

Case Report

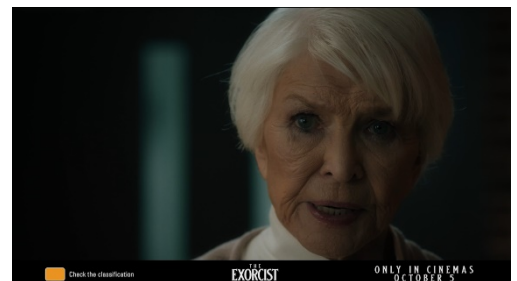
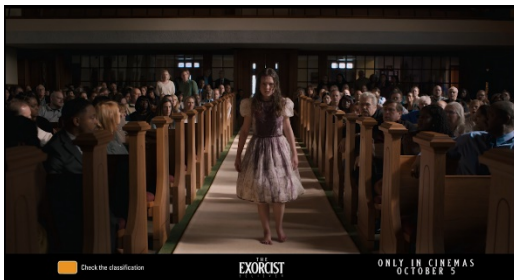
1. Case Number :	0217-23
2. Advertiser :	Universal Pictures Entertainment
3. Product :	TV - Free to Air
4. Type of Advertisement/Media :	11-Oct-2023
5. Date of Decision:	Dismissed
6. Decision:	Panel to Reconsider
7. IR Recommendation:	6-Dec-2023
8. Date of reviewed decision:	Dismissed
9. Decision on review:	

ISSUES RAISED

AANA Code of Ethics\2.3 Violence

DESCRIPTION OF ADVERTISEMENT

This television advertisement has three versions and contains scenes from the film The Exorcist:Believer.



THE COMPLAINT

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

I just find it disturbing way too early there are probably kids that will see it.

September 20th my husband daughter and I were watching my kitchen rules. During the 8.45pm ad break it showed an ad for an upcoming movie, The Exorcist Believer. It was a very scary and innapropriate ad during a family friendly show and also during school holidays when kid are often awake later.

The ad was on during a family tv show, we were watching My Kitchen Rules and it was 9.05pm (on school holidays). My 9 year old son was absolutely terrified and distressed by the ad. It was very graphic and disturbing to me as an adult.

The movie is rated R18 and scenes are not suitable for general audiences during family shows. My young children are traumatised by this ad.

I think it's very scary for that time of night. Happy if it's on past 11pm, but not during family viewing shows such as Have You Been Paying Attention.

Thankfully our children are in bed, but it's possible that 9 or 10 year olds are up watching harmless TV and then are forced to watch an trailer that could give them nightmares. My husband and I can't even watch it and we're in our 30s, it's too much horror for that time of night.

I was not offended. I object to this graphic, horror, bloody scenes being played on free to air tv at a time when people are watching with their kids. The movie is also R rated from what I've seen (if not it should be). I find it baffling that its ok to see this type of violent, graphic, horror images on TV. Please do not allow this sort of images on TV.

I was watching Seinfeld at the time and was extremely shocked to see this film trailer being promoted on Channel 10 Peach. The trailer depicted dark and disturbing horror with child-like characters. It also showed graphic depictions of blood and gore. This ad came on at approximately 9:49-9:50pm on a Friday night during the school holidays. Many school aged kids would potentially still be up and watching TV and this ad was completely inappropriate to be viewed by children. I am an adult, and I found it extremely disturbing myself- so if my child had seen it I would be absolutely horrified.

THE ADVERTISER'S RESPONSE

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

The below response is in relation to the complaints received regarding UNIVERSAL PICTURES advertising for The Exorcist: Believer, specifically in regards to the TVC advertisements depicting violence/language which causes alarm and distress to Children.

Universal Pictures International Australasia adhere to the AANA Advertiser Code of Ethics.

Section 2.3 of the Code 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 Exorcist: Believer is a horror film which contains numerous scenes which could be scary in nature and suspenseful. It would therefore be reasonable to justify that our advertising materials have been produced within the context of the product being advertised.

Universal Pictures strive to advertise films of this content in a manner that remains appropriate for all consumers.

All advertising content from Universal Pictures is broadcast on FTA TV once rated by the Commercials Advice Board which is industry compliant with the advertising standards code of conduct.

