

An [Instagram](#) post picturing a family in McDonald's pyjamas holding McDelivery bags has exposed Australia's regulatory "grey areas" in influencer marketing.

Advertising in Australia is self-regulated. An independent body, Ad Standards, exists to enforce the industry's voluntary code.

The post, uploaded to the Instagram handle @SouthAussiewithCosi, which has 118,000 followers, pictured South Australian SAFM radio host Andrew "Cosi" Costello with his family.

The caption read: "Verified @maccas_sa have been serving South Australians for 50 years. How cool is that? Tonight we are celebrating their birthday with delivery and my girls are wearing the @peteralexanderofficial limited edition maccas PJ's".

After a panel review by Ad Standards, McDonald's Australia was found in breach of distinguishable advertising rules set out in the Australian Association on National Advertisers Code of Ethics, which state advertisements should be "obvious" and "upfront".

What was missing from the post was a #sponsored or #ad hashtag. But McDonald's had not paid Costello for the post. Although they had a commercial relationship with the radio station he works for, all McDonald's had provided to Costello directly were some free products.

In their initial response to the complaint, McDonald's argued they "gifted the products as a gesture of goodwill", and that due to the non-commercial nature of the relationship, "the content posted on the account 'South Aussie with Cosi' is entirely outside of the McDonald's reasonable control".

The majority of the panel determined "the influencer was motivated to publish positive content about his employer's sponsor, and in the context of the relationship would not, for example, have posted similarly about a competitor to the employer's sponsor". The post has now been deleted, and it is not suggested that Costello breached any standards that applied to him.

Eleni Pringle says the practice of brands giving gifts in exchange for social media exposure is incredibly widespread. She runs the handle @BooksWithEleni on Instagram and YouTube, and has amassed around 4,500 followers. In marketing parlance, this makes her a "micro influencer".

Pringle says, even in her "niche corner" of Instagram, she sees gifted products in posts "all the time".



Even in niche categories like book influencing, gifted products are commonplace, one influencer says. Photograph: Westend61/Getty Images

“You see lovely set ups with a book in focus, and a gifted bookmark, candle or pin to the side,” she explains. “Usually, the caption will talk about the book and not specify the shop that the candle or the bookmark is from. They will just tag the shop in the photo.”

Kevin Lynch, a partner of Sydney law firm Johnson Winter and Slattery, says there are two interesting elements to the McDonald’s decision. The first is whether or not McDonald’s were responsible for the post under advertising code.

McDonald’s would “need to have a reasonable degree of control over the social media content”, he says.

“No doubt the radio host did exactly what McDonald’s would’ve wanted when they sent him bags of Maccas. But McDonald’s doesn’t have ultimate control of how the post would be presented ... There is a bit of a gap there.”

Lynch says the second element is the question of whether Costello’s post is distinguishable as an advertisement.

“Corporations do want organic social media engagement with their product,” Lynch explains. “They want it to be as unobtrusive as possible.”

The Ad Standards code was designed so that corporations can’t “camouflage the fact that it’s advertising”, Lynch says. It exists to ensure those organic social media advertisements remain “clearly distinguished”.

“When you have a commercial radio host posting a picture on Instagram wearing limited-edition McDonald’s pyjamas with his family, hamming McDonald’s bags into the camera, I think the fact it is an ad is as subtle as a sledgehammer,” Lynch says.

Dr Lauren Gurrieri, a marketing academic specialising in digital culture, says research shows social media influencers often feel pressure to post positive things about a company because of gift-giving culture.

Social media influencers are “relying upon these relationships” being built with a brand. They give a sense of stability, and in some cases “ongoing income,” Gurrieri explains. “So of course you’re going to feel obliged to promote things accordingly.”

Pringle agrees. She says in broader communities on Instagram, across beauty, fashion and technology, influencers “rely on brands sending products for their own content in posts and reviews”.

McDonald’s are not the first to breach Ad Standards’ code this year with content that Lynch says any

“social media consumer” could see is “clearly an ad”.

A post by the fashion influencer Nadia Fairfax was submitted to Ad Standards for review after the photo, featuring three friends holding Samsung phones, received complaints about a lack of advertising disclosure. The caption read: “Z FLIP(ing) around FW with these two... @galaxybysamsung,” and included the tags #WorkingWithSaumsuing #GalaxyZFlip #NadiaTakesSamsung.

Samsung responded to the panel, asserting that the post in question was “not part of the deliverables” under their working agreement with Fairfax.

The panel found that the post breached distinguishable advertising code, for not being obviously declared an ad. The post has since been updated with the hashtag #BrandedContent. It is not suggested Fairfax breached any standards applicable to her.

Lynch says relationships between a corporation and an influencer always involve inducements. “With that type of relationship, it is important that the consumer knows that someone’s views have been influenced at some level.

