news bulletin, such as 'breaking news' style music or use of interviews or news reporting language, then the relevant audience should quickly be able to recognise the message as advertising. Distinguishing advertising and marketing communication from editorial content may be achieved through repetition of the brand name, legal disclaimer associated with the relevant product or service, clearly scripted and pre-recorded content, clearly comical or fictitious reporter names, a call to action to interact in some way with the brand.</p>
<p>A television cooking show "Wonder Chefs" integrates products by the two chefs using particular food and beverage products, using particular cookware and wiping kitchen benches with particular cleaning products. The advertisers have paid for the branded products to feature in the show, however the show makes no claims about the products.</p>	<p>Even though consumers may not realise the advertisers have made a commercial arrangement for their products to appear, the use of the branded products may be sufficient to distinguish the material as an advertisement or marketing communication.</p>
<p>A cookware company makes a commercial arrangement with a television chef to discuss the patented non-stick surface and heat circulating base of the frypan being used when she appears on "Wonder Chefs". The chef recommends the frypan to viewers for these qualities.</p>	<p>The advertiser should take care that the comments are distinguishable as advertising and not appear to consumers that they represent the independent views of the chef.</p>
<p>A video game allows players to experience a virtual world. In the virtual world, players see billboards with advertising for Ripperz running shoes.</p>	<p>It likely that players will attribute the ads to Ripperz and the advertisements are distinguishable as such to the relevant audience.</p>
<p>A video game features a character in action-adventure scenarios. When in a city based adventure the character wears Ripperz running shoes.</p>	<p>The use of the branded products may be sufficient to distinguish the material as an advertisement or marketing communication. Further disclosure of product placement may not be necessary.</p>

<p>Ripperz also provides its running shoes to Cougar a well-known fitness guru with a strong social media following. The shoes are provided for free along with relevant brand handles and hashtags. Cougar often wears the shoes running and posts images every morning to his social media account.</p>	<p>Where there is no control by Ripperz over any of the images or statements Cougar may make, and there's no understanding that the shoes will feature in his social media, then any resulting communication may not be considered to be advertising or marketing communication.</p>
<p>The Kalex paint company pays the producer and network to be the supplier of paints for a home renovation show. The presenter regularly mentions Kalex, including specific types of paints which are recommended and the Kalex brand is shown. As a program sponsor Kalex may sometimes be mentioned in and out of commercial breaks.</p>	<p>Where a brand sponsorship gives the advertiser the ability to control the program content or requires presenters to recommendations, the advertiser should take care that the comments are distinguishable as advertising and not appear to consumers that they represent the independent view of the presenter. Where Kalex is mentioned in and out of commercial breaks, or is the sponsor of the program or the presenter, this may be sufficient to signal to viewers that a recommendation, or the appearance of the brand within the program, is due to a commercial arrangement.</p>
<p>A documentary about landscapes and geography has the presenters regularly travelling by car. The same car or car brand is used by all presenters and is regularly seen on screen either on the road travelling or parked. The car brand is not mentioned by the presenters. As a program sponsor the company may be mentioned in and out of commercial breaks (but not as a rule).</p>	<p>Given that the programme is not about motoring per se or the performance of the car, the viewer may conclude that the featured car is a product placement and therefore no explicit disclosure may be necessary.</p>
<p>A scripted drama set in an Australia has a particular beer integrated to the program. Each time a character is seen drinking beer, the same beer brand is seen on screen. There is no mention of the product in script and no acknowledgement during the program (including credits).</p>	<p>Given that no endorsement is made and the character is seen drinking a branded beer it is likely that the audience would conclude it is product placement and no further disclosure may be necessary.</p>
<p>On its website, a home renovation TV show features short videos to enable viewers to tackle simple renovations themselves. The same renovator features in each to show step by step instructions – in one, the renovator demonstrates a tile grout cleaner and recommends it to remove dirt and protect grout from residue, which is featured by arrangement with the advertiser. The video's look and feel closely resembles other videos in the series which generally do not feature branded products.</p>	<p>The advertiser should take care that the comments and products featured are distinguishable as advertising and not appear to consumers that use of the product is recommended due to the impartial opinion of the expert renovator.</p>
<p>An advertisement for Mego children's toys is created in the style of a TV show featuring 3 children in a studio each on a podium. The ad is shown on Juniorz, a popular children's station. The children are required to assemble a particular toy made of a number of component parts as quickly as possible. The introductory voice over welcomes viewers back and describes the challenge, saying "today it's Sally, Jack and Tom as they battle it out in the hope of being crowned Mego Champ". Pack-shots of Mego products are shown as well as toy prices. After Sally assembles the toy in the fastest time, the voiceover says "make sure you're right here on Juniorz this weekend as Sally goes head-to-head with our previous winners in the Challenge Finals".</p>	<p>Care should be taken to ensure the communication is clearly distinguishable as advertising or marketing communication to the relevant audience – in this case children aged 7-12 - which may not be apparent simply by showing the product and its price, given the strong editorial style of the format. It is likely this would require an explicit disclosure.</p>
<p>The FabFaces make-up brand creates a #brighteyes campaign to highlight their new range of eye makeup, engaging a group of well-known social media influencers to appear in videos talking about moments that make their eyes bright. These videos are then shared by the brand using the hashtag.</p>	<p>Where the content is then distributed by the brand via its own social media presence, it is likely to be clearly distinguishable to the relevant audience as a marketing communication.</p>

