

Case Report

1. Case Number :	0245-24
2. Advertiser :	Uber Australia Pty Ltd
3. Product :	Food/Beverages
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Decision:	23-Oct-2024
6. Decision:	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a man standing in an Uber Eats bag on a wooden box in the middle of the loungeroom. The man pulls his underwear down and screams "Lets gooooo, wooo hooo." His genitals are blurred. The text "Streaker No" appears on the screen. Followed by "Speaker Yes" and then "Uber Eats - Get almost almost anything."



THE COMPLAINT

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

Sexual parts are revealed even though they're blurred you !!

It has a man completely naked in the advert at 3:09 pm on channel 7

This is so inappropriate for kids to watch!!! Rude, nudity, inappropriate, and offensive! This is advertised during the AFL grand final where families with their children are watching! How dare they put this kind of ad on in this time frame and during a family watching time! Not right and should never be done! Very poor!

THE ADVERTISER'S RESPONSE

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

Thank you for bringing this to our attention. Uber provides the following response to the complaint, having regard to its responsibilities under the AANA Code of Ethics (Code).

Discrimination or vilification

The advertisement does not breach section 2.1 of the Code because it does not portray or depict any discriminatory or vilifying material.

Sexual appeal

The advertisement does not breach section 2.2 of the Code because it does not employ sexual appeal.

Violence

The advertisement does not breach section 2.3 of the Code because it does not present or portray violence.

Sex, sexuality and nudity

Section 2.4 of the Code states the following:

Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

Thank you for bringing these concerns to our attention. Uber submits that the advertisement does not breach section 2.4 of the Code for the reasons set out below. Uber submits that it is not insensitive to use the concept of a 'streaker', noting that streakers are typically humorously received (rather than offensively). The advertisement does not otherwise depict any sexual content or material, and any partial nudity was treated with sensitivity to the relevant audience. The advertisement ultimately promotes the utility of the Uber Eat's service in a lighthearted, comedic way that takes into account an understanding and awareness of the needs and emotions of the relevant audience, rather than intending to offend or disturb.

The advertisement treats the concept of a 'streaker' in accordance with the relevant, considered audience. The advertisement was set to run during the AFL season on TV. Accordingly, Uber identified the relevant audience to mostly consist of adults aged 18-

54 years, with a smaller subset of supervised teenagers and children who would likely be watching with family. Considering this audience, the advertisement briefly depicts a stalker cheering passionately in support of his sporting team and comically standing in an Uber Eats bag as a playful reference to stalkers who often interrupt major public, televised sporting events. The reference draws on the humour of an unexpected disruption to a formal event, with the element of surprise intended to generate laughter and amusement from crowds and audiences, rather than offence.

Uber does not agree with the complainants' claims that the advertisement contains a "completely naked...dancing man". Appreciating that 'nudity' may include partial or suggested nudity, in this advertisement, the lower section of the man's body and genitalia are covered by a large, pixelated rectangle so that he is not completely naked. This depiction was treated with sensitivity, having regard to the relevant audience set out above. In addition, the brief depiction of underpants being removed is not depicted in an inappropriate, sexual or suggestive way, and is shown in the immediate context of the stalker character.

Like 'streaking' events that commonly take place at large public events, the brief depiction of the stalker appears for only a few seconds before the advertisement cuts to the key focus - an Uber Eats bag filled with speakers. Rather than intending to offend or disturb any audience, the portrayal of the stalker only serves the purpose of humorously emphasising the vast range of product offerings on the Uber Eats platform and comically exaggerates what is not available on the platform. This humour was targeted at the common experience of the audience of largely adults and families who watch sporting or other major events, and would therefore recognise the reference. Similarly, where viewers included families and/or children, Uber considers that the non-sexual and playful nature of the advertisement would likely induce laughter rather than fear or offence.

