

Case Report

1. Case Number :	0176-24
2. Advertiser :	Apple Pty Limited
3. Product :	Entertainment
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Decision:	3-Jul-2024
6. Decision:	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.3 Violence

AANA Code of Ethics\2.4 Sex/sexuality/nudity

AANA Advertising to Childrens Code\2.4 Frightening Images

DESCRIPTION OF ADVERTISEMENT

There are seven versions of this on demand TV advertisement for the series 'Presumed Innocent' featuring scenes from the series, including:

- A man and woman kissing up against a wall.
- A man saying, "I did not kill her"
- Two people struggling underwater
- The feet of a dead person with a toe tag
- A man and woman kissing while her hair is being pulled.
- Someone punching the camera
- Someone restrained with rope.



THE COMPLAINT

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

This ad has explicit violent and disturbing visual content about murder, including a dead body. This has shown multiple times as we watch Masterchef as a family and my young children have been exposed to it many times in this episode alone. Why are streaming ads not under the same classifications as the show they're in? SBS food does this too, shows adult content ads during food shows!

I was watching Masterchef series 16 episode 4 on 10 play on 3 June with my children. During the ad breaks a trailer for an MA15+ tv show was shown multiple times. The show is called "Presumed Innocent" on Apple TV. The content was highly inappropriate for showing during a family entertainment program. On the trailer it says the classification is "MA15+ Strong themes, violence, references to sexual violence, blood and gore, sex scenes and sexualised imagery". I was concerned that my 7 and 11 year old children were exposed to this content.

Ad for a MA15+ Apple TV series during a free to air show rated PG at 7:30pm. The content of the ad was sexual, while watching a PG family show at family time on 9Now and 10Play.

My children are watching "LegoMasters" on Nine Now streaming service. Almost every ad break, a long and graphic ad for "Presumed Innocent" on Apple TV, which is rated MA.

THE ADVERTISER'S RESPONSE

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

Apple takes community standards seriously, and appreciates the views of the complainants. In considering the placement of advertising, Apple takes steps to ensure that advertising is placed with consideration for suitability of the audience, and regrets any distress that may have been inadvertently caused as a result of children seeing these advertisements.

There are a number of versions of the advertisement for 'Presumed Innocent' and, given the nature of placement of advertising on on-demand platforms, we have been unable to determine which version or versions are the subject of the complaints. Accordingly, we have included the script and digital copy of all the versions which were used. Our responses cover the content of all of the versions. Apple notes that the

advertisements in question did not appear during the terrestrial broadcast of the identified programs ('Lego Masters', 'Master Chef', 'Survivors', and the women's Under 19 Origin game), but only during the 'on-demand' version.

Description of the advertisement

The advertisements in question are 30/15 second television advertisements featuring footage from the Apple TV+ show 'Presumed Innocent. The advertisement promotes that the show is streaming on Apple TV+.

Apple's comments in response to the complaint

Although Apple considers both the content and placement of the advertisements to be compliant with the AANA Advertiser Code of Ethics (Code), Apple notes that these particular advertisements are no longer running on TV on-demand in Australia (having ceased to run on 23 June).

Apple has taken the opportunity to review the process by which we place advertisements on TV on-demand, so as to minimise the risk of this issue arising with future placements.

Addressing each of the matters in section 2 of the AANA Code of Ethics:

Section 2.1: The advertisements do not depict any material that could be described as discriminating against or vilifying any particular section of the community.

Section 2.2: The advertisements do not contain any material that could be described as exploitative or degrading of any individual or group of people.

Section 2.3: The advertisements do contain very brief depictions suggestive of violence, including (in various combinations across the different advertisements) a character punching an unidentifiable object, a hand picking up a fire implement, hands and feet restrained by rope, and images located in a hospital and a morgue. These images are associated with dialogue referencing a murder having taken place. The advertisements use quickly changing scenes which lessen the impact of the scenes in question and there is no focus on blood or gore. In the case of the images in the morgue, there are no full body images lessening their impact. These depictions are justifiable in the context of an advertisement for a thriller TV series, about a character accused of murder.

Section 2.4: The advertisement does not portray any nudity, and while it does contain imagery indicative of 2 characters being in a sexual relationship the extent of overtly sexual imagery is limited to passionate kissing while the characters are clothed.

Section 2.5: The advertisement does not contain any strong or obscene language.

Section 2.6: The advertisement does not contain any material that could be considered contrary to prevailing community standards on health and safety.

Section 2.7: The advertisement is clearly distinguishable as advertising.

Accordingly, Apple is of the view that the advertisements are not in breach of the Code.

In terms of the application of the Children's Advertising Code, we note that the program being advertising is rated MA15+ and, given its presentation, subject matter and target audience, is not 'principally or significantly appealing' to children. Although children do form part of the audience of the programs identified in the complaints, the majority of viewers for those programs are over 18 years of age (with viewership ranging between 81% and 93% depending on the program in question). When placing the advertisements, the on-demand services in question only placed them for adult viewers. Given these factors, Apple is of the view that the advertisements were not targeting children and, accordingly, the Children's Advertising Code does not apply in this instance.

I trust that this information will assist the Community Panel in its consideration of the complaints.

THE DECISION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Children's Advertising Code (the Children's Code) or the AANA Code of Ethics (the Code).

The Panel noted the complainants' concerns that the advertisement is inappropriate for placement where it may be viewed by children and the broad community.

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

The Panel noted that for the provisions of the Children's Code to apply, the advertisement must be found to target children under 15 years of age.

