



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

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| 1. Case Number : | 0247-21 |
| 2. Advertiser : | Volvo Car Australia |
| 3. Product : | Vehicle |
| 4. Type of Advertisement/Media : | Internet - Social - Instagram |
| 5. Date of Determination | 8-Sep-2021 |
| 6. DETERMINATION : | Dismissed |

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram story posted by @tashsefton on 13 August featured a short video of a vintage Volvo and the words, "How divine is this vintage @volvocarau parked behind my current XC90".

THE COMPLAINT

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

Distinguishable Advertising-other than tagging Volvo in the copy, there is no indication of the commercial relationship between Sefton and Volvo, and whether her car was paid for by her or gifted by Volvo, or if she's a paid ambassador.

THE ADVERTISER'S RESPONSE

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

*Response to Ad Standards –@Tashsefton Instagram story 13 August 2021
Volvo Car Australia Pty Ltd ("Volvo Cars") acknowledges receipt of the complaint Case Reference Number 0247-21 regarding a two second video story posted by Tash Sefton on her Instagram account @tashsefton on 13 August 2021 featuring a vintage Volvo vehicle that was parked directly behind Ms Sefton's Volvo XC90 (also featured). The video included the caption "How divine is this vintage @volvocarau parked behind my*



current XC90.” The story tagged Volvo Car’s Instagram account @volvocarau (“Content”). A video file of the Content was previously provided to Ad Standards.

The complaint was made under Section 2 of the AANA Code of Ethics for Advertisers (“Code”). For the purposes of this reply the Content is, in Volvo Cars’ opinion, advertising content within the meaning of the Code as it promotes the Volvo brand. Volvo Cars’ response will focus on Section 2.7 and whether the Content is clearly distinguishable as such. Due to the nature of the Content, Volvo Cars is of the view that the other aspects of Section 2 of the Code do not need to be considered and there is no breach on other grounds.

Volvo Cars’ longstanding collaboration with Ms Sefton
Volvo Cars confirms that it has an influencer marketing agreement in place with Ms Sefton, whose Instagram account is @tashsefton. A Google search for “Tash Sefton Volvo” will reveal the various links between Volvo Cars and Ms Sefton including a link to the Partnership section of the Volvo Car website where visitors are invited to “meet the Volvo Car Ambassadors”. (<https://www.volvocars.com/au/why-volvo/discover/partnerships>.)

At the date of this response Ms Sefton has published more than 5,500 posts to her 239,000 followers. Her account has been verified and the verified blue tick indicates to Instagram users that the account is the authentic presence of a public figure or celebrity.

Ms Sefton has collaborated with Volvo Cars as a brand ambassador since October 2018. Volvo Cars chose to work with Ms Sefton because her personal interests and values, as a mum, an advocate for sustainability and living a conscious life, align with Volvo Cars’ own brand values. In addition, her strong sense of authenticity, personal style and unique content creation resonates with Volvo Car’s target audience. Her vibrant online presence and strong eye for design also dovetail with Volvo Cars’ brand aesthetic.

Volvo Cars engages Ms Sefton through a PR agency, Hush, and has an influencer marketing agreement in place where Ms Sefton is provided with a Volvo vehicle. In return, Ms Sefton is required to create social media content monthly featuring Volvo Cars’ products and promoting the brand, as well as clearly disclosing the relationship with Volvo Cars. As part of this collaboration, Volvo Cars is permitted to republish the content on its own Instagram profile and request Ms Sefton to appear at marketing events as a brand ambassador. She has attended the launch of the Volvo Living Seawall in October 2018 and the 2019 Volvo Scandinavian Film Festival and was featured in a sponsored editorial in Vogue Magazine Australia for the Volvo Cars E.V.A project.

While the Content was created by Ms Sefton with no direct involvement or direction of Volvo Cars, Volvo Cars accepts that it has a reasonable degree of control over the content featuring Volvo branded products by virtue of the arrangement in place, providing Ms Sefton with the use of a vehicle and providing guidelines on promoting



the Volvo brand. Volvo Cars has provided guidance to all its brand ambassadors about the importance of making content distinguishable as marketing content and disclosing the relationship with Volvo Cars in a clearly identifiable way.

Instagram Stories

The Content was an Instagram “story”, which should be distinguished from an Instagram “post”. Instagram has two main ways to publish content on its platform to registered users.

One is to “post” an image, series of images, video or videos which are published to the user’s profile and, unless deleted by the user, this content remains permanently available on the user’s profile for followers and, if public, other users to access and view.

The second way is to share a “story” of photos or short videos (no more than 10 seconds) that disappear after 24 hours, allowing a user to share moments of their day without having to permanently display them on their Instagram profile page. A story may consist of a single piece of content or multiple pieces of content in a story reel creating a longer narrative.

