



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0056-20</b>
<b>2. Advertiser :</b>	<b>Uber Australia Pty Ltd</b>
<b>3. Product :</b>	<b>Food/Bev Venue</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>12-Feb-2020</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

There are 15 versions of this television advertisement which open on a shot of a sports arena, then cuts to a scene involving a tennis player or Magda Szubanski speaking to camera.

- 1 – 45 second - Magda Szubanski tossing balls to Serena Williams
- 2 – 30 second – Serena Williams handed a towel and tucking it around herself
- 3 – 30 second – Serena Williams playing and speaking to camera in slow motion
- 4 – 30 second - Magda Szubanski as a ball girl, missing balls being rolled to her
- 5 – 30 second – Magda Szubanski stuck to net
- 6 – 30 second – Nick Kyrios acting as both player and umpire
- 7 – 30 second – Nick Kyrios and Alex de Minaur chest bump
- 8 – 30 second –Grigor Dimitrov sitting as ball girls bring him water
- 9 – 30 second – Ash Barty interview on screen as Grigor Dimitrov is on court
- 10 – 30 second – Ash Barty statistics on court
- 11 – 30 second – Stefanos Tsitsipas interview
- 12 – 30 second – Stefanos Tsitsipas with fans wearing masks
- 12 – 30 second – classic moments featuring John McEnroe
- 14 – 60 second – classic moments featuring John McEnroe
- 15 – 30 second – Rod Laver in crowd



## **THE COMPLAINT**

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

*Whether the ads are an ad or actual programming is not immediately clear resulting in a different interaction with the ad. Clear boundaries are supposed to exist between the ads and the open. These are blatantly being blurred. This is being applauded by advertising executives but is very frustrating for viewers who are looking to enjoy the open and not be suckered into watching ads they would otherwise likely ignore.*

## **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 nationally since 2017; predominantly aired on Channel 7, 9, 10 and SBS. The reach since the campaign has been in market has been approximately 98% of the entire Australian population in metro capital markets between the ages of 18-45 with an average frequency of 28 x per campaign burst (since launching in 2017 we have run 8 separate bursts with the same format).*

*These ads are no longer running on Australian 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 series of versions of the advertisement and noted the advertiser's response.

The Panel noted that there are 15 versions of this television advertisement which all follow the same theme. The Panel considered that the issue of concern applied to each, but that each advertisement was similar enough to not require individual consideration.

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 noted it had considered a similar range of advertisements in case 0043-19 in which:

*"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 noted that consistent themes are used across all versions of the advertisement, such as the branding on the brown paper bag that is delivered, the tag-line "Tonight I'll be eating...", and the musical tone (like a doorbell) that plays when the food is delivered.

Consistent with the previous case, 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.