



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0121-21
2. Advertiser :	Spin Master
3. Product :	Toys and Games
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	26-May-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Advertising to Childrens Code\2.5 Safety

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a child (face not visible) colouring Orbeez, hydrated 'grown' water beads. In the opening scene the child chooses colours contained in liquid colouring bottles to add to tubes containing Orbeez. After the colours are added, the child shakes the tubes to mix the colours and each of the six coloured tubes is then individually depicted on a table to demonstrate the effects of colouring. This scene is overlaid with the words "what colour will you make?", followed by a separate scene with the words "COLOUR your own Orbeez" in bold and colourful font. The child then pours some of the coloured Orbeez into a bowl, ready for play. The Advertisement finishes by showing the Orbeez products available for purchase which includes the Orbeez Colour Meez kit the subject of the Advertisement as well as the Orbeez Soothing Spa (from left to right). The music throughout the Advertisement is an electrical beat and the voiceover used is a child's, aged 11 at time of recording.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:



This advertisement breaches the AANA Code for Advertising and marketing communications to children, specifically code 2.5b which states 'Advertising or marketing communication to children must not advertise Products which have been officially declared unsafe or dangerous by an Australian government authority. The Orbeez colour balls have been officially declared unsafe and dangerous by the Australian Competition and Consumer Commission (ACCC). For more information about the declaration and warning from the ACCC, please visit <https://www.accc.gov.au/media-release/accc-warns-of-dangers-of-water-expanding-balls-to-kids#:~:text=%E2%80%9COnce%20ingested%2C%20just%20one%20ball,as%20toys%20to%20immediately%20stop.>

I object to this advertisement being aired on Australian television because it promotes unsafe and dangerous behaviour by children. It also promotes a false idea that this product is safe for parents to buy and for children to play with. Our son ingested one of these balls while playing with it at his childcare centre, which caused much concern and resulted in us seeking medical advice. Other examples exist whereby Australian children have ingested the balls and required urgent, life saving surgery for removal. You can also see evidence highlighting the dangers of this product from the Australian Medical Journal at <https://www.mja.com.au/journal/2016/205/11/dangerous-toys-expanding-problem-water-absorbing-beads>

By allowing this advertisement to continue to be aired on Australian television, I believe the ad standards community panel would be negligent and in part complicit for any future injuries sustained by children using this product.

THE ADVERTISER'S RESPONSE

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

We refer to your letter dated 6 May 2021 (Your Letter) relating to a complaint received by Ad Standards dated 17 April 2021 (Complaint).

The Complaint relates to a free to air television advertisement for Spin Master's Orbeez Colour Meez products (Colour Meez Kit and Soothing Spa) which was aired on Channel 10 Shake (13) on 10 April 2021 (not 2020 as indicated in the Complaint) (Advertisement).

Thank you for providing Spin Master with the opportunity to respond to the Complaint. At the outset, we would like to note that Spin Master takes its compliance obligations with the Australian Association of National Advertisers, Ad Standards and all other applicable regulatory requirements very seriously and we intend to cooperate with Ad Standards to address the current complaint.



We respond to each of the matters set out in Your Letter and the Advertiser Response Form as follows:

Details of the programs in which the Advertisement appears

The Advertisement appeared on:

30 Sec Spot - G8XQ3TGF:

9Go! – Commenced: April 4, 2021 – Ended: April 10, 2021

10Shake – Commenced: April 4, 2021 – Ended: April 10, 2021

Foxtel - Commenced: April 4, 2021 – Ended: April 10, 2021

15 Sec Spot - G8XQ2TGF:

9Go! – Commenced: April 11, 2021 – Ended: April 24, 2021

10Shake – Commenced: April 11, 2021 – Ended: April 24, 2021

Foxtel - Commenced: April 11, 2021 – Ended: April 24, 2021

Whether the audience of the programs is predominantly children

Yes, the audience of the programs in which the Advertisement appears is predominantly children aged 5-12 years.

Whether the Advertisement is primarily directed to children

Yes, the Advertisement is primarily directed to children aged 5 (five) years and older.

