

Case Report

1. Case Number :	0081-24
2. Advertiser :	Sportsbet
3. Product :	Gambling
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Decision:	3-Apr-2024
6. Decision:	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification
AANA Code of Ethics\2.3 Violence

DESCRIPTION OF ADVERTISEMENT

This advertisement depicts several people dressed as ninjas inside a bar.



THE COMPLAINT

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

A room full of white Ninjas - covered faces and representing covered heads & bodies in black attire and is politically sensitive in this day & age and is derogatory to ethnic groups

The characters in the advertisement look like Hamas terrorists

The men are dressed as terrorists and I first thought it was something to do with hamas. It was very triggering for me, and I'm sure for others, given the current situation in Israel. I find it very agitating seeing the ad.

Deeply offensive with men dressed up like ISIS terrorists.

THE ADVERTISER'S RESPONSE

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

Summary of response

Ad Standards have identified that the Complaints raise issues potentially bearing on the following sections of the AANA Code of Ethics (Code):

Section 2.1 – requires that 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’.

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

Sportsbet strongly rejects any suggestion that the Advertisement breaches section 2.1 or 2.3 (or indeed, any other section) of the Code for the reasons set out below.

The Advertisement

The Advertisement depicts a fictional pub setting where all of the occupants are dressed as ‘Ninjas’, including the patrons and staff. The Advertisement forms part of Sportsbet’s ‘Nobody does it easier’ campaign and is intended to be humorous and lighthearted. It highlights a series of stereotypically difficult tasks and the ease of using Sportsbet’s mobile application. The point of the Advertisement is that if doing difficult things was as easy as using Sportsbet’s application then everyone would do it, drawing upon the view held in popular culture of Ninjas being experts in stealth, distraction, and camouflage.

What does the Code prohibit?

Section 2.1 of the Code prohibits discrimination or vilification of any individual or group of people on the basis of certain defined attributes, one of which is race (being the sub-category identified in your correspondence regarding the Complaints).

The AANA’s Practice Note in respect of the Code (Practice Note) relevantly provides that:

- *race includes “colour, descent or ancestry, ethnicity, nationality, and includes, for example, ideas of ethnicity covering people of Jewish or Muslim origin”;*

- *discrimination means “unfair or less favourable treatment”; and*
- *vilification means something which “humiliates, intimidates, incites hatred, contempt or ridicule”.*

Section 2.3 of the Code prohibits advertising that “presents or portrays violence unless it is justifiable in the context of the product or service advertised”.

Absent a contrary definition in the Code, the word ‘violence’ must be given its ordinary meaning. Dictionary definitions of ‘violence’ include ‘behaviour involving physical force intended to hurt, damage, or kill someone or something[1]’ and ‘extremely forceful actions that are intended to hurt people or are likely to cause damage’.[2]

Sportsbet takes a zero-tolerance approach to discrimination and/or vilification of any kind, including, relevantly, on account of race.

Section 2.1 – the Advertisement does not discriminate or vilify any individual or group of people based on race

Sportsbet submits that the Advertisement does not breach section 2.1 of the Code. This is because the Advertisement:

- *makes no “discriminatory” or “vilifying” reference at all to an individual or a group of people based on race (or any other attribute);*
- *does not contain any language, images, references or connotations that could reasonably be viewed as humiliating, intimidating, or inciting hatred or ridicule towards a person or a group of people based on race or any other basis;*
- *merely depicts the characters engaging in stereotypically difficult tasks, such as sitting in “the splits” pose or using one’s hand to chop an ice block, performance of which are made to look easy;*
- *clearly depicts characters who are racially and gender diverse, including women and men of Asian, Hispanic, and Caucasian appearance, which is representative of everyday consumers of Sportsbet’s product; and*
- *does not create or exaggerate any accent or other physical attributes such as the characters’ appearance, which could be viewed as an offensive stereotype used to denigrate those of a specific race. [3]*

On the contrary, the Advertisement champions the view widely held in popular culture that Ninjas possess a unique set of skills which are notoriously difficult to master. On that basis, the Advertisement cannot be reasonably construed as a negative depiction of any particular person’s, culture, race, ethnicity, or nationality.