To ensure due diligence, prior to activity going live PEACH (on behalf of Universal Pictures) liaises with CAD to obtain approval on The Exorcist: Believer TVC spots.

Universal Pictures produced a number of TV spots for The Exorcist: Believer TV campaign and each spot was classified by CAD - the TV spot in question received an A rating (attached are the key number/material instructions which were provided to the TV networks)

The following approval was obtained by Universal Pictures from CAD on A rating:

Definition:

*MA style commercials for R18+ classified cinema films, DVDs, videos and games
May be broadcast between 8.30pm and 5.00am on any day.*

*In addition to the time restrictions, a Commercial classified "A" must NOT be shown:
Before 9.30 pm during Sports Programs and Films classified G or PG which commence before 8.30 pm and continue after 8.30 pm (unless it is a Film which is neither promoted to Children nor likely to attract substantial numbers of Children).*

The above CAD guidelines were adhered to and the spot was cleared for broadcast which only ran in the allocated times stated.

Please also note that all advertising materials for this film have displayed the CTC (Check the Classification) logo for the required duration.

Universal Pictures and MediaCom exercised care with the planning and selection of the TV schedule and focused on programming that reaches our intended 18+ audience group. We strive to evaluate each media placement to ensure that the materials are being seen by the intended target audience.

We apologise for any distress caused and would like to reassure all parties involved that we have adhered to all required standards and the industry code of conduct in relation to the advertising materials and placements for this film.

THE ORIGINAL 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 complainants' concerns that the advertisement was frightening and inappropriate for broadcast at a time when children were watching.

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

Section 2.3: Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

The Panel noted that the Practice Note for this section of the Code states:

"In considering whether the violence or menace depicted in an advertisement is justifiable, the Community Panel may have regard to the audience of the advertisement. Graphic depictions of violence or a strong suggestion of menace have been found to present violence in an unacceptable manner especially when visible to a broad audience which includes children. For example, advertising for violent or horror movies, tv shows or video games should take care not to include images that give the impression that a character has just committed violence against someone (for example, a weapon with dripping blood), was the victim of violence (for example, freshly severed limbs) or is about to commit violence against someone (for example, gun aimed directly at a person or the viewer) where there is a broad audience which includes children. More leeway is permitted where the depiction is stylised rather than realistic."

Does the advertisement contain violence?

The Panel noted that the advertisement features scenes from the MA15+ rated movie.

The Panel considered that all versions of the advertisement contained scenes of menace and graphic imagery, including children with cut and scarred faces.

Overall, the Panel considered that all versions of the advertisement contained violence.

Is the violence portrayed justifiable in the context of the product or service advertised?

The Panel considered that while the scenes are fleeting, the advertisement is disturbing and uncomfortable due to the depiction of 'possessed' children. The Panel noted that although the children appear restrained in several scenes and show markings suggesting harm, the advertisement refrains from visually depicting anyone inflicting direct harm on them. Given the film's plot centres around the children becoming 'possessed', the Panel considered that it was justifiable for the advertisement to portray the children and the level of violence featured in the film, in this manner.

The Panel considered that the advertisement creates a high level of tension and menace due to the music choice and the dark imagery, however in the context of promoting a horror film, the level of physical or graphic violence shown is justifiable.

The Panel noted that the advertisement received an A classification from FreeTV which allowed it to be broadcast from 8.30pm onwards. The Panel noted that some complainants advised that they had viewed the advertisement during My Kitchen Rules, which starts at 7.30pm, they indicated that they had only seen the advertisements after 8.30pm.

The Panel acknowledged that the advertisement may be scary for children, however considered that post 8.30pm the audience would predominately be adult.

The Panel considered that the advertisement contained violence that was justifiable in the context of advertising an MA15+ rated horror film, and therefore did not breach Section 2.3 of the Code.

Section 2.3 Conclusion

The Panel determined that the advertisement did present or portray violence which was justifiable in the context of the product or service advertised and did not breach Section 2.3 of the Code.

Conclusion

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

REQUEST FOR INDEPENDENT REVIEW

There have been multiple complaints about this ad. The Panel has a responsibility to uphold and represent community standards, and to recommend that ad standards be adjusted according to community standards.

