



**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>0142-20</b>
<b>2. Advertiser :</b>	<b>Domino's Pizza Enterprises Ltd</b>
<b>3. Product :</b>	<b>Food/Bev Venue</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Other</b>
<b>5. Date of Determination</b>	<b>22-Apr-2020</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive  
AANA Code of Ethics\2.6 Health and Safety

### DESCRIPTION OF ADVERTISEMENT

This animated YouTube advertisement promotes Domino's new contactless delivery method. The voice over states, "At Domino's our first priority is the health and safety of our team members and customers. That's why, in response to the COVID-19 outbreak, we are now offering zero contact delivery, for your peace of mind when you choose to have dominos delivered the driver will place your order in front of your door before letting you know they've arrived. The driver will then stand back and wait to ensure you have collected your order. We understand the trust our customers place in us to deliver safe, freshly prepared meals and take our responsibility seriously."

An animated delivery person is shown following the steps stated.

### THE COMPLAINT

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

*Domino's advertising is misleading. Customers assume that all transactions are carried out as per the advert. Domino's are refusing to discontinue cash transactions. Cash payments cannot be managed in the way that it is represented in the advert. A distance of 2 meters cannot be maintained during a cash transaction. This poses a risk*



*to both the delivery driver and the customer if either of them are carriers of COVID19. This then in turn is exposing the rest of the community at large, especially given that many customers will be self isolating due to COVID results pending mixed with a second co-hort of vulnerable customers who 'stay home' as they have pre-existing health conditions which increases the likelihood and severity of infection.*

## **THE ADVERTISER'S RESPONSE**

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

*We refer to your letter dated 14 April 2020 enclosing a complaint received by Ad Standards in relation to an online advertisement entitled 'Domino's Zero Contact Delivery Instructional Video' (Advertisement).*

*Firstly, thank you for providing Domino's with the opportunity to respond to the complaint regarding the Advertisement. Domino's takes its responsibility as an advertiser very seriously and encourages any feedback from the community to better understand and respond to any issues or concerns that may be raised in connection with our advertisements.*

*Domino's response to the complaint considers the Advertisement in light of the provisions contained within the AANA Code of Ethics (AANA Code), the AANA Food and Beverages Advertising and Marketing Communications Code (Food Code), the AANA Code for Advertising and Marketing Communications to Children (AMCC Code), the Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCMI) and the Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children (QSR Code), all together the "Codes".*

*Domino's entirely refutes any suggestion in the complaint or otherwise that the Advertisement breaches the Codes.*

### *AANA Code of Ethics (AANA Code)*

*As requested in your letter, Domino's provide the following responses in respect of Section 2, specifically sections 2.1 to 2.7 inclusive, of the AANA Code.*

#### *Section 2.1 – Discrimination or vilification*

*Domino's does not believe that the Advertisement portrays people or depicts material in a way which discriminates against or vilifies any person or section of a community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.*

#### *Section 2.2 – Exploitative or degrading*

*Domino's does not believe that the Advertisement employs sexual appeal which is exploitative or degrading of any individual or group of people in any manner whatsoever.*



*Section 2.3 – Violence*

*Domino's does not believe that the Advertisement presents or portrays violence in any manner whatsoever.*

*Section 2.4 – Sex, sexuality and nudity*

*Domino's does not believe that the Advertisement displays any sex, sexuality or nudity that is not only not sensitive to the relevant audience, but in any manner whatsoever.*

*Section 2.5 – Language*

*Domino's does not believe that the Advertisement uses any inappropriate language whatsoever.*

*Section 2.6 – Health and safety*

*We note the Ad Standards has referenced in its letter of 14 April 2020 that the issues raised in the complaint concern an alleged breach of Section 2.6 of the AANA Code. Section 2.6 of the AANA Code provides:*

*“Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.”*

*Domino's has reviewed the Advertisement against Section 2.6 of the AANA Code and refutes any suggestion that it depicts any material contrary to Prevailing Community Standards on health and safety.*

*At the outset, we submit that Domino's highest priority is the health and safety of our team members, customers and community. We have continued to emphasise this following the introduction of the current COVID-19 pandemic (COVID-19), including by introducing various operational procedures in direct response across all Domino's stores in Australia. Domino's Zero Contact Delivery is an operational procedure that was introduced in direct response to COVID-19. The Advertisement is an informational video that demonstrates the Domino's Zero Contact Delivery operational procedure in practice between a Domino's team member completing a delivery and a customer.*

*For context we note the following:*

- Domino's Zero Contact Delivery commenced in stores in Australia on or about 9 March 2020;*
- The Advertisement was published by Domino's Australia on YouTube on or about 17 March 2020, entitled “Domino's Zero Contact Delivery Instructional Video”;*
- The Advertisement was also published by Domino's Australia on Vimeo on or about 17 March 2020, entitled “Domino's Zero Contact Delivery - What to Expect”;*
- On and from 25 March 2020, Domino's made Domino's Zero Contact Delivery mandatory in Australia for all deliveries.*
- The Advertisement is available to customers via Domino's website, electronic direct email (eDMs), SMS and social media channels.*
- A variation of the Advertisement will appear in one (1) TVC on air from 22 April 2020 (TVC). The TVC only depicts the beginning portion of the instructional video with the Domino's team member riding an e-bike. It does not depict the interaction during a customer and Domino's team member during a Domino's Zero Contact*



