



Ad Standards Community Panel  
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Ad Standards Limited  
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## Case Report

1. Case Number :	0136-21
2. Advertiser :	adidas Australia Pty. Ltd.
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	9-Jun-2021
6. DETERMINATION :	Upheld – Modified or Discontinued

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

This Instagram post from @sophie\_guidolin features four images of a woman in activewear standing on a deck overlooking the ocean. Two of the images also feature a young boy in activewear. The caption for the post is, "Back doing run club with Ryder. When we land he is straight into footy season, and let's just say today hurt. The beauty of travelling with only 1 versatile pair of shoes pays off- my nano x1's perfect for running, skipping, weights and more! @reebokau

### THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*It is misleading as to whether it is an ad. Does not say sponsored or include any hashtags*

### THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

#### OUR COMMENTS IN RELATION TO THE COMPLAINT

Section 2 AANA Advertiser Code of Ethics ("Code")

2.1 Advertising shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of



*race, ethnicity, nationality, gender, age, sexual orientation, religion, disability, mental illness or political belief*

*2.2 Advertising shall not employ sexual appeal:*

*(a) where images of Minors, or people who appear to be Minors, are used; or  
(b) in a manner which is exploitative or degrading of any individual or group of people.*

*2.3 Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised.*

*2.4 Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience.*

*2.5 Advertising shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.*

*2.6 Advertising shall not depict material contrary to Prevailing Community Standards on health and safety*

*2.7 Distinguishable as advertising: Advertising shall be clearly distinguishable as such*

*While you have stated that our response should not be limited to Section 2.7 and that we must consider all of the other subsections, we do not consider that the Post falls within one or more of subsection 2.1 to 2.6. We shall therefore limit our comments to Section 2.7.*

*Ms Guidolin's Relationship with adidas/Brand Reebok*

*We confirm that Ms Guidolin has signed an endorsement agreement with Reebok for the entirety of 2021 ("Agreement") whereby Ms Guidolin is a Reebok Ambassador. Under the Agreement, Ms Guidolin is required to comply with all laws and regulations related to advertising disclosures and to make her relationship with Reebok readily apparent to the public.*

*Ms Guidolin's relationship as a Reebok Ambassador is well recorded on both her and Reebok's web blogs and in associated publicity, for example:*

- Reebok Sophie Guidolin | Reebok Australia*
- The Sophie Secret, Introducing Reebok Pacific's new Ambassador.*
- 844,000 potential new customers: Reebok reveals 2021 ambassador - Ragtrader*
- 20-Minute Full Body Workout With Reebok | Sophie Guidolin*
- Fitness guru Sophie Guidolin's five-minute workout for time poor parents | The Morning Show (7news.com.au)*

*The AANA Industry Practice Note on Clearly Distinguishable Advertising ("Practice Note") states that "The overall appearance is relevant, particularly the similarity with non-advertising content that may appear in combination with the marketing communication". It goes on to provide the following guidance on making advertising distinguishable:*

*Step 1: Does the material fall within the definition of advertising and marketing communication under the AANA Codes? Consider whether the advertiser has a reasonable degree of control over the material and whether the material is intended to promote a product or service.*



*The Post was not one of the Contracted Posts but was created and uploaded by Ms Guidolin on her own initiative. adidas did not have a reasonable degree of control over the Post. As mentioned above, adidas curates and approves all Contracted Posts. The Post is very different in style and content to the Contracted Posts, as discussed further below.*

*Step 2: Who is the relevant audience? Consider the target for the advertising – look at the content of the communication as well as classification material, audience measurement data and the media placement plan. When it comes to social media, the opt-in nature and age gating may be relevant in determining the audience.*

*Given that the Post appeared on Ms Guidolin's Instagram page, the relevant audience are followers of her page. We would argue that followers of her page would be aware, either as a result of publicity surrounding Ms Guidolin or from earlier posts such as the Contracted Posts, that she is a Reebok Ambassador. Followers of Ms Guidolin's page have actively chosen to follow her in Instagram and would therefore have knowledge about Ms Guidolin and her relationship with adidas/Reebok.*

*Step 3: Is the material clearly distinguishable? Consider:*

- the material as a whole including visual or audio cues;*
- where the content is placed;*
- how are you directed to the content;*
- themes, visuals and language used;*
- use of brand names or logos.*

*Think about the perspective of a reasonable member of the targeted group and whether the material is clearly distinguishable as advertising to that person.*

*The relevant audience is directed to the content by virtue of them already following Ms Guidolin's Instagram page. As mentioned above, her followers would be aware of her relationship with Reebok and in fact may have chosen to follow her due to this relationship (and/or any other commercial avenues with which she is involved).*

*Moreover, a comparison of the Post with the examples of the Contracted Posts above clearly shows a difference in style – the Contracted Posts show product/modelled shots and clear branding, hashtags and/or logos of Reebok. They are very different in style from the personal images shared by Ms Guidolin in the Post, which also shares Ms Guidolin's reflections as background to the images, mentions Ms Guidolin's son and consists of selfies/amateur photographs. In contrast, the Contracted Posts do not contain large amounts of text or personal information.*

*The Practice Note mentions that "Labels or disclosures don't necessarily have to be formal, they can match the blogger/vlogger's style, they just need to be clear." The Post does include @reebokau (which is one of the handles appearing in the Contracted Posts) but again, her followers would already be aware of her relationship with Reebok.*

*In relation to the Practice Note's statement that "When it comes to social media, because consumers have less experience with some forms of advertising in this space, and advertorial content in particular is often difficult to distinguish from genuine user generated content, marketers should focus on whether the material is clearly distinguishable as advertising. It may be that in some cases the inclusion of a clear*