Does the advertisement target children?

The Panel noted that the Children's Code defines "target children" as:

"Target Children is determined by the context of the advertisement and the following three criteria:

1. *Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
2. *Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;*
3. *Expected average audience at the time or place the advertisement appears includes a significant proportion of Children.”*

The Panel noted that the Practice Note provides guidance on the interpretation of “target children”:

“All three criteria will be considered by the Community Panel in determining whether or not advertising targets Children. The weighting given by the Community Panel to each of the three criteria will be determined on a case by case basis. In the event of a complaint being considered by the Community Panel, the advertiser should be in a position to provide details in terms of the nature and intended purpose of the product, the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears.

“In relation to the third criteria, measures to determine if Children are likely to be a ‘significant proportion’ of the expected average audience may include one or a combination of the following:

- *Compliance with the Outdoor Media Association Placement Policy and Health & Wellbeing Policy which regulate the placement of advertising at primary and secondary schools which are locations where Children regularly and predictably gather. Where accurate program audience data is not available, the Community Panel may have regard to other factors listed above such as the program content, the time or the location where the advertisement is being shown (in line with the above provision).”*

Point 1: Is the nature and intended purpose of the product principally or significantly appealing to children?

The Panel considered that the advertisement is promoting an MA rated television show about someone being tried for murder. The Panel considered that this would not be principally or significantly appealing to children.

Point 2: Is the content of the advertisement principally appealing to children?

The Panel noted that the advertisement features scenes from the series, including flashing images of violence and dialogue about murder. The Panel considered that the themes, visuals, and language in the advertisement would be principally appealing to an adult audience and the advertisement was not principally appealing to children.

Point 3: Does the expected average audience of the advertisement include a significant proportion of children?

The Panel noted that the advertisement had been viewed during various PG rated television shows including MasterChef and Lego Masters, as well as during streamed sports programming. The Panel noted the advertiser's response that these shows had an audience of between 81% and 93% adults. The Panel considered that the advertisement did not have an audience of 25% children, and as such the audience of the advertisement would not include a significant proportion of children.

Targeting children conclusion

The Panel considered that the product would not have appeal to children, the content of the advertisement was not principally appealing to children, and audiences for the advertisement would not include a significant proportion of children.

The Panel found that the advertisement did not target children and therefore the provisions of the Children's Code did not apply.

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 the Practice Note for 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."

Does the advertisement contain violence?

The Panel noted that scenes in the advertisements included brief images of hands being restrained, the feet of a dead body, and a person punching something, as well as dialogue about murder.

The Panel considered that the advertisement did contain violence.

Is the violence justifiable in the context of the product?

The Panel acknowledged that some people may prefer programs with MA (15+) ratings not to be advertised during programs with lower ratings. However, the Panel considered that advertisers were able to promote such programs at any time so long as the content of the advertisements themselves did not contain graphic depictions of violence or strong suggestions of menace.

The Panel considered that the product being advertised was a television series about someone being tried for murder. The Panel noted that the advertisement played during PG rated shows on streaming services and during sporting programs and considered that the audience would include supervised children. The Panel noted that the scenes of violence were fleeting and not overly graphic or menacing and were of a level which was justifiable in promoting this product to this audience.

Section 2.3 Conclusion

The Panel concluded that the advertisement did not breach Section 2.3 of the Code.

Code of Ethics Section 2.4: Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel noted the Practice Note for the Code states:

“Discreet portrayal of nudity and sexuality in an appropriate context (eg advertisements for toiletries and underwear) is generally permitted but note the application of the relevant audience. More care should be taken in outdoor media than magazines, for example.

Images of naked couples embracing when viewed in a public space, has been found to be inappropriate and to not treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.”

Does the advertisement contain sex?

The Panel considered whether the advertisement contained a depiction of sex. The Panel noted the definition of sex in the Practice Note is “sexual intercourse; person or persons engaged in sexually stimulating behaviour”.

The Panel noted that the advertisement included dialogue about two people having an affair and depicted people kissing. The Panel considered that these people were depicted as being fully clothed, and the content of the advertisement itself did not contain sex.

Does the advertisement contain sexuality?

The Panel noted the definition of sexuality in the Practice Note is “the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters”.

The Panel noted that the advertisement included dialogue about two people having an affair and depicted people kissing. The Panel considered that the advertisement contained sexuality.

Does the advertisement contain nudity?

The Panel noted that the definition of nudity in the Practice Note is “the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity”.

The Panel noted that the people in the advertisement were fully dressed and considered that the advertisement did not contain nudity.

Are the issues of sex and sexuality treated with sensitivity to the relevant audience?

The Panel noted that the definition of sensitivity in the Practice Note is “understanding and awareness to the needs and emotions of others”.

The Panel considered that the requirement to consider whether sexual suggestion is ‘sensitive to the relevant audience’ requires them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement.

The Panel noted that the advertisement had played during PG rated programs and sports programs on streaming services. The Panel considered that the relevant advertisement would therefore be broad and include children.

The Panel considered that the depiction of two people kissing is fleeting and not the focus of the advertisement. The Panel considered the advertisement did not depict any explicit material or contain strong sexual references.

The Panel considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience, which would include children.

Section 2.4 Conclusion

The Panel concluded that the advertisement did not breach Section 2.4 of the Code.

Conclusion

Finding that the advertisement did not breach any other section of the Children's Code or the Code of Ethics the Panel dismissed the complaints.