I believe there is a substantial flaw in the panels decision because

a) The panel acknowledges that the ad contained "scenes of menace and graphic imagery, including children with cut and scarred faces", and that the children "appear restrained" against their will. In the context of the current mental health epidemic in Australia, images of this nature are wholly unacceptable given the risk of triggering.

b) the Panel's view that the advertisement may be "scary" for children is a blase and unsubstantiated opinion, and a significant understatement of the trauma likely to be caused to younger viewers. There is no clinical or other evidence cited by the panel that this imagery would merely be "scary" to a young person, and that it would not cause mental harm. According to Elana Pearl Ben-Joseph, MD, MPH, "Kids who view violence onscreen are more likely to show aggressive behavior" and experience "behavior problems, nightmares, and trouble sleeping"

c) further, the Panels opinion that "the audience post 8.30pm would predominately be adult" is naive and factually incorrect. The panel should have ample evidence of this fact at its disposal.

d) Finally, the Panels finding that "the level of physical or graphic violence shown is justifiable" is weak and without substantiation. The panels response is unclear about how the term 'justifiable' is used in this context. Prima facie, the panel seems to be saying the level of violence is justifiable for the purposes of generating ad revenue for the advertiser (within the rules of a Code written by advertisers themselves, ironically). Yet the panel has made no apparent attempt to determine whether the depicted violence is justifiable in terms of mental health impacts on the likely younger audience, irrespective of whether the ad was deliberately targeted at that younger age group.

I look forward to a full response from the panel, including -

a) citation of data in relation to the age of viewers in the time slots where this ad was shown, and

b) citation of clinical research data that measures the mental health impacts of imagery of the nature shown in this ad

INDEPENDENT REVIEWER'S RECOMMENDATION

Description of advertisement

The television advertisement appeared in three versions and contained scenes from the film The Exorcist Believer: Body and the Blood. More than thirty complaints were

received. There were two consistent and related themes in the complaints: the advertisements were frightening and disturbing for children; and the advertisements should not have been shown at times of the evening when children were, or were likely to be, watching. The timing was particularly inappropriate given the advertisements appeared during school holidays and at the beginning of summer-time when children are often permitted to be up later than normal.

No new evidence was provided by the advertiser following the reviewer's agreement to review the complaint.

The role of the reviewer in this initial phase of the complaint process is to decide whether there is a prima facie case that there was a 'substantial flaw' in the Community Panel's decision, either because there was a clear misinterpretation of evidence or the rules of the Codes, or appropriate weight was not given to the information that was available.

Findings of Community Panel

The Panel conceded that each of the three advertisements contained violence, namely, '*scenes of menace and graphic imagery, including children with cut and scarred faces*'. The Panel concluded that:

'the advertisement creates a high level of tension and menace due to the music choice and the dark imagery, however, in the context of promoting a horror film, the level of physical or graphic violence shown is justifiable'.

This observation drew on the facts:

- (a) that the advertisement received an A classification from FreeTV which allowed it to be broadcast from 8.30pm onwards, and an MA15+ rating for the movie, the Exorcist; and
- (b) while acknowledging that the advertisement may be scary for children, that the audience post 8.30pm would predominantly be adults.

Accordingly, the conclusion of the Panel was that despite the clear depiction of violence, the level of violence did not breach section 2.3 of the Code.

Consideration

The bloody faces, including bloody disfigurement on children in the advertisements, are indications that violence has been committed. The violence, it can be assumed

has been inflicted quite recently as the blood is running and has not been removed. The injuries it can be assumed have either been self-inflicted by the person shown, or by another person.

When that image is allied with the moody music, backgrounds, portrayals of fear on the faces and the dark and gloomy settings, coupled with the ferocity on the faces of people in the advertisement, it is clear fear and menace are intended to be portrayed either for current or recent violence. There are no interpretation errors involved in this observation. That finding of the Panel was justifiable for an advertisement intended for adult viewing.

Scheduling

The principal complaint is not that the advertisements depicted violence. Rather, the concern is that the advertisements were scheduled at a time when children viewed them.

The Panel is required to make its decisions in accordance with '*prevailing community standards*'. To do so entitles the Panel to rely on broad sources of evidence - those within common knowledge. Accordingly, it has relied on an 'A' classification for the advertisements by FreeTV, and an MA15+ rating for the film, *The Exorcist Believer*, by the Australian Classification Board.

