

COMPLAINT NUMBER	20/612
ADVERTISER	Simone Anderson
ADVERTISEMENT	Simone Anderson, Instagram
DATE OF MEETING	19 January 2021
OUTCOME	Upheld Advertisement to be removed or amended.

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about an Instagram post created by Simone Anderson. The Complaints Board said the post met the ASA's definition of an advertisement because the clothing Simone Anderson wore in the post prominently displayed a brand with which she has a commercial arrangement. The post was not identified as an advertisement and this breached Rule 2(a) of the Advertising Standards Code.

Advertisement

The Instagram post from Influencer Simone Anderson shows a photo of her wearing activewear with the name "aim'n" featured across the front of the top. The text on the post says, "A fresh week, I am ready for you!"

Summary of the Complaint

The Complainant is concerned the advertisement is misleading as Simone Anderson is a paid ambassador for Aim'n activewear and has not disclosed this is an advert by labelling it "ad".

Issues Raised:

- Truthful Presentation
- Identification of Advertising

Summary of Simone Anderson's Response

The Advertiser said she is simply wearing the clothing. There was no mention of the brand nor was the post tagged. The Advertiser questioned whether she was able to wear clothing in posts if it has been gifted, even if the brand is not mentioned.

Summary of Brand Owner's Response

The brand owner, Aim'n Oceania, said the post was not part of the scheduled affiliate promotions and the content was 100% created by the Influencer.

Despite there being no direct financial gain to the Influencer, Aim'n considered that any content which contains their products means a potential financial gain and should be labelled as advertising, due to the on-going relationship they have with Simone Anderson.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2(a) Identification: Advertisements must be identified as such.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to precedent Decision 20/191 which was Upheld.

The full version of this decision can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 20/191 concerned Instagram advertisements posted by Simone Anderson about Aim'n activewear and a Cordis hotel stay. The Complaints Board was of the view the Advertiser had not made the identification of the advertisements sufficiently clear to avoid audiences being misled as to the commercial arrangements behind the Instagram content.

The Complaints Board also noted the [Influencers AdHelp Information on Identifying Ad Content](#) resource published in September 2020.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was Simone Anderson was promoting Aim'n activewear clothing in a post about being ready to take on a new week.

Is the content an advertisement?

The Complaints Board began by noting the Advertising Standards Authority's (ASA) definition of an advertisement:

“Advertising and advertisement(s)” are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

The Complaints Board agreed the Instagram post is an advertisement because there is a commercial relationship between Simone Anderson and Aim'n Oceania. The Board said that showcasing the brand was of benefit to both parties and the commercial relationship should be clear to consumers in the post.

Clarification on the roles of the Advertisers

The Complaints Board noted in this case the post was generated by Simone Anderson, who is a brand ambassador for Aim'n Oceania. She had control over a post in which the brand is clearly identifiable. The Board noted the brand owner, Aim'n Oceania confirmed the post was not a scheduled promotion and they did not have any direct or indirect control over the message.

Is the advertisement sufficiently identified?

The Complaints Board said the Instagram post promotes the Aim'n activewear brand by a brand ambassador and should have been labelled as advertising. The Board said it was immaterial that the brand had not been mentioned (other than in the image) or tagged in the advertisement.

The Board noted the ASA had provided guidance through its AdHelp resource on ad identification and re-iterated the importance of making commercial relationships clear on platforms where there is a mix of commercial and personal content.

The Complaints Board ruled the advertisement was in breach of Principle 2 and Rule 2(a) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement to be removed or amended.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Advertisers
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Appendix 1

COMPLAINT

Simone is a paid ambassador for Aim'n active wear and has not disclosed this is an advert with 'ad'

Appendix 2

RESPONSE FROM ADVERTISER, SIMONE ANDERSON

I am simply wearing the clothing, I haven't mentioned the brand or tagged them in the post. I have not tried to advertise them in this post? Am I not allowed to wear clothing in posts if it has been gifted to me even if I am not mentioning it?

RESPONSE FROM ADVERTISER, AIM'N OCEANIA

Thanks for your email and for bringing this to our attention. The post was not tagged with @aimn.oceania so did not appear in our 'tagged' feed via Instagram so we weren't aware of it.

The post in question was created entirely by Simone and not dictated by our company in any way. We do have scheduled promotions each month where Affiliates earn their commission. This post was not part of Simone's promotions for December.

All content created by our Affiliates, like Simone, is 100% their own and we do not have final approval over the content. We do constantly remind influencers to clearly label any content containing our products as advertising by using 'AD' or the paid partnership tool within Instagram.

We have reached out to Simone and kindly asked her to identify the post as advertising. Simone responded and said she wasn't aware that she had to identify this as advertising as there's no mention of our brand in the post copy (or tagged) nor was her Affiliate code mentioned so there's no direct financial gain for herself as it was posted outside of the scheduled promotion time. Simone asked for further clarification around this.

I explained because we have an on-going relationship with her, then any content that contains our products must be labelled as advertising as there is a potential commercial gain for our company whenever our products are featured.

We believe this was genuinely an oversight on her behalf and the intention of the post was not to promote our brand, she was just wearing our products that day. Simone has since deleted the post and has reviewed any posts that appear on her feed containing our products as per our request.

As the content was not created or briefed by our company, you will need to reach out to Simone or her agent for assurance that the content will not be posted again. aim'n will not ask for the content to be reposted.

We hope this matter is settled now but please let us know if there's any way we can be of further assistance.