



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0046/17</b>
<b>2</b>	<b>Advertiser</b>	<b>Anytime Fitness</b>
<b>3</b>	<b>Product</b>	<b>Sport and Leisure</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>SMS</b>
<b>5</b>	<b>Date of Determination</b>	<b>08/02/2017</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

## ISSUES RAISED

2.5 - Language Inappropriate language

## DESCRIPTION OF THE ADVERTISEMENT

The complaint relates to an advertisement in the form of an SMS message seemingly sent by the Anytime Fitness Munno Para club. Its alleged wording is described in the complaint.

The precise wording of the SMS message contained in the complaint differs from the template SMS messages contained in the broader marketing campaign we provided our Clubs; however, given we have provided Clubs with similar example messages and the advertising campaign has been developed at a Head Office Level, we are of the view that it is appropriate for us to respond.

Examples of the template SMS messages we provided to Clubs include:

Say F\*CK UNFIT with the new Anytime Workouts app. Join in-club today at [insert Club name]. Reply STOP to opt out.

Say F\*CK UNFIT with the Anytime Fitness & 3 free 30 min PT sessions. Join in-club today at [insert Club name]. Reply STOP to opt out.

## THE COMPLAINT

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

*I received a text message from anytime fitness, the text message read as follows, F\*CK UNFIT! Make 2017 your year with our exclusive ANYTIME WORKOUTS App, With over 1,100 tailored workouts to kick-start your fitness goals. Normally \$10.99 P/month, Yours FREE when you re-join at Anytime Fitness- MUNNO PARA. Call 08 8254 8156 now! Reply 'Stop' to opt out*

*I was very shocked and felt uneasy from the message. I did not see the use of the word F\*CK in the message. There is no need to swear at customers. If they were to use them face to face they would be in a lot of trouble, so why use it in a SMS.*

## **THE ADVERTISER'S RESPONSE**

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

### *Anytime Fitness Network*

*Anytime Fitness is a franchise system that involves the development and operation of 24/7 fitness clubs using certain trademarks, systems and other intellectual property. The franchise system is owned by Anytime Fitness LLC of Minnesota, USA. We, Anytime Australia Pty Ltd have the rights, in Australia, to grant Anytime Fitness franchises to others (franchisees) who operate Anytime Fitness clubs using the system; we are therefore considered the Australian Franchisor. It is important to note the following characteristics of a franchise model:*

- Each franchise is independently owned and operated; and*
- Anytime Australia is a separate legal entity and does not own or operate any Anytime Fitness clubs on its own account.*

*Despite the above, we, in conjunction with our marketing agency, have developed, and made available to our franchisees, the relevant advertising campaign and the material the subject of the complaint. We have also used components of the campaign on our own website and social media channels. Accordingly, we consider it appropriate for us to respond to complaints that relate to our advertisements published in connection with our campaign.*

### *Applicable Codes*

*The complaint raises issues under Clause 2.5 of the AANA Advertiser Code of Ethics ('the Code') which we address in our response below. Anytime Fitness is of the view that Clauses 2.1, 2.2, 2.3, 2.4 and 2.6 of the Code, together with the AANA Food & Beverage Advertising & Marketing Communications Code, are not relevant to the advertisement.*

*The AANA Code of Advertising & Marketing Communications to Children does not apply as the advertisement is not directed primarily to children and is not a product targeted toward and having principal appeal to children. Anytime Fitness Clubs do not allow minors to join if under the age of 16 and minors aged 16 and above can only join approved Clubs with the permission of their guardian.*

### *Campaign Context*

*The SMS message to which the subject complaint relates form part of the wider “F\*ck Unfit” campaign which was launched by Anytime Fitness on 9 January 2017 (however, as mentioned above, the wording of the particular subject SMS varies from the campaign templates). The campaign is due to run until 11 February 2017. The F\*ck Unfit campaign is designed to inspire a fitter Australia by challenging the fundamental health problem of being unfit. Approximately two thirds of Australians are overweight or obese; as Australian’s largest gym chain, Anytime Fitness considers itself morally obligated to take positive action to address this issue. This emotive marketing campaign challenges Australia to become fitter and healthier with the support of Anytime Fitness and the Anytime Workouts app, which is a digital workouts tool Anytime Fitness launched to all its members alongside the campaign. Anytime Workouts features over 1,100 workouts and 2,700 exercises and is accessible exclusively to members via the Anytime Fitness app. Anytime Fitness seeks to motivate and equip Australians with the necessary resources to take the nagging, pessimistic internal dialogues about getting fit and flip them into positives by saying “F\*CK UNFIT!”. Underpinning this is the message that with Anytime Fitness you’re not just a part of a gym, but you’re part of the largest fitness community in Australia with people who’ve overcome those same negative voices. Our cultural and commercial ethos centers upon a bona fide commitment to improving the nation’s health.*

#### *The advertisement*

*The relationship between the campaign, Anytime Fitness’ goal to inspire a fitter, healthier Australia and the launch of the app is clearly expressed in the template SMS messages.*

