



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0305-20
2. Advertiser :	eBay Australia & New Zealand
3. Product :	Retail
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	7-Oct-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

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

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a man and woman in a warehouse. They look at a delivery of protein powder and the man talks about working out. The woman makes a comment about him eating pies.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

Body shaming/ belittling male body. If this was in reverse, it would not pass standards. Any public advertising should not make any negative references to body appearance. It also condones bullying in a workplace.

I find the manager to be bullying workers - with one she picks on his weight & in another on the way he looks

Putting a male down inferring he is overweight. I would like to see this add will a roll reversal and a bloke putting a woman down like they are doing in this matter and it would be removed from the air or never broadcast.



THE ADVERTISER'S RESPONSE

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

We refer to the complaint made in connection with an advertisement, which is part of the eBay Plus 'Posties' series of advertisements featured on free to air television during September 2020 (Advertisement). We thank you for the opportunity to provide a response to this complaint.

Background – the eBay Plus 'Posties' advertising campaign

The eBay Plus 'Posties' advertising campaign is part of eBay's campaign to position eBay as a premier provider of on-line shopping services to Australian consumers. Consumers can easily purchase a wide range of products at competitive prices from the eBay website, which are then efficiently, and within a minimal timeframe, shipped to consumers. The Advertisement reflects the focus of eBay on stocking a wide variety of products and providing responsive, expeditious customer service to maximise a consumer's experience with the eBay brand. This focus on product range is highlighted in the advertisements by playfully demonstrating the interaction between two eBay employees, both of whom work in eBay's warehouse. The target audience for the Advertisement is on-line shoppers who are adults aged 18 years and over. The observations in the Advertisement are intended to be light-hearted, humorous and memorable, particularly insofar as they depict the breadth of products available on the eBay platform.

Response to issues raised in the complaint

eBay is committed to conducting all advertising and promotions to the highest standard and we take seriously any complaints made in relation to our advertising and promotions.

As requested, we have addressed the complaint by reference to all relevant advertising codes, being the AANA Code of Ethics (Code of Ethics) and the AANA Food and Beverages Marketing and Communications Code (Food Code).

Having considered the Advertisement and the complaint, as well as the requirements of the Code of Ethics and the Food Code, eBay respectfully submits that the Advertisement does not in any way contravene the Code of Ethics or the Food Code.

Please note that we have not assessed the complaint by reference to the:

*AANA Wagering Advertisement and Marketing Communications Code as eBay is not a licensed wagering operator; or
AANA Code for Advertising and Marketing Communications to Children (please see our explanation below).*



Application of the AANA Code of Advertising and Marketing Communications to Children

We submit that the AANA Code of Advertising and Marketing Communications to Children does not apply to the Advertisement for the following reasons:

a 'child' for the purposes of the AANA Code of Advertising and Marketing Communications to Children is a person 14 years old or younger;
the target audience for the Advertisement is on-line shoppers who are adults aged 18 years and older;
the language and tone of the Advertisement is not of a childlike nature, and does not feature scenarios which are aimed at or are appealing to children; and
the Advertisement is not directed at, or targeted to, children and has not been placed in media which is specifically directed or targeted to children. This is evidenced by the fact that eBay does not advertise during programs classed as children's programs.

Code of Ethics

We submit that, having regard to section 2 of the Code of Ethics, the Advertisement does not contravene the Code of Ethics.

The Advertisement does not contravene section 2.1 of the Code of Ethics as 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 orientation, religion, disability, mental illness or political belief.

The Advertisement is in no way discriminatory against, or vilifies, men. The Advertisement presents to the target audience humorous situations that might arise when consumers order products from eBay. It is intended to highlight the variety of products which are or may be purchased through the eBay platform and the playful interaction between staff that might arise. The Advertisement is intended to be, and eBay submits is, light-hearted, exaggerated and tongue-in-cheek as regards both males and females in order to connect with the target audience.

The complaint states that in the Advertisement the female employee body shames the male employee because of his weight. eBay does not condone body shaming of any gender and is cognisant of the prevailing community standards in respect of the issues that arise relating to body shaming. The Advertisement does not vilify men or condone or promote body shaming, it simply provides a comedic and exaggerated view of the workings of the eBay warehouse, particularly when certain products are purchased by members of the public. The dialogue exchanged between the two employees is light-hearted, this is reinforced by the fact that the female employee, who is a similar size to the male employee, is joking with the male employee by choosing to respond to his use of the phrase "bi's, tri's and thighs" with the rhyming "meat pies". The target audience may, or may not, find the humorous, slightly sarcastic, techniques employed in the Advertisement amusing, however such a view will be subjective. In eBay's opinion, it cannot be objectively held that the Advertisement vilifies men by condoning or



promoting body shaming. Such a view would not be formed by the vast majority of the target audience, nor the broader community, and therefore the Advertisement is not discriminatory against, does not vilify a section of the community and does not contravene section 2.1 of the Code of Ethics.

The Advertisement does not contravene section 2.2 of the Code of Ethics as it does not employ sexual appeal using images of a person under the age of 18 years nor does the Advertisement employ sexual appeal in a way which is exploitative or degrading of any individual or group of people. There is no debasement or abuse of any person or group of people.

The Advertisement does not contravene section 2.3 of the Code of Ethics as it does not contain any violent graphics or imagery.

