

Case Report

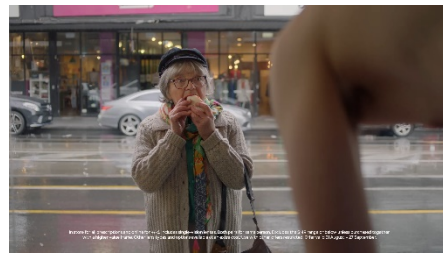
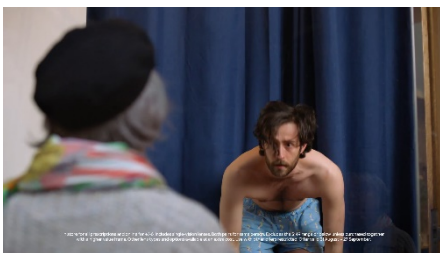
1. Case Number :	0200-23
2. Advertiser :	Specsavers Pty Ltd
3. Product :	Health Products
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Decision:	27-Sep-2023
6. Decision:	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification

DESCRIPTION OF ADVERTISEMENT

This television advertisement begins with a man browsing in a clothing store. He chooses a pair of jeans from a rack and looks around for the changing room. He doesn't notice that the changing room is right behind him and walks off in another direction. He is then seen appearing from some curtains without a shirt on and he starts pulling down his trousers to try on the jeans. The camera then cuts to woman who is watching him from the street and it is clear that the man is getting changed in the front window of the store. Still adjusting his trousers, the man suddenly notices the woman standing before him outside the window and becomes embarrassed as he realises his error. The VO then commences and says 'Ohhh.. should've gone to Specsavers.



THE COMPLAINT

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

I object to the recurring theme that Specsavers have used for many years, that visual errors lead to humiliation but can be avoided by their products. As a visually impaired person, these types of scenarios are part of my daily life. I can't think of another disability that is portrayed so poorly by the Australian media.

THE ADVERTISER'S RESPONSE

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

The television advertisement in question is one in a series of the long running "Should've Gone To Specsavers" television campaign. The campaign encourages people to shop at Specsavers in a light-hearted way and uses humour to point out the things that people may do when they can't see clearly and aren't wearing their glasses. In this particular advertisement, our intention is to draw attention to the poor eyesight of the man in a playful way. It is definitely not our intention to ridicule visually impaired people. The Specsavers in-house legal team was involved and consulted with in the creation of this advertisement.

Specsavers is dedicated to improving eyesight for all Australians with affordable and accessible eyecare. Specsavers donates funds to charities such as The Fred Hollows Foundation and works together with partners such as Diabetes Australia, health funds and universities to improve the health outcomes of its patients and those without easy access to eyecare.

2.1 - Discrimination or Vilification

As the Code does not define the terms 'discriminates' or 'vilifies' we have adopted the ordinary English meanings of these terms. We draw your attention to the following Macquarie Dictionary definitions in the context of this complaint:

'vilify': to speak evil of, defame, libel, malign, slander

'discriminate': to make a distinction, as in favour of or against a person or thing.

We do not believe it can reasonably be said that any aspect of the advertisement portrays people 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 Disability Discrimination Act 1992 says that disability discrimination occurs when a person is treated less favourably, or not given the same opportunities as others in a similar situation because of their disability.

No person in this advertisement is treated unfairly or less favourably than others. The advertisement uses light-hearted humour to depict a way in which one might mistake their surroundings without their glasses on. An extremely common and harmless scenario affecting a very large portion of the community. The special offer (Any 2 pairs for \$199) in the advertisement is available to all consumers, specifically those with vision impairment and thus we do not think it could be reasonably argued that those with vision impairment are treated less favourably or are not given the same

opportunities as others. It would be incongruent with Specsavers' vision and values to vilify or discriminate against those who are vision impaired.

2.2 – Exploitative or degrading

Section 2.2 of the Code addresses the use of sexual appeal in a manner that is exploitative or degrading. There is no use of sexual appeal in the advertisement. We therefore believe that the advertisement complies with the Code in relation to Section 2.2.

2.3 – Violence

Section 2.3 of the Code requires that advertising not present or portray violence unless it is justifiable in the context of the product or service advertised.

