

Case Report

1. Case Number :	0056-23
2. Advertiser :	Foxtel
3. Product :	Entertainment
4. Type of Advertisement/Media :	TV - Pay
5. Date of Determination	5-Apr-2023
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification

DESCRIPTION OF ADVERTISEMENT

This advertisement depicts two female friends standing by their lockers as a young man walks nearby. One of the friends comments the fact that the young man "doesn't even know [she] exist[s]" at which point the young woman's friend removes her glasses and unties her hair in one quick movement. Almost immediately, the young man appears next to the two of them and asks, "What's up?" The advertisement concludes with the young woman and young man (blurred, in the background) walking down the corridor together holding hands.



THE COMPLAINT

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

The girl wears glasses but boy doesn't notice her until she takes her glasses off. I feel it doesn't set a good example for girls or boys who have to wear glasses. It's saying that you can't get a boy or girl if you wear glasses.

It implies that people are more attractive if they do not wear glasses.

It infers that like the old saying "men never make passes at girls who wear glasses". We tell girls that looks don't matter, then show an ad like this one.

THE ADVERTISER'S RESPONSE

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

We refer to the Complaints made against Foxtel which were received from Ad Standards on 20 March 2023, as well as the further complaint received from Ad Standards in respect of case reference number 0056-23 received on 27 March 2023 (together, the Complaints). Foxtel Management Pty Limited (Foxtel) provides this response. The Complaints relate to the same advertisement, and it is alleged that both advertisements may have breached certain Sections (2.1 and 2.6) of the AANA Code of Ethics (the Code).

Description of the Advertisement

The Complaints relate to a 15 second advertisement from Foxtel's 'Speedy Stories' campaign (the Advertisement). The Advertisement forms part of a broader campaign which parodies a range of entertainment tropes. The campaign was developed to tie Foxtel Broadband to the concept of speed, by creating radically sped up stories. The purpose of the aligning this "speedy story" with Foxtel Broadband (and noting it is ranked #1 on the Netflix Speed Index) is also to seamlessly switch from entertainment to retail, thereby making the advertisement feel similar to the content that audiences enjoy and heightening the sense of speed. The Advertisement itself is intended as a humorous satire of romantic comedy tropes.

The Advertisement is set in a school hallway with exaggerated rock music playing throughout. Two female friends standing by their lockers as a young man walks nearby. One of the friends bemoans the fact that the young man "doesn't even know [she] exist[s]," at which point the young woman's friend removes her glasses and unties her hair in one quick movement. Almost immediately, the young man appears next to the two of them and asks, "What's up?" After this, the voiceover, using classic entertainment phrasing to inform the audience they've just seen a dramatized piece of fiction, notes that the "speedy story was brought to [the audience] by Foxtel Broadband". The Advertisement concludes with relevant details of, and disclaimer relating to, Foxtel Broadband presented on-screen, alongside the modem itself, with the young woman and young man (blurred, in the background) walking down the corridor together holding hands.

The Advertisement was produced internally by Foxtel Creative. The Advertisement was placed in all states and territories in Australia, and we confirm it was scheduled during the Geelong v Collingwood AFL game on Fox Footy on 17 March 2023.

The Advertisement was approved by Foxtel's Broadband and Marketing team for broadcast on the Foxtel platform only and was assigned the "G" placement code.

The Complaints

We understand that the Complaints relate to a 7 second clip at 0.3 to 0.10 of the Advertisement whereby, as described above, the young woman's glasses are removed and her hair untied by her friend, at which point the young man joins their group, asking "What's up?" (the Clip).

In summary, the Complaints allege that the Clip implies that people are more attractive if people do not wear glasses. The Complaints include allegations that "the boy doesn't notice her until she takes her glasses off" and "[the Advertisement] is saying you can't get a boy or girl if you wear glasses" and "[the] young woman. ..says to her friend he will never notice me... her friend removes her glasses and the young man comes over and starts talking to her", among other complaints dealing with the same issues.

AANA Code of Ethics

Section 2.1 (discrimination or vilification - disability; gender)

Ad Standards has identified that, based on the Complaints, the Advertisement may have breached Section 2.1 of the Code. Section 2.1 requires that:

"Advertising shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual orientation, religion, disability, mental illness or political belief."

Based on the AANA Code of Ethics Practice Note (effective February 2021) (the Practice Note), Section 2.1 of the Code prohibits the discrimination (unfair or less favourable treatment) or vilification (humiliation, intimidation, incitement of hatred, contempt, or ridicule) of any individual or group of people on the basis of certain defined attributes. In the Complaints notifications, Ad Standards has raised issues relating to two specific defined attributes under the Practice Note. We deal with these in turn below.

