



Ad Standards Community Panel
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Advertising Standards Bureau Limited
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Case Report

1	Case Number	0056/19
2	Advertiser	Medibank Private Ltd
3	Product	Health Products
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	06/03/2019
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.7 - Native Advertising Advertising not clearly distinguishable

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features a Medibank reporter doing a news-segment style report on health news.

THE COMPLAINT

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

I object to this advertisement due to the confusion that it deliberately created. It was impossible to distinguish between "News" and Advertising. The advertisement deliberately tried to construe itself as news, with the news banners and logos being utilised to trick viewers. It immediately went into an actual advertisement for the same product, adding to that confusion.



This advertorial was designed to masquerade as a news article by using the Channel 7 logo lower thirds chyron . By following it with an ad for medibank it has presented an idea to people that looks like part of the news, followed by an ad that sells their product.

I feel this is unethical and this specific combination of advertising should be discontinued.

THE ADVERTISER'S RESPONSE

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

The Ad Standards Case Managers have requested that as they have not yet had the opportunity to view the content in question, all parts of Section 2 of the AANA Code of Ethics ('Code') should be addressed. Medibank respectfully submits that upon viewing the marketing communication it will be apparent that only section 2.7 [Distinguishable as advertising of the AANA Code of Ethics] is relevant to this matter, and will accordingly limit its comments to this area.

Section 2.7 of the Code provides that Advertising or Marketing Communications shall be clearly distinguishable as such to the relevant audience. The AANA Industry Practice Note on Clearly Distinguishable Advertising ('Practice Note') provides guidance as to how to interpret section 2.7.

Medibank submits that the relevant marketing communication was clearly distinguished as the sponsored nature of the content was readily apparent to the viewers, as indeed it was to the complainant.

The marketing communication is presented in the form of a Medibank Health Update. Broadcast during a commercial break in Seven News, the marketing communication commences with clear, full screen Medibank branding. A presenter holding a Medibank branded microphone provides information on the predominance of anxiety in the Australian population and the support mechanisms available to help address it in the community. An interview with an expert psychologist is included. The marketing communication is compressed into a squeezeback form, to allow room for the network to show a ticker at the bottom of the screen, promoting news reports that will be broadcast after the break. The marketing communication concludes with further full screen Medibank branding, and a call to action for viewers to visit Medibank's online platforms. It is followed by another 30 second commercial for Medibank.

In determining whether a marketing communication is clearly distinguishable as such



to the relevant audience, the Practice Note relevantly states:

“If it is clear to the relevant audience that the content is commercial in nature (for example, by the nature of the content, where the content is placed, how consumers are directed to the content, the theme, visuals and language used, or the use of brand names or logos), then no further disclosure or distinguishing element may be needed.” In regards to the first issue, that being the relevant audience, the audience for Seven News is very predominantly an adult one, and is necessarily savvy to the fact that advertising on commercial television can take many forms. Simply because a marketing communication uses a person acting as a ‘reporter’ and another person is seemingly interviewed, the relevant audience will not be led into the erroneous belief that such an information based marketing communication is a bona fide news program.

In regards to the nature of the content, it is clearly commercial in nature, with the content possessing a general, informational style suited to Medibank as a health insurer, and not to a prime time news program.

In terms of placement of the marketing communication, it was broadcast as the first piece of content in a commercial break, and was in no way embedded into the Seven News program. Directly prior to the commercial break, the newsreader references, as is typical in a lead up to a commercial break, the news reports yet to come and then the theme music plays. The newsreader does not throw to, or make any reference to the Medibank marketing communication that follows, as one would reasonably expect of any advertising content. Viewers are clearly directed to the marketing communication on the understanding that a commercial break has already commenced.

The visuals and language used, including the use of the brand name and logos all serve to reinforce in the viewer’s mind that the material is commercial in nature. The first screen of the marketing communication (Image 1), and the last screen of the marketing communication (Image 2), clearly brand the marketing communication as a ‘Medibank Health Update’.

