

COMPLAINT NUMBER	21/032
ADVERTISER	Edna Swart
ADVERTISEMENT	Edna Swart, Instagram
DATE OF MEETING	9 March 2021
OUTCOME	Upheld Advertisements not to be used again in their current form

Summary of the Complaints Board Decision

The Complaints Board Upheld three complaints about four Instagram stories created by Edna Swart, a social media Influencer and business owner. The Complaints Board said the advertisements appeared on the Advertiser's personal Instagram page and the identification of the content as advertising was not sufficiently clear to avoid audiences being misled or confused as to the commercial link behind the Instagram content.

Advertisements

Four Instagram stories from Influencer Edna Swart show her promoting her ED&I (Edni Body) swimwear and body care system on her personal Instagram page.

Advertisement 1 showed a bikini shot with two bottles of tanning products labelled "During" and "After". The text says "The golden tan duo...@edni.body"

Advertisement 2 showed a bikini selfie shot with the text "@edni.body SWIPE UP"

Advertisement 3 showed three product shots of Morning Coffee face scrub and a video icon.

Advertisement 4 showed a silhouette of a figure holding up a wine glass with the text "Cheers to @edni.body Swipe up."

Summary of the Complaints:

Three Complainants were concerned the Instagram stories featured on the Advertiser's personal Instagram page were misleading by not making clear throughout that it she is advertising her own brand of swimwear and skincare products.

Issues Raised:

- Truthful Presentation
- Identification of Advertising

Summary of the Advertiser's Response

The Advertiser said she has bought the company and pays for the products, so does not need to identify products she showcases as advertisements.

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 two precedent decisions, Decision 20/199 and 20/611, both of which were Upheld.

The full versions of these decisions can be found on the ASA website:

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

Decision 20/119 concerned two advertisements by Simone Anderson promoting Aimn Oceania activewear and the Cordis hotel. The Complaints Board said the content met the ASA's definition of advertisements and 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.

Decision 20/611 concerned a series of Instagram advertisements from 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. The Complaints Board also noted it was not obvious to the average consumer that Simone Anderson was advertising her own Embrace Active brand.

Complaints Board Discussion

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised.

Business versus Personal Instagram pages

The Complaints Board began by discussing the difference between a business and personal advertising platform. The Board noted the ASA's Influencers AdHelp Information on Identifying Ad Content states:

"Some platforms used by Influencers are also used by advertisers to promote their brands, products or services. When it is obvious to, and well understood by, consumers that they are engaging with advertising by brands, no additional identification of ad content is usually required. For example, when a consumer is engaging with the Instagram account of a large retailer."

The Complaints Board compared this to the guidance for advertising on a personal account which states:

“Influence ad content will sometimes appear alongside their own organic content and will be similar in style. This means it may not be immediately obvious to consumers when they’re interacting with advertising.”

The Complaints Board considered each of the four Instagram stories by Edna Swart which show her promoting her ED&I (Edni.Body) swimwear and body care system on her personal Instagram page in turn:

Advertisement 1

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was that Edna Swart uses and is recommending the ‘during’ and ‘after’ Edni Body sun care products.

Is the Instagram story an advertisement?

The Complaints Board agreed the content was intended to influence the choice, opinion or behaviour of consumers who engaged with it. The Board said it met the ASA’s definition of advertising.

Is it clear to the average consumer there is a commercial link between the Edna Swart and the business Edni Body in the context of her personal Instagram page?

The majority of the Complaints Board said it was not likely to be obvious to most consumers Edna Swart owned the business Edni Body which was being promoted.

The majority of the Complaints Board noted the Advertiser’s response that she did not need to label the advertisement because she owned the company. The majority of the Board agreed the story would not require labelling if it appeared on the Edni Body business Instagram page as consumers would expect all content to be advertising. However, the Board said that when posted on a personal Instagram account which has a mix of organic content and advertisements for other products unrelated to her business, there was a need to label this content as advertising to avoid confusion for consumers. The Board said that while there were some signals about the connection between the influencer and business such as links to the website and the Edni Body identification, these were not sufficient to make the connection clear.

A minority of the Complaints Board disagreed and said there were sufficient signals the influencer was also the owner of the brand being promoted and most consumers would understand the link. For the minority of the Board these signals including swipe ups to more information, the Edni Body labelling and existing consumer knowledge of the influencer and her business to make the commercial link clear. A minority of the Board said the advertisement did not meet the threshold to mislead or confuse consumers.

However, in accordance with the majority, the Complaints Board said without a clear indication that the content was advertising, there was the potential for consumers to be misled or confused.

The Complaints Board ruled Advertisement 1 was in breach of Principle 2 and Rule 2(a) of the Advertising Standards Code.

