



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0264-19
2. Advertiser :	Downtown Brooklyn
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	Internet - Social - Facebook
5. Date of Determination	11-Sep-2019
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification
AANA Code of Ethics\2.6 Health and Safety
AANA Code of Ethics\2.0 Other

DESCRIPTION OF ADVERTISEMENT

This Facebook advertisement features an image of a Reece's Bowl (a dessert) and the text "REECE'S WHATTT? Get those Epipen's ready, because this is going to be worth it! Churro Bowls are out and Reece's Bowls are in! This giant Reece's Piece is sure to get the heart racing! Loaded with ice Cream and drizzled in Peanut Butter and Chocolate, it sure screams, get me to the hospital ASAP! Available for a limited time only!"

THE COMPLAINT

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

Offensive and blatant reference to peanut anaphylaxis including irresponsible reference to medical device Epipen.

Discriminatory, encouraging irresponsible and risky behaviour towards young people to risk anaphylaxis.

The advertisement makes light of the seriousness of anaphylaxis by joking that perils need to get their Epipens ready for the new product line



I object to their flippant inclusion of nut allergies in the text of the advertisement. They suggest that people with life threatening but allergies should still consume the product and just ensure they have an epipen to use when eating it and go to the hospital. They are using a life threatening medication condition as an attempted humorous device. More concerning, I hope that no one with low health literacy skills would actually believe it would be safe for them to consume this food despite a nut allergy if they have an epipen with them.

It made fun of people with life-threatening food allergies. It's highly offensive to flippantly make fun of people who effectively live with a disability and live with fear of death every single day. It also spreads the misconception that a person with anaphylaxis can be saved with an Epipen - this is NOT the case and people can still die after being injected.

As a mother of two highly allergic children I found it absolutely appalling that the restaurant would make light of their life threatening medical condition. It's this kind of language that leads the general public to believe that allergies don't need to be taken seriously, that a 'little won't hurt', and that an EpiPen is a guaranteed cure - none of which are true. Imagine if a young person was to take their post literally, and expose themselves to serious harm / death. Shameful!

THE ADVERTISER'S RESPONSE

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

I am writing to you in regards to the complaint made against our company, Downtown Brooklyn, about our Reese's Peanut Butter Cup that was shared on our Facebook Page.

We have undertaken legal advice from our lawyers and at present will be choosing to not use them, in the hope that we can sort this matter out accordingly with your panel.

I have been in the hospitality industry for 15 years now. Our Chefs have all the proper qualifications required. We have all the necessary procedures in place to minimize cross-contamination. Our yearly food and health inspections have always yielded 5 Stars, which we display proudly on our doors. We have all necessary warnings and labels on all products sold on our menu.

Our waiters have been trained effectively to make note of any customer with any sort of allergy, so extra care can be taken in those circumstances in producing the food served. We offer a range of products that is inclusive of all customers and changes can be made to our Burgers we serve if that is required.

Allergies are no joke in this industry, but a little tongue in cheek and light banter has somehow been misconstrued as we don't care. It is very far from the truth.



It is our belief that the joke/dark humour/tongue in cheek, had been taken out of context and applied in a way in which people thought we were attacking Allergy groups, which we did not set out to do. The ad came from one of our staff that is Anaphylactic, where she said and I quote, "... jab me now and call an ambulance because I want to try that shit!".

I have explained below in regards to the complaint made, and if you require any further information, please do not hesitate to contact myself.

After reading through your notification of complaint, please see below and I have attached as well the material in which the complaint has been made against.

To give the panel a background of our company, we are an American Themed Burger Bar that indulges in over the top Burgers, Desserts and Loaded Shakes. We use humour and post gimmicky ads with tag lines to gain attention on our products, which represents how good they are. It creates engagement with our audience and our fans love our tag lines that we have used in the past.

Unfortunately, this time around, the line in question ‘...Get those Epipen’s Ready, because this is going to be worth it...’ didn’t hit the mark with some. They could not see the humour nor the tongue in cheek play on words. Our meaning behind it – this Dessert is so good, it’s worth risking your life for.

(Obviously not literally as many took this).

The post went viral as Allergy Groups around the world banded together to attack our company. From leaving hate messages on our Answering Machine, Verbal attacks on staff that picked up the phone, filling our inboxes up, 1-star reviews on platforms such as Google and Trip Advisor, these groups did everything in their power to sabotage our business.

This goes without saying there has been as much support as there has been hate against our company. Below you can see the outcry of people that could see the humour in the post and have stuck by and supported our company.

