



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0029/15</b>
<b>2</b>	<b>Advertiser</b>	<b>Nimble Australia</b>
<b>3</b>	<b>Product</b>	<b>Finance/Investment</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Pay</b>
<b>5</b>	<b>Date of Determination</b>	<b>28/01/2015</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

2.6 - Health and Safety Within prevailing Community Standards

## DESCRIPTION OF THE ADVERTISEMENT

A woman is concerned that she will not be able to pay her phone bill, as she has been posting too many selfies. The Nimble Bunny (a man in a rabbit suit) suggests she obtains a loan from Nimble. The 15 second version features the Nimble Bunny reviewing a phone bill on the woman's couch.

## THE COMPLAINT

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

*The gist of the commercial is to get the girl to borrow money to feed her habit and not worry about the consequences of this by "just moving on". To celebrate the loan, she is encouraged to continue her habit by taking a "celebration selfie". In my humble opinion, this is just the same as gambling. At least they put the disclaimer at the end of their ads.*

## THE ADVERTISER'S RESPONSE

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

*This is a combined response to the three complaint numbers: 0016/15, 0019/15 and 0029/15*

*Nimble Australia Pty Ltd (Nimble) has carefully considered the complaints received by the Advertising Standards Bureau (ASB).*

*We appreciate being given an opportunity to respond before the Advertising Standard Board considers this matter.*

*Nimble respects the AANA Advertiser Code of Ethics (the Code), and we are confident that our advertising complies with the Code.*

*We carefully review and consider the contents of our advertising before it is broadcast, and we take viewer complaints seriously. We are concerned that a number of viewers were offended by our TVCs. However, we respectfully submit that none of the TVCs mentioned in those complaints has breached Section 2 of the Code.*

*- The advertisements*

*The complaints received by the ASB refer to different Nimble advertisements: 'phone bill', and 'kid's party'. There is a 15 second, 30 second and 45 second version of each advertisement.*

*- The complaints*

*One complaint (part of 0016/15) raises a concern about the alleged use of the word 'chillam' (sic) in the phone bill TVCs. (From the content of the complaint, we assume the complainant means 'chillum'.)*

*The other complaints raise broadly similar concerns about the Nimble advertisements. Those viewers express concerns about consumers being encouraged to take on debt, and suggest that consumers are being encouraged to spend irresponsibly.*

*We understand that the ASB's initial assessment of these complaints has identified that the Nimble TVCs may breach section 2.6 of the Code. Section 2.6 states that advertising 'shall not depict material contrary to Prevailing Community Standards on health and safety'.*

*- Our response*

*Chillam*

*One complainant alleges that the woman in the phone bill TVCs tells her male partner to 'chillam'. This word is not used in the TVCs, expressly or inadvertently. We assume the viewer has misheard the woman when she says 'Surely I'm not posting that many?'. (The Board will see that the written script contains the line 'Surely I don't post... that many...').*

*We therefore cannot see any basis for this complaint.*

*Debt concerns*

*We understand that the ASB's initial assessment – prior to reviewing the TVCs – is that the complaints may fall under section 2.6 of the Code.*

*We respectfully submit that there is nothing in the TVCs that could reasonably be seen as depicting material contrary to prevailing community standards on health and safety. No unsafe activities are depicted, and viewers are not encouraged to engage in dangerous behaviour. The TVCs also do not use techniques of emotional exploitation or emotional distress to encourage purchase.*

*The complaints relate to concerns about consumer debt and spending, and in some cases suggest that the complainants have underlying concerns about the small loans service offered by Nimble.*

*While we respect the right of these viewers to raise these issues, we do not think that their concerns relate to section 2.6 of the Code, or indeed any other part of the Code.*

*Further, Nimble takes pride in being a responsible lender, and we only approve approximately one in four applications. We are of the belief that we have one of the lowest debt default rates in Australia. We therefore refute any suggestion that we are attempting to encourage irresponsible spending and borrowing practices. In fact, prior to consumers being able to access the online application form, a 'Warning About Borrowing Statement' is shown to educate consumers about accessing assistance when they are experiencing financial difficulties. Nimble holds an Australian Credit Licence, issued by the Australian Securities and Investments Commission, and is required by law to adhere to the responsible lending rules outlined in the National Consumer Credit Protection Act.*

*Our TVCs are clearly intended to be humorous and generic in nature. In order to raise awareness of the services we offer in an engaging way, they contain slightly exaggerated versions of everyday scenarios where consumers may find themselves short of money. Our TVCs are not intended to be taken literally, and have regard to prevailing community standards. We are confident that they are understood as being light-hearted by audiences, and that they do not encourage irresponsible financial behaviour.*

*Some complainants believed that the TVCs were aimed at young viewers and one (Wing) mentioned seeing the phone bill TVC during a G-rated movie. In keeping with their 'W' CAD rating, the TVCs can be broadcast during G-rated programming. However, the TVCs are clearly not aimed at children or teenagers, and we do not believe a reasonable viewer would interpret them in this way. The only characters who are offered Nimble's products in the TVCs are clearly independent adults (our lending criteria strictly requires amongst other criteria, that customers are to be 18 years of age and over). We do not believe any Code issues are raised in this regard.*

*It is our firm belief that the TVCs comply with section 2 of the Code. We hope that the Board agrees with this view, and we look forward to receiving its determination. Please do not hesitate to ask if we can be of further assistance to the Board.*

## **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 encourages people to get in to debt over a phone bill which is against prevailing community standards.

The Board noted the complainants’ concerns that the advertisement is misleading in its suggestion that to get a loan is easy. The Board noted the issue of misleading advertising falls under Section 1 of the Code and concerns around truth and accuracy in advertising is a matter for the Australian Competition and Consumer Commission (ACCC).

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

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted that the advertisement features a woman upset over a large phone bill she has racked up by taking and posting numerous selfies until a man in a rabbit costume suggests she take out a Nimble loan to pay off her bill on time.

The Board noted it had previously dismissed the same advertisement on Free to Air TV in case 0016/15 where:

“The Board acknowledged that there is a level of community concern regarding borrowing money and debt-related issues but considered that consistent with its recent determination in case 0494/14 the money lending industry is heavily regulated and that services such as those offered by the advertiser are legally allowed to be advertised.

The Board noted the advertisement features a young woman who takes lots of selfies on her mobile phone and considered that the advertisement is targeting this younger section of the community. A minority of the Board noted that after the rabbit suggests to the woman she can use a Nimble loan to pay off her phone bill the woman continues to take selfies and considered that the advertisement is encouraging irresponsible financial behaviour as the woman does not appear to learn from her mistake.

Following considerable discussion however the Board noted that ‘pay-day’ loans and similar short-term lending facilities are allowed to be advertised and although the woman is not shown to learn from her excessive phone bill in the Board’s view the fantasy element of the advertisement makes the whole situation unrealistic and that whilst the woman continues to take selfies it is not possible to determine if she continues to breach her data limit. The Board noted that to obtain a loan certain requirements need to be met and considered that most members of the community would recognise that a magic bunny will not offer you a loan based on an excessive phone bill and that overall whilst the use of a large phone bill to demonstrate a loan product is not ideal in the Board’s view it does not amount to a depiction which is in breach of prevailing community standards.”

Consistent with its previous determination the Board considered that the advertisement does not depict material contrary to prevailing community standards.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

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