



Case Report

1	Case Number	0328/17
2	Advertiser	NIKE Australia Pty Ltd
3	Product	Sport and Leisure
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	26/07/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

2.3 - Violence

2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

NRL player James Tedesco places himself in an unusual 'No Turning Back' situation by touching a work of art, giving him no way but to dodge his way out of a museum

THE COMPLAINT

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

Dreadful ad. Promoting illegal /mischievous / dangerous activity in effort to make brand seem tough. Why should this behaviour be encouraged and applauded. Ridiculous.

This advertisement send a very poor message regarding social responsibility and violence.

THE ADVERTISER'S RESPONSE

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

Nike is a company that prides itself on modelling ethical and responsible behaviour at all times. It prepares its advertising materials very carefully with a view to ensuring it upholds the highest standards of corporate social responsibility.

Nike does not consider that this advertisement breaches section 2 of the AANA Advertiser Code of Ethics. Nike's response supporting that view in respect of complaint reference numbers 0318/17, 0319/17 and 0328/17 is set out below.

Nike's response below principally addresses the following specific sections of the AANA Advertiser Code of Ethics:

- section 2.3 – "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised"; and*
- section 2.6 – "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".*

The above sections seem potentially relevant to the complaints that have been made in relation to this advertisement. Nike respectfully submits that no other sub-sections of section 2 of the Code are relevant – it is clear that they have not been breached, therefore Nike does not specifically address those sub-sections.

1. The advertisement features James Tedesco who is a very well-known rugby league player and the reigning Dally M Fullback of the Year. He plays for Wests Tigers in the National Rugby League and has been a prominent player for New South Wales in this year's State of Origin matches. He is likely to be recognised by a very large proportion of people who view the advertisement, particularly given the targeting deployed for the advertisement placement (discussed further below). Indeed, one of the complaints mentions Mr Tedesco by name – clearly the complainant recognised him in the advertisement.

2. Even if some viewers of the advertisement do not recognise Mr Tedesco, they are likely to realise based on the following that he is a well-known athlete:

- he clearly wears a Nike branded shirt, sports training pants and running shoes;*
- he has the build of a rugby league player;*
- he looks young and fit;*
- he has a personalised mouthguard (it says "TEDDY" which is Mr Tedesco's nickname and is the same as his signature mouthguard which he uses on-field);*
- Nike is well-known for sponsoring individual high-profile athletes and for featuring such athletes in Nike advertising;*
- this advertisement is part of a campaign that features other well-known athletes, discussed further below – many viewers will have seen other well-known athletes in other parts of the campaign; and*
- this advertisement was premiered during the TV broadcast of the NRL State of Origin Match II on 21 June 2017 and many other showings of the TV advertisement have also been during sports programs, as described below.*

3. Since the advertisement features a famous athlete behaving outside social norms by touching the sculpture and looking deliberately into the security camera, it should be readily apparent to all viewers that he is engaging in a fantastic, exaggerated and humorous scenario for the purposes of the advertisement, doing things that he would never (and no reasonable person would ever) do in real life. This general advertising device (i.e. having a famous athlete or celebrity appear in an exaggerated scenario) is well-known to the public. Other elements of the advertisement that clearly denote the unrealistic nature of the scenario include:

- the sheer number of security guards who respond to the siren and the speed of their response;*

- *the fact that all of the security guards have a similar build, i.e. they look like rugby players;*
- *the contrast between Mr Tedesco's athletic build and sportswear, and the other patrons of the gallery who do not appear especially athletic and are dressed as typical gallery patrons; and*
- *the fact that Mr Tedesco simply waits for the security guards to arrive after touching the sculpture.*

4. The target audience is Australians interested in sports, with a target age range from youth/young athletes to baby boomers. The advertisement is not targeted at young children. The points below establish this in relation to the specific media channels that are the subject of the complaints.