Despite Uber being comfortable the advertisement does not breach the Code and despite the asset receiving a CAD rating of PG, Uber took a conservative approach and additional precautions prior to the launch of the campaign. In respect of the AFL Grand Final spot buys, Uber instructed that the advertisement only run after 8:30pm as the primary audience would likely be adults, teenagers and/or older children under the supervision of adults. Due to a miscommunication in relation to various other assets and additional inventory offered by the media owner, the advertisement appeared before 8:30pm and in conjunction with the kick-off of the AFL Grand Final from 2:30pm. As soon as Uber became aware of this error, Uber instructed that the advertisement be removed from circulation before 8:30pm in line with the initial instructions.

As advised by Ad Standards, we understand that complaints of this nature have been considered on many occasions by the Panel, which has found that it does not breach

the advertising codes. This advertisement should be regarded in the same light, including in line with the below:

- Case 0231-24, in which the Community Panel dismissed a complaint in relation to an advertisement depicting a man with his genitals blurred, dancing humorously. As was noted in this case, the Panel considered that the advertisement contained nudity but the use of pixelation, humour of the advertisement and non-sexual representation meant that the nudity was treated with sensitivity to the relevant broad audience.

- Case 0119-22, in which the Community Panel dismissed a complaint in relation to an advertisement depicting two partially naked people (with breasts and genitals pixelated), discussing renovations in a humorous way. As was noted in this case, the Panel considered that the pixelation, humour of the advertisement and the fact that the advertisement was not sexualised meant that the nudity was treated with sensitivity to the relevant audience of adults, teenagers and supervised children.

- Case 0190-19, in which the Community Panel dismissed a complaint in relation to an advertisement which included a brief scene where a man's buttocks were visible. As was noted in this case, the Panel considered that this scene was very brief, not the focus of the advertisement and that there was no overt nudity at a level that most members of the community would find confronting or unacceptable.

Inappropriate language

The advertisement does not breach section 2.5 of the Code because it does not use any inappropriate language, such as strong or obscene language.

Health and safety

The advertisement does not breach section 2.6 of the Code because it does not depict any material contrary to Prevailing Community Standards on health and safety.

Clearly distinguishable advertising

The advertisement does not breach section 2.7 of the Code because it is clearly distinguishable as advertising.

Children's Advertising Code

The Children's Advertising Code is not applicable because the advertisement promotes a product directed at adults.

Conclusion

Thank you for bringing this to our attention and for the opportunity to respond to the concerns raised. Uber submits that the advertisement does not breach any sections of the Code and respectfully requests that the complaints be dismissed.

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' concerns that the advertisement contains nudity which is inappropriate for the young audience viewing the advertisement.

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

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:

“Full frontal nudity and explicit pornographic language are not permitted. Images of genitalia are not acceptable. Images of nipples may be acceptable in advertisements for plastic surgery or art exhibits for example.

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 people when viewed in a public space, where the nudity is evident and the focus of the advertisement, have been found not to treat the issue of nudity with sensitivity to the relevant audience, even when the image is not sexual in nature.”

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 considered that the man was depicted as a streaker, and his nudity was not related to a sexual act. The Panel considered that the advertisement 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 considered that while the man in the advertisement was naked, his behaviour was not sexualised.

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 man is depicted as being naked, although his genitals are blurred. The Panel considered that the advertisement did contain nudity.

Is the issue of nudity 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 noted that assessing whether sexual suggestion is ‘sensitive to the relevant audience’ requires consideration of who the relevant audience is and how they are likely to react to or feel about the advertisement.

The Panel noted that this advertisement had been given a ClearAds rating of ‘P’ meaning the advertisement can only be shown anytime of the day, except during P and C rated programming. The Panel considered that the relevant audience for the advertisement would likely be broad and include children.

The Panel noted that while it is clear the man is naked the use of pixilation meant that his genitals are covered. The Panel considered that the advertisement was humorous rather than sexual. The Panel considered that there was a high degree of nudity suggested in the advertisement. The Panel considered that the impact of the suggested nudity was lessened by the humour of the advertisement and the fact that the advertisement was not sexualised.

Overall, the Panel considered that the nudity was treated with sensitivity to the relevant broad audience.

Section 2.4 Conclusion

The Panel found 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 Code the Panel dismissed the complaints.