



**Ad Standards** Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

[AdStandards.com.au](http://AdStandards.com.au)

Ad Standards Limited  
ACN 084 452 666

## Case Report

<b>1. Case Number :</b>	<b>0114-20</b>
<b>2. Advertiser :</b>	<b>Kayo Sports</b>
<b>3. Product :</b>	<b>Entertainment</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>8-Apr-2020</b>
<b>6. DETERMINATION :</b>	<b>Upheld - Modified or Discontinued</b>
<b>7. IR Recommendation:</b>	<b>Panel to Reconsider</b>
<b>8. Date of reviewed determination:</b>	<b>24-Jun-2020</b>
<b>9. Determination on review:</b>	<b>Upheld – Modified or Discontinued</b>

### ISSUES RAISED

AANA Code of Ethics\2.3 Violence  
AANA Code of Ethics\2.6 Health and Safety  
AANA Code of Ethics\2.0 Other

### DESCRIPTION OF ADVERTISEMENT

This television advertisement has two versions:

#### Bus stop advertisement

In this Advertisement, a commuter is seated at a bus stop watching NRL on her phone. Commentary of the game, “Keary runs the ball down”, is heard as two NRL players, Alex Glenn and Luke Keary, appear in front of the bus stop. Keary attempts to side-step Glenn before he’s tackled through the bus stop glass. At the moment of impact, further commentary, “huge hit by Alex Glenn”, is heard from the phone. A super comes up saying “Nowhere is safe from footy”.

#### Supermarket advertisement

In this Advertisement, a shopper is seen walking through a supermarket watching AFL on his phone. We hear a few seconds of commentary from the phone when two AFL players, Dion Prestia and Sam Walsh, suddenly appear. They launch themselves off a pallet of toilet paper, attempt to take a mark and crash into a crate of lettuce. Further commentary “Walsh recovers, picks it up and he’s off” is heard from the phone as



Walsh runs off with the football. A super comes up saying “Nowhere is safe from footy”.

### **THE COMPLAINT**

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

*Depicts violence, bad manners, vandalism, shows poor example to children, glorifies fighting gambling and destroying property. Irresponsibly shows footballers destroying private and public property*

*The ad shows violent vandalism. At a time when our community is trying to curb violence, here is an ad which says violence is OK because it is done in the name of a game. Football and football players do not have good reputations for violence, including domestic violence. The ad is appalling on other levels as well. Does the woman sitting quietly, not reacting, give the message that women should accept whatever men care to dish out to them, including violence? Is food to be regarded as a game, rather than something that is necessary to sustain life? What would people short of food think about that? Why didn't the people commissioning the ad substitute two women players for the males? I am deeply offended and object strongly to this ad.*

*This behaviour shown in the add is dangerous and inappropriate. It will encourage copy cat behaviour and does not really relate in any way to watching sport on your phone through a streaming company.  
Dangerous and inappropriate social behavior*

*In what universe is it socially acceptable to show sports people or anybody, appear to purposely destroy a public funded bus shelter ( Or any taxpayer/ ratepayer funded amenity) then run off as if it's ' just part of a game'. My perception is that the NRL and KAYO is making vandalism acceptable, because it's 'Footy' so is ok. ... its also irresponsible to show that smashing through glass panels is quite safe and no one will be harmed by doing so.*

*Clear destruction of public property going through and breaking a bus shelter & running through supermarket landing on a crate of lettuce this food could be better served to those that can't afford it*

### **THE ADVERTISER'S RESPONSE**

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

*Dear Sir/Madam,*

*Case reference number 0114-20 (the Complaints)*



*We refer to the Complaints made against Kayo Sports (Kayo) which were received from Ad Standards on 11 March 2020 and 13 March 2020. Foxtel Management Pty Limited (Foxtel) provides this response on behalf of Kayo.*

#### *Description of the Advertisements*

*From the information provided by Ad Standards, we understand that the Complaints relate to two 15 second advertisements from Kayo's current "Nowhere is safe from footy" campaign (the Advertisements).*

*The concept underpinning the campaign is that no matter where you are or what you are doing, nowhere is safe from footy and with Kayo you can watch every game of the 2020 NRL Telstra Premiership Season and the 2020 Toyota AFL Premiership Season, anywhere, anytime. To convey this message, the campaign comprises several advertisements with footy appearing at the most unexpected times in everyday situations.*

