

Case Report

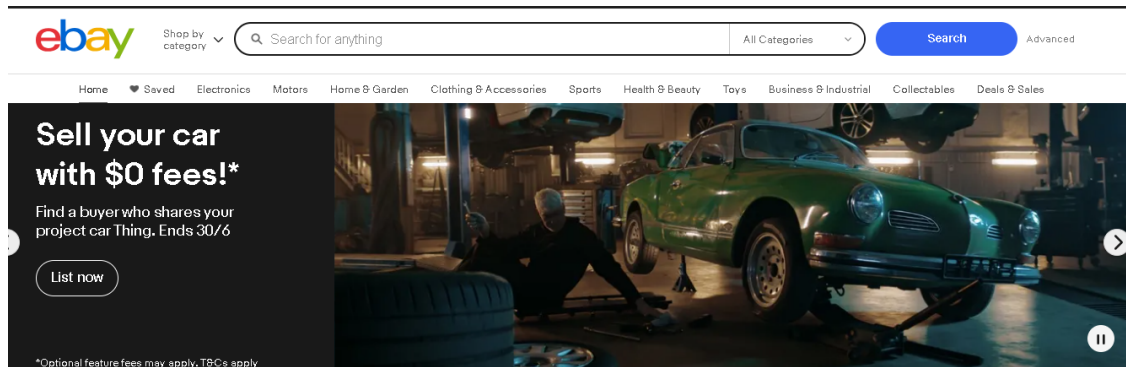
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| 1. Case Number : | 0074-24 |
| 2. Advertiser : | eBay Australia & New Zealand |
| 3. Product : | Automotive |
| 4. Type of Advertisement/Media : | Internet |
| 5. Date of Decision: | 20-Mar-2024 |
| 6. Decision: | Upheld – Modified or Discontinued |

ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

This advertisement depicts a green car raised on one side with a mechanic nearby appearing to be about to move under the vehicle.



THE COMPLAINT

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

Unsafe work safe practice being depicted by their advertisement which could result in a deaths/s if followed.

More information,

<https://www.worksafe.qld.gov.au/news-and-events/alerts/incident-alerts/2022/worker-fatally-crushed-after-car-falls-off-jack>

<https://www.worksafe.vic.gov.au/safety-alerts/mechanic-dies-while-working-underneath-car>

<https://www.qld.gov.au/law/your-rights/consumer-rights-complaints-and-scams/product-safety-for-consumers/safety-advice-and-warnings/vehicle-products/car-jacks>

<https://www.commerce.wa.gov.au/consumer-protection/car-jack-safety>

<https://www.safetysolutions.net.au/content/business/news/14th-victorian-workplace-fatality-under-investigation-16831152>

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 eBay 'Sell your car with \$0 fees' advertisement that is featured as a banner from the 1st of January 2024 until 30 June 2024, on the eBay Australia and New Zealand website (Advertisement). We thank you for the opportunity to provide a response to this complaint.

eBay is committed to conducting all advertising promotions to the highest standard and we take seriously any complaints in relation to our advertising and promotions.

As requested, we have addressed the complaint by reference to all relevant advertising codes, being the AANA Code of Ethics (Code of Ethics).

Having considered the Advertisement and the complaint, as well as the requirements of the Code of Ethics we respectfully submit that the Advertisement does not in any way contravene the Code of Ethics.

Please note that we have not assessed the complaint by reference to the:

- AANA Wagering Advertisement and Marketing Communications Code as eBay is not a licensed wagering operator;*
- AANA Food and Beverage Marketing and Communications Code as the advertisement does not contain any food or beverage marketing;*
- AANA Childrens Advertising Code (please see our explanation below);*
- AANA Environmental Claims Code as there are no Environmental Claims contained in the advertisement;*
- FCAI Voluntary Code of Practice for Motor Vehicle Advertising (please see our explanation below).*

Application of the AANA Childrens Advertising Code

We submit that the ANAA Code of Advertising and Marketing Communications to Children does not apply to the Advertisement for the following reasons:

- 'Child' is set out within the code as to mean a person under the age of 15;*
- The target audience for the advertisement is persons who are capable of buying and selling goods on eBay and capable of owning and driving a car. Such persons cannot be a "child" as defined;*
- The advertisement is not designed to and will not appeal to children because they are not of an age where they could sell or operate a vehicle, nor could a child take advantage of the eBay advertisement because eBay has an age limit policy which requires eBay members to be aged 18 years or older. A person under the age of 18 will therefore not be able to sell a vehicle on the platform as advertised.*