When a user posts a story, a bright ring will appear around the profile picture to indicate story content is available. One can view a user’s story by:

- visiting their profile page and clicking on their highlighted profile photo;*
- by clicking at the top of their own Instagram feed where the accounts they follow have stories available; or*
- if a hashtag, location, or location-based sticker is included in the story users may be able to view the story (if the profile is public) if one was to search the hashtag or location pages.*

As no hashtags were included in the Content, there are two main ways that users would be able to view the Content:

- they were already following Ms Sefton, and her story appeared in their story feed; or*
- they were not following Ms Sefton and instead were directed to her profile via a tag or other algorithm suggestion.*

It is reasonable to assume that most viewers of a “story” are existing followers and have actively selected to follow the user and are familiar with the content, lifestyle, brand aesthetic and brand collaborations of the user.

However, even if a user came to the Content as a new follower, they would typically first visit Ms Sefton’s profile and then see she had a story because her profile picture was illuminated with the colourful ring and selected to watch the story. By visiting the profile page, a user would also see the number of followers, scroll previous posts, and observe the blue tick – which would indicate that this individual is likely to be a public figure or celebrity and therefore likely to be working to promote brands and products to their audience.



Is the Content clearly distinguishable?

Instagram users following Ms Sefton or visiting her Instagram profile page would be aware of her relationship with Volvo Cars as a brand ambassador. Ms Sefton makes no secret of the collaboration, regularly and expressly disclosing the commercial relationship, including on her personal website (<https://www.wheredidyourstylego.com/projects>) and in previous content.

We would like to draw the Panel's attention to earlier posts made by Ms Sefton featuring the Volvo brand and products, clearly highlighting her relationship:

- 22 June 2021: Ms Sefton openly discusses being a brand ambassador for Volvo where she states "Yes, I am an ambassador for @volvocarau" and tagged Volvo Car Australia and used the hashtags #volvomoments #volvopartner*
- 26 May 2021: Ms Sefton's post featuring a Volvo vehicle parked under the Harbour Bridge mentioned VolvoMoments and Volvo Partner, while also tagging @volvocarau*
- 20 April 2021: a post featuring three images of Ms Sefton, two posing beside a Volvo stated @Volvocarau #volvopartner and tagged Volvo Car Australia*
- 30 March 2021: mentions "Volvopartner" and tags @volvocarau*
- 27 January 2021: featuring a Volvo vehicle tagged @volvocarau and used hashtag #volvomoments and #VolvoPartner as well as mentioning the brand.*
- 8 January 2021 tagged @volvocarau used hashtag #volvomoments and VolvoPartner as well as mentioning the brand.*
- Story showcase from 148 weeks ago where Ms Sefton discusses being a Volvo ambassador.*

It should also be noted by the Panel that on 13 August 2021 the Content was immediately followed by another 3 second video story published a couple of hours later featuring Ms Sefton sitting in her Volvo with the tag @volvocarau and #VolvoPartner. Clearly again indicating the relationship with Volvo Cars. Ms Sefton has also previously shared story content featuring vintage Volvo vehicles, promoting the Volvo brand and design aesthetic.

Volvo Cars also regularly reposts the content of its brand ambassadors on its own Instagram profile. In 2021 Volvo Cars reposted Ms Sefton's content on 2 August, 12 July and 6 May. Instagram users can see a clear link between the Volvo Car brand and its commercial association with Ms Sefton.

Volvo Car understands that the requirements of the Code of Ethics were recently tightened to require that advertising be "clearly distinguishable as such", removing the relevant audience test, and that merely tagging the brand may not be sufficient to clearly distinguish it as advertising. However, the use of "may" indicates that in some circumstances tagging a brand will be sufficient. The Practice Note on Section 2.7 also provides that there is no absolute requirement that advertising or marketing communication must have a label however it must be clear to the audience. If it is clear to the audience that the content is commercial in nature (for example by the nature of the content, where the content is placed, how consumers are directed to the



content, the theme, visuals and language used, or the use of brand names or logos), then no further disclosure or distinguishing element is needed.

In determining whether the Content is clear to the audience and therefore distinguishable, Volvo Car believes the Panel should take a broad approach including the circumstances surrounding the posting of the Content. Here the Content was a short two second Instagram story, viewed by followers of Ms Sefton, featuring two Volvo vehicles, calling out the Volvo brand by tagging @volvocarau and referencing a Volvo Cars' product, the XC90. It is also important to consider that in 2020 on average Australian Instagram users spent 7 hours a week on Instagram, accessing it 28 times a week. This means on average users are spending around 15 minutes per visit to the platform (Sensis 2020, Yellow Social Media Report 2020, Sensis, available at: <https://www.yellow.com.au/social-media-report/> (Accessed 25 August 2021)) and would be viewing more than one isolated story – spending time scrolling through their feed of posts, stories and browsing content suggested via the search function to become familiar with the individuals and brands they have chosen to interact with. In considering the circumstances surrounding the Content, the Panel can still rely on the reasoning of its previous determinations regarding influencer marketing made before the removal of the reference to relevant audience test, including earlier content posted.

