



Case Report

1	Case Number	0453/17
2	Advertiser	Ozmosis (Rip Curl Group)
3	Product	Clothing
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	25/10/2017
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.6 - Health and Safety Unsafe behaviour
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

There is a 15 second and a 30 second version of this television advertisement. The advertisements show a series of people falling or hurting themselves while participating in sporting activities such as surfing and skateboarding.

THE COMPLAINT

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

This is encouraging and glorifying personal injury. It is completely irresponsible. Encouraging people to come into a store with injuries (potentially bleeding wounds) is also an OH & S issue for Ozmosis staff. I have looked at the website also and photos of peoples injuries are on display - I saw one image of what looked like a large scar from a cut wrist though a tattoo that says "Dreams" and the caption is 'dreams slashed to pieces'.

This ad could encourage young people to do stupid things, and put themselves at risk and danger.

THE ADVERTISER'S RESPONSE

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

CAD REFERENCE NUMBER AND RATING

J Rating was received from CAD.

Here are the CAD numbers issued and notes that CAD sent when giving the number:

RIP000115 CAD NO: J5860OTA ISSUED ON: 13/09/2017

RIP000130 CAD NO: J5861OTA ISSUED ON: 13/09/2017

In the interests of transparency we note that the above CAD rating was received with the following requirement: "Please note that while the CAD number has been issued for this TVC it may attract complaint under the AANA Code of Ethics 2.6. The code is available at aana.com.au, click on self regulation then codes"

DESCRIPTION OF THE AD

Pay with Pain brings to life the philosophy that to progress in our passions we must endure a certain amount of failure. If we get knocked down we get back up and go again. We should wear our scars with pride.

The Philosophy behind the campaign is as follows:

More than a promotion, more than a campaign it's an idea that is based on the fundamentals of skating, surfing and actually anything that involves passion. With any passion comes a certain amount of sacrifice. To pursue it, you must follow it down treacherous paths, often ending in failure, disappointment and pain. But those who have walked this path will tell you it's these failures and this pain that make you better and make the whole pursuit so much more exciting. As the late, great and very fictional Rocky once said "It ain't about how hard you can hit, it's about how hard you can get hit and keep moving forward"

COMPREHENSIVE COMMENTS IN RELATION TO THE COMPLAINT

As your letter of 5 October 2017 suggests, below we address the specific elements of the Advertiser Code of Ethics ("the Code") as identified in Section 2 of the Code, commenting in detail on those specific areas we believe to be at the heart of the complaint.

2.1 - Discrimination or vilification

We do not believe that there is any issue alleged, or apparent from the campaign, in relation to this aspect of the Code.

2.2 - Exploitative and degrading

We do not believe that there is any issue alleged, or apparent from the campaign, in relation to this aspect of the Code. However, one complaint refers to the images as "unnerving and disgusting". The images selected for the campaign were carefully selected so as not to show graphic serious injury or high impact collisions. We believe that the images are well within the acceptable range of images on view for the public generally in many forms and media.

2.3 – Violence

Paragraph 2.3 provides as follows:

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. While not specifically raised in the complaint or your letter, we comment on this paragraph as follows. "Violence" is generally defined along the lines of "behavior involving physical force intended to hurt, damage or kill someone or something."

It is our view that the campaign does not promote any such behavior. It is aimed at

encouraging participants in action sports (such as surfing or skateboarding) to post evidence of injuries or damage caused as a result of their pursuit of those activities. It does not in any way portray any behavior physical force by any individuals intended to hurt or kill someone or something.

Ozmosis is a surf/lifestyle retail brand which distributes primarily apparel and accessories products from brands which are associated with sports such as surfing or skateboarding (including street and ramp skateboarding). Brands such as Rip Curl, Billabong, Quiksilver, Element, Globe, DC and Thrills. The imagery in Ozmosis stores is heavily based on surf and skate activities. The products ultimately being advertised by the campaign are Ozmosis' products, which have links to surf, skate and action sports.

These activities involve inherent risks and it is common on television (for example the long running and very popular family prime time television show, Australia's Funniest Home Videos), in movies and videos, to display participants in extreme sports suffering falls or wipeouts. Most surf movies will include a "wipeout" section for example, and there are whole programs and web sites devoted to highlighting such outcomes.

The campaign uses footage from existing content of participants in extreme and action sports, who in following their passions suffer injuries. The campaign reaches out to such participants, who are purchasers of Ozmosis' products, to encourage them to share evidence of their injuries they have incurred in following their passions and participation in their chosen sports (the "pain"). It does not encourage or portray violence. Certain images and content does display the potential consequences of participating in extreme sports but we do not believe that this is in any way a depiction of the consequences of violence.

2.4 - Sex, sexuality and nudity

We do not believe that there is any issue alleged, or apparent from the campaign, in relation to this aspect of the Code.

2.5 – Language

We do not believe that there is any issue alleged, or apparent from the campaign, in relation to this aspect of the Code.