*The SMS messages do not contain inappropriate, strong or obscene language. Anytime Fitness understands that the word ‘fuck’ may be considered obscene and inappropriate to some members of the community. However, whilst the campaign alludes to the word it does not appear in any of the advertisements in full as the ‘u’ has been replaced with a ‘\*’. The context of the advertisements is the promotion of a physical fitness center to adult Australians and the word is used in a motivational way to inspire positive change for the betterment of the viewer’s, and ultimately the nation’s, health.*

*Anytime Fitness does not condone overt or unnecessary swearing. Instead the campaign is meant to allude to a strong statement that we’re making in the face of health problems which plague our communities. Our goal was not to swear to offend or just for the sake of it.*

*Further, the phrase “F\*ck Unfit” is not used in a sexual or aggressive manner and instead is used in a motivational manner, intended to inspire people to take control of their fitness goals and highlight the Anytime Workouts app which members can use to make their fitness goals a reality. We firmly believe, and respectfully submit, that there is a significant public interest in combatting Australia’s overweight and obesity crisis and that the advertisement ought to be considered in light of its purpose of advancing this public interest.*

*Anytime Fitness is of the opinion that if you view the SMS messages in the context of the Anytime Fitness brand, the intended audience, the goal to create a fitter and healthier Australia, the launch of the Anytime Workouts app and the motivational tone used throughout, the overall use of the language cannot be deemed strong, obscene or inappropriate.*

*Importantly, the SMS messages were only sent to individuals who are part of our Anytime Fitness database, meaning that the individuals who received the messages are people who*

*have provided their contact details to our Clubs. Further, no one under the age of 16 would have received the SMS messages as our clubs do not accept members under the age of 16 and 16 year olds can only join approved clubs with parental permission. Given the closed audience who received the messages and the age bracket of the audience, we are of the view that the language cannot be deemed obscene or inappropriate in these circumstances.*

*Anytime Fitness became aware of the ASB's determination in regard to SBS Corporation's "F\*CK, THAT'S DELICIOUS" advertisement just prior to commencing the F\*ck Unfit campaign. In an effort to conform with the ruling, Anytime Fitness amended the components of its external advertising that had a higher possibility of being viewed by children. Specifically, "F\*ck Unfit" was changed to "F\*?# Unfit" for certain mediums in order further conceal the word. However, Anytime Fitness are of the view that in circumstances where the campaign is being displayed to a closed off audience such as to members of the Anytime Fitness database, further concealment is not necessary.*

*For the reasons stated above, Anytime Fitness is of the view that the SMS messages and other advertising material which forms part of the F\*ck Unfit campaign does not breach the Code and the complaint should be dismissed.*

## **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 concerns that the advertisement features strong language which is offensive and not appropriate for a text message.

The Board viewed the advertisement 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 (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided".

The Board noted that there are various versions of this SMS advertisement, each featuring the phrase, "F\*CK UNFIT!"

The Board noted the use of the F word with an asterisk replacing the letter 'u'. The Board noted that the asterisks did not obscure the meaning of the word, and considered that in the context of the text message it was clear what the word was meant to be.

The Board noted the advertiser's response that the intended audience was adults who had previously provided contact details to Anytime Fitness. The Board noted that members of Anytime Fitness can be under 16 if they have their parents' permission but a minority of the Board considered that it was unlikely children under 16 would receive the SMS advertisement. A minority of the Board noted the context of the phrase, "F\*CK UNFIT!" as part of an encouragement to join the gym and considered that the language used was not inappropriate for the relevant audience of adults who had provided their details to the

advertiser.

The majority of the Board however noted the advertiser's response that the phrase "F\*CK UNFIT!" is intended to be motivational but considered that while this may be the case, in the Board's view many people still find references to the F word to be strong and obscene. The Board noted that the phrase, "F\*CK UNFIT!" is a very clear reference to the word "fuck" in each version of the advertisement and considered that this is not the sort of language you would expect to receive from a gym. The majority of the Board considered that many adults would find this phrase to be strong, obscene and not appropriate in the context of an SMS message sent to their phones just because they had previously been in contact with the advertiser.

Consistent with its recent determination for the same advertisement when used on flyers, posters, Facebook and Outdoors (0033/17, 0034/17, 0035/17, 0041/17), the Board considered that the language in the advertisement was strong and not appropriate in the circumstances.

The Board determined that the advertisement did breach Section 2.5 of the Code.

Finding that the advertisement did breach Section 2.5 of the Code, the Board upheld the complaint.

## **THE ADVERTISER'S RESPONSE TO DETERMINATION**

We refer to your letter of 13 February 2017 and acknowledge the ASB's decision on this matter.

The advertising campaign concluded on 11 February 2017 and our franchise network have been advised to discontinue use of all marketing materials and advertisements associated with the campaign. We will advise our franchise network of the ASB's decision.

We wish to clarify an error in the Board's comments. The Board stated "that members of Anytime Fitness can be under 16 if they have their parents' permission". This is incorrect. As noted in our initial response to the complaint "clubs do not accept members under the age of 16 and 16 year olds can only join approved clubs with parental permission". Accordingly, no one under the age of 16 would have received the SMS.

We request that you also publish our comments above regarding the error when publishing our response to the Board's determination.