Media Attention

Today Show Facebook Post:

[https://www.facebook.com/today/posts/10157534037396350?__xts__\[0\]=68.ARCIR51sK6quuErFCHvo7lxHt_j2EOPk6Lsp0zpGmPZLD6FXuW98vQXaVQADcFRqrn6xZgwEi_s03Pv7rZvyg9kg0VAapw2WEIEH4dnUrhpAaxF4PZ45Rx9KmmVnWHlkaHptp3UNb7eL_mfWUvPv9Rt4R04wIE1U_AsaUoJLRoPhS9n-Z3N2Na9syPqBMR0dRLot31PO765f7G9o2VBWC5n2QY6PnL2cnvRb7zE7mUBrGwz7Sy4iNDq8rsQeL14MpOsPkmmoVg0FYg2006121k2eNd2m_5_vxzH9qS8DTQvY61TlpwMR4Fyr&__tn__=-R](https://www.facebook.com/today/posts/10157534037396350?__xts__[0]=68.ARCIR51sK6quuErFCHvo7lxHt_j2EOPk6Lsp0zpGmPZLD6FXuW98vQXaVQADcFRqrn6xZgwEi_s03Pv7rZvyg9kg0VAapw2WEIEH4dnUrhpAaxF4PZ45Rx9KmmVnWHlkaHptp3UNb7eL_mfWUvPv9Rt4R04wIE1U_AsaUoJLRoPhS9n-Z3N2Na9syPqBMR0dRLot31PO765f7G9o2VBWC5n2QY6PnL2cnvRb7zE7mUBrGwz7Sy4iNDq8rsQeL14MpOsPkmmoVg0FYg2006121k2eNd2m_5_vxzH9qS8DTQvY61TlpwMR4Fyr&__tn__=-R)



The Western Weekender Facebook Post:

[https://www.facebook.com/westernweekender/posts/10157410479208320?__xts__\[0\]=68.ARC1TdWEgxYjXK0rjwsH1G77frqCECiRhpbtAH6b0m1OSkrl2rpJaFpdLeSjfTWv7cgG1ZzyVdGXWki6OgesGafuehnlduGjipRzltymuzthByhLbsrx8OMwUI7mYC1HcgEngpPpf6bzbzS94ewGCLatPuRcFTtFJNbVKZnVFPouURhjkdlUn35OAPoSV6CnkKf1wKK7T95VIqvWbudStQWLzQBoT2JKBgWID0j4PfijlsIrke-XBoZQbj1wa34PKnLN4NzKCxzWT8oPnyv94oDlb5ny0BeKY8I62Y9jILq3snBGfPNDDsLFpk8&__tn__=-R](https://www.facebook.com/westernweekender/posts/10157410479208320?__xts__[0]=68.ARC1TdWEgxYjXK0rjwsH1G77frqCECiRhpbtAH6b0m1OSkrl2rpJaFpdLeSjfTWv7cgG1ZzyVdGXWki6OgesGafuehnlduGjipRzltymuzthByhLbsrx8OMwUI7mYC1HcgEngpPpf6bzbzS94ewGCLatPuRcFTtFJNbVKZnVFPouURhjkdlUn35OAPoSV6CnkKf1wKK7T95VIqvWbudStQWLzQBoT2JKBgWID0j4PfijlsIrke-XBoZQbj1wa34PKnLN4NzKCxzWT8oPnyv94oDlb5ny0BeKY8I62Y9jILq3snBGfPNDDsLFpk8&__tn__=-R)

The Penrith Press/Daily Telegraph Facebook Post:

[https://www.facebook.com/penrithpress/posts/10157506553224146?__xts__\[0\]=68.ARCbNUHe2APB_Nq9yL5J_MGFSAaVPwAURuecJSSoRGExSVsgaEgTKxU8D66KL5Ro4yvisyIVABMxGUpD_cjXZu9c6L6sC5ic-DrsHxhtD7r51fdX6_pAeuY_tfV5PTXIU6m9bA8mi9STs7Bg7jc0smuKMckA1uwHR90xL0vzdfH3vOSPUCCUbR_PpPwtsaKK-YKTy-2KfpKZ9pDcDJD2CuSGn1I8ANWwR9rr1iSITgp_AmlxIGtBMRF59iuLICd2geyHdcNqT88S_bczSjmC2WMYmidsN6FKiBvjsbMtPXsmI9I3YKzIXQX_Cng98&__tn__=-R](https://www.facebook.com/penrithpress/posts/10157506553224146?__xts__[0]=68.ARCbNUHe2APB_Nq9yL5J_MGFSAaVPwAURuecJSSoRGExSVsgaEgTKxU8D66KL5Ro4yvisyIVABMxGUpD_cjXZu9c6L6sC5ic-DrsHxhtD7r51fdX6_pAeuY_tfV5PTXIU6m9bA8mi9STs7Bg7jc0smuKMckA1uwHR90xL0vzdfH3vOSPUCCUbR_PpPwtsaKK-YKTy-2KfpKZ9pDcDJD2CuSGn1I8ANWwR9rr1iSITgp_AmlxIGtBMRF59iuLICd2geyHdcNqT88S_bczSjmC2WMYmidsN6FKiBvjsbMtPXsmI9I3YKzIXQX_Cng98&__tn__=-R)

In response to the following complaints made please see our replies in accordance with whether we believe we have broken any Code of Ethics.

