



Case Report

1	Case Number	0123/15
2	Advertiser	Amaysim Australia PtyLtd
3	Product	Mobile Phone or SMS
4	Type of Advertisement / media	Internet
5	Date of Determination	15/04/2015
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.3 - Violence Violence
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement is a YouTube video which runs for 2 minutes in total and is set in a creative agency, depicting two partners brainstorming how they will create the "ultimate happiness video". Short segments of various popular YouTube videos are then displayed, to the backing track of a humorous song with the two partners describing the content of each video in a comical way and brainstorming ideas of other content that would make people happy. Towards the end of the video, one of the creative partners does not seem to quite 'get it' and begins to sing about his own odd interests (e.g. sniffing waste and being sprayed with mace) to which the other partner objects. The actors appearing in the Advertisement are comedians and the Advertisement is not intended to be taken too seriously.

The Advertisement was posted on YouTube and embedded in an amaysim blog post on the amaysim webpage published on 25 November 2014. It was also shared on amaysim's social media outlets and in its monthly newsletter.

THE COMPLAINT

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

The presentation was disseminated to a target audience including "kids" as per the email. After complaining to Amaysim a reply email from Amaysim stated the promotional

presentation was targeted to children as young as 14. The presentation makes references to "boobs" and other lewd inferences including depiction of a woman with a male sex doll.

THE ADVERTISER'S RESPONSE

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

Complaint Reference Number: 0123/15

Advertiser: amaysim Australia Pty Ltd

Advertisers Response to Complaint

We refer to the above complaint made in connection with the 'Ultimate Happiness' Advertisement (Advertisement) and thank you for the opportunity to provide a response.

We are committed to conducting all advertising and promotions to the highest standards and we take seriously any complaints made in relation to any such advertising and promotion.

Having considered the Advertisement and the complaints, and the requirements of the AANA Code of Ethics (Code), we respectfully submit that the Advertisement does not in any way contravene the Code.

The Advertisement

The Advertisement is a YouTube video which runs for 2 minutes in total and is set in a creative agency, depicting two partners brainstorming how they will create the "ultimate happiness video". Short segments of various popular YouTube videos are then displayed, to the backing track of a humorous song with the two partners describing the content of each video in a comical way and brainstorming ideas of other content that would make people happy. Towards the end of the video, one of the creative partners does not seem to quite "get it" and begins to sing about his own odd interests (e.g. sniffing waste and being sprayed with mace) to which the other partner objects. The actors appearing in the Advertisement are comedians and the Advertisement is not intended to be taken too seriously.

The Advertisement was posted on YouTube and embedded in an amaysim blog post on the amaysim webpage published on 25 November 2014. It was also shared on amaysim's social media outlets and in its monthly newsletter.

Background – the amaysim "Ultimate Happiness" campaign

The drive of the amaysim "Ultimate Happiness" campaign is to relate to Australians by addressing what they really care about – relationships (with their handsets), entertainment and happiness – in a very tongue-in-cheek way, poking fun at much of the online content people consume on their mobile devices. The YouTube video forms part of this campaign as a fun, shareable piece of video content that shows current and potential amaysim customers what can be enjoyed with data through our mobile phone service plans.

In addition to the YouTube video, the "Ultimate Happiness" campaign was run across the

amaysim Facebook page, Twitter account blog and through traditional PR, reinforcing amaysim's brand personality as a cheeky, modern telecommunications company delivering to its customers a genuine sense of happiness in a "tongue in cheek" and humorous way.

Response to issues raised in the complaint

We have addressed the complaint by reference to Section 2 of the AANA Code of Ethics (AANA Code of Ethics).

Having considered the Advertisement and the complaint, and the requirements of the AANA Code of Ethics, we respectfully submit that the Advertisements do not in any way contravene the AANA Code of Ethics.

Please note that we have not assessed the complaints by reference to the AANA Code of Marketing and Advertising to Children as we submit the Advertisement is not targeted to children for the following reasons:

a. amaysim does not target its products, services, advertising and branding at children (as defined in the AANA Code of Advertising to Children). amaysim seeks to appeal to a target audience of persons between approximately 20-40 years and its services are not available to persons who younger than 14 years of age. If they are, a parent must acquire the service on behalf of the child and take responsibility for the service as well as all communication to and from amaysim;

b. The AANA Code of Marketing and Advertising to Children defines "child" as a person 14 years old or younger, which we have submitted is not amaysim's target audience; and

c. Further, the YouTube Terms of Service provides that:

You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the Service is not intended for children under 13. If you are under 13 years of age, then please do not use the Service.

