



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0033/17</b>
<b>2</b>	<b>Advertiser</b>	<b>Anytime Fitness</b>
<b>3</b>	<b>Product</b>	<b>Sport and Leisure</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Mail</b>
<b>5</b>	<b>Date of Determination</b>	<b>08/02/2017</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

- 2.5 - Language Inappropriate language
- 2.5 - Language Strong or obscene language

### DESCRIPTION OF THE ADVERTISEMENT

The flyer advertisement features a picture of a person in gym clothing along with the following wording:

**“F\*CK UNFIT! THIS IS MY YEAR. BEAT THE EXCUSES. SMASH OVER 1,100 WORKOUTS WITH OUR ANYTIME FITNESS APP. GET STARTED WITH A 7-DAY FREE TRIAL. JOIN IN-CLUB AND DOWLOAD IT TODAY #ANYTIMEWORKOUTS”.**

The back page of the Flyer states the following:

**“MAKE THIS THE YEAR YOU SAY I CAN DO THIS. Those inner voices, the ones that give you thousands of reasons not to get fitter and healthier. It’s time to do something about them. When you join you’ll get our exclusive Anytime Fitness app with Anytime Workouts. It’s got over 1,100 tailored workouts to kick-start your fitness goals. Plus you’ll get all the equipment, motivation and support you need to change your life. JOIN A COMMUNITY THAT’S 500,000 VOICES STRONG TODAY.”**

The flyer also features contact details for the nearest Anytime Fitness Gym, Terms and Conditions of the 7-day free trial and the Anytime Fitness trademarks.

### THE COMPLAINT

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

*It uses language which can be offensive, particularly to young children - I don't wish for my children to read their slogan. It is clear as to what the "F\*ck" means and should not be advertised publicly.*

*Whilst the use of the "F" word is broadly used in today's society, I still find this to be unacceptable to promote a Gym and to get fit. The "F" word is totally unnecessary and I find it offensive. This would not encourage me to use a Gym or get fit with the use of the "F" word. I sent an email to anytime fitness and they didn't really care what my thoughts were as they are trying to promote Australians to get fit. I am appalled!!!*

*F\*CK UNFIT is the opening two words. Standards are pathetic in this country if my 10yo son collects the mail and brings this to me laughing at the content. He already knows this word from school and we've been trying to educate him that casual use of the word is unacceptable. What hope have we got? What's happening to the standards in this country? Have some clout and stamp this filth out. It is unnecessary and lowers our standards here and overseas.*

*I find it extremely offensive, unnecessary. I DO NOT want my children to be exposed to this sort of thing in our daily mail collection.*

## **THE ADVERTISER'S RESPONSE**

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

### *Anytime Fitness Network*

*Anytime Fitness is a franchise system that involves the development and operation of 24/7 fitness clubs using certain trademarks, systems and other intellectual property. The franchise system is owned by Anytime Fitness LLC of Minnesota, USA. We, Anytime Australia Pty Ltd have the rights, in Australia, to grant Anytime Fitness franchises to others (franchisees) who operate Anytime Fitness clubs using the system; we are therefore considered the Australian Franchisor. It is important to note the following characteristics of a franchise model:*

- Each franchise is independently owned and operated; and*
- Anytime Australia is a separate legal entity and does not own or operate any Anytime Fitness clubs on its own account.*

*Despite the above, we, in conjunction with our marketing agency, have developed, and made available to our franchisees, the relevant advertising campaign and the material the subject of the complaint. Accordingly, we consider it appropriate for us to respond to the complaint (particularly in circumstances where the complaint does not identify the particular relevant club displaying the subject advertisement).*

### *Applicable Codes*

*The complaint raises issues under Clause 2.5 of the AANA Advertiser Code of Ethics ('the Code') which we address in our response below. Anytime Fitness is of the view that Clauses 2.1, 2.2, 2.3, 2.4 and 2.6 of the Code, together with the AANA Food & Beverage Advertising & Marketing Communications Code, are not relevant to the advertisement.*

*The AANA Code of Advertising & Marketing Communications to Children does not apply as the advertisement is not directed primarily to children and is not a product targeted toward and having principal appeal to children. Anytime Fitness Clubs do not allow minors to join if under the age of 16 and minors aged 16 and above can only join approved clubs with the permission of their parent or legal guardian.*

#### *Campaign Context*

*The flyer to which the subject complaint relates forms part of the wider “F\*ck Unfit” campaign which was launched by Anytime Fitness on 9 January 2017. The campaign is due to run until 11 February 2017. The F\*ck Unfit campaign is designed to inspire a fitter Australia by challenging the fundamental health problem of being unfit. Approximately two thirds of Australians are overweight or obese; as Australian’s largest gym chain, Anytime Fitness considers itself morally obligated to take positive action to address this issue. This emotive marketing campaign challenges Australia to become fitter and healthier with the support of Anytime Fitness and the Anytime Workouts app, which is a digital workouts tool Anytime Fitness launched to all its members alongside the campaign. Anytime Workouts features over 1,100 workouts and 2,700 exercises and is accessible exclusively to members via the Anytime Fitness app. Anytime Fitness seeks to motivate and equip Australians with the necessary resources to take the nagging, pessimistic internal dialogues about getting fit and flip them into positives by saying “F\*CK UNFIT!”. Underpinning this is the message that with Anytime Fitness you’re not just a part of a gym, but you’re part of the largest fitness community in Australia with people who’ve overcome those same negative voices. Our cultural and commercial ethos centers upon a bona fide commitment to improving the nation’s health.*