*Delivery. The TVC received ClearAds (CAD) approval on 6 April 2020 (for your reference, the CAD number is W83LQERA and the CAD rating is "W". Refer to the CAD Approval Slip for the TVC attached to this response for further information.*

*We submit the following reasons in support of our conclusion that the Advertisement does not in any way constitute a breach of Section 2.6 of the AANA Code:*

- 1. The Advertisement depicts an animated demonstration of the Domino's Zero Contact Delivery procedure in practice. It specifically focuses on the depiction of the interaction between a Domino's team member and the customer during a Domino's Zero Contact Delivery as the procedure introduces new operational steps, namely:
  - a. the Domino's team member will call the customer to confirm when they have arrived at the customer's door. The team member will then wait for the customer to arrive at the door while maintaining social distancing requirements of at least two (2) meters as depicted in the Advertisement.*
  - b. the Domino's team member will then place the order down where nominated by the customer to enable them to collect the order at a safe distance.**
  
- 2. Domino's Zero Contact Delivery, and specifically the depiction of the procedure in the Advertisement, has been developed by Domino's in strict compliance with the current advice of government and health authorities regarding the current COVID-19 pandemic (COVID-19). We refer to the AANA Code Practice Notice which provides that:  
"...There is no one test of Prevailing Community Standards. The Prevailing Community Standard will differ in relation to the different restrictions in relation to health and safety,..."  
Domino's submits that the Prevailing Community Standard in this case is determined with reference to the current advice of government and health authorities regarding COVID-19 and specifically social distancing measures (of at least 1.5 metres) and minimisation of contact with foreign surfaces while observing frequent hygiene and sanitisation precautions. If the Ad Standards and/or Community Panel deem it necessary for Domino's to produce the current advice of government and health authorities in support of this response we are happy to provide this on request.*
  
- 3. In the context of Section 2.6, the complaint makes the suggestion that the Advertisement constitutes a breach of this section on the basis cash payments should not be accepted as tender during a Domino's Zero Contact Delivery. The Advertisement does not depict an exchange of cash, however Domino's takes this opportunity to address this particular concern raised in the complaint as follows:
  - a. The prevailing guidance from government and health authorities at this time is that cash remains an acceptable form of tender although it is recommended hygiene, sanitation and social distancing measures be observed at all times.*
  - b. As stated, the Advertisement does not depict an exchange of cash. The Advertisement depicts the customer as having prepaid for their order online and therefore only requires that the customer collect their order on delivery in accordance with Domino's Zero Contact Delivery procedure and the steps described at paragraph 1(a)-(b) above of this response.**



- c. *Domino's decision to depict the interaction between the customer and the Domino's team member in this way is based on the fact we know our customers are more likely to order in this way. Specifically, less than 10% of all Domino's orders are paid in cash and this percentage is even lower in the context of delivery orders.*
- d. *We have also taken additional measures to encourage our customers to choose electronic payment methods which are preferred at this time. Of that minority of customers that still choose to pay cash, Domino's takes reasonable steps to ensure all health and safety protocols are followed during the Domino's Zero Contact Delivery process by ensuring at least 2 metres is maintained between the customer and the team member and specifically in the limited circumstances where the customer chooses to pay cash, that the following measures are strictly observed by the Domino's Team member:*
  - i. *Step 1: If accepting cash on a delivery, we recommend the delivery driver take a small disposable bag and a pair of gloves (clear or blue).*
  - ii. *Step 2: Observe social distancing requirements and clearly advise the customer where to leave the money.*
  - iii. *Step 3: Put the gloves on, collect the money and leave change nearby (if required) maintaining at least 2 metres from the customer at all times.*
  - iv. *Step 4: Before returning to your vehicle, open the small disposable bag, take your gloves off by turning them inside out, place into the bag and seal the bag by tying. Dispose of the bag and gloves when back at the store.*

*Domino's provides a food service for all members of the community and we do not want to exclude those customers that are limited to paying for orders in cash in circumstances where a Domino's Zero Contact Delivery is still able to be maintained in accordance with the steps described in paragraph c of this response. Domino's continues to monitor the acceptance of cash from customers and has taken extensive measures internally to ensure all corporate and franchised operational teams are strictly adhering to mandated Domino's Zero Contact Delivery procedures.*

4. *Although not specifically raised in the complaint itself, Domino's submits that with reference to "Prevailing Community Standards" on health and safety in the Practice Note, the Advertisement at all times depicts the Domino's Team member completing a delivery in complete safety clothing, with a helmet. The Practice Note lends guidance to this depiction in the Advertisement and clarifies that it aligns with the Prevailing Community Standard regarding e-bike deliveries.*