*The Advertisements are scheduled for broadcast on free-to-air, connected TV, YouTube, Facebook and Instagram between 1 March 2020 and 14 April 2020. The Advertisements were approved by ClearAds for broadcast on free-to-air channels and were assigned a "G" placement code.*

#### *The Complaints*

*The Complaints include the allegations that the Advertisements depict "violence" and "dangerous and inappropriate social behaviour".*

#### *Applicable provisions of the AANA Code of Ethics*

##### *Section 2.3*

*Ad Standards has raised Section 2.3 of the Australian Association of National Advertisers Code of Ethics (the Code) as an applicable provision in the context of the Complaint. Section 2.3 requires that:*

*"Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised."*

*The Advertisements depict common sporting manoeuvres; a tackle and a mark. The actions of the players are not menacing, threatening or aggressive and at no point are the players involved shown to be injured. The scenes do not relate to or involve any confrontation; and there is no threat to any other person. Referring to the AANA's Practice Note on the Code, Foxtel does not consider that the content of the Advertisements fall within the stated guidelines as to the definition of "violence". The guidelines refer to a range of other depictions, including "sexual violence", "violence against animals" and "strong suggestion of menace", and it is Foxtel's view that the actions of the players within the Advertisements do not constitute violence.*



*We believe that most reasonable viewers would recognise that the actions depicted in the Advertisements are consistent with a tackle and mark that would occur in a typical NRL or AFL match but are performed in an exaggerated and unrealistic setting. The Advertisements are humorous and light-hearted and intended to be taken by viewers in the same manner in which they were created, namely a celebration of the availability of footy on Kayo, anywhere, anytime.*

*If Ad Standards determined that the Advertisements depicted “violence”, Foxtel’s view is that the scenes are justifiable in the context of the product being advertised, namely the availability of NRL and AFL, both contact sports, on Kayo.*

*Foxtel notes Ad Standards has previously dismissed similar complaints. For example, Ad Standards did not consider the depiction of an elderly man being tackled during a family picnic in the context of an Austar advertisement to portray violence (case number 0082/12). Ad Standards considered that most members of the community would not consider the advertisement to be a real life situation and considered that the fanciful and exaggerated context of the advertisement minimised any suggestion of actual violence and did not condone attacks on other people.*

*For the above reasons, we submit that there is no depiction of violence as understood by most members of the community in the Advertisements and, accordingly, no breach of Section 2.3.*

#### *Section 2.6*

*Ad Standards has also raised Section 2.6 of the Code as an applicable provision in the context of the Complaints. Section 2.6 requires that:*

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

*The actions depicted in the Advertisements are consistent with a common tackle and mark that would occur in a typical NRL and AFL match, respectively, and would not be regarded as dangerous by the games’ own rules. While we acknowledge that these actions take place in unusual scenarios, we consider that most members of the community would recognise the stylistic nature of the Advertisements and leave the viewer in no doubt about the Advertisements’ imaginary nature. Given the exaggerated nature of these stunts and the overall tone of the Advertisements, we do not consider it to be realistic in any way and do not consider viewers would try to replicate the content. Further, we note that the Advertisements were filmed under strict controls, with the use of stunt doubles.*

*In the context of the Advertisements, Foxtel does not consider that the content depicted any material contrary to prevailing community standards on health and safety and therefore do not breach Section 2.6 of the Code. Further, we submit that the Advertisements do not breach any other provisions of the Code.*



*Foxtel takes the Complaints very seriously and regrets any offence caused to the complainants, their family or anyone else.*

## **THE DETERMINATION**

The Ad Standards Community Panel (Panel) considered whether advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainants' concerns that the advertisement depicts violence, vandalism and inappropriate behaviour which can be copied and is a poor example for children and generally inappropriate.

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

The Panel noted a complainant's concern that the supermarket advertisement is offensive as it damages food, which is disrespectful to people who may not have food. The Panel noted that this is not an issue under the Code and noted that it was unable to consider this aspects of complaints.

In order to comprehensively address the concerns of the complainants' the Panel considered the tackle separately to the glass breaking/supermarket crate damage.

The Panel 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 Panel considered that the depiction of a tackle by by well known football players in playing kit would be considered by most members of the community to be a depiction of violence. The Panel considered however that the actions depictions are an inherent part of the particular games.