Application of the FCAI Voluntary Code of Practice for Motor Vehicle Advertising

We submit that the FCAI Voluntary Code of Practice for Motor Vehicle Advertising does not apply to the Advertisement for the following reasons:

- The Practice Note – Ad Standards Community Panel contained within the FCAI code clearly sets out that the code only applies to advertisements for motor vehicles. The Advertisement is not an advertisement for the sale of motor vehicles, it is an advertisement which tells eBay users who wish to sell a vehicle that they can do so on eBay for \$0 extra fees.*

Application of the AANA Code of Ethics

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

The Advertisement does not contravene section 2.1 because it does not portray people or depict material in a way which discriminates against or vilifies a person or a section of the community on account of race, ethnicity, nationality, gender, age, sexual orientation, religion, disability, mental illness, or political belief.

The Advertisement does not contravene section 2.2 because it does not employ sexual appeal through the use of images of minors, people who appear to be minors, or in a manner which is exploitative or degrading of an individual or group of people.

The Advertisement does not contravene section 2.3 because it does not present or portray violence that is unjustifiable in the context of the product or service advertised.

The Advertisement does not contravene section 2.4 because it does not treat sex, sexuality, and nudity without sensitivity to the relevant audience.

The Advertisement does not contravene section 2.5 because it does not use language that is not appropriate in the circumstances (including appropriate references for the relevant audience and medium). It does not use strong or obscene language.

The Advertisement does not depict material contrary to Prevailing Community Standards on health and safety set out by this section including unsafe driving or bike riding, farming or behaviour children may imitate. It does not depict, bullying, unrealistic body image, body size or alteration of images.

While the use of machinery is depicted by the Advertisement, the Advertisement does not, and does not intend to instruct or advertise to consumers how to utilise an axle stand or a vehicle jack. It simply notifies customers that they may sell their car through eBay with \$0 fees. The Trade Practices Act 1974 - Consumer Protection Notice No. 1 of 2010 - Consumer Product Safety Standard: Vehicle Jacks sets out at Division 3 that persons working with vehicle jacks should not lay under a vehicle being supported by a jack. There is no such depiction within the Advertisement.

Furthermore, the image within the Advertisement clearly depicts a professional mechanic conducting work and obviously exaggerates the nature of mechanical work. This is highly unlikely to induce consumers into imitating the actions within the image.

THE DECISION

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

The Panel noted the complainant's concern that the advertisement depicts unsafe behaviour.

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

Section 2.6: Advertising shall not depict material contrary to Prevailing Community Standards on health and safety.

The Panel noted the Practice Note to Section 2.6 which states:

"Images of unsafe driving, bike riding without helmets or not wearing a seatbelt while driving a motor vehicle are likely to be contrary to prevailing community standards relating to health and safety irrespective of whether such depictions are for the product/service being advertised or are incidental to the product.

Advertising which demonstrates the unsafe use of machinery, even when not the focus of the advertisement, is likely to be seen as unsafe and against prevailing community standards on health and safety."

The Panel noted that the main vehicle in the advertisement appears to be raised in an unsafe manner using only a jack at the front and one axle stand at the rear of the vehicle.

The Panel noted the advertiser's response that the advertisement does not depict the mechanic under the vehicle, and that the advertisement is unlikely to condone or encourage unsafe behaviour.

The Panel considered that the mechanic is depicted as though he is about to move under the vehicle to work on it, and that this is a depiction of unsafe behaviour.

The Panel considered that professional mechanics may be aware that such practices are unsafe and would be unlikely to copy the behaviour. However, the Panel considered that the advertisement is targeted at the everyday consumer who may be interested in selling a car. The Panel considered that people who work on vehicles as a hobby are not required to do health and safety training, and may not be aware such a depiction is unsafe.

The Panel considered that the behaviour shown in the advertisement can lead to serious injury and death. The Panel considered that depictions of such equipment being used should always be in line with health and safety guidelines.

The Panel considered that the behaviour depicted was against prevailing community standards on health and safety.

Section 2.6 conclusion

The Panel considered that the advertisement did contain material contrary to Prevailing Community Standards on health and safety and determined that it did breach Section 2.6 of the Code.

Conclusion

Finding that the advertisement breached Section 2.6 of the Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DECISION

eBay intends to discontinue the Advertisement (that is, the image in question) by end day, 9 April 2024.