



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0039-20
2. Advertiser :	Ola Cabs
3. Product :	Travel
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	22-Jan-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

This television advertisement depicts various scenes of people being dropped off and picked up by Ola Cabs.

THE COMPLAINT

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

*I was of the view that the driver committed many driving and parking offences, so to check, I sent a copy to Mr ***** , who is *****Council and has been in this job for over 12 years. He replied (BEGIN EMAIL): ******

*From: [******

Sent: Friday, 11 October 2019 9:09 AM

*To: ******

Subject: RE: Local Government Enforcement

Importance: High

I recall seeing this ad on television on quite a few occasions. My initial reaction was that I noticed that there were several instances of obvious unlawful parking depicted in the ad. I would also add that these are offences that my team witness on a regular



basis involving taxis and Uber drivers. It concerns me that an advertisement appears to normalise unlawful and dangerous parking.

In regards your specific question about the breaches observed I am of the view that there were at least 5 offences depicted of which the following are included :

82561 VOS 12 Stop in intersection R \$344 2 demerit points 170(1)

83423 ZPY 12 Stop within 10 metres of an intersection (no traffic lights) R \$344 2 demerit points 170(3)

83615 CKO 12 Double park R \$268 189(1)

82772 KLY 12

Not parallel park with 3 metres clear road alongside (no dividing line/strip) R \$114 208(1)

82769 KPP 12 Park so as to obstruct vehicles/pedestrians R \$114 208(1)

I am not aware of any Road Rule that prohibits or regulates the side of a vehicle that a passenger can exit.

As you can see, in NSW, several of these parking offences attract 2 Demerit Points, which goes to demonstrate the potential for harm, as seen by our legislators. The ad is therefore in clear breach of HEALTH AND SAFETY (SECTION 2.6) UNSAFE PRACTICES

Images of bike riding without helmets or not wearing a seatbelt will be contrary to prevailing community standards relating to health and safety. Similarly, advertisements depicting unsafe practices or images, such as riding down a hill in a wheelie bin, using a mobile phone while driving or apparently hiding in a chest freezer etc are unacceptable.

This ad attempts to "legalise and normalise" the appalling illegal and dangerous driver behaviour frequently observed of taxi, Uber and Ola drivers.

For these reasons the ad should be banned from being broadcast immediately

THE ADVERTISER'S RESPONSE

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

We write in response to the complaint subject of this matter, case reference number 0039-20.



The TV advertisement in question (the “TVC”) could be described as a comparison ad, between Ola and its biggest competitor. It shows a vehicle, a driver (actor) and passenger/s (actor/s), amongst other things.

At the outset, we advise that we disagree with and reject the complainant’s categorisation of the TVC.

In relation to particular allegations of various breaches of the Road Rules, and whilst we do not intend for this response to be a discussion on specific provisions of the Road Rules, at least some of those allegations appear to be ill founded and unsubstantiated.

For example, the allegation of a breach of Road Rule 170(1) is unfounded and misleading as subrule 170(1)(b) allows a driver to stop along the continuous side of the continuing road at a T-intersection without traffic lights, which we understand was the case here.

The allegation of a breach of Road Rule 170(3) is similarly unfounded and misleading, for the similar reason, as subrule 170(3)(b) allows a driver to stop within 10 metres of a T-intersection without traffic lights if the driver stops along the continuous side of the continuing road of the T-intersection.

Leaving aside and notwithstanding any detailed analysis of the Road Rules, we reject the allegation that the TVC breaches subsection 2.6, or any other part of section 2 of the AANA Code of Ethics (the “Code”) and submit that, contrary to the allegations in the complaint, the TVC is fully compliant with the Code.

The allegation that the “ad attempts to ‘legalise and normalise’ the appalling and dangerous driver behaviour” is, to put it mildly, unmaintainable and, in our view, not a conclusion that one could reasonably reach whilst or after watching the TVC.

Similarly, likening the mild, calm, non-controversial TVC to “riding down a hill in a wheelie bin” and “hiding in a chest freezer” is, in our view, an inappropriate and unreasonable comparison.

