



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0055-22
2. Advertiser :	Amazon AU
3. Product :	Retail
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	9-Mar-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a cycling team riding up a hill. One of the team members passes the others on an electric scooter, and he informs them that it's Ok because he got free delivery.

THE COMPLAINT

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

This activity is only legal on private property in Australia.

There is no disclaimer stating this fact.

It is clear that people are under the impression that you can ride these on the road which has led to people being fined and many personal injuries to pedestrians.

THE ADVERTISER'S RESPONSE

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



It is unclear to Amazon AU whether the complaint relates to the 15" or 30" execution of the Lycra electronic scooter ("e-scooter") television advertisement ("15" Ad" or "30" Ad" respectively, or together the "Advertisements"). We have therefore addressed both the 15" Ad and 30" Ad executions in preparing our response.

1. The complaint

The complaint received by Ad Standards on 22 February 2022 alleges that the Advertisement: (1) shows a group of cyclists and one person riding an electric scooter that they bought from Amazon Australia and got free delivery; and (2) that this activity "is only legal on private property in Australia. There is no disclaimer stating this fact. It is clear that people are under the impression that you can ride these on the road which has led to people being fined and many personal injuries to pedestrians."

While the complaint does not assert a breach of any particular section(s) of the AANA Advertiser Code of Ethics (February 2021) ("Code") or any other law in Australia, we note that Ad Standards has identified that section 2.6 of the Code may have been breached, based on its initial assessment of the complaint and without having seen or heard the Advertisements. However, Ad Standards has requested that Amazon AU does not limit its response to these issues only, and that Amazon AU's response should address all parts of section 2 of the Code.

2. Response to complaint

For the reasons below, the complaint should be dismissed.

(a) Discrimination or vilification (section 2.1 of the Code)

There is no discrimination or vilification depicted in the Advertisements.

(b) Exploitative and degrading (section 2.2 of the Code)

There is no exploitative or degrading content depicted in the Advertisements.

(c) Violence (section 2.3 of the Code)

There is no violent content depicted in the Advertisements.

(d) Sex, sexuality and nudity (section 2.4 of the Code)

There is no sex, sexuality or nudity in the Advertisements.

(e) Language (section 2.5 of the Code)

There is no strong or obscene language used in the Advertisements.

(f) Health and safety (section 2.6 of the Code)

Section 2.6 of the Code provides: "Advertising shall not depict material contrary to Prevailing Community Standards on health and safety."

The AANA Code of Ethics Practice Note ("Practice Note") relevantly states in respect of section 2.6 of the Code that advertising must not depict content that would "encourage or condone" unhealthy or unsafe behaviour having regard to Prevailing Community Standards. An example given by the Practice Note of content which is



likely to be contrary to prevailing community standards relating to health and safety is of “unsafe driving, bike riding without helmets or not wearing a seatbelt while driving a motor vehicle”.

The complaint states that there is no disclaimer outlining that the use of e-scooters is only legal on private property in Australia. We submit that this allegation should be rejected for two reasons.

First, the Advertisements contain a disclaimer which states “E-scooters can only be used on some Australian roads”. This disclaimer appears at the bottom of the screen as soon as the e-scooter rider appears on-screen in the Advertisements. This disclaimer is in contrasting white text and is displayed for a sufficient period of time to enable the viewer to read the disclaimer in-full (i.e. between approximately 0” – 4” in the 15” Ad, and between approximately 0” – 7” in the 30” Ad).

Second, it is not correct to state that e-scooters can only legally be used on private property throughout Australia. In Australia, the laws which regulate the use of e-scooters differ between the states and territories. By way of example, under the Road Safety Road Rules 2017 (Vic), an e-scooter can be used on a footpath / shared path or on public roads where there is no dividing line or median strip, the speed limit is less than 50 km/h, and it is not a one-way road with more than one marked lane, subject to some additional requirements. Similarly, under the Road Traffic Code 2000 (WA), motorised scooters can be used on public roads without a dividing line or median strip, the speed limit is less than 50 km/h, and it is not a one-way road with more than one marked lane, subject to some additional requirements. The road depicted in the Advertisements does not have a dividing line or median strip. If an e-scooter doesn’t meet these conditions, it can legally be used on private property.