2.6 - Health and Safety

Paragraph 2.6 of the Code provides as follows:

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

We repeat the explanations about the campaign made in relation to paragraph 2.3 above, in particular the reference to the focus on action sports and inherent risks in participation in such sports. We consider that surfing and skating, including street skating and ramp skating, are widely accepted as action sports.

We recognize that community standards could require advertisers not to encourage people to undertake unnecessarily dangerous or harmful activities. However, it is our position that the campaign does not go beyond reasonable community standards in this regard. Ozmosis sells products related to the surf, skate and similar action sports industries, which involve participants taking risks, and participants in these activities do suffer injuries.

as showing a driver not wearing a seatbelt or cyclist without a helmet). Rather it is a campaign focusing on participation in action sports, which of their nature involve an element of danger, and which are accepted to do so within prevailing community standards.

As noted under 2.3, extreme or action sports are well promoted and known in the public generally, as is the fact that they can be dangerous and potentially cause injuries to participants. Ozmosis sells brands and products which are associated with actions sports, which activities are inherently risky. The campaign does not however encourage participants to take additional or unnecessary risks. It reaches out to Ozmosis customers who participate in action sports and may have suffered an injury in doing so and offers them a reward for

their dedication to their chosen sport.

The media generally in reporting on these type of activities (including in the news) and in freely available media, including online, commonly shows the “fails” or situations where a participant falls, has a crash or is otherwise injured while participating in such sports.

Community standards would encompass recognition of such injury/damage resulting from participation in such activities and that such incidents are regularly displayed. These sports are not wildly extreme, fringe activities, they are in fact now well within the mainstream, reported on in daily news and on sports programs, with athletes earning millions of dollars in sponsorships and events shown on prime time television. Community standards recognize that such sports are common and involve inherent risk taking by participants, and occasional injury.

Further we would note that:

- The specific injuries shown in the campaign are at the mild end of the range. In preparing the campaign, potentially extreme injuries and high impact collisions and the like were excluded. It is felt that the images and footage selected were well with community standards. Much more graphic imagery and footage can be seen on free to air television every day, let alone on movies and over the web.

- Disclaimers are made on the website’s campaign page noting that Ozmosis is not encouraging people to take risks (#PayWithPain Terms & Conditions | Ozmosis does not encourage the taking of unnecessary risks)

- The conditions to entry to specifically discourage people from taking unnecessary or unrealistic risks. People are excluded from prizes if their entry looks “set up” to bring about an injury.

The promotion is designed to reward participants who follow their passion. The Promoter does not condone or encourage the taking of unnecessary risks and will not give prizes for any entries which involve the taking of deliberate or unreasonable risks for the purposes of winning the prize. The entrants accept sole responsibility for their actions and indemnify the Promotor from all and any claims, losses damages or costs associated with the circumstances surrounding their entry.

The campaign reaches out to passionate participants in action sports, who may have in following their passions suffered injuries. It does not encourage people to harm themselves. It should be contrasted for example to the “Jackass” type shows which in fact glorify the taking of risks and doing potentially very dangerous and harmful stunts and as such encourages people to do the same. “Funniest Home Videos”, a family show ran for many years on Australian free to air television in prime time, was a very popular show aimed at families and children, offering prizes to people who submitted videos of people falling, crashing and being injured, often while participating in action sports, and often in a clearly “set up” situation. Many of the impacts and injuries depicted in this family show were in excess of the levels of harm and injury included in the campaign.

We do not believe that the campaign would lead to individuals deliberately injuring themselves to take advantage of the potential product discount offered under the campaign, as suggested in the complaints. While one complaint states that “One cannot be sure that a person would not go so far as to hurt themselves to receive a discount” it is our view that this is not an outcome that areasonable person would perceive, or that the campaign encourages or would reward. The disclaimers noted above are also referenced in this regard.

The campaign does not feature “pranks” or “stunts” (such as riding downhill in a wheelie bin) or glorify such unsafe activities. It shows the consequences of people following their passions and participating in well publicized and accepted sporting activities which inherently involve a degree of risk, and who have been injured as a result. Community

standards encompass such activities and the potential risks associated with them. Participants in action sports do assume some risks, and do suffer injuries as a result of pursuing their preferred activities. It is these people that the campaign reaches out to, and who are responding to the campaign. It is very common (before our campaign) for action sports participants at all levels to post pictures of themselves in various media proudly showing the injuries they have sustained in pursuing their passions and this type of post is very common and would continue irrespective of our campaign.

One complaint (0453/17) identifies an OHS risk for Ozmosis staff. I think it is extremely unlikely that the campaign would encourage anyone to race to a store immediately after an accident in the state suggested. The campaign offers two options to receive a benefit (being by taking a picture or video and posting online, or alternatively by coming in-store). We would suggest that anyone immediately injured who was interested in participating in the campaign would use the picture/video option rather than coming to a store in a dangerous state. Further, all our instore staff are trained on the campaign itself and on dealing with OHS issues, which they face on a regular basis as part of their job dealing with customers. This extends to locating or advising on any required medical support for customers and reporting incidents to appropriate parties including centre management.

