

<b>COMPLAINT NUMBER</b>	20/611
<b>ADVERTISER</b>	Simone Anderson
<b>ADVERTISEMENT</b>	Simone Anderson, Instagram
<b>DATE OF MEETING</b>	19 January 2021
<b>OUTCOME</b>	Upheld
	Advertisement not to be used again in its current form

### **Summary of the Complaints Board Decision**

The Complaints Board upheld two complaints about Instagram stories created by Simone Anderson promoting her activewear brand, Embrace Active. The Complaints Board said the Advertiser had not made it clear on the first screen of each separate post and each segment of a story that the content was advertising.

### **Advertisement**

The Instagram stories from Influencer Simone Anderson show her talking about products from her activewear brand, Embrace Active. The advertisements showcase the features of several items of activewear clothing over 20 Instagram stories. The final screen of the last story is labelled “ad@embrace\_active.”

### **Summary of the Complaint**

Two complainants are concerned the Advertiser’s Instagram stories are misleading by not making clear throughout that it is advertising her own brand of activewear.

### **Issues Raised:**

- Truthful Presentation
- Identification of Advertising

### **Summary of the Advertiser’s Response**

The Advertiser said it was their understanding that according to the ASA guidelines you only needed to place “ad” on the slides if the brand is being tagged/advertised and directing people to it.

## Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaints 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 versions of these decisions 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 from the stories was that Simone Anderson was talking about the benefits and design features of some activewear products from the *Embrace Active* brand. The Board agreed it was not obvious to the average consumer (particularly if they viewed each Instagram story with the sound off) that Simone Anderson was advertising her own *Embrace Active* brand.

#### *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 each of the Instagram stories are advertisements because the Advertiser, Simone Anderson, is promoting her own brand of activewear for commercial gain. She also has direct control over each message, and the intent is to influence her followers to purchase the activewear.

#### *Is the advertisement sufficiently identified?*

The Complaints Board noted the last slide of the last Instagram story featured the label ad@embrace\_active. The Board discussed whether the label on the last slide of the story was sufficient to identify the content as advertising.

The Complaints Board referred to the Influencers AdHelp Information on Identifying Ad Content document issued by the ASA, in September 2020. The Board noted Page 9 of the guidance notes explains when advertising content needs to be labelled as such:

“Consumers need to know it’s an ad at their first interaction with the ad content. Label must be clear, for example: 1. At the start of a post or story: 2. In the title or thumbnail: 3. On the first image or screen the consumer sees.”

The Board agreed Instagram is no different to any other medium in which space is shared between editorial, organic and advertising content. Page 7 of the Influencer guidance notes states:

“Influencers can clearly explain in the first interaction consumers have with the content that it is advertising. Consumers must understand from the explanation that the Influencer means ad content.”

The Complaints Board referred to the summary on page 1 of the Influencer guidance notes states:

“Every post that includes ad content and each segment of a story that includes ad content needs to be identified as advertising.”

The Board said further explanation around this point is provided on page 9 of the guidance notes:

“Label each separate post and each segment of a story that contains ad content. Blanket disclosures in Influencer profile information is not sufficient to notify consumers about ad content in individual posts or stories.”

In addition, the Board referred to ‘examples of common mistakes with labels’ on page 10 of the guidance notes:

“Label is only voiced and not heard when consumers have their sound off”  
 “Consumer has to watch a story or video before realising it’s an ad”  
 “Label is not visible as soon as the consumer first interacts with a post or ad content in a story”

The Complaints Board unanimously agreed the Instagram stories have a promotional tone and the Advertiser is talking about the features of the clothing. The Complaints Board said the AdHelp Information clearly states that each separate post and each segment of a story should be identified as advertising and as a minimum, on each of the first screens of each story visible to consumers. The Board confirmed this is particularly important as consumers may not always watch a series of stories from start to end. Consumers may also watch the stories with their sound off meaning a label is the most obvious way to identify the content is advertising.

The Complaints Board ruled the content was not sufficiently identified as an advertisement and was in breach of Principle 2 and Rule 2(a) of the Advertising Standards Code.

### **Outcome**

The Complaints Board ruled the complaints were **Upheld**.

Advertisement not to be used again in its current form.

**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](http://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. Complaints
  2. Response from Advertiser
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### Appendix 1

#### COMPLAINT 1

Embrace Active is owned by Simone Anderson - she has just launched the brand. On the morning of 14th December she posted almost 5 minutes worth of Instagram stories promoting the products, only disclosing "ad" on the final Instagram story (after 22 stories). The average person should not have to sit through 5 minutes of content to understand that something is an ad.

The full video file size is too large to upload as an attachment to show the full extent but I would be happy to provide this separately, particularly as stories disappear after 24 hours.

#### COMPLAINT 2

Simone Anderson has been promoting her own personal brand. She has made a post on her page today, 14 December, and has not included AD. She has also done over 20 story slides talking about her brand, showcasing items from her brand but has not used AD. She is clearly flouting the ASA rulings, and doesn't care to follow the guidelines.

She is advertising her own brand and product, it is very clear that she is talking about her brand, and it is very clear it is her brand in the stories.

She also makes posts on her IG, without stating AD, and then a few hours later will edit it to include AD. Surely she should know by now.

### Appendix 2

#### RESPONSE FROM ADVERTISER, SIMONE ANDERSON

It was my understanding that according to the ASA guidelines you only needed to place 'ad' on the slides if the brand is being tagged/advertised and directly people to it.