- *One complainant viewed the advertisement on Twitter. This advertisement has also been shown on Instagram, Facebook, Snapchat, YouTube and nike.com. Social media users are generally at least 13 years old – indeed, the Terms of Service of Facebook (see section 4, here), Instagram (see section 1, here), Snapchat (see section 1 of the Snap Group Limited Terms of Service, here) and YouTube (see section 12, here) all require a user to be at least 13 years old. Twitter's rules also, until last year, stated that its services are not directed to persons under 13 (see Twitter's Privacy Policy effective January 27, 2016 here) and we expect that few Twitter users are under 13. The audience for this advertisement targeted by Nike in its paid social media advertising is people from teenage up to the age of 50 who are interested in sports. Data from the social media platforms indicates that the majority of social media users who have viewed the advertisement are aged from 18 to 34.*

- *Two complainants viewed the advertisement on pay television (Foxtel). Nike's arrangements with Foxtel provide for the advertisement to be broadcast to a demographic of viewers aged from 16 to 39. Nike made two relevant purchases of advertising on Foxtel:*

- o *The first was a dynamic purchase across key sport and lifestyle channels with a channel mix across Fox Sports, Fox Sport News, Fox 8 (a light entertainment channel), the Comedy channel, music channels, 111 (a situation comedy channel) and TV Hits (a police drama channel). Most or all of the programming on the relevant non-sports channels is classified PG or above (and most or all programs on TV Hits are classified M or above). The PG classification denotes that the program is "not recommended for viewing or playing by persons under 15 without guidance from parents or guardians" – see <http://www.classification.gov.au/Guidelines/Pages/PG.aspx>. The times when the advertisement was shown on Foxtel had a 70/30 split. 70% of advertisements were shown during peak hours and 30% during non-peak times (i.e. daytime and during the early hours of the morning).*

- o *The second purchase was across a sport fixed spot package with key spots appearing as follows:*

- o *during the AFL replay;*

- o *during live premium AFL "sports magazine" shows (AFL 360, On the Couch, Bounce or League Teams);*

- o *before and after live NRL games;*

- o *during the NRL replay;*

- o *during NRL entertainment shows (NRL 360, On the Couch with Sterlo, Monday Night with Matty Johns, League Life, Queenslanders Only);*

- o *during live Super Rugby games;*

- o *during live USPGA Golf; and*

- o *during Fox Sports News.*

- *Two complainants viewed the advertisement on free-to-air television. The advertisement*

was only aired on free-to-air television during State of Origin Match II on 21 June 2017. This broadcast commenced at 7.30pm AEST. 21 June was a Wednesday and we believe, was a school night throughout most or all of Australia. The players were not scheduled to run onto the field until 8.00pm. It would be surprising if young children were watching this broadcast. One of the complainants notes that they saw the advertisement at 10.15pm and especially by that time, we expect that the audience would have been predominantly adults and older youths.

5. The audience for this advertisement should therefore be old enough to discern immediately that the advertisement depicts a fantastic and exaggerated scenario in which no reasonable person would ever engage.

6. One complaint states that the protagonist in the advertisement seeks to "attack" the security staff and "tackle them as in rugby". With respect, this is incorrect. In fact, it is quite the contrary and Mr Tedesco's objective is to avoid being tackled, which is reflective of his position and objective on-field. By way of background, Mr Tedesco's position on-field is that of fullback. The role of a fullback is to receive the ball and run with it into open space, progressing the ball down the field and evading any opposing players. Mr Tedesco is known as being a particularly fast and agile fullback. What the advertisement is seeking to showcase is the athlete's tremendous ability under pressured situations to avoid impact and contact and by no means to "attack" the security guards, but to ultimately evade them. This is demonstrated in the advertisement where Mr Tedesco can be seen side-stepping as he starts to run towards the security guards, who are positioned like and have the stance of members of an opposing rugby league team. There are audible stepping and squeaking sounds as if he is quickly adjusting his direction, so as to avoid the guards.

7. Two of the complaints suggest that the advertisement includes "violence" or "implied violence". Another complaint suggests that the advertisement includes "dangerous activity". For the reasons set out above Nike disagrees that there is any violence, implied violence or dangerous activity. Indeed, as explained above, the implication is that Mr Tedesco is setting himself a difficult challenge of avoiding being tackled; and if anyone can avoid being tackled it is him, i.e. a star fullback rugby league player. Further the Advertising Standards Board's stated view is that "Where there is no actual image of violence, advertising with suggestions of violence are unlikely to breach the Code" and that "Advertising which creates tension between two parties, but does not portray any actual violence, is not considered to be in breach of the Code" (see Violence: determination summary on the Advertising Standards Bureau's website). The overall tone of the advertisement is no more violent than the tone of the average NRL match – in fact, it has a less violent tone because it so clearly involves exaggeration, humour and fantasy. Nobody is depicted as being injured or in pain, or even as being scared.