The Panel considered that the tackles are sporting actions and are being used in the context of a streaming service that is focused on sporting activities including football games and therefore is directly relevant to the product being advertised.

The Panel noted that football is a sport popular with all ages and that the depiction of a tackle is not inappropriate for children to view.

The Panel considered that the tackle was one which is common in football, and that of itself the tackle used in conjunction with a promotion for football was justifiable in the context of the product being advertised and did not breach Section 2.3 of the Code.

The Panel then considered the depiction of the NRL players going through a glass panel of a bus shelter, and the AFL players falling into vegetable displays.



The Panel considered that both versions of the advertisement depict violence through the images of the men falling into glass and other obstacles, and there is significant damage to property.

The Panel noted that the advertisement is clearly unrealistic and fanciful in that the people in the advertisements do not react to the tackle and property damage that occurs in front of them and that there is a clear depiction of the players walking away uninjured after their falls. The Panel noted that the intention of the advertisement is to highlight that football can be watched anywhere and viewers can immerse themselves in the game regardless of where they are.

However the Panel considered that the violence depicted at the bus stop and in the shopping centre, even though there were not adverse consequences, was a depiction of violence that is not relevant to the product promoted.

The Panel noted a complainant's concern that the bus shelter advertisement suggests that women should accept violence. The Panel considered that the advertisement does not depict violence against women and does not suggest that women should condone violent behaviour.

The Panel considered that the depiction of violent behaviour in the context of this advertisement was not relevant to the product promoted and was a breach of Section 2.3 of the Code.

The Panel considered whether the advertisement complied with 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 Panel noted that the fantasy of the advertisement has the players depicted in public places – a bus stop and a shopping centre. The Panel accepted that the intention of the advertisement is to depict the immersive experience of the woman at the bus stop and the man at the shopping centre in the product and the quality of the streaming service.

However the Panel considered that the behaviour was depicted in realistic every day settings – a supermarket and public street – where such behaviour would be unacceptable and unsafe.

The minority of the Panel considered that the advertisement was an exaggerated and unrealistic scenario that is clearly a visual representation of the up close and real experience that users of the streaming service can enjoy. The minority considered that the advertisement was not depicting behaviours that would be seen to be unsafe due to the lack of realism and the clear link to the streaming service.

The majority of the Panel considered that regardless of the link to the streaming service and the unrealistic lack of consequence/injury to the players and the fact that



the man and woman pay no attention to what is happening beside them, the overall depiction is realistic every day scenarios of sitting at a bus stop or being in a supermarket. The majority of the Panel noted that the football players are shown to get up and keep playing after crashing through the bus shelter/supermarket crate.

The Panel considered that the advertisement would be attractive to younger people as there are well known sporting players in the advertisement. The Panel considered that the depiction of this behaviour in realistic settings would be easily imitated.

The Panel considered that this is of concern as it suggests that such behaviour will result in no harm to a person, and the Panel considered that such a message is not appropriate for younger viewers.

Overall the Panel considered that while the fantastical element is clear, the unsafe behaviour depicted shows no consequences and is easily imitated. The Panel considered that this depiction is contrary to prevailing community standards on safety and did breach Section 2.6 of the Code.

Finding that the advertisement breached Sections 2.3 and 2.6 of the Code, the Panel upheld the complaints.

## **THE ADVERTISER'S RESPONSE TO DETERMINATION**

Foxtel confirms that Kayo's "Nowhere is safe from footy" campaign has finished, with the television advertisements ceasing broadcast on 25 March 2020.

## **INDEPENDENT REVIEWER'S RECOMMENDATION**

### ***Background***

The complaints related to a two versions of a television advertisement by Kayo Sports depicted as arising in a public space; one relating to a depiction of an NRL 'tackle' leading to property damage; and the second, an AFL mark resulting in the knocking over of vegetables in a supermarket.

Bus stop advertisement. A commuter is seated at a bus stop watching NRL on her phone. Commentary 'Keary runs the ball down' is heard as two well-known NRL players, Alex Glenn and Luke Keary appear in front of the bus stop. Keary attempts to side-step Glenn before he's tackled through the bus stop glass. At the moment of impact, further commentary 'huge hit by Alex Glenn' is heard from the phone. A super comes up saying 'Nowhere is safe from footy'.

