

## Case Report

1. Case Number :	0001-23
2. Advertiser :	Binge
3. Product :	Entertainment
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	8-Feb-2023
6. DETERMINATION :	Upheld - Modified or Discontinued

### ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification  
AANA Code of Ethics\2.3 Violence

### DESCRIPTION OF ADVERTISEMENT

This television advertisement is a montage of various scenes taken from television series available on the advertiser's media platform with text message bubbles superimposed over the various scenes being displayed. One scene depicts a woman kicking a man in the testicles.



### THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*The content included a clip of a woman kicking a man in the groin, with reaction bubbles around it saying "wow", "amazing" etc. This is a blatant display of the glorification of gendered based violence. Never would you see the opposite occur for a television advertisement, where a man did the same for a woman, especially glorified in a way that is promoting violence and sexism.*

*The advertisement showed unnecessary violence against a male, a female was shown to kick a male in the genitals with visible pain shown by the male. There was no provocation shown by the male. All I ask is that the same standards are applied to male and female violence on TV. If the same unprovoked violence was against females would it be approved?*

*One image showed a man being kicked in the groin by a woman. This was seen by my 6 year old child, who now believes this sort of behaviour is acceptable, and this translated into action approximately 2 hours after seeing this.*

## **THE ADVERTISER'S RESPONSE**

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

*The Complaints relate to a 30 second advertisement from Binge's 'Summer Range' campaign (the Advertisement). The campaign was developed to drive awareness of the new television series that were available for consumers to view on Binge over the summer holidays. The Advertisement is a montage of various scenes taken from the television series with text message bubbles superimposed over the various scenes being displayed. The purpose of the text message bubbles was to imitate how consumers' commonly text message their friends and family with live reactions to a television series as they view the content.*

### *The Complaints*

*We understand that the complaints relate to a 3 second clip at 0.18 to 0.21 of the Advertisement that depicts a scene from the television series 'Upright' (the Clip). The Clip depicts a female walking up to a male who is taking photographs of her and kicking him in his genital region. Various text message bubbles are superimposed over the scene reading "That's gonna hurt", "Loved Milly in House of The Dragon – she is bad ass", "Upright be back!!" and "Well deserved!!", among others.*

*The Complaints include allegations that "[the Advertisement is] encouraging female violence against men" and "[t]he content included a clip of a woman kicking a man in the groin, with reaction bubbles around it saying "wow", "amazing" etc. This is a blatant display of the glorification of gendered based violence. Never would you see the opposite occur for a television advertisement, where a man did the same for a woman, especially glorified in a way that is promoting violence and sexism", among other complaints dealing with the same issues.*

### *AANA Code of Ethics*

#### *Section 2.1*

*As one of the complainants alleges the Advertisement “[t]he casualness of the action, makes the physical abuse of a man acceptable, somehow, supposed to be funny”, and a number of the complaints query whether the conduct displayed in the Advertisement would be acceptable if the roles were reversed, we have addressed Section 2.1 of the Australian Association of National Advertisers Code of Ethics (Code).*

*Section 2.1 requires that:*

*“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.”*

*The Complaints allege that the Advertisement discriminates against or vilifies a person or section of the community on account of gender. In the context of the defined attribute of gender, the Practice Note to the Code defines discrimination against or vilification on the basis of gender as material that “refer[s] to the attributes, roles, behaviours, activities, opportunities or restrictions that society considers appropriate for girls or boys, women or men”.*

*Foxtel does not consider that the Advertisement as a whole, or the relevant Clip, contains any material that refers to the attributes, roles, behaviours, activities, opportunities or restrictions that society considers appropriate for boys or men.*

*The majority of Complaints refer to the level of acceptability if the conduct displayed in the Advertisement was reversed. However, on Ad Standards webpage containing previous determinations regarding discrimination and vilification, it states that “[c]omplaints concerning discrimination or vilification against men commonly refer to the level of acceptability the advertisement would have if roles were reversed, and women were in the spotlight. The Community Panel’s role is to consider each advertisement on its own merit and as such, addressing hypothetical alternatives is not part of their role.” Foxtel submits that in line with this guidance, the Community Panel’s role is not to consider the hypothetical alternative posed by the Complaints.*

*For the above reasons, we submit that there is no depiction of discrimination against and/or vilification of any individual person or section of the community on the basis of gender in the Advertisement and, accordingly, no breach of Section 2.1.*

*Section 2.3*

*The Complaints have also alleged that the Advertisement depicts violence in breach of Section 2.3 of the Code.*

*Section 2.3 requires that:*

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

*If Ad Standards determined that the Advertisement depicted “violence”, Foxtel’s view is that the scenes are justifiable in the context of the product being advertised, namely the availability of the television series, Upright, on Binge. On Ad Standards webpage containing previous determinations regarding the depiction of violence, it states that “[w]hen promoting acting schools, movies, events and shows, it is reasonable for the advertiser to show violent images or scenes related to the product being promoted.”*