Having said that, we understand that you have to approach and examine all complaints seriously. Similarly, we adopted the same serious approach in relation to the production of the TVC. In order to assist you in dealing with this matter, we provide the following further information in relation to the TVC.

- 1. The TVC was filmed in Balmain, Sydney. Wallace Street for the opening shot and Birchgrove Road/Addison Street as the second location.*
- 2. The TVC shoot took place on 2 April 2019. The opening shot at Wallace Street was filmed at approximately 6:00 pm - 7:00 pm. The Birchgrove Road/Addison Street shots were filmed at approximately 9:00 pm - 11:30 pm.*
- 3. The TVC was filmed in a controlled environment.*



- 4. Council permit/licence was obtained from the Inner West Council for filming permission and road occupancy.*
- 5. We had footpath and road occupation blocked off for Wallace Street, Wallace Lane, Birchgrove Road and Addison Street.*
- 6. On set there was a location manager, as well as control crews, including safety supervisor, traffic controllers, pedestrian controllers and supervisors.*
- 7. Risk assessment and safety report was made prior to filming and distributed to the crew.*
- 8. Location agreement for showcasing The Riverview Hotel was also obtained.*

In summary, we not only disagree with the complainant's allegation that the TVC breached subsection 2.6 of the Code, but also believe that, in addition to the TVC being compliant with the Code, we have adopted and followed the best practice approach in relation to the TVC and its production. We submit that such approach was not accidental, but rather a result and reflection of our serious approach to rules, regulations and safety, amongst other things.

We have uploaded the TVC, the council permit/licence, the risk assessment and safety report and CAD slip.

We trust that the uploaded materials and the information provided in this response will be sufficient to enable you to deal with this matter. Should you require any further information, please do not hesitate to contact us.

THE DETERMINATION

The Ad Standards Community Panel (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 advertisement depicts several scenes of driving behaviour which contravene traffic rules.

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

The Panel considered whether the advertisement complied with 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 Panel noted it has previously considered an advertisement in which a woman parked within ten metres of an intersection in case 0097-18 in which:



“The Panel considered that, regardless of whether or not the woman was parked in a manner that would give rise to a potential breach of the Australian Road Rules, the depiction was brief and unclear. In the Panel’s view the mother is shown driving carefully away and the brief scene did not amount to a depiction of driving or parking in a manner that would contravene prevailing community standards on safety around schools. The Panel determined that the depiction of the car near the children’s crossing was not a depiction of material that would breach prevailing community standards on health and safety.”

Case 0097-18 was subsequently subject to Independent Review, with the following comments made in determination:

“In particular the Panel noted that the Independent Reviewer considered that there were a number of substantial flaws in Panel’s determination. Specifically the Reviewer...Was of the view that an advertisement which depicts the breach of NSW Road Rules would, under normal circumstances and unless conclusive evidence proving otherwise was offered, necessarily be contrary to Prevailing Community Standards on safety...”

In the current case, the Panel noted that the vehicle is not depicted near a children’s crossing or an area that children would be likely to frequent, and noted that the advertisement is set in the evening with no other moving vehicles or traffic shown. The Panel noted that the split-screen of the advertisement, depicting a scenario of the same woman entering two sides of the same car simultaneously was clearly an exaggerated depiction and would not be considered by most members of the community to be a realistic example of parking practices or be a call to action in regard to how a rideshare service would pick up a passenger.

The Panel noted that the relevant aspect of Section 2.6 of the Code relates to prevailing community standards on health and safety and noted the Independent Reviewer’s comments in case 0097-18. However, the Panel considered that Section 2.6 does not require a legal test for determinations. The Panel considered that the content of an advertisement that includes the depiction of a specific action or activity which may be in breach of a law, is not automatically a breach of the Code, as the Panel must consider the overall content, theme and messaging of an advertisement through the lens of prevailing community standards.

The Panel addressed each of the complainant’s identified breaches of the road rules.

The Panel noted that the complainant identified *“Double park 189(1)”*.

The Panel considered that this scene occurred at 2 seconds into the advertisement, and depicts the vehicle stopping in a street that appears to be one-way.

The Panel noted Section 189 of the Australian Road Rules states:



“189 Double parking

(1) A driver must not stop on a road if to do so would put any part of the vehicle that he or she is driving between a vehicle that is parked on the road and the centre of the road.

