



Case Report

1	Case Number	0452/17
2	Advertiser	Telstra Corporation Ltd
3	Product	Mobile Phone or SMS
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	25/10/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.6 - Health and Safety Motor vehicle related
- 2.6 - Health and Safety Unsafe behaviour
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

The television advertisement demonstrates Telstra's 12 month Foxtel Now offer on a \$99 mobile plan and shows users streaming Foxtel Now on their mobile phones in everyday usage scenarios such as on a bus, in a park and in a restaurant.

THE COMPLAINT

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

In the advert you are told you can stream Foxtel on a new phone for \$99 . It then shows a video clip of two people in a car and the person driving is holding a Mobil phone which is against the law. The actor in the ad holding the Mobil while driving is the Rock, Dwayne Johnson. This is a miss representation of the law and in effect are making it look ok to drive and use your Mobil which is against Australian law.

There was one person who appeared to be driving a car with a mobile phone held up to his ear. This is both dangerous and illegal.

THE ADVERTISER'S RESPONSE

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

The focus of the advertisement, entitled "Keep on Streaming - Moments" is to showcase the latest entertainment a Telstra customer can experience through the Foxtel Now application on a \$99 mobile plan. The scene of the TVC that is the subject of the complaint relates to a clip of footage from the show "Ballers", featuring the actor Dwayne Johnson using a mobile phone whilst driving a car.

For the reasons set out below, Telstra maintains that the advertisement does not breach section 2 of the Code and in particular, clause 2.6 (which we assume is the basis on which breach of the Code is alleged, given balance of clause 2 relates to matters which do not arise in the context of the advertisement). In short, Telstra's position is that the purpose of the advertisement as a whole is to demonstrate to the viewer how Foxtel Now is entertaining. Specifically, the "Ballers" clip is used to depict an example of a TV show that a user can stream using Foxtel Now. The advertisement is not intended to, and Telstra says does not, convey an overall impression that motorists can safely operate a vehicle whilst using a mobile phone.

In more detail:

Telstra asserts that a reasonable consumer would understand that the clip from the show, Ballers, is merely included to demonstrate that a Telstra customer can stream this particular show using Foxtel Now and that this content is an extract from the show, and is not content developed by Telstra. The relevant scene that includes the Ballers clip features a man sitting next to a fountain in a park. The focus of the scene is on the reaction of the man watching the show, and not on the activities depicted in the clip. This is demonstrated by the close-up shot of the man holding his mobile phone to watch Ballers, and a long-shot of him reacting to the show by laughing. The focus of the scene is not, therefore, on what the actor Dwayne Johnson is doing and the scene does not represent a usage scenario where Telstra condones mobile phone use whilst operating a vehicle. Rather, the scene is intended to represent that you could stream a show – such as Ballers - on Foxtel Now whilst in a park and how Telstra provides customers with access to shows on Foxtel Now with popular actors, such as Dwayne Johnson. The narration, "Now when you get a new phone from Telstra, you also get the world's best entertainment so you can keep on streaming on and lose yourself in your favourite shows" and the chain of usage scenarios depicted in scenes showing people streaming entertainment on a bus, in a park and at a restaurant further evidences how the focus of the advertisement is on how Telstra customers can "keep on streaming" entertainment on Foxtel Now. Approximately 70% of the TVC run-time is dedicated to demonstrations of these various usage scenarios. In contrast, the clip from Ballers runs for approximately 2.5 seconds.

For the reasons above, the primary focus of the advertisement, being the accessibility of entertainment using Foxtel Now, does not depict material that goes against Prevailing Community Standards on Health and Safety.

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 someone driving while using a mobile phone.

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

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 advertisement features people on a bus, outside and in restaurants using their phones to watch movies. The voiceover and text describes the details of the offer and the final screen shot shows the Telstra logo. One of the movies shows a scene where Dwayne Johnson – “the Rock” using his mobile phone while driving a car.

The Board noted the complainant’s concern that the use of a mobile phone while driving is dangerous and illegal.

The Board noted that the product being advertised is the Foxtel Now application and to show the ability to be able to stream movies on your mobile device.

The Board noted that the overall tone of the advertisement is clearly recognisable as being a promotion of this product and that it is reasonable for an advertiser to show an example of the type of content that could be viewed.

The Board noted that the focus of the advertisement is not on the movie itself and that the scene of the actor driving the car is a fleeting part of the overall advertisement and is not the focus of the promotion.

The Board noted that the actor himself is well known and that most members of the community would be able to easily discern that he is being seen in his capacity as an actor and is not promoting or encouraging the driving of a vehicle while on the phone.

The Board noted the complainants concerns that the activity is illegal and whilst the Board acknowledged that this is the case, in the Board’s view the overall tone of the advertisement was clearly to deliver information about the streaming function and was not drawing unnecessary attention to the activity of driving while on the phone.

The Board considered that overall the advertisement and this scene especially did not encourage or condone unsafe behaviour and was unlikely to create copycat behaviour.

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.

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

