



Case Report

1	Case Number	0079/15
2	Advertiser	Australian Super
3	Product	Finance/Investment
4	Type of Advertisement / media	Mail
5	Date of Determination	25/03/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

A packet appearing similar to that of a headache medicine or other medicine packet (blister pack) and includes the text "Australian Super."

The list of symptoms it will relieve include: relief from superannuation contribution pain, fast, effective and super convenient.

THE COMPLAINT

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

Totally inappropriate form of marketing. They appear to be "pushing drugs"...

THE ADVERTISER'S RESPONSE

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

1. Background:

Australian Super Pty Ltd is the trustee for "Australian Super", which is a superannuation fund regulated by APRA (Australian Prudential Regulation Authority). We manage the

superannuation funds of our customers, whom we refer to as “members”. For the purposes of this letter, I will refer to our customers as our “members”. As at 31 December 2015, we managed \$84 billion in members’ assets (which we refer to as funds under management). As at 31 December 2014, we had approximately 2 million members. Members are classified as either:

- “choice” members, whereby they actively choose Australian Super as their superannuation fund; or*
- “deemed” members, whereby their employer (a business/company) chooses Australian Super as their default superannuation fund.*

Australian Super may be the default superannuation fund of an employer due to:

- Australian Super being specified as such in a Modern Award (some Modern Awards specify various superannuation funds which an employer can choose);*

- an employer choosing Australian Super as their superannuation fund of choice.*

As at 31 December 2014, we had 200,000 employers (businesses/companies) paying their employees’ superannuation contributions into Australian Super.

Australian Super’s advertising and marketing communications are aimed at our members.

We classify these advertising or marketing communications as B2C (from Australian Super to our customers/members). At times, we will engage in public relations events and education campaigns directed to our employers. These events and campaigns are referred to as B2B events, campaigns and communications.

2. The Campaign being the subject of the Complaint:

2.1 The reason for the Campaign:

Australian Super is required by law to communicate with all our employers (those businesses/companies which pay their employees’ superannuation into Australian Super) about SuperStream. Superstream is described on the ATO website as “a government reform aimed at improving the efficiency of the superannuation system. Under SuperStream, employers must make super contributions on behalf of their employees by submitting data and payments electronically in a consistent and simplified manner.”

Given that we had to communicate with our employers and educate them on Superstream and Australian Super’s Clearing House solution, “QuickSuper”, we decided to outsource this B2B communication to one of our advertising agencies (CHE Proximity) to segment our employers and develop content suited to each segment. CHE segmented the database into 5 segments, looking at the number of employees the businesses/companies had and also the percentage of these employees who were Australian Super members. From that point, we selected two segments and we sent them an informative and educational package in the mail. The letter inserts were tailored to:

- (a) active employers who had less than 20 employees (the term “active” in this sense means that these employers have actively chosen Australian Super to pay their employees’ superannuation contributions);*

(b) *active employers who had more than 20 employees;*

(c) *deemed employers who had less than 20 employees (the term “deemed” in this sense means that these employers had employees who are Australian Super members, but the employer was not registered as an employer with Australian Super); and*

(d) *deemed employers who had more than 20 employees.*

The creative idea came about as a comical response to feedback from employers telling us that superannuation was a ‘headache’ and a source of pain for them. As superannuation can often be perceived as a boring subject, our creative agency came up with the idea of this pack to humorously and entertainingly educate our employers on Superstream and Australian Super’s Clearing House solution.

2.2 Description of the package:

A mint box was sent by mail to the business address of the segmented employers. The box contained mints in a blister pack. Within that box, was an informative and educational letter – there were 4 different versions of this letter (see attached).

We sent the package to 8,961 active employers (4% of our employer base) and 2,181 deemed employers (1% of our employer base).

We sent the packages on 10 February 2015. This was a one-off mail out.

The package (including the concept and content of the letter) was signed off by our Compliance department to ensure compliance with all relevant laws and regulations, including those imposed by ASIC, APRA and the ATO.

3. The Complaint and the AANA Advertiser Code of Ethics:

3.1 The Complaint:

*The complaint described Australian Super’s ad as follows:
“Australian Super have mailed out a box which is made up to appear like pharmaceutical goods (pain relief). Oversized “medication” in blister packs”.*

The Complainant’s reason for concern was described as: “Totally inappropriate form of marketing. They appear to be pushing drugs.”

3.2 The AANA Advertiser Code of Ethics:

Your letter states that the complaint raises issues under Section 2 of the AANA Advertiser Code of Ethics (the “Code”).