<p>FabFaces arranges with the influencers to post the #brighteyes content on social media and use the hashtag.</p>	<p>That content is likely to be considered a marketing communication and must be clearly distinguishable as such to the relevant audience, for example a tweet could include a tag @FabFaces or if there are a series of connected tweets in a short space of time, the final tweet could include a brand tag e.g. #FabFaces, #ad or similar wording.</p>
<p>FabFaces sends a celebrity a set of make-up brushes for free without any stipulation that she must post comments about the products on social media.</p>	<p>Where there is no control by FabFaces over any statements the celebrity may make then any resulting communication is unlikely to be considered advertising or marketing communication.</p>
<p>FabFaces sends a radio announcer a set of make-up brushes for free and arranges via a media buy for the announcer to discuss on air their application qualities. The on air communication is unscripted but features the FabFaces name and the benefits of the brushes that FabFaces has provided to the announcer.</p>	<p>This would be considered a marketing communication and care should be taken to ensure the message is clearly distinguishable as advertising or marketing communication to the relevant audience. For example, the announcer could say “and thanks to our sponsor...” or “FabFaces has given me these fabulous brushes to try...”.</p>
<p>A car manufacturer provides a free car to a television personality to drive for a month and provides a list of features for the personality to incorporate into social media posts with images of the personality using the car.</p>	<p>Where the car manufacturer has a reasonable degree of control over the statements the personality may make and the car is provided on the arrangement or understanding the personality will post commentary on social media, the content is likely to be considered a marketing communication and must be clearly distinguishable as such to the relevant audience.</p>
<p>Based on her fashion forecasting abilities, a well know fashion influencer recommends to her followers that square faced watches are now on trend. By arrangement with Omexa watches, she uses a photo of an Omexa watch as an example and tags @Omexa in her post.</p>	<p>This would be considered a marketing communication and care should be taken to ensure the message is clearly distinguishable as advertising or marketing communication to the relevant audience. Whether tagging the brand is sufficient to distinguish this post as a marketing communication will depend on the other visuals and language used. It may be that the relevant audience of the influencer know or expect that products featured in her posts appear through an arrangement with the brand.</p>
<p>Mice Media online lifestyle magazine is aimed at 18-25 years old. A Mice journalist writes an article about using public toilets and whether people will use them or not. She wants to incorporate the latest fashion in the associated images to make the article more readable and relies on free sample clothing sent to her by a range of brands.</p>	<p>Where the clothing is provided on the arrangement or understanding that they will be used within the editorial, the use of the images is likely to be considered a marketing communication. However where the journalist makes an independent decision to use whatever clothing is available at the time of writing, the material may not fall within the definition of advertising or marketing communication.</p>
<p>Mile High Airways organises a luxurious and exclusive private flight from Los Angeles to London. It invites leading thinkers to board the free flight with the opportunity to share their thoughts on developing global innovation, with the results of the brainstorming flight to be shared with international organisations. The influencers tweet about their experience with Mile High Airways generating wide media coverage.</p>	<p>Where Mile High Airways has no control over whether or not the passengers will tweet, or what they say, the resulting communication by the passengers may not fall within the definition of advertising or marketing communication. The situation would be different if there was an arrangement between the airline and the passengers that the flight was provided on the basis that the passengers would share their experience on social media.</p>
<p>Fashionista magazine is published monthly and features a range of interviews and fashion photography. It includes an article with a prominent young business woman who talks of her challenge maintaining life balance – in the photos she wears only JulesX work attire. The following article discusses the benefits of creating your own ‘work uniform’ and features images of JulesX work attire, as well as a feature box highlighting the new range of JulesX work attire and the phone number for the JulesX flagship store. The placement of JulesX is by commercial arrangement with Fashionista.</p>	<p>It is likely that by the nature of the content, the theme, visuals and language used, the use of the feature box and the use of the JulesX name that the content is distinguishable as a marketing communication to the relevant audience i.e. Fashionista’s readership.</p>

Relax Insurance sends mail and email to potential customers. The envelopes have printed on them "Important: Your Policy Documents Enclosed" and the subject heading of the email messages contains the same wording.

Consumers should be able to tell from an envelope or email message itself that it is a marketing communication. Examples of ways that envelopes or messages can masquerade as social correspondence include using hand-written text or printed styles, postage stamps or other types of presentation that consumers often associate with social or personal correspondence. Care should be taken to ensure the envelope or message is clearly distinguishable as advertising or marketing communication to the relevant audience. Commercial electronic messages should also comply with the Spam Act 2003.