Classifications for advertising by FreeTV are provided by ClearAds, which is controlled by FreeTV. Prior to placement on Free-to-air commercial television, all advertising is required to go through ClearAds to receive a classification, which governs the times the ad can be placed¹. Under the placement guidelines, an advertisement with an 'A' classification is an R18+ Classified Material/MA style advertisement which may be broadcast between 8:30pm and 5am on any day, but must not be shown before 9:30pm during sports program; films classified G or PG may commence before 8:30pm and continue after 8:30pm.² The content of such an ad is consistent with an MA classification under the *Commercial Television Industry Code of Practice*. The Panel also relied on the Australian Classification Board's rating for the film which was MA15+, the rating for a horror film.

For the Panel to use these sources of classification and scheduling is justified in the context of their role as representing and making decisions according to community standards. But these sources should not be relied on at the expense of its prime sources of information, the *Ad Standards Codes, Practice Notes* and *Decisions*.

¹ <https://clearads.com.au/information-hub/faqs/#general-questions>

² *The ClearAds Handbook* in Appendix B: Placement Codes, p. 128

The Ad Standards material has been developed over many years by the Australian Association of National Advertisers, and its Community Panels. As befits a regulatory body, the material relating to advertising and marketing standards provided by Ad Standards is sophisticated, comprehensive and targeted in relation to advertisements and marketing. For example, its *Code of Ethics* and *Practice Note* deal specifically with the issue of violence.

Ad Standards is the independent national body dealing with all forms of advertising and marketing communications. As the regulatory body for marketers and advertisers it is the Ad Standards classification or definitions which should have provided the principal benchmarks applied to the evidence in this complaint. To have relied on the benchmarks used by FreeTV and the Australian Classification Board was inappropriate because the findings of the Panel gave insufficient weight to the Ad Standards Code and related material, particularly as to scheduling at a time slot likely to have a broad audience.

The request for review pointed out correctly that the standards implemented by Ad Standards are intended to reflect community standards, '*especially when visible to a broad audience which includes children*'. The evidence of community concern about the viewing of these advertisements by children was the multiple number of complaints. Amongst those complaints the almost universal concern was about the actual or potential harm caused to children who viewed or were able to view the advertisements scheduled to be shown during family friendly TV viewing times.

In interpreting that aspect of the *Practice Note* to the *Code of Ethics* relating to section 2.3, the Panel failed to give sufficient weight to the fact that the advertisements were shown during school holidays. It is notorious that school holidays are a period when parents commonly permit their children, even younger children, to watch television past their normal bed-time. 'Later than normal' includes 8.30pm and onwards. Parents do so, knowing the children will not need to get up in sufficient time next day to attend school.

It would have taken little effort for the advertiser to discover when school holidays are held throughout Australia. Any reputable diary publishes the school holiday calendars. That would have enabled Universal Pictures to provide either that viewing the advertisements did not occur until the school holidays were over or, if shown during school holidays, that the advertisements were not scheduled until a timeslot from least 9.30pm or later. That is a not unreasonable requirement.

That step was required because it was conceded that the advertisements for the film *The Exorcist, Body and the Blood* were intended as advertisements for a horror movie for adults, were intended to portray violence and the advertisements depicted

children with bloodied faces and bodies and were intentionally violent and menacing. As can be expected of horror movies, particularly when depicting violence against or by children, the advertiser needed to take account of the probability that children, including primary school age children, could be viewing the advertisements.

The error was that the Panel failed to address whether a post-8:30 time slot during school holidays, and specifically in the programs mentioned by the complainants, (*60 Minutes*, *My Kitchen Rules*, the Brownlow Medal broadcast, *Cheap Seats*, *Have You Been Paying Attention*, *Seinfeld*) would consist of a broad audience which would include children including quite young children during the holiday periods.