Supermarket advertisement. A shopper is seen walking through a supermarket watching AFL on his phone. We hear a few seconds of commentary from the phone when two well-known AFL players, Dion Prestia and Sam Walsh, suddenly appear. They launch themselves off a pallet of toilet paper, attempt to take a mark and crash



into a crate of lettuce. Further commentary is heard, 'Walsh recovers, picks it up and he's off' is heard from the phone as Walsh runs off with the football. A super comes up saying 'Nowhere is safe from footy'.

### ***Complaint***

The complaint was that the advertisements depicted violence, vandalism and inappropriate behaviour which set a poor example for children and was generally inappropriate, and accordingly breached section 2.3 and 2.6 of the AANA Code of Ethics.

### ***Panel findings***

There was no depiction of violence as understood by most members of the community in and of itself in 'the tackle used in conjunction with a promotion for football' which was accordingly 'justifiable in the context of the product being advertised and did not breach Section 2.3 of the Code'.

The Panel considered that both versions of the advertisement depict violence through the images of the men falling into glass and other obstacles, and there is significant damage to property. The Panel considered that the violence depicted at the bus stop and in the shopping centre, even though there were no adverse consequences, was a depiction of violence that is not relevant to the product promoted and was a breach of section 2.3 of the Code.

Overall, the Panel considered that while the fantastical element is clear, the unsafe behaviour depicted shows no consequences and is easily imitated. The Panel considered that this depiction is contrary to prevailing community standards on safety and did breach section 2.6 of the Code.

### ***Advertiser's response to Panel findings for purposes of review***

The advertisements ceased broadcasting on 25 March 2020.

The advertiser's response was that overall the actions did not involve violence contrary to section 2.3 since they were not 'menacing, threatening or aggressive and at no point are the players shown to be injured'. The advertiser's view was that reasonable viewers would accept that the actions were consistent with moves that occur in typical NRL or AFL matches, and their performance, although in public, rather than on the field, in the context of the exaggerated and unrealistic setting, notably the phone users' absence of reaction to what would be noisy and disruptive actions in their close proximity, presented these actions in a humorous and light-hearted manner. This setting highlighted the theme underpinning the advertisement, namely that through Kayo you can enjoy football anywhere, anytime.

The advertisers also maintained that for these reasons, and seen in the context portrayed, notably that the actors were shown walking away, unhurt, after the depictions, the content did not breach prevailing community standards of health and safety and hence did not breach section 2.6 of the Code.





### ***Code Principles***

Section 2.3 of the Code of Ethics states:

Advertising or Marketing communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

Section 2.6 of the Code of Ethics states:

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

### ***Role of reviewer***

The Independent Reviewer first considers whether the application for review sets out a prima facie case for review and decides whether to accept or not accept the request. That decision depends on whether the complaint meets any of the required but limited grounds for review. The relevant ground relied on was:

- Where there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence).

If the Independent Reviewer accepts the application for review, their role is to review the Panel's reasons to identify whether there are substantial flaws in the Panel's reasoning or clearly made against the weight of evidence, including errors in interpreting the relevant sections of the Codes or inconsistencies with previous decisions. If an error or inconsistency is identified, the Independent Reviewer remits the decision(s) to the Panel for reconsideration.

### ***Reviewer's reasons***

Section 2.3. This section requires the Panel to make two findings: the first is whether there is a depiction of violence in an advertisement; the second is to decide, if there is violence, whether it is justifiable in the context of the circumstances shown in the advertisement. The Panel failed to undertake this process, at least in relation to the second, AFL mark advertisement. The two actions, the tackle and the mark, should have been dealt with separately and were not. This was confusing and resulted in an ultimate finding of breach of section 2.3 in the case of both advertisements which in the opinion of the reviewer was not justified and involved a substantial flaw in the Panel's reasoning.

'Tackle'. The Panel's reasoning appears in paras 7-11 on p 5. The Panel concluded that the tackle involves violence, but in the context of promotion for football was 'directly relevant to the product being advertised'. In the next paragraph, the Panel states 'the tackle used in conjunction with a promotion for football was justifiable [of



itself] in the context of the product being advertised and did not breach Section 2.3 of the Code’.