8. One complaint states that the protagonist shows "stupid disregard for the priceless statue". Of course, a priceless statue was not used in the advertisement – instead the sculpture was created specifically for the advertisement and it has no substantive value. Notwithstanding, it is apparent that Mr Tedesco touches the sculpture in a deliberately gentle way and promptly returns to the other side of the rope. There is no evidence or even suggestion that the sculpture has been damaged in any way. In the context of the humorous, fantastical and unrealistic tone of the advertisement, it should be very clear to viewers that Mr Tedesco is not in fact showing disregard for a valuable piece of sculpture – viewers will assume that Mr Tedesco did not in fact touch and/or damage an actual priceless sculpture.

9. Another complaint suggests that Mr Tedesco is "breaking the law" in the advertisement. However the complaint does not explain which law is broken and Nike does not concede that any law would be broken by the activity depicted. Nike is not aware of any specific law that would be breached. In any event, as explained above, it should be apparent to viewers that the whole scenario depicted is fanciful and clearly unrealistic – therefore the advertisement is not (as the complaint claims) "teaching young people to break the law" and would not be understood by the audience as depicting any breach of the law.

10. One complaint suggests that a message conveyed by the advertisement is that "it is OK to destroy things". Nike respectfully contends to the contrary. The advertisement does not convey this message – it does not depict or imply the destruction of anything (including the sculpture). It is clear that Mr Tedesco deliberately touches the sculpture gently so as not to damage it. This complaint also suggests that the advertisement tells "the younger generation that it is ok... not to abide by signage in places". As explained above, the audience for this advertisement is likely to be old enough to understand that the advertisement is not conveying that message, given the exaggerated and obviously unrealistic scenario that it depicts. In any case it is not clear that any signage is disobeyed by Mr Tedesco in the advertisement – while there appears to be a stand in front of the sculpture that presumably has writing on it, the writing may well be a description of the sculpture rather than a sign saying, for example, "Do not touch".

11. This advertisement is part of a broader campaign by Nike with the theme, "No Turning Back". The campaign features numerous famous elite sportspersons including tennis player Nick Kyrgios, footballer Tom Rogic, NRL player Cameron Smith and runner Genevieve LaCaze. It includes outdoor advertising, experiential events, in-store advertising, digital advertising and a total of four television advertisements. The television advertisements can be seen at www.nike.com/justdoit (the site displays three ads at once, so they are periodically rotated).

12. Nike has deployed sequential targeting of social media users with the aim of exposing them to all four of the television advertisements. In relation to the showing of the advertisements on Foxtel, Nike distributed its budget evenly across all four advertisements so that the target audience would have the opportunity to see all four. However two of the advertisements, including the advertisement the subject of the complaints, were available before the others so the showing of those two was front-weighted to the beginning of the campaign.

13. As Nike explained in a media release dated 20 June 2017 about the campaign, the campaign "is about reawakening the Aussie spirit of playing sport like there's nothing to lose and embracing a "Just Do It" attitude", using the "irreverent and bold tone Nike is famous for". The broader context of this campaign, including the use of famous sportspeople and the irreverent and bold tone that runs across the whole campaign, will reinforce to viewers of the advertisement featuring Mr Tedesco that the advertisement depicts a famous sportsperson in an exaggerated, fantastic and unrealistic situation. Indeed, this is the interpretation adopted and communicated by media reporting on the campaign, including the wide-reaching website 'Adweek' (see <http://www.adweek.com/creativity/just-do-it-is-easier-said-than-done-in-nikes-fun-new-ad-campaign/>) which described the campaign as "fun" and humorous, featuring "outlandish" scenarios and "athletes going to ridiculous lengths to banish the easy way out".