AANA Code of Ethics

We submit, having regard to Section 2 of the AANA Code of Ethics that:

Section 2:

2.1 The Advertisement does 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 preference, religion, disability, mental illness or political belief, and accordingly the Advertisement does not contravene Section 2.1 of the AANA Code of Ethics;

2.2 None of the Advertisements employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people, none of them objectify or demoralise any

person or group of persons and there are no identifying individuals that appear in the Advertisements, and accordingly, the Advertisements do not contravene Section 2.2 of the AANA Code of Ethics;

We note that the complainant has claimed the reference to "boobs" in the Advertisement is "lewd". We submit that the Advertisement does not objectify or demoralise women by referring to "boobs", and simply refers to a popular video search term on YouTube. The Advertisement does not show any imagery in accompaniment to the reference and the reference is employed in a humorous way to rhyme with the word "views" during the song.

2.3 The Advertisement does not use any violent graphics or imagery in a serious manner, and accordingly, the Advertisement does not contravene Section 2.3 of the AANA Code of Ethics. The man being hit in the face and spraying mace in his own eyes, is done in a humorous and light hearted way to demonstrate the "strange" things that may make people happy. The spraying of the mace in someone's own eyes, is not a realistic scenario, as someone is unlikely to do that to themselves.

2.4 The Advertisement does not contravene Section 2.4 of the AANA Code of Ethics and treats sex, sexuality and nudity with sensitivity to the relevant audience.

The complainant has claimed the Advertisement was disseminated to "a target audience including kids", which was inappropriate given the references to "boobs" and the "depiction of a woman with a male sex doll".

As we have previously submitted, amaysim strongly disagrees that the Advertisement is targeted at children younger than 14 years of age. The Advertisement and the campaign in which the Advertisement forms part of, is targeted at persons between the age of 20 and 40. The overarching themes of relationships, entertainment and happiness (derived through use of the Internet) in the campaign are clearly targeted at adults who frequently use their mobile phone data to engage with social media (including use of sites and apps such as YouTube, Facebook and Twitter – the media on which the campaign's advertisements were published).

amaysim further submits that the references to "boobs" and "adult toys" in the Advertisement are not inappropriate in the context of the Advertisement and also with reference to the target audience. As previously submitted, the use of the term "boobs" is intended as a humorous reference to a popular YouTube search term and is not supported by any inappropriate imagery. Similarly, the depiction of the woman and the male doll is neither explicit nor coarse, and simply shows a woman smiling with her arm around the doll. The reference is in the context of the creative partner brainstorming and voicing his own rather odd interests, to which the other creative partner responds adversely.

Accordingly, we submit that the Advertisement does not contravene Section 2.4 of the Code;

2.5 The Advertisements features language which is innocuous, and none of them feature strong or obscene language or language which is inappropriate for the relevant audience and medium, and accordingly, the Advertisement does not contravene Section 2.5 of the AANA Code of Ethics; and

2.6 The Advertisement does not depict any material which is contrary to Prevailing Community Standards on health and safety, and accordingly, the Advertisement does not

contravene Section 2.6 of the AANA Code of Ethics. The scenes are portrayed in a humorous, unrealistic and light hearted manner.

We note that clause 3 of the AANA Code of Ethics does not apply to the Advertisement.

On the basis of the above, we do not consider that any of the Advertisements contravene the AANA Code of Ethics, having regard to Section 2 of the Code or otherwise.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concern that the advertisement makes reference to ‘boobs’ and features a blow-doll which is not appropriate especially as it appears to be targeted at teenagers.

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

The Board considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 states: "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The Board noted that this internet advertisement features two men from a fictitious advertising agency singing a song about things on the internet that make you happy such as awkward dancing, cats, unlikely friends and so on.

The Board noted that the final scene shows one of the men slapping the other across the face.

The Board noted the advertiser’s response that the slap scene is humorous and light-hearted and is intended to demonstrate the "strange" things that may make people happy’.

The Board noted that when he hits his friend there is an accompanying sound effect. The Board noted it had previously upheld a complaint about a radio advertisement that featured the sound of a man being slapped by his wife in case 0350/11 where:

“The Board listened to the advertisement and noted the sound of a man being hit and his expression of pain. The sound effect suggested that the woman’s slap hurt the man. The Board considered that the sound effects were realistic and were not humorous nor could they be considered a slap stick depiction of violence.”