The Advertisement does not contravene section 2.4 of the Code of Ethics as it is not sexually suggestive, nor does it contain nudity or references to sex.

The Advertisement does not contravene section 2.5 of the Code of Ethics as it features language which is appropriate for the relevant audience and medium and does not feature strong or obscene language.

The Advertisement does not contravene section 2.6 of the Code of Ethics as it does not depict any material which is contrary to Prevailing Community Standards on health and safety, including with respect to bullying.

The complaint states that the Advertisement condones bullying in the workplace as the female employee is engaging in bullying behaviour directed at the male employee. eBay is aware of the Prevailing Community Standards on health and safety, including mental health, and does not condone bullying. As stated above, the Advertisement provides a comedic and exaggerated view of a working environment which is intended to be amusing. The banter engaged in between the eBay employees is, in eBay's opinion, light-hearted and this is reflected in the interaction between the employees. Although the male employee looks down, purportedly at his abdomen, following the comment from the female employee, he is not portrayed as being upset due to bullying behaviour, but as simply responding in a humorous, self-deprecating way to the amusing comment made by his colleague. In eBay's opinion, the female employee is not bullying her colleague. Objectively, the context of the Advertisement does not condone or promote bullying and the vast majority of the target audience and the broader community would agree. As such, the Advertisement is not contrary to Prevailing Community Standards on health and safety, particularly with respect to bullying, and does not contravene section 2.6 of the Code of Ethics.

The Advertisement does not contravene section 2.7 of the Code of Ethics as it is clearly distinguishable as advertising to the relevant audience.

We note that sections 1 and 3 of the Code of Ethics do not apply to the Advertisement.



Based on the above, we do not consider that the Advertisement contravenes the Code of Ethics, having regard to section 2 of that Code or otherwise.

Food Code

We submit that, having regard to section 2 of the Food Code, the Advertisement does not contravene the Food Code.

The Advertisement does not contravene section 2.1 of the Food Code. The Advertisement is truthful and honest, and is not, nor is it designed to be, misleading or deceptive or otherwise contravene prevailing community standards. The Advertisement is presented in a light-hearted, humorous way designed to engage the target audience and inform them of the diverse range of products, including protein powder, which are available on the eBay platform. It does not attempt to present factual information, in particular in relation to the health, nutrition and ingredient components of any type of protein powder.

The Advertisement does not contravene section 2.2 of the Food Code. Specifically, the Advertisement does not undermine the importance of healthy or active lifestyles or the promotion of healthy balanced diets. The Advertisement does not encourage what would reasonably be considered excessive consumption through the representation of the product or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to prevailing community standards.

The Advertisement does not contravene section 2.3 of the Food Code. The Advertisement does not contain any health or nutrition claims. It does not make any direct or indirect reference to health benefits or nutrition.

The Advertisement does not contravene section 2.4 of the Food Code as the Advertisement does not include any health-related comparisons.

The Advertisement does not contravene section 2.5 of the Food Code as the Advertisement does not make reference to consumer taste or preference tests, nor use any scientific terms to falsely ascribe validity to advertising claims.

The Advertisement does not contravene section 2.6 of the Food Code as the Advertisement does not make reference to taste, size, content, nutrition and health benefits which are non-specific to the promoted product or inaccurate in all such representations.

The Advertisement does not contravene section 2.7 of the Food Code as the Advertisement does not appear within segments of media devoted to general and sports news and/or current affairs, nor rely on the endorsement or use of a recognised personality.

The Advertisement does not contravene section 2.8 of the Food Code as the Advertisement does not portray protein powder as a substitute for meals.



The Advertisement complies with the Code of Ethics and the AANA Code for Advertising and Marketing Communications to Children is not relevant, and accordingly, the Advertisement does not contravene section 2.9 of the Food Code. Clause 3 of the Food Code does not apply to the Advertisement, as the Advertisement is not targeted at children.

On the basis of the above, eBay does not consider that the Advertisement contravenes the Food Code, or any other Code, having regard to sections 2 and 3 of the Food Code or otherwise.

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 complainants' concerns that the advertisement portrays bullying, body shaming and puts down the man in the advertisement.

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."*

The Panel noted the advertiser's response that the advertisements are in no way discriminatory, inappropriate or derogatory to males.

The Panel noted that the situation is humorous as the man is depicted as a person who is not an athletic person, in that he is not especially trim or muscled.

The Panel considered that the comment made by the woman in the advertisement was in relation to the particular character and that the advertisement does not refer to the man's gender or suggest that the comment is related to his gender or to all men.

The Panel considered that the man was not seen to receive unfair or less favourable treatment because of his gender. The Panel considered that the man was not depicted in a manner which ridiculed or humiliated him on account of his gender.



The Panel determined that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and 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 is bullying the man by body-shaming him due to his weight.

The Panel noted that the two people in the advertisement are obviously colleagues and noted that this advertisement is part of a series which all show the same two employees.

The Panel considered that the man in the advertisement is subtly bragging about his exercise regime, and the woman is gently teasing the man by suggesting that his regime is mixed with eating meat pies. The Panel noted that her comment does not suggest that the man is overweight and noted that the man is not shown as being overweight or unhealthy. The Panel considered that such good-natured banter is common between colleagues and friends, and noted that the man does not appear to be hurt or offended by the woman’s comment.

On this basis, the Panel considered that the advertisement did not contain material which would be contrary to Prevailing Community Standards on health and safety and determined that it 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.