Further, while riding e-scooters on roads in NSW is currently prohibited by the Road Rules 2014 (NSW), this prohibition does not extend to the operation of e-scooters on private roads and private land. The e-scooter in the Advertisements is being operated on and was filmed on a private road in the Hunter Valley region of NSW and accordingly, is being operated in a lawful manner.

We also submit that the Advertisements do not “encourage or condone” unsafe behaviour in contravention of section 2.6 of the Code. We refer to the reasons outlined above with respect to e-scooter regulatory requirements. In addition, the Advertisements are filmed on a quiet road, and do not depict any other vehicles or pedestrians. We therefore submit that the Advertisements do not depict any risk of any personal injuries to pedestrians. The e-scooter rider remains in proper control of the e-scooter at all times, appropriately warns the cyclists that there is a “rider on your right”, is operating the e-scooter in a responsible manner on the far left-hand side of the road and is wearing appropriate protective gear (i.e. a securely fitted helmet). Similarly, all of the cyclists are wearing appropriate protective gear (i.e. securely fitted helmets) and are riding in a responsible manner on the far left-hand side of the road. Each cyclist is clearly wearing cycling livery which suggests they are experienced with cycling on roads.



The Advertisements have been on free to air TV for approximately 9 weeks (as at the date of this response), and Amazon AU has not received any complaints regarding the Advertisements apart from the complaint the subject of this response.

The Practice Note also relevantly states that advertisers should not “depict behaviour that children may imitate. For example, advertisements which are likely to attract the attention of children or could indicate to children that appliances or other domestic/commercial equipment are a safe place to hide, are seen to encourage unsafe behaviour.” We submit that the Advertisements are not directed at children and so they are unlikely to attract the attention of children. In the event that a child does view the Advertisements, the Advertisements do not depict behaviour that, if imitated, would expose them to some risk of harming themselves or others, or to unlawful behaviour. The Advertisements also do not suggest that any appliance or equipment is a safe place to hide.

The Practice Note also prohibits advertisements which “demonstrates the unsafe use of machinery”. Notwithstanding the question of whether a bicycle or electric scooter would be properly considered “machinery”, we submit the Advertisements do not depict such behaviour for the reasons outlined above.

We therefore submit that the Advertisements do not contravene section 2.6 of the Code.

(g) Distinguishable as advertising (section 2.7 of the Code)

The Advertisements are clearly distinguishable as advertising.

(h) Other

We consider that the AANA Code for Advertising and Marketing Communications to Children, the AANA Food and Beverages Marketing and Communications Code, and the AANA Wagering Advertising and Marketing Communications Code are not applicable to the Advertisements, as the Advertisements are not primarily directed at children and do not relate to any food or beverage product or any wagering product.

3 Closing submission

For the above reasons, Amazon AU submits that the Advertisements are not in breach of the Code.

In the event that this complaint is not dismissed and/or that there are any residual or other concerns, Amazon AU notes that the Advertisements are scheduled to cease airing on Saturday 12th March 2022.

We thank Ad Standards for the opportunity to provide these submissions in relation to the complaint and respectfully request Ad Standards dismiss the complaint.

THE DETERMINATION



The Ad Standards Community Panel (Panel) considered whether the advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concerns that the advertisement depicts behaviour that is only legal on private property and that the advertisement does not make this clear.

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

Section 2.6: Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

The Panel noted that the rules regarding e-scooters vary between states/territories and noted that the advertisement was broadcast nationally.

The Panel noted that the advertisement does contain a disclaimer stating "E-scooters can only be used on some Australian roads".

The Panel considered that the advertisement is not set on a busy or heavily-used road - it is clearly set in a country landscape. The Panel further noted that the e-scooter rider is wearing appropriate safety gear, stays on the correct side of the road, and warns the other riders that he is passing them.

The Panel considered that most viewers would not interpret this advertisement as encouraging or condoning the use of such products in an unsafe manner.

Section 2.6 conclusion

The Panel considered that the advertisement did not contain material contrary to Prevailing Community Standards on health and safety and determined that it did not breach Section 2.6 of the Code.

Conclusion

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