A Medibank Health Update watermark (Image 3) is also displayed in the upper right corner for the duration of the marketing communication.

Further, the presenter’s microphone is branded as Medibank (Image 4).

The language used also constantly reinforces the sponsored nature of the content. The presenter signs off at the end of the marketing communication with, “For Medibank, I’m Mia Greeves.” The narrator also verbally refers to the ‘Medibank Health Update’ over the first and last screen in which the words ‘Medibank Health Update’ are displayed.

The overall visual and aural impression of the marketing communication is entirely different to that of Seven News, with no use of the Seven News colour palate, entirely



different theme music, and no use of Seven personnel.

The Practice Note also refers to an example scenario in which a radio advertisement begins with music in the style of a news bulletin, before a verbal reference is made to a 'news bulletin' and an announcer provides a news style report. The guidance provided for this example scenario highlights the significance of quickly providing information that allows the audience to discern that the content is in fact a marketing communication. This accords with previous Ad Standards Community Panel Determinations, in which use of a 'news' style for marketing communications has been accepted, provided there are sufficient indicia pointing to the content being a marketing communication. By way of example of such indicia, the guidance to the example scenario deems that a call to action to interact with the brand at the completion of the advertisement is an element that distinguishes advertising. Tellingly, over the final 'Medibank Health Update' title screen, the narrator states, "To find out more, search Medibank Health Updates."

In regards to Seven's insertion of a news ticker underneath the lower boundary of the marketing communication, the Practice Notes states that:

"The overall appearance [of the advertising or marketing communication] is relevant, particularly the similarity with non-advertising content that may appear in combination with the marketing communication."

While the news ticker shown at the bottom of the screen is non-advertising content added by Seven at the time of broadcast, it in fact serves to distinguish the Medibank advertising content from the actual news program.

Seven News does not use tickers during its reports, with the ticker in the marketing communication referring to reports that are 'up next', meaning news stories that will be shown upon the continuation of the news report after the commercial break. This technique is one widely understood by the relevant audience, with 'up next' tickers and text being a common way of promoting programming following that which is currently on screen. The relevant audience would understand the use of the news ticker underneath the marketing communication to be a description of news stories to be reported upon the return of the news program after the break.

In summary, Medibank is of the view that the material is clearly distinguished as a marketing communication to the relevant audience and complies with the Code.

THE DETERMINATION

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



The Panel noted the complainants' concerns that the advertisement is not clearly distinguishable as an advertisement.

The Panel noted the television advertisement ran immediately after a segment of the Channel 7 news. The advertisement begins with the Medibank logo and the words 'HEALTH UPDATE' with a voice over stating 'This is a Medibank Health Update with Mia Greves'. Mia Greves is shown speaking into a microphone with Medibank branding. A Channel 7 News 'ticker' is on the bottom of the screen with information about stories that are coming up. Mia speaks about anxiety with infographics supporting the information she is providing. The words 'Medibank health update' are in the top right of the screen throughout the advertisement. Psychologist Dr Michael Carr-Gregg also appears in the advertisement providing information. 'B-roll' footage of young people is shown. Information on Beyond Blue and the Raising Children Network are given. At the end of the news style segment the Medibank Health Update screen is again shown and the voice over states 'to find out more search Medibank Health Updates. The news-style ad is then followed by another advertisement for Medibank with a voiceover speaking about the benefits of Medibank and people giving testimonials.

The Panel noted the complainants' concerns that this advertisement is masquerading as a news story and this would be misleading as people expect the news to be impartial.

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: "If it is clear to the relevant audience that the content is commercial in nature (for example by the nature of the content, where the content is placed, how consumers are directed to the content, the theme, visuals and language used, or the use of brand names or logos), then no further disclosure or distinguishing element is needed."

The Panel first considered the nature of the content, where the content was placed and how consumers are directed to the content.

The Panel noted the content appeared as the first ad in the ad break for Seven News.

The Panel noted the advertiser's response that the advertisement was clearly distinguishable as advertising and marketing material.

