



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0168-21
2. Advertiser :	Singtel Optus Pty Ltd
3. Product :	Mobile Phone or SMS
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Determination	23-Jun-2021
6. DETERMINATION :	Upheld – Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

This TV on demand advertisement features two nursery employees discuss a proposal on an iPad before concluding they should then run it past their boss.

This shot is interrupted by a person moving front left to right of screen on a forklift.

Subsequent shots then show the forklift operator navigating the forklift throughout the nursery before appearing to park the forklift by sliding sideways into the spot.

THE COMPLAINT

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

A forklift should never be driven in this manner. It is extremely dangerous to leave the forks in the air as it could cause an accident. Forks should always be lowered to the ground. This is not how a forklift should be operated for safety reasons.

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 10 June 2021 in relation to the Optus Communications TV advertisement involving the operation of a forklift in a plant nursery (“Plant Nursery Advertisement”).

Optus appreciates the opportunity to formally respond to the complaint. To reiterate, Singtel Optus Pty Ltd (“Optus”) is committed to best practices in its advertising, and appreciates all consumer feedback.

DESCRIPTION OF THE ADVERTISEMENT

The Plant Nursery Advertisement is a 15 second clip promoting Optus’ ‘Business Connect Plan.’ This plan allows business customers to connect up to 8 SIMs on a month-to-month plan with a shared data allowance. The ad starts with a conversation between two employees looking at a tablet device (inferred to be comparing phone plans), and then features a person driving a forklift through the nursery. A transcript of the ad is attached at Attachment A.

There is a close-up of the forklift steering wheel, and a shot of the driver operating the forklift, accompanied by the voice over “with the Optus Business Connect Plan, you’re in control.” The concept of the ad is that this plan puts small businesses in control of their telco services, as it allows them to increase and decrease the number of services with no lock-in contracts. Showing the boss of the nursery driving the forklift is intended to link to the concept of ‘control’ (ie, as the boss has control of the forklift). The forklift is then shown being parked between pots, and the ad closes with the boss (having parked and walked away from the forklift) talking with an employee saying “yes, let’s do it” in reference to taking up the Business Connect Plan.

The advertisement was reviewed and approved by the Optus legal team, both during the scripting stage and the final edit stage.

TBWA was the ad agency. Universal McCann was the media buyer.

THE COMPLAINT

The complaint alleges the Plant Nursery Advertisement portrays a person driving a forklift in an unsafe manner, and that a forklift should never be driven in the manner depicted in the ad, on the basis it is extremely dangerous to leave the forks in the air as it could cause an accident. The complaint continues that forks should always be lowered to the ground, and that this is not how a forklift should be operated for safety reasons.

Optus notes the initial assessment by Ad Standards has identified section 2.6 (Health and Safety) of the Australian Association of National Advertisers Code of Ethics (“Code”) as being relevant for this complaint.

OPTUS RESPONSE



AANA Code of Ethics\2.6 Health and Safety.

Optus respectfully submits that the Plant Nursery Advertisement does not breach the Code, as the scenario does not depict the unsafe operation of the forklift.

As noted, the intention behind the Plant Nursery Advertisement is to provide a visual representation of a business person being in 'control,' to link to the concept of businesses being in control of their telco plans with Optus. The ad seeks to depict a relatable scenario for Australian small business operators, who are busy working in their core business as well as making decisions about administrative issues such as telecommunications requirements.

Optus submits that an objective measure of whether the operation of the forklift was 'unsafe' and operated in a manner contrary to prevailing community standards would need to involve an assessment of whether the ad included:

- 1. the portrayal of danger or harm to the driver, bystanders, or property (or that there was a risk such harm or danger occurring); and/or*
- 2. a breach of applicable guidelines and regulations regarding the proper operation of a forklift.*

These issues are considered below:

Risk of harm or danger to the driver, bystanders, or property

Optus notes that according to a fact sheet published by Safe Work NSW ("Safe Work NSW Factsheet"), the three main reasons workers are killed or seriously injured in forklift incidents are 1. being hit or crushed by a forklift, 2. being hit or crushed by a load that the forklift is moving, and 3. being crushed in a forklift tip-over.