We note that the Code applies to “Advertising or Marketing Communications” which is defined as:

any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, and over which the advertiser or marketer has a reasonable degree of control, and that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organization or line of conduct, but does not include Excluded Advertising or Marketing Communications (emphasis added).

We further note that the Code does not apply to “Excluded Advertising or Marketing Communications” which is defined as:

“labels or packaging for products, public relations communications (corporate or consumer) and related activities and, in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station (emphasis added).

We respectfully submit that the package that was sent to employers was “Excluded Advertising or Marketing Communications” for one or more of the following reasons:

(a) the campaign was a B2B communication which was undertaken for the purposes of educating and informing employers of their legal superannuation obligation under Superstream, and therefore was a public relations communication or a related activity;

(b) the communication was not communicated or sent to our customers (members) – it was not a B2C campaign;

(c) the communication was sent to the business addresses of a small percentage of employers – just over 5% of our total number of contributing employers;

(d) the package being the subject of the complaint was a “label or package” for the mints that were contained within the box – labels or packaging for products are specifically excluded from the operation of the Code.

In the event that you disagree with the above and you maintain that the Code applies to our communication (which we respectfully maintain would be an incorrect interpretation of the Code), then we address the consumer complaints sections of the Code below.

3.2 Consumer Complaints sections of the Code:

Although we maintain that the Code does not apply to the package that was sent to employers, in the event that you disagree with the above, we address the sections of the Code as follows.

3.2.1 Section 2.1 of the Code - Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief:

This section is not relevant. The package did not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of

race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

3.2.2 Section 2.2 of the Code - Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people:

This section is not relevant. The package did not employ sexual appeal.

3.2.3 Section 2.3 of the Code - Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised:

This section is not relevant. The package did not present or portray violence.

3.2.4 Section 2.4 of the Code - Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience:

This section is not relevant. The package did not contain content that related to sex, sexuality or nudity.

3.2.5 Section 2.5 of the Code - 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:

This section is not relevant. The package did not contain any inappropriate language.

3.2.6 Section 2.6 of the Code - Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety:

The complainant contends that Australian Super “appear to be “pushing drugs””.

We vehemently deny that claim, and we deny that the package contravenes section 2.6 of the Code.

As mentioned above, the creative idea for the design of the package came about as a comical response to feedback from employers telling us that superannuation was a ‘headache’ and a source of pain for them. As superannuation can often be perceived as a boring subject, our creative agency came up with the idea of this pack to humorously and entertainingly educate our employers on Superstream and Australian Super’s Clearing House solution.

The package was branded Australian Super and contained humorous statements such as “relief from superannuation contribution pain” and “side effects may include productivity and reduced stress” and most importantly contained an informative brochure within the pack educating employers on the Australian Super Clearing House.

As mentioned above, the package was delivered to the business addresses of employers.

A reasonable employer receiving the package:

· would not think that the package was a packet of medication; and

· would not think that the package was in any way promoting the use of drugs.

On the contrary, a reasonable employer receiving the package would find the package as humorous, entertaining and informative.

Australian Super has anecdotally received lots of positive feedback from employers and from Westpac (being the bank we have partnered with for the Clearing House solution) in relation to the package.

In summary, I respectfully submit that:

(a) the Code does not apply to the package and accordingly, the complaint must be

dismissed; or

(b) if you disagree that the Code does not apply, that the Code has not been contravened in any way whatsoever, and accordingly, the complaint must 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 concern that the advertisement is an inappropriate form of marketing as it is seemingly ‘pushing drugs.’

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 was a mail-out, presented as a medicine box (similar to paracetamol) and contained mint confectionary. The box included an information sheet about Australian Super and the box itself included the title “Australian Super” and a list of symptoms that the product would alleviate.

The Board noted the complainant’s concern that the promotion is inappropriate and “pushing drugs.”

The Board noted that the blister pack was sent to a select mail distribution list of particular employers and deemed employers and included detailed information in the pack regarding the superannuation product.

The Board noted that the package did look very similar to a paracetamol packet in size and shape but that the target audience being adults would clearly be able to identify that it was in fact marketing material and not mild pain relief medication.

The Board noted the reference to “one less headache.” The Board agreed that the term “headache” is well known and widely used as a term applied to difficult things or things that are troublesome. The Board agreed that in general the issue of superannuation is considered a difficult product to understand and that the promotion is intended to attract the attention of the receiver so that they may find the information useful and of assistance in easing the confusion around superannuation.

The Board considered that the incorporation of a marketing concept imitating mild pain relief medication to assist in better understanding the headache of superannuation did not depict material contrary to prevailing community standards on health and safety and 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.