The Panel considered that the relevant audience for this advertisement would be Seven News viewers and the audience would be familiar with the format of the news but who may also be watching the news whilst doing other things such as preparing



dinner.

The Panel considered the theme of the advertisement.

The Panel considered that the overall theme of the content was to provide information on anxiety and to direct people to the Medibank website.

The Panel noted that it had previously considered a sponsored segment in a program that appeared as though it was a news story in case 0154/18, in which:

“The Panel considered the overall theme of the content was that it was a news segment promoting cardiovascular health. The Panel considered that the advertisement included the message that the Kyolic Aged Garlic would benefit cardiovascular health, but considered that this was included as part of the overall news-story theme.

The Panel considered that there was no mention in the segment of the cardiologist appearing to promote a product within the segment itself, rather the impression was he was there to provide broad medical advice in his specialist field of cardiology on an important health issue.

The Panel considered that when the product was mentioned the hosts reacted as though they had not heard of the product before, and there was no mention in the segment that there was a sponsorship arrangement between NutraLife and Studio 10.

The Panel considered that some of the wording and questions in the segment may have indicated to some viewers familiar with in-content promotion that a product was being promoted, however considered that this was not clear that the content was commercial in nature. The Panel noted that the brand name is mentioned in the context of broad health factors and a range of actions that can improve heart health. The Panel considered that the mention of the product name in this context did not make it clear that the segment was a promotion for that product.

Overall, the Panel considered that the nature of the content, where the content was placed, how consumers were directed to the content, the theme, visuals and language used in the advertisement did not make it clear to the relevant audience that the content was commercial in nature.”

The Panel considered that unlike Case 0154/18 the advertisement was not a sponsored segment, but appeared as the first commercial in an ad break.

The Panel noted the advertiser’s response that the Seven News newsreader ends the segment as usual and does not throw to, or make any reference to, Medibank and that it would be clear to regular viewers that the content was part of the advertising



break. The Panel also noted the advertiser's response that the advertisement is clearly commercial in nature, with the content possessing a general, informational style which was suitable for an advertisement for a health insurer, but not for a prime-time news program.

The Panel considered that the format of this advertisement was much longer than typical television commercials and was highly stylized to look like a news segment. The Panel considered that the theme of anxiety and the opening statement that 'new data shows that the rates of anxiety have doubled in a decade' reflects a current concern in the community about anxiety and mental health, and resembled content likely to be on the news.

The Panel considered that Mia Greves, who was a presenter for Seven News for eight years, presenting the advertisement as though it was a news segment was consistent with content viewers would expect from Seven News. The Panel considered that the use of Psychologist Dr Michael Carr-Gregg was consistent with how Seven News would present information from an independent expert. The Panel considered that Dr Michael Carr-Gregg often provides expert information to a number of news programs and the relevant audience for this marketing communication could be aware of this. The Panel noted that there was no information which made it clear that Mia Greves and Dr Michael Carr-Gregg were employed by Medibank and were not providing information as part of a sponsored segment. The Panel considered that whilst there was branding throughout the advertisement the overall effect of the advertisement creates confusion as to whether the content is advertising or is part of the news content.

The Panel then considered the visuals and language used in the advertisement.

The Panel noted the advertiser's response that the advertisement was clearly distinguishable through the use of full screen Medibank branding at the start and end of the advertisement, the presenter holding the Medibank branded microphone and the Medibank watermark present throughout the ad. The Panel also noted the advertiser's response that tickers are not used during Seven News and that this further distinguishes the content as distinct from the news.

The Panel noted it had previously considered a case about an advertisement which was designed to look like a news segment in case 0028/18, in which:

"The Board 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 Board considered there is space for parody and satire in advertising and



considered that although the news bulletins may at first appear real, the advertisements do not use real newscasters or station branding and is clearly different from a genuine news bulletin.”

The Panel considered that unlike case 0028/18, the use of language and visuals in the current advertisement were similar to those used by Seven News and did not serve to clearly distinguish it as advertising material.