Addressing these reasons, Optus submits the Plant Nursery Ad does not depict any behaviour which gives rise to a risk of these scenarios occurring, as:

- the driver is in complete control of the vehicle at all times;*
- all bystanders are shown as being at safe distance from the forklift whilst it is in motion;*
- the driver is wearing a high-visibility vest and seatbelt, and the forklift itself has a warning light to make it more visible;*
- the forklift is not carrying a load, so there is no risk of a load being the cause of collision or tip-over (or for the driver to have any reduced visibility whilst operating the forklift); and*
- the forklift is being operated at a reasonable speed.*

The only specific allegation of unsafe behaviour identified in the complaint is that 'forks should always be lowered to the ground.' Regarding fork height, Optus notes that the 'Information Sheet for Owners and Operators - Forklifts' issued by Safe Work



Australia (“Safe Work AU Guidelines”) states that when operating a forklift, drivers should:

“drive with the fork arms as close to the ground as reasonably practicable, with the tips of the fork arms tilted slightly upwards and away from the ground, whether driving with or without a load.”

Optus submits the operation of the forklift shown in terms of fork height is fully compliant with the applicable Safe Work Guidelines. For reference, the following screenshot illustrates that the forks are approximately 1 foot off the ground at all times, and are tilted slight upward.



For completeness, whilst the complaint makes no specific reference to this part of the ad, Optus notes the final shot of the forklift in motion shows it being parked between a number of flower pots, with an exaggerated sound effect of a wheel skid as the driver turns in. The use of the sound effect is intended as a comedic trope (ie, accompanying a clearly exaggerated sound effect with the parking motion).

Optus submits that this portion of the ad does not show any practices that would be considered unsafe (and again we note the complaint itself does not refer to any specific action depicted this parking segment as being unsafe). Optus submits the forklift is being operated at a reasonable speed, the forklift remains stable at all times as the front wheels remain in a largely fixed position as the rear wheels align with the spot, and the vehicle comes to a safe stop within a clearly designated spot (the latter point being clear from the above picture).

Breaches of applicable guidelines and regulations

The complaint makes no reference to specific breaches of any guidelines, regulations, or rules applicable to the safe operation of forklifts. To the best of Optus’ knowledge,



we are not aware that the manner in which the forklift is shown to be operated would constitute a breach of any relevant legal or regulatory obligations.

With reference to the Safe Work NSW Guidelines and the Safe Work AU Guidelines, the forklift driver appears to operate the forklift in accordance with the following requirements:

- look in the direction of travel (even when reversing, the driver is looking in the direction of travel);*
- keep bodyparts within the forklift;*
- avoid distracting behaviour (no smoking, or the use of a mobile phone);*
- being aware of other people;*
- driving at a safe speed;*
- drive with the fork arms as close to the ground as reasonably practicable (as addressed above);*
- avoid speeding up, decelerating and turning too quickly;*
- keeping people and forklifts separate; and*
- wearing a seatbelt.*

As noted above, given the forklift was not carrying a load, the rules applicable to load limits and appropriate restraints are not relevant.

In terms of the production of the Plant Nursery Commercial itself, Optus has been advised:

- the ad was filmed under controlled conditions - a full health and safety report was developed prior to shoot by a third party safety consultant. Specific guidelines in relation to the forklift use were developed using the Safe Work NSW Guidelines. This safety report was circulated to the crew prior to shoot as part of the call sheet; and*
- the forklift operator used for the shoot was fully licensed to operate the forklift.*

OTHER COMPLAINTS INVOLVING FORKLIFTS

Optus notes Ad Standards has recently considered other complaints involving forklifts and s 2.6 of the Code:

- Case Number 0009/19; and*
- Case Number 0096-20.*

The complaint subject to Case Number 0009/19 alleged that the depiction of a forklift moving forward and raising a load at the same time was unsafe. As Ad Standards would be aware, the Panel dismissed this complaint, finding (amongst other things):

- whilst the operation of forklift may be considered to be going against workplace safety recommendations, these are not laws;*



- *the vision of the operator was not impaired; and*
- *it was unlikely anyone would see the advertisement and believe it to condone unsafe operation of forklifts, or would attempt to copy the behaviour.*

Optus submits it is open to the Panel to make a similar assessment in our case, as the conclusions drawn above are analogous to the complaint in relation to the Plant Nursery Advertisement. This is especially the case as there is no breach clear breach of the workplace safety guidelines as outlined above.