Disability

Disability is a certain attribute defined in the Practice Note to mean a current, past, or potential physical, intellectual, psychiatric, or sensory illness, disease, disorder, malfunction, malformation, disfigurement or impairment, including mental illness.

The implication of the Complaints and the issues raised by Ad Standards in relation to the same (taken together) is that the Advertisement discriminates against or vilifies

those people who wear glasses and that the young glass-wearing woman is treated less favourably as a direct result of wearing glasses.

In identifying this certain attribute (disability), Ad Standards has imputed to the Complaints the argument that the Advertisement or the Clip reflects the young woman as having a disability (as defined above). However, the Complaints do not refer to this as an issue. Moreover, even if the Complaints did do so, there is nothing in the Advertisement which expressly or impliedly shows that the young woman has a disability (when they are removed in the Advertisement, the young woman neither squints nor does the shot become blurry). Unlike, for example in case #0217-22 in respect of Specsavers Pty Ltd, there is nothing to indicate that the young woman wears glasses due to vision impairment. Glasses can be worn for stylistic reasons. At no stage in the Advertisement is the young woman is demeaned or mocked for wearing glasses.

Gender

Gender is a certain attribute defined in the Practice Note to mean the attributes, roles, behaviours, activities, opportunities or restrictions that society considers appropriate for girls or boys, women or men (the Practice Note states that gender is distinct from 'sex', which refers to biological differences).

While our view is that neither of the Complaints allege that the Advertisement discriminates against or vilifies young women (or women in general), we understand that Ad Standards has noted in the relevant notification of complaint that the Advertisement may have breached Section 2.1 of the Code on this basis. Foxtel's view is that the Advertisement in no way portrays material in a way which discriminates against or vilifies a person or section of the community on account of gender. The young woman in the Advertisement is not treated less favourably on the basis of attributes or behaviours that society considers appropriate for girls or women.

- As the Community Panel has noted based on past decisions (as referenced on the Ad Standards website), depicting men and women in roles reflective of gender stereotypes will not breach the Code when the stereotypes are not negative and there is no suggestion that the roles are limited to a particular gender. The Advertisement implies no negativity associated with the young woman being attracted to the young man (which is then reciprocated) and the Advertisement does not suggest that a particular role is exclusively performed by men or women -in fact, the Advertisement opens with both the young man and the young woman wanting to be noticed - the young man struts down the corridor (chest out, smiling broadly) and the young woman bemoans the fact that he won't notice her.*
- As with case #0130-22, there is nothing in the language or depiction of the Advertisement which would suggest that all women need to avoid wearing glasses to appear more attractive -a proposition Foxtel completely rejects.*

There is also no suggestion in the Advertisement that the role of wishing to appear more attractive in someone else's eyes could not be undertaken by men (in fact, it is the young man's initial, noticeable behaviour which instigates the scenario and parodies the romantic comedy trope).

- *As in case #0306-21 in respect of SocietyOne, we do not believe showing the interactions as part of the "love story" performed by alternative genders would change the message or context of the advertisement. Foxtel does not suggest that any person in the Advertisement identifies as a specific gender and while these show the individuals in the Advertisement behaving in a way that might be commonly associated with a gender (the young man struts down the corridor next to the young woman, the young woman's friend takes her glasses off and lets down her hair), the Advertisement does not discriminate, vilify or suggest these roles can be exclusively performed by any one gender. The fact is that both men and women perform these roles and behaviours, and there is nothing inherently discriminatory or offensive by having the genders appear in the Advertisement as they do.*

For completeness, our view is that the Advertisement does not perpetuate any harmful gender stereotypes. In fact, the Practice Note expressly states on page 6 that 'portraying a person as attractive does not, in and of itself, constitute discrimination or vilification.' The Practice Note also states that ads should be sensitive to the wellbeing of vulnerable groups of people who may be under pressure to conform to particular gender stereotypes. Our view is that the Advertisement does not fall foul of this guidance - the parody inherent in the Advertisement is evident in the stylised execution (music, shot composition and line delivery). The immediacy of the young man's appearance after the young woman's hair is let down and glasses removed is illustrative of the parody. The extreme close-up of the other young woman's eye-roll, before she lets down her friend's hair and takes off her glasses, shows the audience that this is a scenario which is neither intended to be taken as a serious comment on society, nor is it discriminatory against any person or group of people on the basis of gender, disability or any other attribute.

For the above reasons, Foxtel submits that the Advertisement is responsible, suitable for general viewing, and that there is no depiction of discrimination against and/or vilification of any individual person or section of the community on the basis of disability or gender in the Advertisement and, accordingly, no breach of Section 2.1 of the Code.