The depiction of Ninjas in popular culture is a widely practiced phenomenon and is generally associated with characters undertaking tasks stereotypically associated with the martial arts culture. Well known examples include movies such as 'The Karate Kid', 'The LEGO Ninjago Movie' and 'Kung Fu Panda'. The Advertisement, like these movies, is based around an exaggerated and stylized martial arts vision in which difficult tasks are mastered as part of the overall narrative. It could not be reasonably said that depicting martial arts culture in such a way could vilify or discriminate against any particular racial or ethnic group.

Even if the Advertisement could be interpreted as referencing or referring to a particular race or ethnicity, Sportsbet submits that the Advertisement is presented in a lighthearted manner and does not humiliate, ridicule or otherwise negatively depict any character or element in a way that amounts to discrimination or vilification, whether as those terms are defined by the Code or otherwise. The Panel has consistently held that whilst advertisements may reference material commonly associated with certain cultures or ethnicities (such as martial arts), such depictions will not breach the Code in circumstances where the material is not likely to humiliate or incite ridicule.[4] That is plainly the case here.

The Practice Note also states that "advertisements can humorously suggest stereotypical aspects of a race/ethnic group, provided the overall impression of the advertisement does not convey a negative impression of people of that group". In Sportsbet's submission, the Advertisement does not specifically identify any particular race and/or ethnic group, and merely highlights the well-known theme of Ninjas. As noted above, to the extent that some complainants have asserted that the Ninjas depicted are all "Caucasian" or "white", that is simply incorrect. In any event, the Panel has consistently held that a stereotypical portrayal of a particular culture or race was not sufficient grounds of itself to find an advertisement breached the code – particularly in circumstances where the portrayal was perceived as being "light-hearted" and it was not intended to be negative or demeaning towards any particular race.[5] The Advertisement is most certainly not negative or demeaning towards any particular race or ethnic group. It is self-evidently complimentary of the Ninjas being depicted in the Advertisement - whatever may be their race or ethnicity.

Further, we note that the Panel has also found that the depiction of people wearing traditional clothing from particular cultures is not in itself discriminatory or vilifying for the purposes of section 2.1 of the Code [6]. To the extent that Ninja costumes could reasonably be described as the traditional clothing of people from a particular culture, the Advertisement plainly does not present those people or that clothing in a manner that would be likely to humiliate or incite hatred, contempt, or ridicule.[7] As noted above, the Advertisement is complimentary of people who wear such clothing - whatever may be their race or ethnicity.

Accordingly, Sportsbet submits that the Advertisement does not contravene section 2.1 of the Code.

Section 2.3 - the Advertisement does not depict violence

Sportsbet understands that references in the Complaints to the characters appearing to be “terrorists” formed the basis for the Panel to consider that the Advertisement may raise issues under section 2.3 of the Code.⁸ For the reasons that follow, Sportsbet strongly rejects that the Advertisement contains or references ‘violence’ and therefore also firmly submits that the Advertisement does not breach section 2.3 of the Code.

The Advertisement does not depict any violence (of any kind) at all. Rather, the Advertisement depicts a series of stereotypically difficult actions being performed with ease by the characters, including throwing a perfect ‘180’ score in darts, chopping a large ice block in half with one’s hand and using a knife to slice a lime in mid-air with precision.

The Advertisement does not portray any threats, or acts of violence, nor are there any depictions of typical consequences of such violence (eg, physical injury, pain or discomfort of the victim). In fact, no character within the Advertisement makes (or threatens) physical contact with any other person in any way. Having regard to the dictionary definition of ‘violence’, which necessarily requires an act to cause or be capable of causing physical harm, none of the actions depicted in the Advertisement could reasonably be viewed as depicting violence of any kind.