#### *The advertisement*

*The relationship between the campaign, Anytime Fitness’ goal to inspire a fitter, healthier Australia and the launch of the app is clearly expressed on the flyer.*

*The Flyer does not contain inappropriate, strong or obscene language. Anytime Fitness understands that the word ‘fuck’ may be considered obscene and inappropriate in certain contexts to some members of the community. However, whilst the campaign alludes to the word it does not appear in the flyer, or indeed any of the campaign’s advertisements, in full, as the ‘u’ has been replaced with a ‘\*’. The context of the advertisement is the promotion of a physical fitness center to adult Australians and the word is used in a motivational way to inspire positive change for the betterment of the viewer’s, and ultimately the nation’s, health.*

*Anytime Fitness does not condone overt or unnecessary swearing. Instead the campaign is meant to allude to a strong statement that we’re making in the face of serious health problems that plague our communities. Our goal was not to swear to offend or just for the sake of it.*

*Further, the phrase “F\*ck Unfit” is not used in a sexual or aggressive manner and instead is used in a motivational manner, intended to inspire people to take control of their fitness goals and highlight the Anytime Workouts app which members can use to make their fitness goals a reality. We firmly believe, and respectfully submit, that there is a significant public interest in combatting Australia’s overweight and obesity crisis and that the advertisement ought to be considered in light of its purpose of advancing this public interest.*

*Anytime Fitness is of the opinion that if you view the Flyer in the context of the Anytime*

*Fitness brand, the intended audience, the goal to create a fitter and healthier Australia, the launch of the Anytime Workouts app and the motivational tone used throughout, the overall use of the language cannot be deemed strong, obscene or inappropriate.*

*Whilst the flyers were placed in letterboxes, the intended audience was not children and the flyers were not designed to attract children. Anytime Fitness does not sell memberships to children and instead intends to attract members predominately from the 18-35 year old age bracket. Accordingly, the content of the Flyer is targeted at this demographic. Anytime Fitness is of the view that given the use of the ‘\*’, together with the context, style and delivery format, as well as the product to which the advertisement relates, if young children were to view the flyer they are unlikely to associate the word with an offensive or swear word.*

*For the reasons stated above, Anytime Fitness is of the view that the Flyer and other advertising material which forms part of the F\*ck Unfit campaign does not breach the Code and the complaint should be dismissed.*

## **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 complainants’ concerns that the advertisement features a reference to a strong swear word which is offensive and not appropriate for children to see.

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

The Board considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: “Advertising or Marketing Communications 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”.

The Board noted that there are four versions of this flyer for Anytime Fitness with each version featuring a different person wearing workout gear but all versions feature the phrase, “F\*CK UNFIT!”

The Board noted the use of the F word with an asterisk replacing the letter ‘u’. The Board noted it had previously upheld a similar complaint in case 0513/13 where:

“The Board noted that the asterisks did not obscure the meaning of the word, and in the context it was clear what the word was meant to be. The Board also noted that the name of the product being advertised was a television show called ‘F\*ck, That’s Delicious’.

The Board noted that it had previously upheld similar complaints about outdoor posters featuring the names of bands (“Holy Fuck” in case 0032/11, “Fuck the Reaper” in case 0362/11 and “Starfuckers” in case 0009/15).

The Board noted that the current advertisement was part of a series of large, outdoor posters

which would be seen by a broad audience, including children. The Board considered that the meaning of the word in the advertisement was clear enough that most young children would be able to read and understand it...

...The majority of the Board considered that community standards research had shown that the word 'fuck' is still considered to be obscene by most members of the community, and that this was not appropriate to be used in advertising in a public medium."

In the current advertisement the Board noted the advertiser's response that the intended audience was adults but considered that the placement of the flyers in mailboxes means that the advertiser cannot control who sees the advertisement. The Board considered that consistent with a previous determination regarding the potential audience of advertisements received in the mail (0057/11), the advertisement is a flyer placed in post boxes and is therefore potentially available to children.

The Board noted that the phrase, "F\*CK UNFIT!" is very clear in the advertisement and considered that most young children would be able to read it and understand it, and in the Board's view, many adults would also find this reference to a swear word to be strong and obscene.

Consistent with previous determinations, the Board considered that the language in the advertisement was too strong for a broad audience that would include children.

The Board considered that the advertisement did use strong and obscene language which is not appropriate in the circumstances and determined that the advertisement did breach Section 2.5 of the Code.

Finding that the advertisement did breach Section 2.5 of the Code, the Board upheld the complaints.

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

We refer to your letter of 13 February 2017 and acknowledge the ASB's decision on this matter.

The advertising campaign concluded on 11 February 2017 and our franchise network have been advised to discontinue use of all marketing materials and advertisements associated with the campaign. We will advise our franchise network of the ASB's decision.