However, having said on p 5 of its reasons that the behaviour was not in breach of section 2.3, the Panel ultimately concluded (p 6, para 6) that the ‘violent behaviour in the context of the advertisement was not relevant to the product promoted and *was a breach*’ of section 2.3 (emphasis added). This is confusing and a flaw in the reasoning. The apparent reason for the contradiction is the image of the men, as a result of the tackle, falling into and breaking the glass of the bus stop window was not considered in the finding on p 5, but this is not clear in the reasoning.

In the reviewer’s opinion, the ‘significant damage to property’ may be a reason for concluding that, despite the need for the advertisement to depict some form of commotion, the damage to public property was not a justifiable way to present a noisy event in the advertisement. That is not spelled out. The confusing reasoning and this aspect of the Panel’s decision in relation to the tackle are flaws in its reasoning, but are not ‘substantial flaws’ leading to an inappropriate outcome. That conclusion is based on the reviewer’s acceptance of the finding that the ‘tackle’ is ‘of itself’ violent behaviour.

‘Mark’. There is no reasoning provided as to whether the ‘mark’ involved violence other than a finding by the Panel on p 6 that there is violence through the image of the men falling into ‘other obstacles’ namely, the stack of lettuces, involving possibly some damage to property. Since this could be regarded as an accident, rather than being due to inherently violent behaviour, in the opinion of the reviewer, and the damage, if any, to the lettuces is not obvious, the conclusion is not justified. It demonstrates that the Panel ran the two tests in section 2.3 together and that is not what section 2.3 requires.

Whether taking a ‘mark’ is violent behaviour in the eyes of reasonable members of the community would in the reviewer’s opinion, need to be determined as a first step. If taking a mark is not violent behaviour, there is no need to assess whether taking a mark taken in a supermarket breaches section 2.3 even if goods are knocked over. If the Panel adheres to its view that taking a mark is violent behaviour, the next step is whether taking a mark in a supermarket, which involves knocking over some lettuces, falls within section 2.3.

In the opinion of the reviewer in these circumstances, the clearly fanciful and unrealistic circumstances depicted in the advertisement must be considered and given weight. Most people would react to the noise of vegetables being knocked over in a supermarket. The fact that the shopper remains glued to his phone and does not do so, is an indication of the exaggeration and lack of realism of the advertisement.

The necessity for a noisy event to occur is a key part of the depiction. The commotion is essential to counterpoint the mesmeric effect of the shopper apparently watching the game regardless and highlights the lack of realism. The weight to be given to these circumstances must be taken into account in deciding whether the circumstances



shown are justifiable. The reviewer notes that the Panel did find that the 'advertisement is clearly unrealistic and fanciful'. In the opinion of the reviewer, the Panel failed to give adequate weight to the fanciful setting in relation to the taking the mark advertisement.

The rolling together of the Panel's findings on the two advertisements did not permit differentiation and prevented the Panel giving sufficient attention to the advertisement concerning the 'mark', as compared with the 'tackle'. The Panel needed to decide whether the mark of itself involved violent behaviour and secondly if so, whether taking a mark in a supermarket resulting in a noisy event, but possibly minimal damage, was justifiable in the context of the advertisement. The failure to take these steps involved a substantial flaw in the Panel's reasoning.

Section 2.6. The reviewer accepts the Panel's findings that the 'tackle' could be considered of itself to be violent behaviour and in the context of an advertisement involving damage to public property, and broken glass which could involve harm to the health and safety of the public was a breach of section 2.6.

The reviewer does not agree that the same conclusion is necessarily reached in relation to strewn vegetables in a supermarket. It is not uncommon for stacks of goods, including vegetables, to fall over in supermarkets. The possibility of harm to health and safety of shoppers is minimal in these circumstances and is usually fixed relatively quickly by staff. The men are shown walking away unharmed. If a shopper knocks over goods in a supermarket it is usual for the shopper not to be involved in restacking the goods, and to be able to leave the premises. There would generally be no other consequences, even though on occasions the perpetrator may be required to pay for damage.

There is no harm or potential harm for the health and safety of members of other shoppers shown in the advertisement. Nor, in the opinion of the reviewer, is it likely that children would be tempted to emulate taking a mark in a supermarket. The norms for appropriate behaviour in a shop are inculcated early in their lives. In these circumstances, the contrived nature of the advertisement and the unrealistic circumstances have greater weight. In the opinion of the reviewer the failure separately to consider the 'mark' advertisement led to a failure to distinguish the circumstances and to give sufficient weight to the fanciful nature of the advertisement in the context of prevailing community standards of health and safety. This resulted in a substantial flaw in the Panel's findings under section 2.6.

