



Case Report

1	Case Number	0009/18
2	Advertiser	Microsoft Pty Ltd
3	Product	Retail
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	24/01/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

The television advertisement depicts an artist and author, Katherine Roy, talking about her experience creating 3D objects on the advertised laptop. Katherine is seen in her workspace, reading her picture book aloud to children. Katherine is shown drawing and animating 3D cartoon pictures of sea creatures, including great white sharks and jellyfish.

THE COMPLAINT

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

Aired at prime time during The Ashes cricket coverage, an offensive and grossly inaccurate TV Commercial for HP computers depicting a "friendly" killer Great White shark. Great White sharks are literally one the deadliest creatures on earth. Depicting them as "friendly" (the woman smiles and pats the killer shark) is grossly irresponsible and false. This misinformation could lead to deaths. It is also grossly insensitive. The records show that fatalities from Great White sharks in Australia have increased 20 to 30 fold recently, since the year 2000, due to increasing populations and unwarranted protection. Many viewers are aware of the recent horrific GW attack and death of 16 year old Laeticia (Teesh) Brouwer in front of her mother, father and sister, as well as many other tragic young lives lost in the most grisly of circumstances. The advertisement should be removed from broadcast and the advertisers reprimanded for presenting grossly false, dangerous, insensitive and offensive material.

THE ADVERTISER'S RESPONSE

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

We refer to the complaint made in connection with the Windows 10 advertisement (Advertisement) and thank you for the opportunity to provide a response.

We are committed to conducting all advertising and promotions to the highest standards and we take seriously any complaints made in relation to any such advertising and promotion. We regret that the complainant was offended by the Advertisement and we hope that this response will also assist them in understanding our intentions behind the creation and promotion of the Advertisement. Having considered the Advertisement, the complaint, and the requirements of the AANA Code of Ethics (Code), we respectfully submit that the Advertisement does not in any way contravene the Code.

The Advertisement in question is for Windows 10 PCs (the Product). It demonstrates how customers can use apps and accessories with the Product to draw pictures and create animations, including using the 3D capability as shown in the Advertisement.

The original Advertisement was produced overseas and subsequently localised for Australian television. Commercials Advice Pty Ltd (CAD) gave the Advertisement a "G" rating, which is a general rating, where "the content is very mild in impact and does not contain any matter likely to be unsuitable for children to watch without supervision" (FreeTV Australia Placement Codes PDF, located at http://www.freetv.com.au/content_common/pg-cad-placement-codes.seo).

The Advertisement itself runs for 30 seconds and features a series of drawings and animations of sea creatures depicted on a Windows 10 PC. Katherine Roy, the artist who features in the ad, creates images intended for children's books that depict drawings of sea creatures and underwater life, in a cartoonish style. No "real life" great white sharks or other sea creatures are shown in the Advertisement, and the scenes are intended to demonstrate the creative tools available to artists and users alike.

We submit, having regard to Section 2 of the Code that:

The Advertisement does 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 preference, religion, disability, mental illness or political belief, and accordingly, the Advertisement does not contravene Section 2.1 of the Code;

The Advertisement does not employ sexual appeal in any way and therefore does not contravene Section 2.2 of the Code;

Members of the community would not consider the content of this Advertisement to portray any inherently violent imagery, as the images in the Advertisement are of sea creatures that appear in children's books and on a computer screen, in the form of drawings or cartoonish animations. Therefore, the Advertisement does not contravene Section 2.3 of the Code;

The Advertisement does not depict sex, sexuality or nudity in anyway and therefore does not contravene Section 2.4 of the Code;

The Advertisement does not feature strong or obscene language or language which is inappropriate for the relevant audience and medium, and accordingly, the Advertisement does not contravene Section 2.5 of the Code;

The Advertisement does not depict any material which is contrary to Prevailing Community Standards on health and safety, including any unsafe practices or images, as the Advertisement depicts drawings and cartoonish animated scenes that are plainly unrealistic and does not demonstrate nor encourage any unsafe practices.

The Advertisement was created to demonstrate the drawing and animation capabilities available of the Product. It shows drawings and animations of great white sharks and jellyfish in the sea, occasionally rotating to and fro to demonstrate the "3D" effect that can be created using the Product.

The Advertisement does not explicitly nor implicitly encourage children or adults to interact with great white sharks in the wild. The Advertisement does not depict any "real life" sharks or jellyfish, and the images depicted are clearly drawings and cartoonish animations. At one point in the Advertisement, a cartoon drawing of a great white shark is shown on the screen, superimposed over a video of Katherine Roy in the background, where she strokes the shark to demonstrate the functionality of the Product. This scene could not reasonably be interpreted as encouraging children or adults to interact with great white sharks in the wild. Furthermore, at no point does the Advertisement refer to great white sharks as "friendly" or "approachable".

We assert that the community at large would understand that the Advertisement demonstrates animated imagery of great white sharks on a computer as opposed to scenes from "real life." The community would be able to distinguish this stylized Advertisement which is promoting a computer product from Advertisements that are designed to promote a real experience. We conclude that the Advertisement does not depict material contrary to Prevailing Community Standards on health and safety, and therefore does not contravene section 2.6 of the Code;

The Advertisement is presented as an advertisement that is clearly promoting a product via a testimonial from Katherine Roy. The disclaimer "real person paid for real opinions" appears prominently in the Advertisement which also indicates the commercial arrangement Microsoft has with Katherine Roy. We conclude that the Advertisement is clearly distinguishable as advertising and therefore does not contravene section 2.7 of the Code.

Further, the theme, visual imagery and language used are all intended to appeal to an adult audience, and therefore the Advertisement is not directed "primarily" or even incidentally to children. The Product in question is also not "targeted toward" children nor does it have a "principal appeal" to children. We note that children under the AANA Code for Advertising & Marketing Communications to Children the definition of "children" is persons 14 years old or younger. As a result, we submit that the AANA Code for Advertising & Marketing Communications to Children does not apply to the Advertisement, and we therefore make no further comment in that regard.

We note that clauses 3.2 and 3.3 of the Code do not apply to the Advertisement.

On the basis of the above, we do not consider that the Advertisement contravenes the Code, having regard to Section 2 and 3.1 of the Code or otherwise. We confirm that the Advertisement is no longer being broadcast, and at this stage there are no plans for it to be run in the future.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concerns that the advertisement is offensive and inaccurate depiction of Great White Sharks being friendly.

The Board reviewed the advertisement and noted the advertiser’s response.

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted that this television advertisement features a female author talking about her children books and demonstrating the use of the advertised product, drawing sea creatures, including a Great White Shark.

The Board noted the complainant’s concern the advertisement depicted sharks as being friendly.

The Board noted the actual content of the advertisement depicts the author demonstrating the advertised product on a computer screen. The Board also noted all creatures drawn are animated 3D cartoon style pictures.

The Board acknowledged that there is a high level of community concern around shark attacks and but considered that in this instance the advertisement does not promote unsafe practices and in the Board’s view the complainant’s interpretation of the advertisement is unlikely to be shared by the broader community.

The Board considered that the advertisement did not depict material contrary to Prevailing Community Standards and determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.