Section 2.6 (health and safety- body issue)

Ad Standards has identified that, based on the Complaints, the Advertisement may have breached Section 2.6 of the Code. Section 2.6 requires that:

"Advertising shall not depict material contrary to Prevailing Community Standards on health and safety."

Based on the Practice Note, Section 2.6 requires that advertising must not depict content that would encourage or condone unhealthy or unsafe behaviour having regard to Prevailing Community Standards (as defined in the Practice Note). Ad Standards has raised an issue with respect to the Advertisement's compliance with Section 2.6 of the Code in respect of 'Body Issue.' Based on the Practice Note, we understand this to refer to 'Body Image' (as described on page 12 of the Practice Note).

In respect of Body Image and Section 2.6 of the Code, the Practice Note states that advertising must not portray an unrealistic ideal body image by portraying body shapes or features that are unrealistic or unattainable through healthy practices (on the basis that this is unacceptable in advertising because exposure to unrealistic body ideals can lead to harmful body dissatisfaction and disordered eating).

Ultimately, our view is that the Advertisement does not portray an unrealistic ideal body image in respect of any of the people shown. Glasses are neither a body shape nor are they a body feature, and the young woman's hair does not provide an unrealistic ideal body image - her hair is a feature which is both realistic and attainable through healthy practices (unlike contravening examples such as case number #0001-22 in respect of Bulgari or case #0238-20 in respect of PVH Brands).

Moreover, the people shown in the Advertisement at no stage adopt a pose, nor are they depicted in a way, which produces an unrealistic sense of body image. The Community Panel notes on Ad Standards' website that advertising which does shows healthy looking bodies does not present material which would be contrary to prevailing community standards on health and safety in relation to body image. Finally, the Advertisement does not digitally alter the body of any of the people shown and the Advertisement does not use technology to digitally alter images or the people shown to such an extent that their body shape, or features, are no longer realistic or attainable through healthy practices.

For the above reasons, we submit that there is no depiction of material contrary to Prevailing Community Standards on health and safety in the Advertisement and, accordingly, no breach of Section 2.6 of the Code.

Conclusion

Further, we submit that the Advertisements do not breach any other provision of the Code.

Foxtel takes the Complaints very seriously and regrets any offence caused to the complainants or anyone else.

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 complainants' concerns that the advertisement is suggesting that people who wear glasses are less attractive.

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

Section 2.1: Advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual orientation, religion, disability, mental illness or political belief.

The Panel noted the Practice Note to Section 2.1 provides the following definitions:

- Discrimination – unfair or less favourable treatment
- Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.
- Disability – a current, past or potential physical, intellectual, psychiatric, or sensory illness, disease, disorder, malfunction, malformation, disfigurement or impairment, including mental illness.
- Gender – refer to the attributes, roles, behaviours, activities, opportunities or restrictions that society considers appropriate for girls or boys, women or men. Gender is distinct from 'sex', which refers to biological differences.

Does the advertisement discriminate or vilify on account of disability

The Panel noted the advertiser's response that people can wear glasses for aesthetic reasons, and that this was not a portrayal of someone with a disability.

The Panel considered that glasses are commonly worn by people with vision impairment, and that this does meet the definition of disability in the Code.

The Panel considered that the advertisement is intended to show a full movie plot in 15 or 30 seconds by using a common trope from a teenage romantic comedy.

A minority of the Panel considered that the tone of the advertisement is light-hearted and would be recognisable as an exaggerated comedy movie trope. The minority of the Panel considered that the advertisement did not portray people who wear glasses in a disparaging or discriminatory way.

The majority of the Panel acknowledged that the advertisement was depicting a common movie trope, however considered that the trope was outdated and not in line with modern depictions of teenage comedies.

The Panel considered that while the tone of the advertisement was light-hearted, the portrayal of someone with a disability, for the purposes of humour, suggests that such

conditions are humorous and the people open to ridicule. The Panel considered that there are negative stereotypes around people who wear glasses being less attractive or socially awkward. Overall, the Panel considered that the depiction of a person being seen as more attractive when their glasses are removed is a depiction which shows people with a disability receiving less favourable treatment.

Does the advertisement discriminate or vilify on the basis of gender

The Panel considered that the genders of the teenagers in the advertisement are not the basis of the humour or trope. Overall, the Panel considered that the advertisement did not show a harmful gender stereotype in a way that shows women to receive unfair or less favourable treatment.

2.1 Conclusion

The Panel considered that the advertisement did portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of disability and determined that the advertisement did breach Section 2.1 of the Code.

Conclusion

Finding that the advertisement did breach Section 2.1 of the Code, the Panel upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Foxtel confirms that the relevant advertisement (the subject of the complaints) has now been discontinued.