The Panel noted that the Seven News ticker may not be used during the usual programming, however in this instance throughout most of the advertisement the Seven News logo is featured more prominently than the Medibank logo, and therefore the advertisement more closely resembled content from Seven News than advertising material for Medibank.

The Panel noted that first and last screens of the advertisement which featured the words ‘Medibank Health Update’. The Panel considered that these two screens would suggest that the material was commercial in nature, however the use of the smaller Medibank logo and the large, capitalized ‘HEALTH UPDATE’ would suggest that this was a sponsored news segment, similar to sponsored sports and weather segments on some news programs.

The Panel considered that the ‘Medicare HEALTH UPDATE’ watermark on the screen similarly suggested the content was a sponsored news segment, rather than a television advertisement. The Panel also considered that the watermark was not clear and would not draw the attention of most viewers.

The Panel considered that the advertisement did contain Medibank branding throughout, including in the opening and ending screens, on the presenter’s microphone and through references made by the presenter and voice over and considered that this branding may distinguish the content as advertising material for some of the relevant audience. However, the Panel considered that the overall impression of the advertisement was of a news segment on anxiety, or a sponsored health segment as part of Seven News.

The Panel noted that the Industry Practice Note for Clearly Distinguishable Advertising provides the example:

“A radio advertisement which begins with music in the style of a news bulletin. An announcer refers to a ‘news update’ and another announcer provides a news style report featuring a brand with a call to action.”

And the advice:

“Where advertising or marketing features elements associated with a news bulletin, such as ‘breaking news’ style music or use of interviews or news reporting language, then the relevant audience should quickly be able to recognise the message as



advertising. Distinguishing advertising and marketing communication from editorial content may be achieved through repetition of the brand name, legal disclaimer associated with the relevant product or service, clearly scripted and pre-recorded content, clearly comical or fictitious reporter names, a call to action to interact in some way with the brand.”

The Panel considered that the advertiser had used branding throughout the advertisement, however considered that this branding was only part of the overall content and that the Seven News ticker was also present. The Panel considered that the advertisement did not use a legal disclaimer and was not clearly scripted or pre-recorded content. The Panel considered that the advertisement used a real presenter and an expert who were likely to be recognized by the relevant audience. The Panel also considered that the style and theme of the advertisement was very closely linked to news content and was not clearly comical or fictitious. The Panel noted there was a call to action to search the brand’s website at the end of the ad, however considered that there were also calls to action to visit Beyond Blue and the Raising Children Network and that the brand’s call to action was not clearly distinguishable as such.

The Panel considered that technically the branding elements may be recognizable as an advertisement to some viewers but in the Panel’s view it was not clearly distinguishable to a broad audience of news viewers.

Overall, the Panel considered that the advertisement content was not clearly distinguishable as such to the relevant audience.

Finding that the advertisement was not clearly distinguishable as advertising material to the relevant audience, the Panel determined that the advertisement did breach Section 2.7 of the Code.

Finding that the advertisement breached Section 2.7 of the Code the Panel upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

advertisement breached Section 2.7 of the AANA Code of Ethics [clearly distinguishable as advertising]. While Medibank and the Seven Network are of the view that the material was clearly distinguishable as advertising, given the nature of the content, the placement of the content, the theme, visuals, language, the use of logos and a call to visit the Medibank website, Medibank and the Seven Network ensured that post receiving the complaint (on the 18th February 2019) changes were made immediately, prior to a ruling being determined. The ‘Medibank Health Update’ was modified so that a ‘This is a paid advertisement’ disclaimer is clearly shown over the opening and closing billboards of the advertisement. And the Seven Network



modified the ticker that is inserted in a live broadcast setting, so that reference is made to reports coming up 'After the Break', rather than 'Up Next'. Further to the above changes, 'Medibank Health Update' watermark that is shown in the top right corner will now also be increased in size. We hope that these changes are deemed acceptable and that our proactive response to the complaint is taken into account.