*identifier (for example, '#ad' or similar) is the most straightforward way to achieve this." (emphasis added) we would highlight that the Post was not advertising in the context of Ms Guidolin's Agreement with adidas. It was not a Contracted Post and therefore does not constitute advertising as such. In support of this, we highlight some examples from the Practice Note: Page 6 Rippers Scenario & Guidance. Page 7 Fab faces Scenario & Guidance.*

*As mentioned above, the Contracted Posts are controlled and approved by adidas. The Post was not a Contracted Post and we have not provided Ms Guidolin with any statements to make in relation to our Products and therefore cannot be said to have control over the Post. We argue that these examples support our position that the Post does not contravene Section 2.7 of the Code.*

*In summary, we submit that we have not breached Section 2 of the Code. Followers of Ms Guidolin's Instagram Page would be well aware of her relationship with Reebok, adidas did not have any control over the Post and in any event, the Post was clearly distinguishable in content and style from the Contracted Posts.*

*Nevertheless, in order to allay any concerns, Ms Guidolin has agreed to removed the Post from her Instagram Feed. In addition, we will continue to work closely with Ms Guidolin on acceptable posting formats and hashtags to be used to ensure that any future posts comply with the Code.*

## **THE DETERMINATION**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the Instagram post does not have sponsorship transparency.

The Panel viewed the advertisement and noted the advertiser's response.

***Section 2.7: Advertising or Marketing Communication shall be clearly distinguishable as such.***

### **Is the material advertising?**

The Panel noted that it must consider two matters:

- Does the material constitute an 'advertising or marketing communication', and if so
- Is the advertising material clearly distinguishable as such?

### **Does the material constitute an 'advertising or marketing communication'?**

The Panel noted the definition of advertising in the Code. Advertising means: "any advertising, marketing communication or material which is published or broadcast



using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct”.

The Panel considered that the clear placement of the product, the brand name tagged in the comments and the further information provided about the product did amount to material which would draw the attention of the public in a manner designed to promote the brand.

With regards to whether the advertiser or marketer has a reasonable degree of control, the Panel noted the advertiser’s response that there was an existing arrangement in place between Ms Guidolin and the advertiser and that Ms Guidolin is an ambassador for the brand, however this post was not a post within the terms of that agreement.

The Panel noted that the Code does not define ‘reasonable degree of control’. The Panel noted that influencers operate as an advertising medium utilised by businesses to promote their brands and products. The Panel noted that many influencers have agents and that businesses exist which put brands and influencers in touch with each other. The Panel noted that influencers are sometimes paid, sometimes provided with free product and sometimes post about products in the context of longer term relationships without immediate incentive. The Panel noted that influencers’ posts may also be created in circumstances in which there is no relationship context. The Panel considered that the Code’s requirements should be interpreted with its purpose in mind, that is to ensure that consumers are informed, and that influencers should be transparent about their relationship with a brand, whatever form it takes.

The Panel noted that the advertiser had an existing commercial relationship with Ms Guidolin and was aware of her position as an influencer. The Panel noted that this post was not part of the terms of the enforcement agreement between the advertiser and Ms Guidolin and that the post was created and uploaded by Ms Guidolin on her own initiative without direction from the advertiser, However, the Panel considered that it is reasonable to assume that the motivation for an advertiser to provide product to a Reebok ambassador (as Ms Guidolin was) is that the ambassador will post about the product or otherwise draw the attention of their followers to the brand as Ms Guidolin did in this case. The Panel considered that while it was not known whether Ms Guidolin had received the advertised product for free, the post could be seen as an extension of her existing relationship with the advertiser. The Panel considered that in choosing an ambassador who is an influencer they are exercising a degree of control, and the post did draw the attention to the product.

The Panel considered that the post did meet the definition of advertising in the Code.

**Is the material clearly distinguishable as such?**



The Panel noted the Practice Note for the Code states:

*“Influencer and affiliate marketing often appears alongside organic/genuine user generated content and is often less obvious to the audience. Where an influencer or affiliate accepts payment of money or free products or services from a brand in exchange for them to promote that brand’s products or services, the relationship must be clear, obvious and upfront to the audience and expressed in a way that is easily understood (e.g. #ad, Advert, Advertising, Branded Content, Paid Partnership, Paid Promotion). Less clear labels such as #sp, Spon, gifted, Affiliate, Collab, thanks to... or merely mentioning the brand name may not be sufficient to clearly distinguish the post as advertising.”*

The Panel noted that since the complaint had been received the post appears to have been removed.

The Panel considered that there was nothing in the wording of the post and no hashtags which clearly demonstrated the existing relationship between Ms Guidolin and the brand and the circumstances surrounding the posting of the product.

The Panel noted the advertiser’s response that followers of Ms Guidolin would be aware of her existing relationship with the brand. The Panel noted that the advertisement needs to be clearly distinguishable as advertising in general, and not just for the specific audience of Ms Guidolin’s followers.

The Panel considered that tagging the brand on its own was not sufficient to satisfy the Code’s requirements and that the wording of the post was not clearly distinguishable as advertising.

## **2.7 conclusion**

In the Panel’s view the advertisement as it was originally posted was not clearly distinguishable as such and did breach Section 2.7 of the Code.

## **Conclusion**

Finding that the advertisement did breach Section 2.7 of the Code, the Panel upheld the complaint.

## **THE ADVERTISER’S RESPONSE TO DETERMINATION**

As well noted within the case report, Ms. Guidolin has removed the post and is discontinued.