### ***Previous decisions***

The advertiser has argued that previous decisions were insufficiently relied on by the Panel. It should be noted that, in the opinion of the reviewer, in none of the cases cited are the facts sufficiently close for the parallels to be compelling. Each case must always be considered on its own facts, guidance only being provided by other, earlier cases.

### ***ALDI Australia, Case Number 0239/17***



The advertisement featured a woman dancing alone at night with a trolley in an almost empty ALDI car park, performing acrobatic-like stunts before returning and recovering her \$2 coin.

Although the Board acknowledged the safety concerns for children about children copying the woman's actions when riding on trolleys, 'the majority of the Board ... considered that the exaggerated nature of the advertisement' and 'the overall look and tone was clearly one of fantasy, and was not considered to be realistic in any way'. As a consequence, the ALDI depiction was not 'contrary to Prevailing Community Standards on health and safety'.

The element of fantasy in the Kayo Sports advertisement of the 'tackle' is less than the ALDI case, given its setting in day-time, at a bus stop, and the use of well-known sporting figures. In addition, the potential for harm to adults and children from the broken glass following the tackle is a depiction which could be considered to be contrary to prevailing community standards on health and safety and more likely to be emulated by children in an outdoor setting. The outcome in the ALDI case can be distinguished on the facts from the Kayo Sports 'tackle' advertisement.

The same outcome, in the advertisement depicting the mark, is more akin to the facts in the ALDI case. It is highly unlikely that children, given their upbringing and training about appropriate behaviour in shops, much less adults, would copy the actions depicted in the supermarket thereby causing damage to themselves. This view is heightened by the strong element of fantasy of the depiction. Adults, much less children, do not take marks indoors in public places. In the opinion of the reviewer, the facts in Kayo Sports more closely align with the depiction in the ALDI car park, albeit the depiction in ALDI is at night, when less children would be around.

***Mars Confectionary, Case Number 0150/10***

The advertisement depicts young men playing football, but their contact tackles are not considered to be violent because they are undertaken on the sporting field. However, the depiction of the tackles being performed on an older man or woman would, if real, harm them, but the transformation of one of them, following consumption of a Snickers bar, to again being young is so startling and unreal that it negates the violence of a tackle against older persons, was clearly exaggerated and humorous and did not breach section 2.2 of the Code.

When compared to the Kayo Sports advertisement, the same conclusion in relation to the mark is available for the reasons given earlier. In the opinion of the reviewer this conclusion can be distinguished in relation to the tackle given the damage to public property and the more realistic potential for injury and harm, thus being contrary to prevailing standards of health and safety.

***Smith's Snackfood Co Ltd, Case Number 0045/16***

An old lady is miffed at being denied a Smith's Chip from a supply being consumed by someone repairing the premises' lift. Annoyed at his selfishness, while the lift is being tested to check that it is working, the old lady sneaks up behind the person, presses



the button to start the lift, causing the repairman to fly up the stairs before smashing through the upstairs window.

The Board found that the old lady's action was not an act of aggression. It is clearly a fantastical situation, so there was no depiction of violence contrary to section 2.3 of the Code. Nor, given the humour of the advertisement and its fantastical nature, was there a suggestion that the person was actually harmed, thus the depiction being contrary to prevailing standards of health and safety.

When compared with the Kayo Sports advertisement, there is more potential for the tackle to be considered violent, and this was not ameliorated by the context being in a public place, not on a sporting field. The contrary outcome is capable of being reached in relation to the mark, for the reasons given earlier.

### ***Conclusion***

In the opinion of the reviewer, the Panel should review its findings of breaches of section 2.3 and section 2.6 of the AANA Code of Ethics in relation to the advertisement featuring the players taking a mark in a supermarket.

The reviewer has not found substantial flaws or inadequate weight given to the overall circumstances in the findings by the Panel or the majority of the Panel in relation to the advertisement depicting the tackle.

## **THE DETERMINATION ON REVIEW**

The Ad Standards Community Panel (Panel) noted the request for review of its decision and the findings of the Independent Reviewer.