In Case Number 0193/18 the Panel considered a post featuring a Mercedes Benz posted by Pip Edwards and if it breached section 2.7 of the AANA Code of Ethics. There the Panel noted, when considering whether the material was clearly distinguishable as advertising material to the relevant audience:

- (1) That the relevant audience for this post would be people who follow Pip Edwards on social media*
- (2) The post in question contained an image of a Mercedes motor vehicle and, among other handles, contained '@mercedesbenzau*
- (3) The Panel also took into consideration earlier posts made by Ms Edwards promoting the Mercedes Benz brand and disclosing her relationship as a "friend of the brand".*

In considering these elements the Panel considered that the relevant audience for this post would be familiar with the commercial relationship between Pip Edwards and Mercedes. The Panel also referred to another Instagram advertisement reviewed under section 2.7 of the Code, Case Number 0360/17, again by using the hashtag and directing followers to the advertiser's own social media presence, the Board considered that the relevant audience of followers and other users of Instagram would be aware that the content was sponsored and therefore distinguishable as advertising.

Here the audience would be aware the Content was part of a broader commercial relationship with Volvo Cars and would recognise that the Content was promoting the Volvo Cars brand within the terms of that long standing collaboration. It would be difficult for an average user of Instagram to assume that content featuring the Volvo brand is not deliberately promoting the brand and that there was no collaboration in place, given the regularity with which Ms Sefton posts about Volvo



and her partnership with Volvo (and other brands). Ms Sefton has taken adequate steps to make the relationship clear, obvious and upfront and expressed in a way that is easily understood, by actively talking about her relationship with the Volvo brand and, specifically in the Content, tagging @volvocarau.

Further, Volvo Cars believes a distinction can be made between the previous cases and determinations upheld since the recent revision to Section 2.7 from the Content because, in most cases, the content related to one-off product placements or new brand collaborations which should be distinguished from long standing brand and content collaborations, such as the one between Volvo Cars and Ms Sefton.

The Panel should consider the Content not in its two second isolation, but in the context of the longstanding relationship, the additional content Ms Sefton has published (including the video story immediately after the Content) as well as the active steps taken by both Volvo Cars and Ms Sefton to clearly and consistently disclose the commercial relationship.

Volvo Cars views the Content as advertising and that it is clearly distinguishable, as it is distinct from other personal posts. By featuring Volvo products and actively calling out the Volvo brand, users recognise this and see it as different from other personal or user generated content.

Volvo Cars would also like the Panel to be aware that the Content was only available for 24 hours and is no longer able to be viewed by users of Instagram. Should the Panel take a different view to that of Volvo Cars in making its determination, Volvo Cars will continue to work closely with all brand ambassadors to provide guidance regarding how content featuring the Volvo Cars brand should be communicated to ensure future compliance with the Code.

THE DETERMINATION

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

The Panel noted the complainant's concern that the advertisement is not distinguishable as there is no indication of the commercial relationship between the advertiser and the influencer.

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

Section 2.7 Advertising or Marketing Communication shall be clearly distinguishable as such to the relevant audience.

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 noted the advertiser’s response that that Ms Sefton is a brand ambassador for Volvo and the relationship is regularly disclosed in a variety of channels.

The Panel considered that although the post was highlighting a vehicle that could not be purchased, the post did draw attention of the public to the organisation through the tagging of the brand and the focus in the short video on the brand.

The Panel acknowledged that the advertiser did not have direct creative control over the post, however there was an existing relationship between Ms Sefton and the advertiser and that this would constitute a reasonable degree of control.

The Panel determined that the Instagram story was an advertisement.

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 the advertiser’s response that although the relationship was not disclosed in this short three second story, this story could not be viewed in isolation away from other posts and stories which do clearly disclose the relationship.

The Panel noted that another Instagram story was posted three hours later, directly following this advertisement. The Panel noted that the second story included the hashtag #volvopartner.

The Panel noted that anyone viewing Ms Sefton’s story within this three hour gap would not have seen the second post or the disclosure of partnership. However, the Panel noted that the nature of Instagram stories is that they are often viewed together, and that they are usually only visible to people who follow the influencer or who are searching for the influencer. The Panel considered that it is reasonable to



assume that the majority of people who viewed the advertisement would have also viewed the second story, either at the time or within the next 24 hours.

The Panel considered that the use of the hashtag #Volvopartner in the second story meant that the relationship between the advertiser and influencer was disclosed and the advertisement was clearly distinguishable.

Section 2.7 Conclusion

The Panel considered that the advertisement was clearly distinguishable as such.

Conclusion

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.