Optus notes the complaint subject to Case Number 0096/20 (where a person is depicted riding a forklift) was upheld. In that case, the Panel noted the improper use of a forklift is likely to cause harm, and the manner in which the forklift was operated in this ad (with someone riding on the forks) would be considered by most members of the Australian community to be unsafe. The majority of the Panel noted that the man was seated next to large cylinders on the moving forklift, and that if these were to shift the man could be hurt.

Optus respectfully submits that the activity portrayed in the Plant Nursery Advertisement is significantly different to 0096/20: the operation does not show any behaviour as egregious as riding on the forks, and there are no specific identifiable risks (such as large cylinders on the moving forklift) that could cause harm to life or property.

Optus would never seek to broadcast an advertisement that we believed would depict or encourage unsafe behaviour, whether in the workplace or otherwise. For future deployments of this content, we will include a prominent disclaimer that it was "Filmed under controlled conditions" to further make it clear to the public that this is an advertisement and not intended to be an instructional reference as to how forklifts should be operated. Optus is happy to consider any amended form of disclaimer as may be recommended by the Panel.

OTHER SECTIONS OF THE CODE

We note Ad Standards requested that our response should address all parts of the Section 2 of the Code. We have reviewed all sections of the Code, and do not believe the Plant Nursery Advertisement, in any way:

- *portrays people or depicts 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 (section 2.1);*
- *employs sexual appeal (section 2.2);*
- *presents or portrays violence (section 2.3);*
- *treats sex, sexuality or nudity with insensitivity to the relevant audience (section 2.4);*
- *uses language which is inappropriate in the circumstances (section 2.5);*
- *does not clearly distinguish itself as an advertisement (section 2.7).*



Given this, we have not provided submissions on these sections of the Code.

SUMMARY

For the reasons set out above, we are of the view that the Plant Nursey Advertisement is compliant with, and does not breach, the Code.

We thank Ad Standards for the opportunity to provide these submissions in relation to the complaints and respectfully request Ad Standards dismiss the complaint.

1. Available at <https://www.safework.nsw.gov.au/hazards-a-z/forklifts>.
2. Available at <https://www.safeworkaustralia.gov.au/system/files/documents/1703/forklifts-information-sheet.docx>
3. Available at <https://adstandards.com.au/sites/default/files/reports/0009-19.pdf>
4. Available at <https://adstandards.com.au/sites/default/files/reports/0096-20.pdf>

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 complainant's concern that the advertisement depicts a forklift being driven with the forks in the air in an unsafe manner.

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

Section 2.6: Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

The Panel noted the Practice Note to Section 2.6 which states:

"Images of unsafe driving, bike riding without helmets or not wearing a seatbelt while driving a motor vehicle are likely to be contrary to prevailing community standards relating to health and safety irrespective of whether such depictions are for the product/service being advertised or are incidental to the product."

The Panel noted the advertiser's response that Safe Work Australia recommends that forklifts without loads be driven with the forks as close to the ground as practical with the forks pointing upwards. The Panel further noted the advertiser's response that the height of the forks in this advertisement were consistent with this guideline.

The Panel noted that it had previously considered the issue of forklift safety in case 0009-19, as referenced by the advertiser. In this case:



“The Panel noted that while SafeWork Australia guidelines don’t specifically state the operator should not move forward while raising a load, they do recommend: “When operating a forklift you should drive with the fork arms as close to the ground as reasonably practicable, with the tips of the fork arms tilted slightly upwards and away from the ground, whether driving with or without a load” and “When operating a forklift you should look in the direction of travel and keep a clear view of the way ahead”
(https://www.safeworkaustralia.gov.au/system/files/documents/1703/forklift_information-sheet.pdf)

The Panel considered that the forklift may be considered to be going against recommendations for workplace safety, however noted that these recommendations are not laws and are dependent on the situation.

