



Case Report

1	Case Number	0009/13
2	Advertiser	FOXTEL Management Pty Ltd
3	Product	Entertainment
4	Type of Advertisement / media	TV
5	Date of Determination	30/01/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

2.5 - Language inappropriate language

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement depicts dismayed looking elves opening mail in Santa's workshop. One of the elves opens a letter that has been sent to Santa and reads it out loud to the other elves: "Dear Santa, can we please have Foxtel with Nickelodeon". With a confused look the elf then asks "What the hell is a Nickelodeon?". The viewer is encouraged to "outgift" the elves this Christmas with the Foxtel Christmas offer.

THE COMPLAINT

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

It shows bad-tempered elves complaining and using bad language eg: "What the HELL". Christmas should be a special time for little kids and I feel that this ad takes away the magic of Christmas and Santa Claus for young children.

THE ADVERTISER'S RESPONSE

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

The television commercial is for Foxtel's 2012 Christmas campaign which offers new subscribers Foxtel's starter package free for the first 3 months on a 6 month plan (the "Advertisement").

The Advertisement was broadcast across the commercial television networks and SBS from 25 November 2012 until 9 December 2012. The Advertisement was approved for broadcast by the Commercials Advice (CAD reference: 967056) and was assigned a "G" placement code. A digital copy of the Advertisement and its script are attached for your reference. The aim of the Advertisement is to celebrate the festive season and promote Foxtel's end of year sale. The Advertisement depicts dismayed looking elves opening mail in Santa's workshop. One of the elves opens a letter that has been sent to Santa and reads it out loud to the other elves: "Dear Santa, can we please have Foxtel with Nickelodeon". With a confused look the elf then asks "What the hell is a Nickelodeon?." The viewer is encouraged to "outgift" the elves this Christmas with the Foxtel Christmas offer. The basis of the complaint is "language" and the potential breach of section 2.5 of the AANA Code of Ethics (the "Code"), which provides: "Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided." The complainant is concerned about the use of the word "hell" in an advertisement associated with Christmas, alleging that the Advertisement takes the magic out of Christmas and Santa Clause for young children. Foxtel can confirm that the Advertisement was aimed to appeal to potential new subscribers. Only persons over 18 years of age are eligible to sign up to Foxtel. Accordingly, the Advertisement was aimed at attracting the interest of the adult community 18 years or over. The theme of the Advertisement is that Santa's elves are being "outgifted" by the Foxtel Christmas offer. The Christmas offer is meant to be so good that rather than asking Santa for toys this Christmas, children are asking Santa for Foxtel. The use of the word "hell" was used in a comical sense to express the elves' frustration that children are failing to ask Santa for the toys that they have been busy making. Foxtel considers the use of the word "hell", in the context of its use within the Advertisement, to be innocuous and distinctly Australian. It was used in a humorous, light-hearted manner that is in line with, and reflects, the culture of the target audience. Foxtel believes that it is a word that has widespread and common use in the Australian vernacular. Foxtel notes that the Advertising Standards Bureau (ASB) has previously dismissed similar complaints on the basis that a term is considered to be part of Australian colloquial and vernacular language and where the term is unlikely to be considered offensive language by the majority of Australians. For example, the ASB did not consider the use of the term "bloody" or the phrase "bloody hell" in the context of the Tourism Australia advertisement to be inappropriate nor did it consider that the words were strong or obscene (complaint number 101/06). Foxtel submits that the use of the word "hell" was justified by the context of this Advertisement and was appropriate in the circumstances (including appropriate for the relevant audience and medium). Additionally, Foxtel does not believe that the word "hell" would be considered to be strong or obscene language. Foxtel takes the concerns of its subscribers and its commitment to the community very seriously and it was never Foxtel's intent to cause any offence. Foxtel submits that the Advertisement has not breached section 2.5, nor any other section, of the Code.

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 inappropriate behaviour and use of language.

The Board viewed the advertisements and noted the advertiser’s response.

The Board considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: “Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided”.

The Board noted the advertisement features three of Santa’s Elves working through Christmas letters. One of the Elves reads the letter of request for “Foxtel with Nickelodeon”. The Elf then remarks “what the hell is a Nickelodeon?” The voiceover goes on to explain the deal that is being offered.

The Board noted that the complainant’s concern that the depiction of bad tempered Elves takes away from the joy of Christmas particularly for children.

The Board noted that the promotion of the Foxtel service is intended to reach an audience that would likely be considering the installation of Foxtel. The Board considered that this target audience would likely be over the age of eighteen (18).

The Board noted that the use of Elves and Santa themes at Christmas time was common practice and would be considered reasonable by most members of the community as they search for Christmas gift ideas and best offers.

The Board considered that the use of the term “hell” by the Elves was used in a light-hearted, humorous way to portray frustration by the Elves about their own lack of knowledge about the product being requested. The Board noted that they have previously dismissed complaints on the basis that a term is considered to be part of Australian colloquial and vernacular language and where the term is unlikely to be considered offensive language by the majority of Australians.

The Board considered that the word “hell” when used in this way does consistently make up part of the Australian vernacular and that the advertisement did not feature any language which would be considered inappropriate, strong or obscene.

The Board determined that the advertisement did not breach Section 2.5 of the Code.

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