The Board noted it had also previously upheld a complaint featuring a man slapping his friend’s face in case 0433/10 where:

“The Board noted that in the current case the advertiser’s response states that this advertisement was intended to ‘depict a moment of friendly, jocular banter’. The Board considered that whilst the tone of the advertisement was humorous up to the point of the slap, the reaction of the housemate to the slap suggested that this action was overstepping the line.”

In the current advertisement the Board noted that when the man hits his friend he is singing about what makes him happy and considered that the overall suggestion is that hitting his friend is something that will bring him enjoyment. Consistent with its previous determinations the Board considered that the sound effect of the slap was realistic and the man's reaction to being slapped by his friend, and the ensuing uncomfortable silence between the two men, is not suggestive of a humorous or slap-stick depiction of violence.

The Board noted that this section of the Code is very specific with regards to depictions of violence and that violence is only justifiable in the context of the product or service advertised. The Board considered the Practice Note to Section 2.3 of the Code of Ethics, particularly the guidance that stylised rather than realistic violence may be acceptable. A minority of the Board considered that the slap scene was intended to be indicative of the strange things that make this particular man happy and that the slap is shown to be inappropriate based on the reaction of the two men and is therefore more of a slapstick depiction than a violent depiction.

Following considerable discussion however the Board considered that in the context of farcical suggestions within the advertisement the slap was a realistic depiction rather than a slapstick depiction. The majority of the Board noted its previous determinations and considered that the slap is a depiction of violence and as the product or service is a telecommunications provider there is no justification for violence to be portrayed therefore the provision of the Code leaves it no option but to uphold this aspect of the advertisement.

The Board considered that the advertisement did present violence and this is not justifiable in the context of the product or service advertised.

The Board determined that the advertisement did breach Section 2.3 of the Code.

The Board considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

The Board noted this internet advertisement features a reference to 'boobs' and that this word is flashed on screen. The Board noted that there are no accompanying images of women or their breasts. The Board noted it had previously dismissed complaints about an advertising campaign for Bonds featuring the word 'boobs' in case 0361/13 where:

"The Board considered however that although a reference to breasts, the word of itself with no other images or context, does not have a strong connotation of sex, sexualisation or sexuality or of nudity."

Consistent with this previous determination the Board considered in the current advertisement that the reference to this part of a woman's body is not sexualised or inappropriate in the context of the relevant audience of an internet advertisement targeted at mobile phone customers.

The Board noted that one scene depicts a man sings about 'adult toys' making him happy and we see a woman putting her arms around a male doll. The Board noted that the doll's upper torso and head are visible and that it appears to be naked except for a tie. The Board noted that it is only the accompanying description of 'adult toys' that makes the doll sexualised and

considered that the phrase ‘adult toys’ can refer to games directed at adults as well as sex toys. The Board noted that the image of the doll itself is not sexualised nor is it depicted in a sexually suggestive manner and considered that overall the reference to ‘adult toys’ and the depiction of a doll are not inappropriate and do treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Board noted the scene featuring a young boy and girl sat embracing on a lounge. The Board noted the accompanying song refers to this as an ‘awkward young romance’ and we see the boy reach over to stroke the girl’s arm.

The Board considered that this scene is an innocent portrayal of a child romance and is not sexualised or inappropriate.

Based on the above the Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted the advertisement features a scene where a mobile phone is placed in a blender which is then switched on. The Board considered that this scene is unlikely to encourage viewers to copy this action as it would clearly damage both the phone and the blender.

The Board noted the scene where a man says he is spraying himself in the face with mace to make him happy. The Board considered that this action is presented in a farcical manner and that the other man can be heard in the background advising that this action would make you the opposite of happy. The Board considered that most reasonable members of the community would not take this to be a message to copy such an action and spray mace in your own face.

Based on the above the Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.3 of the Code the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

amaysim does not condone or endorse violence in any way. It’s disappointing that the content was not taken in the light-hearted and obviously slapstick vein it was intended. It’s fair to say that the awkwardness of a colleague slapping his workmate after witnessing him spray himself in the face with mace, and the even more awkward pause that follows, is pretty unrealistic and highlights some of the more absurd stuff we spend time watching, and laughing at, on the internet.

That said, we'll remove the video from our social channels and keep our hands off the mace when making videos in future.