The Panel considered that the forklift that is seen to be raising a load and moving forward at the same time is in the background of the advertisement, and is not the focus of the advertisement. The Panel considered that the height of the load would mean that the vision of the forklift operator was not impaired. The Panel considered that the vision of the forklift lasts for less than two seconds. The Panel considered that most people viewing the advertisement would not notice the forklift at all, let alone notice the way it is being driven.

The Panel considered it was unlikely anyone would see the advertisement and believe it to condone unsafe operation of forklifts, or would attempt to copy the behaviour in the advertisement. The Panel considered that the advertisement did not depict material contrary to prevailing community standards on health and safety and did not breach Section 2.6 of the Code.”

In contrast to the previous case, the Panel considered that the driving of the forklift in the current advertisement was a key focus of the overall advertisement, and that the manner it was being driven in would be noticed by people viewing the advertisement.

The Panel considered that the forks on the forklift did not appear to be as low to the ground as they could be and this does not appear to be in line with the Safe Work guidelines. The Panel noted that in the first shot the forklift is seen to be reversing in close proximity to other employees with some speed, before executing a turn, and that there is a clear risk that the forks could present a danger to others.

The Panel considered that most members of the community would understand that Safe Work guidelines are in place to prevent accidents and injuries in the workplace.

The Panel also noted the Safe Work guidelines recommend that the vehicle be driven at a safe speed and avoid turning too quickly. The Panel considered that the parking manoeuvre executed at the end of the advertisement did depict the forklift turning at a speed excessive to need.



The Panel noted the advertiser's response in relation to this scene that the sound effect of the squealing tires was added for comedic effect and was shown to end up in a designated parking spot.

The Panel also noted the advertiser's response that one of the three main reasons forklift drivers are killed or seriously injured is due to being crushed in a forklift tip-over.

The Panel noted that the parking move executed by the forklift driver in this advertisement depicted the vehicle turning quickly into a tight spot. The Panel noted that in the advertisement the forklift did not appear to tip or have its wheels leave the ground and did not appear to be in danger of tipping over. The Panel noted that the driver appeared to have a high level of skill, and that the parking manoeuvre was seen to be expertly handled.

The Panel noted that rather than being comedic, the sound effect of the squealing wheels adds to the impression of speed, and the impression that the driver must be highly skilled to park in such a tight parking space so quickly.

The Panel noted that the forklift comes to rest next to a spot with shelves containing large pots, and that these could present a danger if they were knocked over. The Panel considered the forklift did appear to be seen turning into a parking spot at a speed which is likely to be considered dangerous in many workplaces. The Panel considered if this move were attempted in a real workplace by a less-skilled driver in conditions which were not controlled it could lead to serious injury.

Overall, the Panel considered that the forklift was being driven in an unsafe manner, due to the height of the forks as the vehicle was driving and the speed at which the vehicle turns into the tight parking spot. The Panel considered that both actions carry considerable risk in a workplace situation, and was contrary to Safe Work guidelines. The Panel considered that most members of the community would consider the depiction of behaviour contrary to Safe Work guidelines and therefore contrary to community standards on health and safety.

Section 2.6 conclusion

The Panel considered that the advertisement did contain material contrary to Prevailing Community Standards on health and safety and determined that it did breach Section 2.6 of the Code.

Conclusion

Finding that the advertisement breached Section 2.6 of the Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION



Please be advised that Optus has taken steps to modify the advertisement in line with the concerns raised by the Panel, and has instructed our external advertising agency to do so.

The following amendments have been made to the commercial:

- Opening shot of the forklift driving past the employees has been removed;
- All visuals of the forklift in motion (including the parking action) have been slowed down;
- The fork height has been lowered;
- The sound effect of the tyres skidding has been removed, and replaced with a slower 'reversing' sound effect; and
- A written clarification has been added to the ad to advise people the commercial was filmed under controlled conditions, and that the forklift was operated by a licensed operator.

We have instructed our external advertising agency to replace the existing commercial with the amended one, it will be live this week.