*The visual representations within the Advertisement are from the television series and are a necessary and accurate indicator of the characters in the series and the themes and relationships that are explored. Foxtel submits that it is reasonable that the advertising materials have been produced to align with the series’ narrative and as such, any depiction of violence within the Advertisement is justifiable within the context of the product being advertised.*

*Foxtel notes Ad Standards has previously dismissed similar complaints. For example, Ad Standards did not consider that an advertisement for a television series, Black Monday, presented or portrayed violence (case number 0036/19), which included a man being slapped. While Ad Standards acknowledged that the advertisement contained fleeting scenes of violence, the violence was not overly graphic or gory, and was justifiable in the context of the product advertised.*

*In considering whether violence depicted in an advertisement is justifiable, Foxtel acknowledges that Ad Standards may have regard to the audience of the advertisement. The Advertisement was approved by ClearAds, who gave the Advertisement an approval rating of “J” (or PG = Parental Guidance Recommended). ClearAds advises that “J” (or PG = Parental Guidance Recommended) classified advertisements may be broadcast at any time. While the obligation for the scheduling of advertisements on commercial television sits with the relevant commercial television broadcaster, we understand that the Advertisement has been scheduled in accordance with this approval rating, including during Air Crash Investigations and Nacho Libre.*

*For the above reasons, we submit that there is no depiction of violence as understood by most members of the community in the Advertisement and, accordingly, no breach of Section 2.3.*

*Further, we submit that the Advertisements do not breach any other provision of the Code.*

*Foxtel takes the Complaints very seriously and regrets any offence caused to the complainants or anyone else.*

## **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 complainants' concern that the advertisement depicts violence towards men.

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

**Section 2.1: Advertisements shall not portray 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 preference, religion, disability, mental illness or political belief.**

The Panel noted the Practice Note to Section 2.1 provides the following definitions:

Discrimination – unfair or less favourable treatment.

Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.

Gender – refer to the attributes, roles, behaviours, activities, opportunities or restrictions that society considers appropriate for girls or boys, women or men.

Gender is distinct from 'sex', which refers to biological difference.

**Does the advertisement portray material in a way which discriminates against or vilifies a person on account of gender?**

The Panel considered that the scene of the woman kicking the man was brief, but it can be seen that the man is taking photos of her and she approaches and kicks him.

The Panel considered that there is no indication that the woman kicks the man because he is male, or because she is female, and that the disagreement between the two characters was not clearly related to gender.

The Panel considered that the man in the advertisement is not shown to receive unfair or less favourable treatment because of his gender, and the advertisement did not humiliate, intimidate or incite hatred, contempt or ridicule of the man because of his gender.

### **Section 2.1 conclusion**

The Panel considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did not breach Section 2.1 of the Code

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

The Panel noted that the Practice Note for this section of the Code states:

*“Although the depiction of violence in an advertisement may be relevant to the story being told in the advertisement, any violence must also be justifiable in the context of the product being advertised, or else will be in breach of this section of the Code...*

*The results or consequences of violence (e.g. a black eye) and audio representations of violence may also be prohibited.”*

The Panel noted the advertiser’s response that the advertisement uses an excerpt from the television show ‘Upright’ and it is reasonable to depict scenes from this show to display the narrative.

### **Does the advertisement contain violence?**

The Panel noted that the Code and the Practice Note do not provide a definition of violence. The Panel noted that they needed to consider whether the general community would consider this ad to portray violence.

The Panel noted that the woman appears to kick the man hard, and he reacts as though he is in pain. The Panel considered that the advertisement contained violence.

### **Is the violence justifiable in the context of the product or service advertised?**

The Panel noted that the advertised service is a streaming service promoting multiple summer shows.

The Panel noted that the show, ‘Upright’ was promoted for three seconds out of the 30 second advertisement. The Panel noted that the television show consisted of two series and that the advertiser had deliberately selected this three second clip to promote the show.

The Panel considered that while it is reasonable to depict scenes from the show in this kind of promotion, the scene of the kick was not providing information on the narrative of the show. The Panel considered that the kick was gratuitous and not necessary as there were plenty of other moments from the show which could have been used.

The Panel considered that the product being advertised was a streaming service. Overall, the Panel considered that the violent scene was not justifiable in the promotion of a streaming service, which could have used other non-violent scenes to promote its shows.

## **Section 2.3 Conclusion**

The Panel determined that the advertisement did present or portray violence which was not justifiable in the context of the product or service advertised and did breach Section 2.3 of the Code.

### **Conclusion**

Finding that the advertisement did breach Section 2.3 of the Code, the Panel upheld the complaints.

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

I confirm that Foxtel discontinued display of the advertisement subject to the Complaints in mid-January.