



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0165-20
2. Advertiser :	Stacks Law Group
3. Product :	Professional Service
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	27-May-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification

DESCRIPTION OF ADVERTISEMENT

This television advertisement features stylised animation depicting a story as a voice over states, "Terry was struck by an out of control car, shattering his legs. The driver had had a diabetic fit so his insurer claimed it wasn't his fault. That's when Terry called Stacks. Their compensation expert uncovered that the driver had a similar attack days before and wasn't taking his medication. Terry's case was settled out of court for a significant sum. When it really matters you don't just need a lawyer, you need a specialist stack lawyer. Contact Stacks today for your free consultation."

THE COMPLAINT

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

The law firm states a diabetic was driving and had a fit. This is not the case I am a diabetic and very offended with this ad., extremely prejudice against all diabetics. They could have said without labelling... a medical fit

THE ADVERTISER'S RESPONSE

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

Creation of the advertisement & broadcasting



The advertisement was created by Eardrum, an experienced advertising agency in Sydney, in response to a brief by Stacks Law Firm.

Before it was broadcast, the advertisement was reviewed by our inhouse legal team who were satisfied that it accorded with all applicable laws and advertising codes. The advertisement was also reviewed by Eardrum who were similarly satisfied.

As is required for all television advertisements broadcast on a commercial free to air television network in Australia, the advertisement was submitted to Clear Ads for classification and was approved for broadcast in November 2018 with a 'G' rating (CAD no G61O5LSA).

The advertisement has been broadcast on a consistent and regular basis on the PRIME7 television network in various regional NSW broadcast areas since November 2018.

Description of the advertisement

The advertisement is 30 seconds in length and consists of an animation that depicts a motor vehicle colliding with a pedestrian, the pedestrian in a wheelchair, the pedestrian meeting with a lawyer, then various frames with the written text "You don't just need a lawyer", "You need a specialist Stacks lawyer", and "Stacks Law Firm, Partners in life".

The audio transcript of the advertisement is as follows:

*00:00 Terry was struck by an out-of-control car shattering his legs
00:04 The driver had had a diabetic fit, so his insurer claimed it wasn't his fault
00:08 That's when Terry called Stacks. Their compensation expert uncovered that
00:12 the driver had a similar attack days before and wasn't taking his medication
00:16 Terry's case was settled out of court for a significant sum
00:20 When it really matters you don't just need a lawyer
00:23 You need a specialist Stacks lawyer
00:26 Contact Stacks today for your free consultation.*

A digital copy of the advertisement accompanies this response.

The advertisement promotes the legal services provided by Stacks Law Firm to assist people who are injured in a motor vehicle accident. The advertisement also delivers important messages by serving to remind victims of road accidents that they may have legal rights available to them to pursue, and to remind road users generally that they have important obligations to other road users.

Compliance with section 2.1 of the AANA Code of Ethics

The complaint alleges that the advertisement is prejudicial to people with diabetes. Your letter indicates that given the nature of the complaint, the advertisement may potentially raise issues under section 2.1 of the AANA Code of Ethics (Code) in so far as it discriminates against or vilifies people with a disability.



We note the guidance in the Practice Note to section 2.1 of the Code which defines discrimination to mean “unfair or less favourable treatment” and vilification to mean “humiliates, intimidates, incites hatred, contempt or ridicule”.

We regret that the complainant is offended by the advertisement; certainly, it was not our intention to offend or upset any members of the community. Following receipt of the complaint we have again reviewed the advertisement but remain satisfied that it does not contravene the Code. We are also satisfied that most members of the community would agree that the diabetic driver depicted in the advertisement is not shown to receive unfair or less favourable treatment, is not humiliated, intimidated or ridiculed, nor that hatred or contempt is incited toward him, because of his medical condition. That the advertisement has been widely broadcast in NSW for the last 18 months and in that time no other complaint has been received supports this view.

The narrative of the advertisement does suggest that, in this case, a diabetic driver was responsible for a road accident. However, the advertisement makes equally clear that the driver’s liability arose not due to his diabetes but, rather, because of his conduct in failing to manage his medical condition such that he could safely operate a motor vehicle. The factual scenario for the advertisement is based on a real-life legal case in which a client of Stacks Law Firm did succeed and recover damages against a diabetic driver in very similar circumstances to those described.

The advertisement makes no specific comment in respect of people with diabetes. It does no more than reinforce the message to all drivers that they have a responsibility to drive safely, including by managing any medical condition they have that might impact on their ability to drive safely. It is well documented that there are many medical conditions that can affect a person’s ability to drive safely, including diabetes, and this is reflected in Australia’s driver licensing laws (see for reference: <https://www.rms.nsw.gov.au/roads/licence/health/fit-to-drive.html>). The main hazard documented in respect of people with insulin-treated diabetes is the occurrence of hypoglycaemia, which, amongst other physical symptoms, can cause fits/seizures and affect their ability to safely operate a motor vehicle (see for reference: <https://austroads.com.au/publications/assessing-fitness-to-drive/ap-g56>). This is an objective medical fact and it is precisely this scenario that is depicted in the advertisement.

General compliance with the Code and other codes and initiatives

Your letter requests that in addition to section 2.1 of the Code, our response also address any issues the complaint might raise in respect of any other part of section 2 or as any other applicable codes or initiatives.

We have carefully reviewed those other requirements and are satisfied that they either do not apply to the advertisement or that the advertisement does comply.

Conclusion



While we respect the right of any member of the community to complain about an advertisement, for the reasons set out above we request that in this instance the complaint be dismissed.

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 prejudiced against people with diabetes.

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

The Panel considered whether the advertisement complied with Section 2.1 of the Code which requires that '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 preference, 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"

The Panel noted that diabetes is a serious disease and considered that this would fall within the definition of disability.

The Panel noted the advertiser's response that the driver is shown to be at fault not because he has diabetes, but because he failed to manage his medical condition in a way which meant he could safely operate a vehicle.

The Panel noted that advertisers should take care when mentioning specific medical conditions in an advertisement, as the advertisement may be seen to be reflecting upon all people with that medical condition.

However, in this instance the Panel considered that the advertisement was referencing a 'real case' scenario of a specific incident which involved a case of a person with diabetes not managing his medical condition appropriately.



The Panel considered that the advertisement does not suggest that all people with diabetes do not manage their condition effectively, and does not suggest that people with diabetes are not able to operate vehicles safely.

The Panel considered that the advertisement does not show people with diabetes to receive unfair or less favourable treatment, and does not humiliate, intimidate or incite hatred, contempt or ridicule of people with diabetes.

The Panel considered that the advertisement does not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of disability.

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

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