



Case Report

1	Case Number	0377/13
2	Advertiser	Vodafone Network Pty Ltd
3	Product	Mobile Phone or SMS
4	Type of Advertisement / media	TV
5	Date of Determination	13/11/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement depicts a series of scenes which show 'kidults' taking advantage of Vodafone's Red Roaming offer on a New York holiday by using their smart phones in various ways ie. taking photographs, using trip advisor etc. In one scene we see a kidult leaning out of the window of a yellow cab taking a photo.

THE COMPLAINT

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

The advert as I said above, shows the young boy, standing up out of a window, taking photos.

This is against the traffic laws of NSW and I'm sure, most Australian States.

If I remember rightly, NSW, it states something like this, Driver and passengers must be wholly within the vehicle whilst it is moving.

This advert does not set a good example to young children who may see this advert and also does not set a good example to those visiting from other countries in regard to our road rules.

One scene shows a child leaning out of a moving car using the mobile phone to photograph sights. This constitutes an incredibly dangerous act and one that is, I believe, subject to fines within some jurisdictions in Australia. Given the tendency for young children to model things they have seen on TV, it would seem reprehensible for a responsible advertiser to expose their brand to aspersions of not caring for the health and safety of the community or even to encouraging young children to risk life and limb.

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 17 October 2013 which sets out the the complaint made in connection with the 'Vodafone – Roaming, Discover the New' Advertisement (Advertisement) and thank you for the opportunity to provide a response.

We are committed to conducting all advertising and promotions to the highest standards and we take seriously any complaints made in relation to any such advertising and promotion.

Our response to the Complaint is set out below

Having considered the Advertisement and the Complaint, and the requirements of the AANA Code of Ethics (Code), we respectfully submit that the Advertisement does not in any way contravene the Code.

The Advertisement uses a visual metaphor of the 'kidult', an adult who embraces their inner child and views a world of fun, wonder and discovery like that of a child. This is visually represented with the head of a child.

The voice says "Explore the world like you're a child again. Only Vodafone lets you use your plan in 40 countries to surf the web, call and text like you would at home for just \$5.00 extra a day. Discover the new. Vodafone". This is designed to convey the idea that Vodafone is empowering people (adults) to take a fresh look and see the world through the eyes of a child, whilst travelling overseas.

The Advertisement runs for 30 seconds and depicts a series of scenes which show 'kidults' taking advantage of Vodafone's Red Roaming offer on a New York holiday by using their smart phones in various ways.

One of these scenes depicts a male 'kidult' taking a photograph of the sights of New York by momentarily placing his arm out of the taxi. This particular scene lasts approximately one second and there are no obstructions or traffic conditions on the road which make this scene a dangerous one. For these reasons and the reasons described below, there is nothing in this particular transient scene viewed by itself and/or in the context of the 30 second commercial that depicts material which is contrary to Prevailing Community Standards on health or safety.

Section 2.6 of the Code:

Further to the reasons explained above, the Advertisement does not depict any material which is contrary to Prevailing Community Standards on health and safety, including any unsafe practices or images for the following additional reasons:

- it is not a child as a passenger in the back of the taxi, it is a 'kidult', as demonstrated by the adult arm holding the mobile phone in this transient moment;*
- the 'kidult' momentarily reaches out his arm to take a photograph of New York;*
- the 'kidult' is not shown driving the car;*
- the Advertisement was shot in New York where the seat belt use is not required in taxis, allowing the kidult to momentarily take the photo from the taxi – refer to <http://www.dmv.ny.gov/broch/c-1.htm> New York State Department of Motor Vehicles*
- The scene in question is on screen for approximately one second of a 30 second commercial and therefore is not prominent nor the main focus of the advertisement.*

Consequently, for the reasons stated above, the one second scene showing the 'kidult' in a New York taxi does not show any unsafe activities and is not contrary to Prevailing Community Standards on health and safety. Accordingly, the Advertisement does not contravene Section 2.6 of the Code.

Sections 2.1 to 2.5 of the Code are not relevant to the Advertisement.

Additional complaint received:

Our earlier response essentially addresses the concerns raised in relation to the further complaint received. However we would like to reiterate the following points:

- the passenger in the back of the taxi is not a child, it is an adult represented by a 'kidult' in this instance;*

- the scene is set in New York, and was filmed on location. The laws of New South Wales are not applicable to the activity taking place; and*

- seat belt use is not required in taxis in New York.*

Having considered the Advertisement again and the Complaint, and the requirements of the AANA Code of Ethics (Code), we respectfully submit that the Advertisement does not in any way contravene the Code.

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 complainants' concerns that the advertisement shows a person leaning out of the window of a moving car to take a photo and this is unsafe and illegal and could encourage children to copy the behaviour.

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

The Board noted the advertisement features the faces of young children superimposed on to the bodies of adults, and the music playing in the background includes the lyrics, "well I feel just like a child..."

The Board noted that they had previously considered a similar advertisement for Vodafone (ref: 0338/13) and consistent with that case considered that the depiction of the adults with children's faces is intended to convey the child-like behaviour of the adults rather than the adult behaviour of young children.

The Board considered that there is a clear tone and message through the advertisement that is the ability for adults to behave as or feel like a child. The Board considered that the advertisement is not about children behaving as adults.

The Board 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 the scene in the advertisement with a passenger in the rear of a New York taxi cab leaning their arm and head outside of the window so as to take a photo of the view.

The Board noted the advertiser's response that the advertisement was filmed in New York and that the use of a seat belt is not required in taxis in New York. The Board noted that it is almost impossible to tell if the passenger is wearing a seat belt or not and stated that it does not matter what the laws are in the country in which an advertisement is filmed. The Board has to consider whether the advertisement depicts material that would contravene prevailing Australian standards on health and safety.

A minority of the Board noted that although the advertisement may be filmed in New York, it is available for viewing in Australia and therefore consideration should be given to depiction or actions that may contravene applicable rules in Australia. The minority of the Board considered that despite the overall light-hearted and unrealistic theme of the advertisement the depiction of a person leaning out of a moving vehicle is contrary to Prevailing Community Standards on health and safety.

The Board noted that clause 268(3) of the Australian Road Rules refers to how persons must travel in or on a motor vehicle. This clause states that "...A person must not travel in or on a motor vehicle with any part of the person's body outside a window or door of the vehicle...."

The Board noted that the road rules do not distinguish between whether or not the person is the driver or a passenger. The Board noted that it had previously upheld a complaint concerning a young girl leaning out of a moving vehicle (case reference 0299/12) and considered that in this instance the context is different as the whole theme of the advertisement is fantastical in its depiction of people with the bodies of adults and the heads

of young children.

A majority of the Board considered that the fanciful nature of the advertisement makes the scene where the passenger leans out of the taxi less impactful and that the scene is very brief and is unlikely to be copied by children who would be under the supervision of an adult when in a moving vehicle.

The Board noted that community concern around vehicle safety and unsafe behaviour in vehicles is paramount in the minds of the broader community but considered that in this instance the advertisement does not depict material contrary to prevailing community standards on health and safety.

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