

Case Report

1. Case Number :	0100-23
2. Advertiser :	eBay Australia & New Zealand
3. Product :	Other
4. Type of Advertisement/Media :	TV - Pay
5. Date of Determination	14-Jun-2023
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification

DESCRIPTION OF ADVERTISEMENT

This pay TV advertisement portrays an office where the office staff are frozen with 'purchase paralysis' at the thought of online shopping. A person depicted as a delivery person says that "with eBay's money back guarantee you get what you ordered or your money back". After this, the office staff start to move and the main person says "I can move" while making an exaggerated movement to press enter on their keyboard, implying that they are now able to make a purchase.



THE COMPLAINT

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

As someone who had a disability and suffers from paralysis I find this extremely offensive.

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 the Advertisement. We thank you for the opportunity to provide a response to the complaint.

Background – eBay's Money Back Guarantee advertising program

The Advertisement is part of a campaign for eBay's Money Back Guarantee program. This program provides for eBay to provide money back to buyers who have purchased products on eBay in certain circumstances (e.g. where the product doesn't arrive, is damaged or doesn't match the listing). The slogan for the campaign is "Browse. Buy. Carefree. eBay Money Back Guarantee."

The campaign is directed at promoting the Money Back Guarantee program as a means of providing assurance to buyers that they may be able to get their money back in certain circumstances. The campaign is aimed at Australian online shoppers 18 years and older. The intention was to portray, in a comedic way, the benefits of the Money Back Guarantee program.

Response to issues raised in the complaint

eBay is committed to conducting all advertising and promotions to the highest standards and takes seriously any complaint made in relation to advertising and promotions.

As requested, the complaint has been addressed by reference to all relevant advertising codes and initiatives, including the AANA Code of Ethics (AANA Code of Ethics) and the AANA Code for Advertising and Marketing Communications to Children (AANA Children's Marketing Code).

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

AANA Code of Ethics

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

2.1 - Discrimination or vilification

With respect to section 2.1, the Advertisement does not contravene section 2.1 of the AANA 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 preference, religion, disability, mental illness or political belief.

We note that the complaint in respect of the Advertisement is that it is “extremely offensive” to someone “who had a disability and suffers from paralysis”. Although the ad does use the term “purchase paralysis” on several occasions, the term is clearly used in the sense of being in a (temporary) state of powerlessness or incapacity to act, rather than paralysis resulting from a physical condition or illness. No person suffering from physical paralysis or a disability of any kind is depicted, discriminated against, or vilified. Rather, the persons in the Advertisement are depicted as physically still or temporarily ‘frozen’, causing them to be unable to make a purchase, which is intended to be humorous. The reference to paralysis is also used only in conjunction with “purchase”, making it clear that it refers to an incapacity to make a purchase. In no way does the Advertisement, or the imagery and language it uses, create a negative impression of a person who is paralysed or is experiencing paralysis (or more generally of a person with a disability).

2.2 - Exploitative or degrading

The Advertisement does not contravene section 2.2 of the AANA Code of Ethics as the Advertisement does not employ sexual appeal in a way which is exploitative or degrading of any individual or group of people and there is no debasement or abuse of any person or group of people. No images of minors, or people who appear to be minors, are used in the Advertisement.

2.3 – Violence

The Advertisement does not contravene section 2.3 of the AANA Code of Ethics as it does portray violence and does not include any violent graphics or imagery.

2.4 - Sex, sexuality and nudity

The Advertisement does not contravene section 2.4 of the AANA Code of Ethics as the Advertisement is not sexually suggestive, there is no nudity, nor is it inappropriate or insensitive in any way having regard to the relevant audience.

2.5 – Language

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

2.6 - Health and Safety

The Advertisement does not contravene section 2.6 of the AANA Code of Ethics as the Advertisement does not depict any material which is contrary to prevailing community standards on health and safety, including any unsafe practices or images. Further, the

Advertisement does not depict any content that would encourage or condone unhealthy or unsafe behaviour having regard to prevailing community standards.

2.7 - Distinguishable as advertising

The Advertisement does not contravene section 2.7 of the AANA Code of Ethics as the Advertisement is clearly distinguishable as an advertisement.

On the basis of the above, we do not consider that the Advertisement contravenes the AANA Code of Ethics, having regard to sections 2 of that code or otherwise.

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

We submit that the AANA Children's Marketing Code 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 advertising of the eBay Money Back Guarantee program is all Australian online shoppers, 18 years and over.*
- the Advertisement is targeted to all Australian online shoppers, 18 years and over.*
- 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 or targeted to children and has not been placed in media which is specifically directed or targeted to children.*

On this basis, we do not consider that the Advertisement contravenes the AANA Children's Marketing Code.

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 complainant's concern that the advertisement is offensive to disabled people who suffer from paralysis.

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

Section 2.1: Advertising or Marketing Communication shall 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 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.

Disability - a current, past or potential physical, intellectual, psychiatric, or sensory illness, disease, disorder, malfunction, malformation, disfigurement or impairment, including mental illness”

Does the advertisement portray material in a way which discriminates against or vilifies a person on account of disability?

The Panel noted the complainant’s concern that the advertisement is offensive to disabled people who suffer from paralysis.

However the Panel noted that the advertisement makes no reference to disability.

The Panel noted that some people have disabilities which may include symptoms of paralysis, however considered that the advertisement is not depicting people with a disability rather visually depicting the commonly used phrase “purchase paralysis”.

The Panel considered that the advertisement did not identify particular people or a group of people, and did not refer to people who may have a disability at all or in a way which would discriminate against or vilify them.

Section 2.1 conclusion

The Panel considered that the advertisement did not depict material in a way which discriminates against or vilifies a person or section of the community on account of disability and determined that the advertisement did not breach Section 2.1 of the Code.

Conclusion

Finding that the advertisement did not breach any other section of Code the Panel dismissed the complaint.