

## AUSTRALIA'S NEW NATIVE AND INFLUENCER ADVERTISING CODE OF PRACTICE RULES – OVERDUE, TOOTHLESS TIGER OR BOTH?

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The Australian Association of National Advertisers (AANA) recently unveiled a new provision to be inserted into the industry's main Code of Ethics, from 1 March 2017. Aimed primarily at influencer marketing, native advertising (i.e. sponsored content) and product placement arrangements, the question has to be asked – will it have any practical impact?

### Why was the new rule considered necessary?

It's arguable that it wasn't necessary at all, as the industry has managed without one for many years, although Australia has actually lagged other markets for some time when it comes to forced identification of native advertising. The new rule seeks to ensure that any material that is paid, controlled advertising material is clearly identified as such, which was an issue in the spotlight recently when News Corp editor Melissa Hoyer published content related to Carnival Cruises, including reports on vessel visits and onboard celebrity chefs, without disclosing she was invited as a guest aboard the vessels. Before that, in 2012 celebrity chef Matt Moran (and others) were criticized for tweeting about Kangaroo Island and not disclosing that they were paid to do so by the South Australian Tourism Commission. Regulators in the UK and USA have recently taken steps to ensure the relationship between advertisers and influencers or content providers is more clearly expressed, and now Australia's own AANA is set to follow suit.

### What exactly does the rule say?

The new provision 2.7 to be inserted into the Code of Ethics reads: *"Advertising or Marketing Communication must be clearly distinguishable as such to the relevant audience."*

The AANA has issued a Best Practice Guideline in respect of the new provision, designed to assist marketers in determining what steps should be taken to ensure their advertising material is clearly identifiable as the same. The AANA advises that when assessing whether or not a particular piece of content will be caught by the provision, two criteria must be met: (i) the advertiser should have a reasonable degree of control over the content; and (ii) the content must be designed to draw attention of the public in a way that promotes a product or service. If these criteria are not met, the provision does not apply to you.

### What does this mean for you?

The main objective of the provision is to prevent advertisers from camouflaging advertising material in other forms of content, and this will particularly be felt in the online and digital space. In particular, the AANA cautions against disguising advertisements as independent market research, user-generated content, private blogs or independent reviews. The AANA also warns that payment is not a necessary pre-requisite for determining if material is caught by the provision, as there could be other forms of valuable consideration including contra deals and free samples. It is also to be noted that product placement, for instance in TV programs, is generally acceptable and there will be no need to change current practice in that instance.

Moving forward, careful consideration will be required in determining whether a piece of paid content falls within this provision and if it does, that steps are taken to ensure it is clearly distinguishable as advertising. There is no prescribed way to achieve this, but "#AD" is one option.

It should be noted, however, that the provision qualifies the “distinguishable” requirement as being distinguishable “to the relevant audience”. This could allow for a degree of flexibility depending on the audience targeted by the content itself, however, time will tell how strictly this provision is interpreted by the Advertising Standards Board (ASB) as they enforce the provision.

### **Some final thoughts from us**

On the face of it the new rule is going to change things in the space, but then on closer inspection there are numerous exceptions and limits on its effectiveness. Further, how it will actually be enforced in certain instances remains to be seen. For example, in the online space, social media posts by influencers are so instant and short-lived yet the enforcement for breaches through the ASB can take weeks. Similarly, other paid content is “one and done”, so the same enforcement that works so effectively for more traditional forms of advertising may not be as useful for those caught by the new provision..

Further, in the online context, a lot of the relevant media companies, influencers (and the social media platforms themselves) are based overseas, so it may prove difficult to impose the new provision on entities in that context. It is certainly a case of ‘watch this space’ for now.

If you would like further information on the new rule, and how it impacts on communications for you or your clients, please contact one of our experts below.

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