The Panel noted that the Independent Reviewer had reconfirmed the Panel's determination in respect of the NRL version of the advertisement (bus shelter) and no further review was required for this version. The Panel noted that the Independent Reviewer had recommended that the Panel reconsider its determination in respect of the AFL version of the advertisement (supermarket). Specifically the Reviewer:

- Was of the view that the Panel failed to undertake the two step process of determining whether the supermarket advertisement depicted violence and if so, whether such violence is justifiable in the context of the advertisement for the AFL supermarket advertisement.
- Had the view that the Panel failed to give adequate weight to the fanciful setting.

The Panel noted that it would only reconsider the supermarket (AFL) version to determine if that version of the advertisement breaches Section 2 of the AANA Code of Ethics (the Code).



As recommended by the Independent Reviewer, the Panel first considered whether the advertisement depicted violence.

The Panel noted that unlike the NRL advertisement which depicts a tackle, the AFL advertisement depicts a mark. A mark in AFL is achieved when the ball is caught directly from the kick of another player who is not less than 15 metres away. The Panel noted that the advertisement depicts a football coming from off-screen and shows the two AFL players attempting to catch the ball. The Panel considered that the two players are shown to have minimal physical contact with each other as they land in the crate of lettuce.

The Panel considered that the action depicted in this marking scenario is an inherent part of the game. The Panel considered that the mark is a sporting action and is being used in the context of a streaming service that is focused on sporting activities including football games and therefore is directly relevant to the product being advertised.

On review, the Panel considered that there is limited contact between the two players before they land on the crate with one briefly touching the shoulders of the other as he launches for the ball, and considered that this aspect of the advertisement did not depict violence.

The Panel noted that the Independent Reviewer considered that if the act of a mark was found to not be a depiction of violence, then there is no need to assess whether taking a mark in a supermarket breaches the Code. The Panel considered that in this instance there remains a reasonable requirement to view the act of a mark separately to the destruction of the crate of produce, just as the physical tackle was considered separately to the glass shattering in the NRL version of the advertisement. Although the two acts are linked and depicted together, the Panel considered that it is still two acts that can be considered separately.

The Panel then considered the depiction of the AFL players falling into the lettuce crate.

The Panel noted the comments of the Independent Reviewer and on review considered that the action of the two men falling into a crate of lettuce, resulting in it collapsing completely, was an action that most members of the community would consider to be surprising rather than violent. The Panel considered that while the NRL version of the advertisement depicted people crashing through glass with glass shattering in the street and was a confronting and aggressive depiction, the act of a crate of lettuce collapsing was mild and was not as impactful.

On review, the Panel considered that the AFL version of the advertisement did not depict violence in the act of taking the mark nor in the landing in a crate of produce and therefore did not breach section 2.3 of the Code.



The Panel then considered whether the advertisement complied with 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 Panel noted Independent Reviewers comment that the Panel should give sufficient weight to the fanciful nature of the advertisement.

The Panel considered that the fantasy of the advertisement has the players depicted in a public place – a supermarket. The Panel accepted that the intention of the advertisement is to depict the immersive experience of the man in the supermarket in the product and the quality of the streaming service.

The Panel considered that the advertisement was an exaggerated and unrealistic scenario that is clearly a visual representation of the up close and real experience that users of the streaming service can enjoy. The Panel noted that the man watching his phone did not react to the players falling into the crate of lettuce.

The Panel considered that while the act of the players falling into the crate of lettuce was a depiction of property damage and product destruction, with the lettuce going all over the floor, such an act would be unlikely to be generally emulated by children..

The Panel noted the Independent Reviewer’s comment that the norms for appropriate behaviour in a shop are inculcated early in children’s lives. The Panel noted that junior AFL organisations typically discourage players from performing marks such as the one depicted in the advertisement and considered that young children familiar with this game based skill would be aware that they should not attempt such an act in a supermarket.

The Panel considered that the advertisement was not depicting behaviours that would be seen to be unsafe due to the lack of realism and the clear link to the streaming service and considered that the advertisement did not breach Section 2.6 of the Code.

Upon reconsideration of the complaint in line with the recommendation of the Independent Reviewer, the Panel determined that the AFL supermarket version of the advertisement did not breach Section 2.3 or Section 2.6 of the Code.

The Panel noted that the Independent Reviewer reconfirmed the decision to find that the NRL (bus shelter) version of the advertisement did breach Section 2.3 and Section 2.6 of the Code.