We do not believe that there is violence depicted in the advertisement. We therefore believe that the advertisement complies with the Code in relation to Section 2.3.

2.4 – Sex, sexuality and nudity

Section 2.4 of the Code requires that advertising treat sex, sexuality and nudity with sensitivity to the relevant audience.

We acknowledge that nudity is used in the advertisement. Specifically, we see the adult male's bare torso when he appears from behind the curtains. However, we do not believe the nudity violates section 2.4 of the Code, as it is relevant to the product being advertised and does not have any sexual connotations.

The nudity occurs when the male undresses to try on the clothing garments he has selected. The sole purpose of the nudity is to set up the scenario that follows, wherein the audience realises he is getting changed in the shopfront window rather than the changing room, The takeaway for the audience is that he wouldn't have been getting changed in this area if he'd been wearing glasses and had a clearer view of his surroundings.

During this scene the man is not being sexually suggestive in any way; he is solely focused on trying on the clothing. This is confirmed by the fact that he is embarrassed and immediately stops undressing upon realising he is being watched by another person. We believe that the impact of the nudity is lessened by the humour of the advertisement and the fact that the advertisement is not sexualised.

We therefore believe that the advertisement complies with the Code in relation to Section 2.4.

2.5 – Language

Section 2.5 of the Code requires advertising to only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

We do not believe there is inappropriate language in the commercial. We therefore believe that the advertisement complies with the Code in relation to Section 2.5

2.6 – Health and Safety

Section 2.6 of the Code requires advertising to not depict material contrary to Prevailing Community Standards on health and safety.

We do not believe the commercial depicts material contrary to prevailing health and safety standards. We therefore believe that the advertisement complies with the Code in relation to Section 2.6.

2.7 – Distinguishable as advertising

We believe the commercial is distinguishable as advertising and as a marketing communication. The advertisement clearly promotes the fact that Specsavers, for a limited time, is offering consumers Any 2 pairs for \$199. The Specsavers logo is depicted on the end frame as well as the offer disclaimer.

We therefore believe that the advertisement complies with the Code in relation to Section 2.7.

Advertising & Marketing Communications to Children Code

We believe that the advertisement does not contravene the Advertising & Marketing Communications to Children Code as the advertisement is not directed primarily to children, having regard to the theme, visuals and language used. In particular:

- (a) this is an advertisement which is directed to adults; the offer promoted (and the associated call to action) relates to spectacle frames from the adult ranges;*
- (b) there is nothing in the theme of the advertisement which is directed towards children; and*
- (c) the advertisement depicts adult people only.*

Food & Beverages Advertising & Marketing Communications Code

The Food and Beverages Advertising and Marketing Communications Code does not apply to the advertisement. The advertisement is not advertising Food or Beverage Products.

We trust that we have been able to provide further clarity on this matter, but in the event you require any further information, please do not hesitate to let me know.

THE DECISION

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 humiliates the visually impaired.

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

Section 2.1: Advertising 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 orientation, religion, disability, mental illness or political belief.

The Panel noted the AANA Practice Note which provides guidance on the meaning of:
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 that poor eyesight is a physical impairment and considered that this would fall within the definition of disability for the purposes of this matter.

The Panel noted that in the advertisement a man thinks that he has gone into a change room but has actually entered the front store window display. The Panel considered that the advertisement is intended to be humorous and the humour is of a gentle nature and is aimed at the misunderstanding rather than mocking or humiliating the man on account of his vision impairment.

The Panel noted that the man is not shown to be demeaned or mocked for not realising that he has entered the wrong area, nor is he shown to be embarrassed or offended. Rather, he simply looks surprised and confused as he makes eye contact with the older woman.

The Panel considered that the advertisement does not depict people with vision impairment to receive unfair or less favourable treatment, and does not humiliate, intimidate or incite hatred, contempt or ridicule of people with vision impairments. The Panel considered that the advertisement does not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of disability.

Section 2.1 conclusion

Finding that the advertisement did not portray material in a way which discriminates against or vilifies a person or section of the community on account of disability, the Panel 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 the Code the Panel dismissed the complaint.