Conclusion

I recommend that the Community Panel reconsider its decision. It is my opinion that the Panel appeared to give excessive weight to material concerning classifications by other bodies, namely, FreeTV and the Australian Classification Board, rather than the standards that apply to advertising and marketing by Ad Standards. The result was to give commensurate inadequate weight to the timing of the advertisements under Ad Standards principles. In doing so, the Panel failed to address specifically whether scheduling the advertisements during school holidays was appropriate taking into account Ad Standards requirements that a factor to be considered was the substantial child audience viewing these ads at or after 8.30pm. This was a substantial error in relation to the weight attributed to the evidence relied on by the Panel.

THE DECISION 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 review request included a request for audience data and clinical research on the mental health impacts of children viewing the advertisement. The Panel noted that its role is to make determinations about the content of advertising in line with the relevant advertising codes and community standards, and that sourcing and interpreting clinical research is beyond its scope. The Panel noted that the Independent Reviewer had not recommended that the Panel consider such information.

The Panel noted that the Independent Reviewer considered that there was a substantial flaw in the Panel's determination. Specifically, that the Panel had given excessive weight to the classification of the advertisement, and had given insufficient consideration to whether the advertisement being broadcast in school holidays meant that there would be a substantial child audience for this advertisement at the time of broadcast.

The Panel noted that it was required to reconsider the case under Section 2.3 of the AANA Code of Ethics (the Code) taking into account the Independent Reviewer's recommendations and comments.

Section 2.3: Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

The Panel noted that in its previous consideration of the advertisement it had determined that the advertisements did contain violence. The Panel noted that the Independent Reviewer had not found a flaw in this determination.

The Panel noted the Independent Reviewer's comments and that it needed to consider whether the audience for the advertisement would have included a substantial number of children, and if so, if the level of violence in the advertisement was justifiable in the context of promoting this product to this audience.

The Panel noted that the advertisement received an A classification from ClearAds which allowed it to be broadcast from 8.30pm onwards. The Panel noted that while ClearAds takes into account the Code of Ethics when providing ratings for advertisements, it is a separate body from the Community Panel with a different role. As such, the Community Panel is not bound to accept the rating as being the sole determinant of whether an advertisement is in breach of the Code. However, the Panel noted that the rating is useful in understanding what times the advertisements are allowed to be broadcast, and the likely audience who would view the advertisement.

The Panel noted that the programs in which complainants viewed the advertisement included: *60 Minutes*, *My Kitchen Rules*, the Brownlow Medal broadcast, *Cheap Seats*, *Have You Been Paying Attention*, and *Seinfeld*.

The Panel considered that the Brownlow Medal, *Seinfeld*, and *60 Minutes* are unlikely to appeal to most children, and considered that the audience for these programs are likely to be predominantly adults regardless of the time of day the program was shown.

The Panel noted that the *Have You Been Paying Attention* and *The Cheap Seats* are both rated 'M'. The Panel considered that most members of the community, especially parents, would understand television classifications and would know that 'M' rated programming is not recommended for audiences under 15 years.

The Panel noted that *My Kitchen Rules* is a PG rated show that would be viewed primarily by families, especially those with older children and teenagers.

The Panel considered that most young children would be in bed after 8:30pm, even during the school holidays. The Panel considered that there would be older children who viewed the advertisements while watching family viewing programs. The Panel considered that children would most likely not be watching these programs in the absence of older family members, even in school holidays, and would likely have a parent or guardian present when the advertisements were shown.

The Panel considered that it is parents' responsibility to determine whether their children are mature enough to watch certain programs, and to stay up later to watch them. The Panel considered that most parents would understand that advertisements and program content have ratings, and that advertisements shown after 8:30pm may contain a higher level of violence than those before 8:30pm, and they can choose whether to allow their children to watch television at this time.

The Panel noted that while there was a high level of menace and some graphic depiction of the consequences of violence in the advertisement, this was not inappropriate for a post-8:30 audience of mostly adults and older children, even in circumstances where the school holidays may have led to a larger number of children being part of the audience.

The Panel considered that the advertisement contained violence that was justifiable in the context of advertising a horror film to a post-8:30 audience, and therefore did not breach Section 2.3 of the Code.

Section 2.3 Conclusion

The Panel determined that the advertisement did present or portray violence which was justifiable in the context of the product or service advertised and did not breach Section 2.3 of the Code.

Conclusion

On review, the Panel determined that the advertisement did not breach Section 2.3 of the Code and the Panel dismissed the complaints.