2.1 Advertising or Marketing Communication 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 preference, religion, disability, mental illness or political belief.

The company Downtown Brooklyn, does not believe our ad portrayed or depicted any sort of material that discriminated or vilifies any person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

2.2 Advertising or Marketing Communication shall not employ sexual appeal: (a) where images of Minors, or people who appear to be Minors, are used; or (b) in a manner which is exploitative or degrading of any individual or group of people.

The company Downtown Brooklyn, does not believe our ad employed any sexual appeal. No images of minors or any person appearing to be a minor has been depicted in our ads that exploits them.



2.3 Advertising or Marketing Communication shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

The company Downtown Brooklyn, does not believe our ad portrayed or presented violence in any of the context.

2.4 Advertising or Marketing Communication shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The company Downtown Brooklyn, does not believe that the ad in no way shape or form mistreated the use of sex, sexuality or nudity in our campaign.

2.5 Advertising or Marketing Communication shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

The company Downtown Brooklyn, does not believe at anytime the use of inappropriate language has been used in our campaign.

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

The company Downtown Brooklyn, does not believe that our ad depicts any material that goes against Community Standards of Health and Safety.

2.7 Advertising or Marketing Communication shall be clearly distinguishable as such to the relevant audience.

The company Downtown Brooklyn, believes that our ad is clearly distinguishable as humour, used in a way in which engages our audience.

THE DETERMINATION

The Ad Standards Community Panel (Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainants' concern that the advertisement:

- Makes fun of people with life-threatening allergies
- Features an irresponsible reference to a medical device
- Encourages irresponsible and risky behaviour towards anaphylaxis, especially by young and vulnerable people
- Spreads the misconception that a person with anaphylaxis can be saved with an EpiPen

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 anaphylaxis is a serious immune disorder and considered that this would fall within the definition of disability.

The Panel noted the complainants’ concerns that the advertisement makes fun of people with life-threatening allergies.

The Panel noted the advertiser’s response that the humour used in the advertisement is in line with their usual brand and the advertisement does not discriminate against or vilify any member of the community.

The Panel noted that the advertisement references people who are severely allergic to nuts through the phrases “get those Epipens ready”, “it screams, get me to the hospital ASAP!”, and considered whether these phrases could be considered to humiliate or ridicule people with anaphylaxis.

The Panel considered that while the advertisement may be seen to be making light of serious issue, it is not making any negative statements or inferences about people with severe nut allergies. The Panel also considered that the advertisement did not portray people with anaphylaxis receiving unfair or less favourable treatment.

The Panel acknowledged that nut allergies are a sensitive issue, especially to those who have been through the traumatic experience of having, or watching someone have, a severe allergic reaction. The Panel considered that the advertisement making fun of anaphylaxis may be viewed as being in bad taste, however 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

The Panel considered whether the advertisement complied with 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 noted the complainants’ concerns that the advertisement encourages irresponsible and risky behaviour towards anaphylaxis, especially by young and vulnerable people.

The Panel noted the advertiser’s response that the advertisement does not depict any material which goes against community standards on health and safety.

The Panel noted the complainants’ concerns that younger or vulnerable people could still see this advertisement as a challenge and decide to eat nuts anyway, however the Panel considered that this would be unlikely. The Panel considered that most people who know they are allergic to nuts and who have an EpiPen would be educated in its use and know that it is still unsafe to eat nuts. The Panel noted that this advertisement was on Facebook, and considered that it is unlikely that young children who may not fully understand their allergies would see this post, or be encouraged to eat nuts because of it.

The Panel noted the complainants’ concerns that advertisement features an irresponsible reference to a medical device and spreads the misconception that a person with anaphylaxis can be saved with an EpiPen.

The Panel considered that the advertisement was unlikely to be taken as a serious health message by most members of the community and would not be considered as a serious message by people with nut allergies. The Panel noted that the advertisement also included the line ‘get me to hospital’ and considered that the advertisement does not suggest that EpiPens on their own can treat anaphylaxis. The Panel considered that this advertisement would not encourage people to use EpiPens incorrectly, or to fail to call for emergency services after an anaphylactic reaction.

The Panel considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety.

The Panel 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 complaints.