In addition, Sportsbet makes the following observations with respect to the complaints:

- the characters depicted in the Advertisement are dressed in stereotypical Ninja attire, which included black pants, black jacket, black belt and a hooded cowl;*
- as part of the Ninja outfits, mock swords are attached to the characters’ backs in secure holsters. There are no guns depicted in the Advertisement whatsoever nor are there any depictions of any character holding these weapons and/or using these weapons;*
- the characters are engaging in commonplace activities that would be expected within a pub setting, such as playing darts, watching sport on TV, and sharing a meal, all of which do not create any sense of alarm or distress;*
- there are multiple audible ‘ninja’ references throughout the Advertisement, including by the character sitting in a splits pose at the bar who is clearly heard ordering a ‘Ninja ale’ at 0:07; and*
- the voiceover which can be heard at 0:12 within the Advertisement clearly says, “If being a Ninja was as easy as using the Sportsbet app, everyone would do it”, thereby clearly identifying the characters as ‘Ninjas’.*

Having regard to the above factors, Sportsbet strenuously denies any allegation raised in the complaints that the characters depicted in the Advertisement were “dressed as terrorists” and/or “look like Hamas terrorists” and firmly rejects any suggestion of the Advertisement playing on the ‘fear of terrorism’ or anything similar. There is no suggestion of alarm or distress conveyed in the Advertisement nor is there any impression that the characters within the Advertisement are linked to terrorist activities.

Conclusion

For the reasons outlined above, Sportsbet strongly rejects any assertion that the Advertisement breaches section 2.1 or 2.3 of the Code (or any other section) and submits that the Community Panel should dismiss the Complaint.

[1] Oxford Learner’s Dictionary of the term ‘violence’ (retrieved on 26 March 2024 from

https://www.oxfordlearnersdictionaries.com/definition/american_english/violence).

[2]Cambridge Academic Content Dictionary of the term ‘violence’ (retrieved on 26 March 2024 from <https://dictionary.cambridge.org/us/dictionary/english/violence>).

[3] See Ad Standards Community Panel case no 0017-22 (2 February 2022).

[4] See Ad Standards Community Panel case no 0259/18 (6 June 2018).

[5] See Ad Standards Community Panel case no 0264-20 (9 September 2020); case no 0314-18 (25 July 2018); and case no 0126/17 (22 March 2017).

[6]See Ad Standards Community Panel case no 0005-22 (19 January 2022). See also Ad Standards Community Panel case no 0063/16 (24 February 2016).

[7]As above

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 complainants’ concern that the advertisement is culturally insensitive and racist, and has violent connotations.

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
- Race - viewed broadly this term includes colour, descent or ancestry, ethnicity, nationality, and includes, for example, ideas of ethnicity covering people of Jewish or Muslim origin.

The Panel noted that a ninja was a covert agent, mercenary, or guerrilla warfare expert in feudal Japan, although more so known in the 15th century.

The Panel noted that as ninjas were Japanese, the complainant's concern that the actors in the advertisement are predominately Caucasian does raise issues of cultural appropriation.

The Panel considered that the actors in the advertisement do not make racist remarks, however noted that some viewers may consider their depiction to be inherently racist. The Panel considered that while the actors are clearly wearing costumes, their dress is not mocking of Japanese history.

The Panel noted that while it may have been preferable to use Japanese actors in the advertisement, the use of Caucasian actors in a manner in which there is no derogatory language or other vilifying material does not itself rise to a level that most members of the community would consider to be discriminatory.

The Panel considered that the advertisement does not depict anyone in a manner that is unfair nor in a manner that would be likely to humiliate or incite ridicule.

The Panel noted a concern that using Caucasian actors may subtly suggest that only Caucasian people gamble or that "white strength is greater". The Panel considered that this interpretation of the advertisement was unlikely to be shared by the broad community.

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 race, the Panel concluded that the advertisement did not breach Section 2.1 of the Code.

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

Does the advertisement contain violence?

The Panel noted the complainants' concerns that the ninjas in the advertisement bear some resemblance to people involved in the ongoing conflict between Israel and Hamas.

The Panel considered that while the clothing of the people in the advertisement may have some similarity to clothing people may have seen while watching coverage of the conflict, the people are clearly referred to as ninjas and their behaviour is consistent with that theme – disappearing in a puff of smoke, sitting on the ceiling, having excellent aim when throwing things.

The Panel considered that while some viewers may make a connection between the above-mentioned conflict and the advertisement, the content of the advertisement does not depict or suggest violence.

Section 2.3 Conclusion

The Panel concluded that the advertisement did not present or portray violence 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.