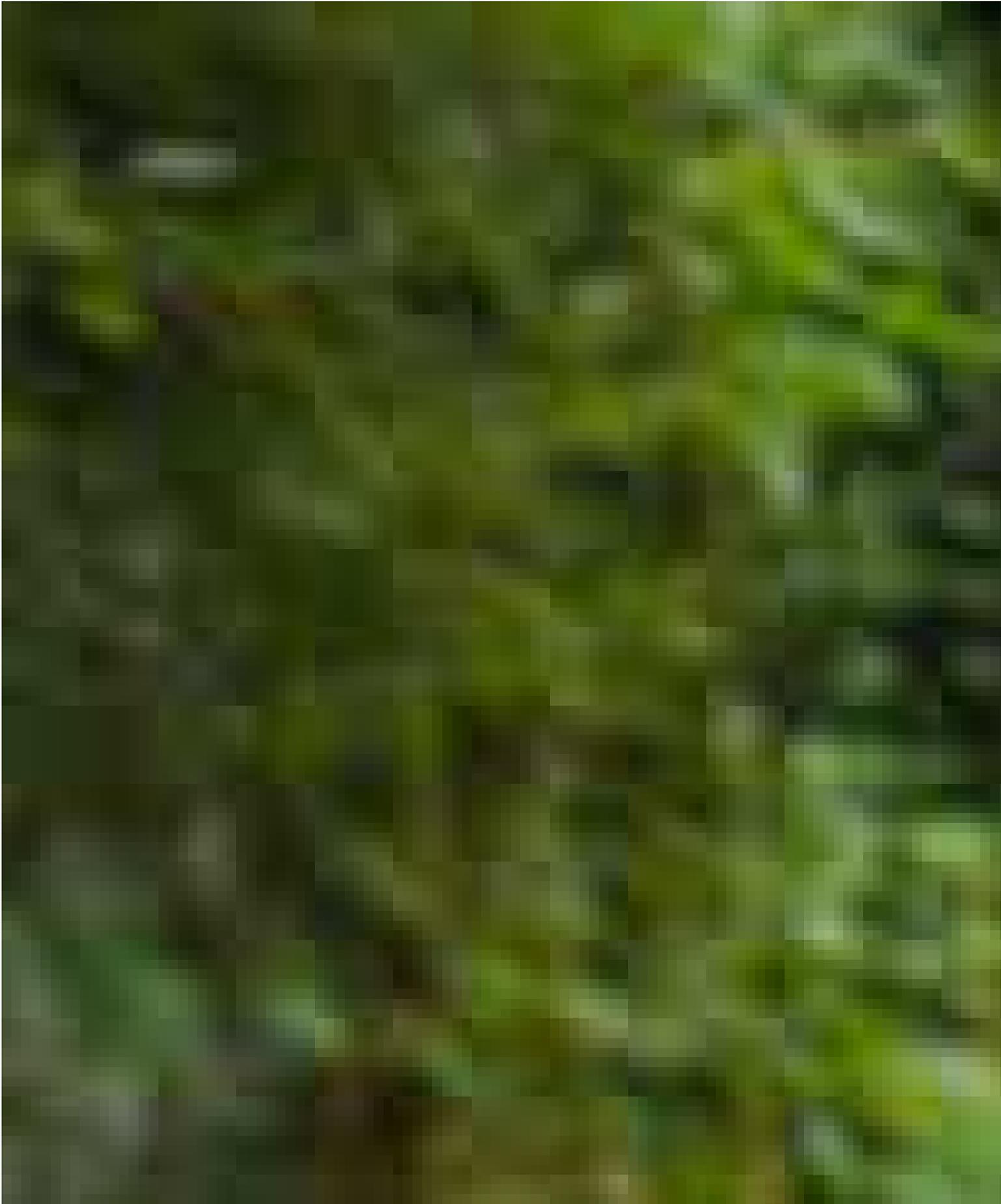
“That can extend from a bag of free Big Macs, to substantial payments. A freebie is enough to trigger the requirements of the code.”

Brent Coker of the Australian influencer marketing agency Wear Cape is concerned that many influencers aren’t equipped to know the best practice for sharing gifted products.

“It is surprisingly common for influencers to appear to be endorsing products without disclosure,” he says. “Or to think only a paid post requires disclosure.”

“That grey area of whether something is an ad or is not does exist for influencers,” he says. “We mostly see this with smaller brands who rely on the influencer to know how to deal with products properly – which is a recipe for disaster. In this case, it is surprising that it is McDonald’s.”

A “misunderstanding” about the best approach to social media marketing is shared by some brands, Coker says.



‘An advertisement will work better when there is full disclosure,’ marketing expert Brent Coker says. Photograph: FluxFactory/Getty Images

“They think not disclosing that a post is an advertisement is better than disclosure. They think it makes it look authentic. This is a big issue because, frankly, consumers are not that naive.

“An advertisement will work better when there is full disclosure. Audiences want that transparency.”

Consumers like Laura agree. The mum of two was scrolling through her feed on Instagram when she saw Cosi’s McDonald’s post, which she says looked “immediately like a posed photo”.

To Laura, who is choosing to only use her first name in fear of social media backlash, the post didn’t clearly enough confirm that it was advertising.

“I went to the caption to see what it was all about. I read and re-read, looking for any indication that this was a sponsored post in partnership, but there was nothing in the caption to indicate this,” Laura says.

She submitted a complaint to the Ad Standards community panel for review.

“With great influence comes great responsibility,” Laura says. “Any commercial relationships should be disclosed.”

In response to the finding, McDonalds [gave a statement to Mumbrella](#), saying: “McDonald’s takes its responsibility as an advertiser seriously. We are disappointed with the outcome of the complaint, however, we respect the final decision from the panel. We have communicated with the influencer, and the influencer has agreed to remove the post.”

Source: [‘A freebie is enough’: influencer gift posts trigger breaches in Australian ad standards](#)