(2) A driver does not contravene this rule by parking on the side of the road, or in a median strip parking area, in accordance with rule 210”.

The Panel noted that the split-screen of the advertisement, depicting two simultaneous scenarios was clearly an exaggerated and metaphoric depiction as it featured the same woman get in the same vehicle from two different sides at the same time.

The Panel considered that the advertisement was clearly in the context of a comparison between Ola Cabs and other rideshare services. The Panel considered that most people viewing the advertisement would recognise the unrealistic and exaggerated nature of the advertisement in comparing the same person entering two sides of the same vehicle simultaneously and most members of the community would not consider the advertisement to be prompting or encouraging unsafe behaviour.

The Panel noted that the complainant identified *“Not parallel park with 3 metres clear road alongside (no dividing line/strip) 208(1)”* and *“Park so as to obstruct vehicles/pedestrians 208(1)”*

The Panel considered that this also related to the scene at 2 seconds into the advertisement, depicting the vehicle stopping in a street that appears to be one-way.

The Panel noted Section 189 of the Australian Road Rules states:

“208 Parallel parking on a road (except in a median strip parking area)

(1) A driver who parks on a road (except in a median strip parking area) must position the driver’s vehicle in accordance with subrules (2) to (8). Offence provision”.

The Panel further noted specific provisions under Section 208:

“(4) If the road is a one-way road, the driver must position the vehicle parallel, and as near as practicable, to the far left or far right side of the road, unless otherwise indicated by information on or with a parking control sign.

[...]

(7) If the road does not have a continuous dividing line or a dividing strip, the driver must position the vehicle so there is at least 3 metres of the road alongside the vehicle that is clear for other vehicles to pass, unless otherwise indicated by information on or with a parking control sign.

(8) The driver must position the vehicle so the vehicle does not unreasonably obstruct the path of other vehicles or pedestrians.”



As discussed in the consideration of the previous law, the Panel considered that the high degree of unrealism in this scene would be unlikely to be considered by most members of the community to be actively encouraging or promoting unsafe behaviour.

The Panel noted that the complainant identified “*Stop in intersection...170(1)*” and “*Stop within 10 metres of an intersection (no traffic lights)...170(3)*”.

The Panel considered that this scene occurred at 19 seconds into the advertisement, and depicts the vehicle stopping just after turning a corner on a 3-street intersection.

The Panel noted Section 170 of the Australian Road Rules states:

“170 Stopping in or near an intersection

(1) A driver must not stop in an intersection unless:

- (a) the driver is permitted to stop at that place under the Australian Road Rules; or*
- (b) the intersection is a T-intersection without traffic lights and the driver stops along the continuous side of the continuing road at the intersection.*

Offence provision. Note: Continuing road, intersection and T-intersection are defined in the dictionary.

[...]

‘(3) A driver must not stop on a road within 10 metres from the nearest point of an intersecting road at an intersection without traffic lights, unless the driver stops:

- (a) at a place on a length of road, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under the Australian Road Rules; or*
- (b) if the intersection is a T–intersection—along the continuous side of the continuing road at the intersection.*

Offence provision.

Note: Continuing road and T–intersection are defined in the dictionary.

The Panel noted the definition of a continuing road:

“continuing road, for a T–intersection, means the road (except a road-related area) that meets the terminating road at the T–intersection.

The Panel noted the definitions of T-intersection and terminating road, and considered that the angle of the advertisement makes it impossible to determine whether the vehicle stops along the continuous side of the continuing road, which would therefore be an exemption to this particular road rule.

The Panel considered that there is not a clear breach of the road rule, and that in conjunction with the high level of fantasy discussed previously this scene is not contrary to Prevailing Community Standards on safety.



Overall, the Panel determined that the exaggerated and unrealistic nature of the content of the advertisement in comparing the actions of a woman metaphorically using two different rideshare services was not a call to action in regard to parking practices and was not condoning or encouraging unsafe behaviour by the driving behaviours depicted.

The Panel considered that the advertisement did not depict material that most members of the community would consider to be contrary to Prevailing Community Standards on safety, and did not breach Section 2.6 of the Code.

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