14. In this regard, the Advertising Standards Board's stated view is that "Advertising which is obviously fantastical and unlikely to be taken seriously by most members of the community will not be seen as a breach of" section 2.6 of the Code and "Advertising which uses humorous and exaggerated scenes which are clearly fantastical and unlikely to be taken seriously by most members of the community are unlikely to breach the Code" (see *Health and safety: determination summary* and *Violence: determination summary* on the Advertising Standards Bureau's website).

15. In the above context, it is very unlikely that any viewer of the advertisement would seek to emulate the behaviour of Mr Tedesco in the advertisement. The advertisement is not likely to be seen by viewers as condoning or encouraging any illegal, unsafe or violent behaviour.

16. As mentioned above, two of the complaints relate to the advertisement being broadcast on pay TV. Also as mentioned above, the advertisement has also been shown on free-to-air TV during State of Origin Match II. Before being shown it was reviewed and classified by FreeTV's Commercials Advice (CAD) service where it received a W classification (General/Care in placement). No concerns about the advertisement were raised during that process. It also was reviewed by internal and external legal counsel. It is further noteworthy that this advertisement has reached a very large number of viewers but received only five complaints (Nike has not itself received any direct complaints about the advertisement). Nike estimates that the advertisement has reached:

- 2.379m people via free-to-air TV during State of Origin Match II (based on figures supplied by Channel 9 which broadcast this program);
- 784,781 people via Foxtel (based on figures supplied by Foxtel); and
- 1,198,201 people via social media (based on figures supplied by the social media sites).

Note that there may be some overlap between, and within, the above figures – e.g. the same person may have seen the advertisement on free-to-air TV and on Foxtel, or seen the same advertisement on two or more different social media platforms. Nevertheless it is clear that the advertisement has reached a very large number of viewers. The very small number of complaints suggests that the complainants have interpreted the advertisement in a different manner to most members of the community.

For the above reasons, Nike respectfully requests that these complaints be dismissed.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement is promotes illegal and dangerous activity and sets a bad example for young people.

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

The Board considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 states: "Advertising or Marketing Communications shall not present or portray

violence unless it is justifiable in the context of the product or service advertised".

The Board noted that the advertisement shows a man (James Tedesco) in a museum looking at an exhibit. He steps over the security boundary and touches the exhibit setting off alarms. The security men arrive and the man prepares to tackle them. Text appears on screen that reads "hard way or easy way." The easy way is crossed out and the logo and tagline for Nike appears on screen – Just do it.

The Board noted that the man used – James Tedesco is a current rugby league player.

The Board considered whether Mr Tedesco uses violence to escape from the situation.

The Board noted that it had previously upheld an advertisement for the NRMA (0256/10) where a person shakes the vending machine from the top to dislodge a chocolate bar. In that case the Board considered that "the depiction of the person shaking the machine is a depiction of an activity that can cause harm. The Board considered that this depiction would be considered to be a depiction of an activity that most people would consider unsafe behaviour."

Contrary to the above advertisement, in the current advertisement the man prepares himself with a mouth guard and some stretches in preparation for the confrontation. The Board noted that the man is likely to try and dodge or tackle the security guards who outnumber him. The Board considered that as a professional football player, his actions were not likely to be considered unsafe or violent in nature and he is not seen showing anger or frustration with the security guards, rather he was preparing for a challenge.

The Board considered as the man was not showing aggression toward a person and because he initiated the situation for training practice, it did not amount to a violent act and did not breach Section 2.3 of the Code.

The Board then considered 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 Board noted complaint concerns that the man's actions send a poor message regarding social responsibility.

A minority of the Board considered that children would see the advertisement and recognise the football icon and that his behaviour goes beyond the boundaries of what is acceptable and sets a bad example that could be copied by others. The Board noted that there is no consequence for the man's actions and the outcome is not known.

The majority of the Board however considered that most members of the community, including children, would recognise that this is clearly a staged stunt and not a man actually breaking the rules of the museum.

Overall the majority of the Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety and determined that the advertisement did not breach Section 2.6 of the Code.

The Board noted that it had dismissed complaints about the same advertisement on Television (0318/17).

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.