Advertisement 2*Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was influencer Edna Swart was promoting a bikini from Edni Body with an invitation to “swipe up” in order to see more about the brand.

Is the Instagram story an advertisement?

The Complaints Board agreed the message was intended to influence the choice, opinion or behaviour of consumers who engaged with it. The Board said this therefore met the ASA’s definition of advertising.

Is it clear to the average consumer there is a commercial link between the Influencer Edna Swart and the business Edni Body in the context of her personal Instagram page?

The majority of the Complaints Board said it was not likely to be obvious to most consumers Edna Swart owned the business Edni Body which was being promoted. For the reasons set out above, the majority of the Board said the advertisement needed to be labelled ‘Ad’ as set out in the ASA’s Influencers AdHelp Information on Identifying Ad Content.

A minority of the Complaints Board disagreed and said the influencer owned the business being advertised and there were sufficient signals on the connection to avoid consumers being misled. For the reasons set out above, a minority of the Complaints Board said the advertisement did not reach the threshold to breach Principle 2 or Rule 2(a) of the Advertising Standards Code.

However, in accordance with the majority, the Complaints Board said without a clear indication that the content was advertising, there was the potential for consumers to be misled or confused.

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

Advertisement 3*Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was the promotion of three tubes of Edni Body Good Morning face scrub. The story also shared a video which would link consumers to further content.

Is the Instagram story an advertisement?

The Complaints Board agreed the message was intended to influence the choice, opinion or behaviour of consumers who engaged with it. The Board said the content met the ASA’s definition of advertising.

Is it clear to the average consumer there is a commercial link between the influencer Edna Swart and the business Edni Body in the context of her personal Instagram page?

The majority of the Complaints Board said it was not likely to be obvious to most consumers Edna Swart owned the business Edni Body which was being promoted. For the reasons set out above, the majority of the Board said the advertisement needed to be labelled ‘Ad’ as set out in the ASA’s Influencers AdHelp Information on Identifying Ad Content.

A minority of the Complaints Board disagreed and said the influencer owned the business being advertised and there were sufficient signals on the connection to avoid consumers being misled. For the reasons set out above, a minority of the Complaints Board said the advertisement did not reach the threshold to breach Principle 2 or Rule 2(a) of the Advertising Standards Code.

However, in accordance with the majority, the Complaints Board said without a clear indication that the content was advertising, there was the potential for consumers to be misled or confused.

The Complaints Board ruled Advertisement 3 was in breach of Principle 2 and Rule 2(a) of the Advertising Standards Code.

Advertisement 4

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was that Edna Swart was celebrating the Edni Body brand by raising a wine glass and inviting viewers to “swipe up” to find out more.

Is the Instagram story an advertisement?

The Complaints Board agreed the message was intended to influence the choice, opinion or behaviour of consumers who engaged with it. The Board said this therefore met the ASA’s definition of advertising.

Is it clear to the average consumer there is a commercial link between the influencer Edna Swart and the business Edni Body in the context of her personal Instagram page?

The majority of the Complaints Board said it was not likely to be obvious to most consumers Edna Swart owned the business Edni Body which was being promoted. For the reasons set out above, the majority of the Board said the advertisement needed to be labelled ‘Ad’ as set out in the ASA’s Influencers AdHelp Information on Identifying Ad Content.

A minority of the Complaints Board disagreed and said the influencer owned the business being advertised and there were sufficient signals about the connection to avoid consumers being misled. For the reasons set out above, a minority of the Complaints Board said the advertisement did not reach the threshold to breach Principle 2 or Rule 2(a) of the Advertising Standards Code.

However, in accordance with the majority, the Complaints Board said without a clear indication that the content was advertising, there was the potential for consumers to be misled or confused.

The Complaints Board ruled Advertisement 4 was in breach of Principle 2 and Rule 2(a) of the Advertising Standards Code.

Referral to the ASA Codes Committee.

The Complaints Board agreed to refer the issue of business owners promoting their own products on their personal Instagram pages to the Advertising Standards Authority Codes Committee.

Outcome

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

Advertisements not to be used again in their 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. 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 Advertiser
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Appendix 1**COMPLAINT**

Edna owns the company edni body and is advertising these products on her personal Instagram page without disclosing that it is an AD. This is being done regularly. The images I have sent through were screen shot on 17/12/2020

COMPLAINT 2

Not stating AD on any Instagram stories promoting Ed n I body and never does on her daily posts

COMPLAINT 3

Not stating AD on any Instagram stories or posts

Appendix 2**RESPONSE FROM ADVERTISER,**

Thank you for your email.

I always use AD is all partnerships that I partner into.

In regards to the attached and any ed&i content - you will not see me add in any AD to these ever. I have paid over six figures for this business of mine and have paid for every product that you see in my stories.