

Advertising Standards Authority Rules That Instagram Post Contained Inadequate Disclosure

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by Sarah Robertson and Ron Moscona

A recent ruling of the Advertising Standards Authority (ASA) in the U.K. highlights the global crackdown on sponsored posts that do not make clear that they are advertising.

A complaint was filed with the ASA about an Instagram post made by a popular make-up blogger Sheikhbeauty, which consisted of a mini video that promoted the brand Flat Tummy Tea. The text of the post read: "@flattummytea 20% off guys!!!! If you've been following me you'll know i used this and I genuinely feel less bloated and a flatter tummy ... oh yessss". The post was challenged on the basis that it did not clearly identify that it was an ad.

On April 5th, the ASA issued a ruling against Flat Tummy Tea, the maker of an herbal detox tea. Flat Tummy Tea disclosed to the ASA that it had entered into a financial arrangement with Sheikhbeauty, whereby the blogger was sent the brand's products, which she was required to photograph and post on her social media account. The arrangement required Sheikhbeauty to post in accordance with all applicable laws and guidelines.



Upon notification of the complaint, Flat Tummy Tea acted immediately to require Sheikhbeauty to edit her post to include “#ad” in front of her caption:

Sheikhbeauty's description of her personal experiences with the product was also changed from “less bloated and a flatter tummy” to a more generally stated “genuinely feel[ing] much better,” although this description was not

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the focus of the ASA's ruling.

The ASA's ruling found the post to be a marketing communication based on Flat Tummy Tea's control over the content of the post, the visibility of the product in the posts, display of the brand handle and other factors. The ASA held that the prior lack of disclosure was a breach of the ASA's CAP code, its rule book for non-broadcast advertisement, sales promotions and direct marketing communications.

The ASA directed that the ad must not appear again in its original form and noted the responsibility of Flat Tummy Tea and Sheikhbeauty to ensure that all future ads they produce to be obviously identifiable as marketing communications by including, for example, an identifier such as "#ad".

The ruling signals the advertising industry's current clamp down on influencers to identify their promotional posts as ads. The fact that the ruling was targeted at the brand owner also reflects the responsibility of brands to monitor their influencers' activities even where their written agreements place the obligation on the influencer to comply with all disclosure requirements.

The ASA's ruling comes just as the Federal Trade Commission has issued a further publication indicating its close monitoring of the activities of influencers in the U.S. and giving advice on making effective disclosures on Instagram.