*For the reasons provided in paragraphs 1-9 of this response, Domino's concludes that the Advertisement in no way depicts material contrary to the requirements of Section 2.6 and requests that the Community Panel dismiss the complaint on this basis.*

*Section 2.7 – Distinguishable as advertising*

*Domino's does not believe that the Advertisement is not clearly distinguishable as advertising and is relevant to its audience.*



*AANA Food and Beverages Code (Food Code)*

*Notwithstanding the issues explicitly raised to date in this complaint, Domino's has taken the liberty to review the Advertisement in the context of Section 2.1 of the Food Code and provides the following submissions in this respect.*

*Section 2.1 of Food Code provides that:*

*"Advertising or Marketing Communication for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits."*

*Domino's further notes that the Ad Standards Community Panel is like to consider the Practice Note relating to the Food Code which provides:*

*"In testing the requirement that an advertising or marketing communication shall be truthful and honest, the Community Panel will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest..."*

*Application Section 2.1 of the Food Code to the Advertisement*

*The complaint suggests that the Advertisement is "misleading" and "Customers assume that all transactions are carried out in a way that is represented in the advert."*

*Domino's submits that the Advertisement is truthful and honest and is not designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards. The Advertisement depicts a Domino's team member completing a Domino's Zero Contact Delivery with a customer, and does not specifically represent or depict the payment method on the basis there are various ways for a customer to complete payment for a Domino's Zero Contact Delivery. Regardless of the method chosen by the customer, it is possible for a Domino's Zero Contact Delivery to be achieved if current government and health authority advice is followed, in this regard we refer to our submissions at paragraphs 1-4 of this response regarding Section 2.6 of the AANA Code.*

*Domino's further submits that the average consumer in the target market would take the Advertisement to be truthful and honest, again we draw upon the fact that less than 10% of all Domino's orders are paid in cash, with an even lower percentage for delivery orders paid in cash. Domino's concludes that the Advertisement truthfully and honestly depicts the Domino's Zero Contact Delivery procedure on the basis we know more than 90% of our customers pre pay their orders online and will not complete a transaction with cash. Notwithstanding this position, we refute entirely any suggestion in the complaint that the Domino's Zero Contact Delivery procedure cannot be completed if a non-electronic method of payment is chosen by the customer. We have provided these reasons in paragraph 3 of our response to any suggestion the Advertisement constitutes a breach of Section 2.6 of the AANA Code.*



*Domino's concludes that the Advertisement in no way depicts material contrary to the requirements of Section 2.1 of the Food Code and requests that the Community Panel dismiss the complaint on this basis.*

#### *Further Codes*

*We further note that the AANA Code also incorporates the AANA Code for Advertising and Marketing Communications to Children and the following initiatives: the Australian Food and Grocery Council Responsible Children's Marketing Initiative and the Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children (Further Codes). As our products are likely to also come within the scope of these Further Codes, we confirm that these Further Codes have also been considered and we do not believe that any section within those Further Codes have been breached by the Advertisement in any way.*

*For the above reasons, we respectfully submit that the Advertisement is not in breach of the AANA Code, the Food Code or the Codes collectively.*

*If you require any further information, please do not hesitate to make contact with us.*

## **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 concern that the advertisement is misleading as payment of delivery by cash is not contactless.

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

The Panel noted that the product advertised is food and that therefore the provisions of the Food Code apply. In particular the Panel considered section 2.1 of the Food Code which provides:

*"Advertising or marketing communications for food ...shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene prevailing community standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits."*

In relation to section 2.1 of the Code the Panel considered the Practice Note to the Food code which provides that

*"The Panel will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.*



*“In testing the requirement that an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Panel will consider the advertiser’s stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.”*

The Panel noted the complainant’s concern that the advertisement was misleading as it suggests that all Dominos delivery transactions will be performed in the manner depicted in the advertisement, which is not possible when paying by cash.

The Panel noted the advertiser’s response that zero contact delivery is now mandatory and was at the time the complainant made their complaint.

The Panel noted the advertiser’s response that the advertisement depicts the most common type of delivery scenario, in which a customer pays for their order online before delivery. The Panel noted that it is not a requirement of advertisers to depict every possible payment scenario in advertisements.

The Panel noted that the advertiser had described the process for a cash transaction in their response where a customer places the money on the ground and the Dominos staff members picks it up before placing the pizza on the ground, and considered that that follows the same principle of social distancing that the advertisement depicted.

The Panel considered that the advertisement was not misleading as it depicted how a transaction could be performed, and did not specifically represent or depict the payment method. The Panel considered that a cash transaction would be performed in a similar manner to what is depicted in the advertisement.

The Panel determined that the advertisement did not breach Section 2.1 of the Food Code.

The Panel then considered whether the advertisement was in breach of 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 Panel considered that the complainant’s concern appeared to be that transactions performed using cash payments cannot main social distancing measures.

The Panel considered that its role is to consider the content of the advertisement as it appears, not hypothetical scenarios. The Panel considered that the advertisement did not depict a cash transaction showing social distancing advice being disregarded.



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

Finding that the advertisement did not breach any other section of the Code, the Panel dismissed the complaint.