2.7 - Distinguishable as advertising

We do not believe that there is any issue alleged, or apparent from the campaign, in relation to this aspect of the Code.

ADDITIONAL MATERIAL

Legal advice obtained in preparing the material

Prior to producing the campaign, our media agency Bohemia reached out to Charmaine Moldrich at the Outdoor Media Association (OMA) to review the concepts. Charmaine in turn also sent the material on to the Advertising Standards Bureau for further review. Following the feedback received from Charmaine on 15th July (see attached for a screen grab from her email) we worked with our creative agency Ugly and our parent company's in house legal counsel, Tony Roberts from Rip Curl, to take all reasonable steps to address the concerns. This included a further review of the images and footage being used, and inclusion of the disclaimer "Ozmosis does not encourage the taking of unnecessary risks" to make it extremely clear that we were not encouraging people to take risks. We also only used talent who were 18 years and over and we softened the nature of the injuries shown.

Placement and duration of the campaign

The campaign launched on 25th September 2017 and will run until mid December 2017. The material runs across television, cinema, OOH, digital, mobile, social media and in-store. There is also a promotion running across the 55 Ozmosis stores and on e commerce. If consumers go in-store, show their scar and spend \$80 they get \$20 off their purchase. Or they can go on line and upload a picture of their scar on Instagram or Facebook with #Play With Pain and receive a \$20 discount code to use online. The offers will be changing throughout the campaign period. There is also a draw at the end of the campaign period where one entrant will win product to the retail value of \$5,000.

Additional campaign material

To help strengthen the philosophy behind our campaign we are also about to launch some additional work using ambassadors (including surfing heroes) who will be telling inspiring stories about how through their passion, dedication and commitment they overcame adversity. For e.g. this post by one of our ambassadors

<https://www.instagram.com/p/BZz5J40lZ0Q/?hl=en&taken-by=kirrabelleolsson>

We trust that this response addresses all matters and confirms that the campaign is within the AANA Advertiser Code of Ethics.

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 encourages people to participate in extreme activities in order to obtain a benefit and this is inappropriate and unsafe.

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 that there are two television advertisements a 30 sec and a 15 sec version. The advertisements feature scenes of people surfing and skateboarding while being filmed. The words appear on screen “Come In, Show us your scars, get deals, pay with pain.” The final screen shot is of the store name Ozmosis .com.au #paywithpain.

The Board noted the complainant’s concern that the advertisements will encourage people to injure themselves for a deal.

The Board noted the advertiser’s response that the advertisements were given a J rating by CAD who included a note that the TVC may attract complaint under the AANA Code of Ethics.

The Board noted that the brand Ozmosis is a surf brand that is known for selling surf and skate style clothing and apparel and that the advertisement would appeal to the target demographic of young adults and teens who are familiar with the brand and also with the relatively new culture of ‘epic fails’ and the interest in filming and photographing incidents and accidents that show people being hurt.

The Board noted that the advertisement shows numerous accidents with people surfing and skateboarding, some with protective gear on and others without. The Board noted that in most of the incidents the footage moves on to the next scene before the viewer can determine whether the rider is seriously hurt or not.

The Board noted that the concept of the campaign is to capture an incident or the results of an incident – potentially cuts and or scars and send these into the store or via online in order to receive a discount on an instore purchase.

The Board noted that the catch line for the campaign is “pay with pain.” The Board considered that most members of the community would understand this to mean that there is a direct association with being hurt or hurting yourself and the deal that is being offered.

The Board considered that the overall message of the campaign is one of harm and that the advertisements glorify risk taking behaviour. The Board considered that the depiction of people hurting themselves in the interest of getting a deal is socially irresponsible and is not a positive message to be sending to the target demographic.

A minority of the Board felt that the advertisement was showing people being active and encouraging participation in physical activity and rewards those that tried and failed.

The majority of the Board however, felt that the advertisements only show the unsafe side or risks associated with the activities and was done so for the promotion of a campaign that was rewarding unsafe behaviour.

The Board noted that the advertisement had a direct link between pain and a reward and that there was no clarity about whether this could be an existing or previous injury or whether it was suggestions that people should seek out a new injury by taking unnecessary risk.

In the Board's view, the Board considered that the advertisements glorified risk taking and although there are no graphic depictions of blood or broken bones, the message that is being promoted is condoning and encouraging unsafe behaviour and rewarding risk taking. The Board considered that the advertisements did depict material contrary to Prevailing Community Standards and determined that the advertisements did breach Section 2.6 of the Code.

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

THE ADVERTISER'S RESPONSE TO DETERMINATION

The 30 second and 15 second television commercials stopped running on 21st October. We cancelled the remaining TV media buy that was planned.