



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

[AdStandards.com.au](http://AdStandards.com.au)

Advertising Standards Bureau Limited  
ACN 084 452 666

# Case Report

1	Case Number	0043/19
2	Advertiser	Uber
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	20/02/2019
6	DETERMINATION	Dismissed

## ISSUES RAISED

2.7 - Native Advertising Advertising not clearly distinguishable

## DESCRIPTION OF THE ADVERTISEMENT

There are multiple versions of this television advertisement which open on a shot of a sports arena, then cuts down to a tennis player engaging in either a tennis match, on the sports bench or having a discussion with an umpire. Then the player turns to camera to say his or her line 'Tonight, I'll be eating...'. The menu changes every ad, then the doorbell rings and the player or umpire receives their food delivery.

## THE COMPLAINT

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

*The advertisement content was not sufficiently distinguishable from the program content. Same tennis stars in the same clothing as during the game in the same venue as the game. When it turned out to be an advertisement that was very annoying, each time.*

## THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this





advertisement include the following:

*The intention of the ‘Tonight I’ll be Eating’ campaign has always been to entertain and excite our audience. The inclusion of celebrities and sporting heroes that surprise and delight the viewer has been an important component for building the brand in this market.*

*For the Australian Open tournament, we worked closely with Channel Nine and Tennis Australia to integrate these bespoke ‘Tonight I’ll be Eating’ TVCs into the traditional ad break. The intention was to capture everyone’s attention with an unexpected advertising moment. We worked closely with stakeholders and our media agency partner to ensure the placement of these ads would not interrupt the live broadcast.*

*With the inclusion of Uber Eats branding (logo and use of branded paper bag) and the standard tagline of “Tonight, I’ll be eating...”, it is clear to the audience that the film is an advertisement. All messages are consistent with our brand advertising in this market that has been displayed across approximately 100 different broadcast creatives nationally since 2017; predominantly aired on Channel 7, 9, 10 and SBS. The campaign has been in market for 82 weeks. The reach since the campaign has been in market has been approximately 70% of the entire Australian population.*

*These ads are no longer running on Australia television and were used only for a short period of time across a two week period.*

## **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 complainant’s concerns that the advertisement is not clearly identified as advertising material and is therefore misleading.

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

The Panel noted that this television advertisement has several versions featuring various tennis players and a cameraman and umpire. The advertisements begin as appearing to be a part of the normal tennis broadcast, before the people turn to the camera and say what they’re having for dinner, and an UberEats bag is delivered to them.

The Panel considered whether the advertisement complied with Section 2.7 of the Code which requires that “Advertising or Marketing Communications shall be clearly distinguishable as such to the relevant audience.”



The Panel noted the advice provided in the Practice Note to Section 2.7: “Context driven advertising and marketing approach is permitted, but marketers should be cognizant that, in seeking to make their advertising and marketing communication more engaging, they do not camouflage the fact that it is advertising.”

The Panel considered that it may not be immediately clear within the first few seconds that this is an advertisement, however considered after this time the use of logos, disclaimers and wording would make it clear to most viewers that this is an advertisement.

The Panel considered there is space for parody and satire in advertising and considered that although the advertisements may at first appear part of the real tennis broadcast, the advertisements are clearly identified as being for product when the people in the advertisement talk to the camera and an UberEats bag is delivered.

The Panel considered that advertisers must use caution in employing potentially confusing techniques such as this, and that advertisements that take a long time to distinguish themselves as advertising material, or that take the form of urgent or important news or emergency broadcasts, may breach the Code even if they are ultimately clearly distinguishable as advertising material.

The Panel considered that this advertisement, though designed to attract attention by inducing a very temporary confusion in the viewer, is clearly distinguishable as advertising material to the relevant audience and determined that the advertisement did not breach Section 2.7 of the Code.

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

