



Case Report

1	Case Number	0003/12
2	Advertiser	Way Funky Company Pty Ltd
3	Product	Clothing
4	Type of Advertisement / media	Print
5	Date of Determination	08/02/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

2.4 - Sex/sexuality/nudity S/S/N - sexualization of children

DESCRIPTION OF THE ADVERTISEMENT

The advertisement under complaint is a 16 page A4 sized colour catalogue titled 'Funkita Girls Beach House, Summer 2011'. The catalogue contains a range of colour images of girls in Funkita swimwear, some posed individually and other posed in groups. The images use a number of settings in and around a beach house, including a Kombi van. The inside cover (pg 2) of the catalogue contains text describing the feel and theme of the swimwear range. The latter half of the catalogue contains a number of product images of the swimwear along with descriptions of each style in the range and a size chart.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

I just received a copy of the Funkita Girls Beach House Summer Catalogue after purchasing some swim wear on line for my child.

Both my wife and I found the images in the catalogue disturbing.

The images sexualised girls that where clearly under 16 years of age.

At least three images where set on or near the bed end of a Kombi van implying sexual activity(the front cover was particularly disturbing with a girl who looked around 10 lying provocatively in the back of the Kombi) .

All the images had girls with heavy make up on none of them where doing age or use specific activities like being in or near water or playing on a beach.

THE ADVERTISER'S RESPONSE

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

I refer to your letter dated 10 January 2012 to Way Funky Company Pty Ltd ("Way Funky") attaching a complaint received by the Advertising Standards Bureau ("Complaint").

In the Complaint the complainant alleges that the Advertisement breaches section 2.4 of the AANA Code for Advertising and Marketing Communications to Children ("Children's Code").

It is Way Funky's view that the Advertisement does not breach any provision of the Children's Code (or any other Code for that matter). Way Funky therefore refutes all of the allegations contained in the Complaint.

The Children's Code

Section 2.4 of the Children's Code provides that:-

"Advertising or Marketing Communications to Children:

(a) must not include sexual imagery in contravention of Prevailing Community Standards;
(b) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality"

Section 1 of the Children's Code defines "Children" to mean "persons under 14 years old or younger and Child means a person 14 years or younger" and "Prevailing Community Standards" to mean "the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it see fit, in relation to Advertising or Marketing Communications to Children".

The complainant alleges that the Advertisement sexualises children, that the Advertisement contains sexual imagery that contravenes prevailing community standards and that the Advertisement implies that children are sexual beings. Way Funky disagrees for the reasons outlined below.

Confidence

Way Funky refers the Advertising Standards Board ("Board) to the matter of Complaint No: 0453/11, in which the Board determined whether an advertisement showing Dakota Fanning (a notable young actress) posing in a mildly sexually suggestive manner with a perform bottle positioned between her legs breached the Children's Code.

The Board held that the image of Ms Fanning was an image that showed the actress in a confident manner, that it did not sexualise young women and that the actress' position was normal and appropriate.

The Advertisement in this case depicts, amongst other things, a child posing horizontally on a towel dressed in swimwear and sunglasses gazing out at the beach. It is an image which does not objectify or demean the child. To the contrary, it is a clear example of a child proudly, elegantly and confidently relaxing in a summer beach setting. In this context, the child's pose is reflective of the strength of character and persona exhibited in the image of Ms Fanning (as in Complaint No: 0453/11).

The Advertisement also depicts other children posing in children's swimwear in a relaxing and natural beach setting. The children are seen to be socialising in a comfortable and jovial manner. The intention of the Advertisement is to portray children with confidence, individuality and with a fashion attitude.

Relevance of the Advertisement to the Advertised Product

As the Board has noted in the matters of Complaint Nos: 276/09, 60/10, 0264/10 & 0265/10, the relevance of the images to the product advertised is the determining factor as to whether an advertisement treats sexuality, sex or nudity with sensitivity to the relevant audience, as required by section 2.3 of the AANA Advertiser Code of Ethics. In much the same way, the relevance of the images to the product is also relevant as to whether an advertisement contains sexual imagery which is in contravention of prevailing community standards.

In the matter of Complaint No: 0492/09, the Board considered an advertisement by Bras n Things, which depicted young women wearing underwear including the hanky panky and playboy range. The Board determined that it was not inappropriate for young women to be dressed in lingerie given that the advertised catalogue was for lingerie.

In this instance, the key product that is advertised in the Advertisement is children's swimwear. It is principally directed at parents (and relatives) who wish to purchase swimwear for their children or relatives.

On the principles of the determination made in Complaint No: 0492/09, Way Funky asserts that having regard to the product that is advertised, it is not inappropriate for children to be dressed in swimwear, and none of the advertised images are inappropriately sexualised.

The images of children posing in children's swimwear in a relaxing and natural beach setting are relevant to the product advertised. The Advertisement promotes fun, relaxed, healthy and sociable relations between children, all of whom are dressed in clothing suitable in a beach environment.

Further, the images contained in the Advertisement are discrete, do not contain any nudity or sexually explicit material whatsoever, and are not sexually suggestive. There is neither any overt sexual activity nor sexually suggestive behaviour in the Advertisement.

The style poses adopted by the children in the Advertisement are both age appropriate and within the bounds of community standards.

Accordingly, there is no reasonable basis upon which the audience of the Advertisement can take any sexual inference from the Advertisement.

For the matters aforesaid Way Funky submits that:-

- 1. the Advertisement does not include any sexual imagery in contravention of prevailing community standards;*
- 2. the Advertisement does not state or imply that children are sexual beings and that ownership or enjoyment of a product will enhance their sexuality;*
- 3. the Advertisement does not breach section 2.4 of the Children's Code (or any other Code).*

I hope and expect that this response will assist the Board in reaching the same conclusion.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concern that the advertisement features sexualised images of young girls in provocative poses.

The Board reviewed the advertisement and noted the advertiser's response.

The Board considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”.

The Board noted that the images are featured in a promotional swimwear brochure which was provided to the complainant after they had bought from the company. The Board noted the images consist of various shots of girls of varying ages wearing Way Funky swimwear and considered it was reasonable for an advertiser to depict its products being modelled in its advertising.

The minority of the Board considered that some of the images, particularly those of the younger girls (not the toddlers) were of concern. The minority considered that the young girls are posed in adult like or sophisticated poses, are styled to emulate adult women and that such styling and depictions sexualise children and thereby breach the Code.

The majority of the Board considered that the catalogue depicts a range of colourful new season swimwear, evocative of styles and patterns of the 1960s, for girls and that the images of the girls are not sexualised. The majority considered that, although posed in a manner that is transferable to women, the poses are not sexualised and, consistent with the 1960s theme, the advertisement depicts a houseful of girls talking and relaxing.

The Board noted the complainant’s concern that the images featuring a Kombi imply sexual activity. The Board noted the image of the girl reclining in the back of the vehicle. The Board noted that there are no boys or men depicted in the advertisement, that the girl is appropriately dressed in swimwear and is lying in a position that is not sexually suggestive. The Board considered that the association of the van is readily accommodated with the suggestion of a trip to the beach and that the complainant’s interpretation of the advertisement is unlikely to be one which is shared by the majority of the community.

The majority of the Board considered that most members of the community would not consider the images sexualised and determined that the advertisement was not sexualised and did not breach section 2.4 of the Code.

The Board determined that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach Section 2.4 of the Code.

Finding that the advertisement did not breach the Code on any other grounds, the Board dismissed the complaint.