Comprehensive comments in response to the Complaint

Spin Master is a leading global toy and entertainment company focused on creating exceptional play experiences for children. Spin Master is the supplier of the products the subject of the Advertisement.

At the outset, we note that the Complaint is specifically directed to an alleged breach of section 2.5(b) of the Australian Association of National Advertisers (AANA) Children’s Advertising Code which states that “Advertising and Marketing Communication to Children must not advertise Products which have been officially declared unsafe or dangerous by an authorised Australian government authority.” Spin Master respectfully does not agree with the Complaint and does not consider that the Advertisement breaches this or any other section of the AANA Children’s Advertising Code, nor does it breach any other applicable AANA Codes, laws or regulations.

Specifically, contrary to the suggestion made by the complainant:



1. No Orbeez Colour Meez products featured in the Advertisement (or otherwise) have ever been declared unsafe or dangerous by any authorised Australian government authority, including the Australian Competition and Consumer Commission (ACCC). To falsely suggest otherwise is itself misleading and has the potential to damage Spin Master's reputation with respect to these products and more broadly.

Children's product safety is fundamental to Spin Master's operations. Safety and quality is embedded into every product and play experience and this commitment is evident in every aspect of our business from product development and quality testing to product design and packaging. Creating connections with children and families who put their trust in our products is at the core of our business and our commitment to providing children and their families with the safest and highest quality toys.

Further, as Ad Standards would be aware, stringent regulations and safety standards apply to products sold as children's toys in Australia. These standards address matters including choking hazards, flammability, and presence of known toxins. All Orbeez products, including the products depicted in the Advertisement, have been the subject of repeated testing to ensure their ongoing compliance with all relevant safety standards for toys not only in Australia, but all other markets in which such products are available for sale.

In support of this submission, we enclose a copy of a test report (Appendix 1) for Orbeez Colour Meez dated 26 March 2020 demonstrating compliance with the following relevant Australian specific standards and requirements:

- Australian / New Zealand Standard AS/NZS ISO 8124.1:2019 safety aspects related to mechanical and physical properties;*
- Australian / New Zealand Standard AS/NZS ISO 8124-2:2016 – flammability test;*
- Australian / New Zealand Standard AS/NZS ISO 8124-3:2012 on toxic elements test (Australian Trade Practice Act 1974 with Consumer Protection Notice no. 1, 2009 – Consumer Product Safety Standard on Lead and certain elements in children's toys.); and*
- Australian / New Zealand standard AS/NZS 8124.3:2012/Amdt 1:2016 on toxic elements test.*

The Report also references other standards which have broad application and which the products were tested against.

We confirm that this test report covers the products the subject of the Advertisement and complies with all relevant Australian standards and regulations relating to the sale of such products in Australia. For completeness, we also enclose a separate test report demonstrating compliance of Spin Master's Orbeez Wow World – Wowzer



Surprise product to relevant Australian and international standards. This product is not featured in the Advertisement.

With respect to product packaging, we also confirm that all Orbeez Colour Meez products are sold in Australia with the requisite warning label which is included on product packaging and at point of sale ('Choking Hazard – Small Parts and Small Balls. Not suitable for children under 3 years') and are only recommended for sale to children aged 5 (five) years plus. Spin Master acknowledges that choking in babies and young children is an important safety concern, however babies and children under 3 (three) years of age are not the audience of the Advertisement and the actor in the Advertisement does not interact with the product in a way that could reasonably result in ingestion of the products or choking.

2. The Orbeez Colour Meez products are not "expanding" colour balls.

Orbeez are hydrated grown water beads and are sold in this form (expanded), not as dehydrated or seed beads which subsequently expand when they come into contact with liquid. Spin Master has never sold dehydrated or seed beads to consumers in Australia, either by reference to the product name Orbeez or otherwise.

Further, it was products sold in dehydrated / seed form (by third parties, not sold by Spin Master) which were the subject of the ACCC's warning issued on 6 March 2015. Spin Master's hydrated water bead products were not mentioned or named in this warning, nor have they ever been declared unsafe or dangerous by the ACCC or any other Australian regulatory authority. Further, no interim or permanent product ban has been placed on these products (dehydrated or hydrated) by the ACCC.

Further, the Advertisement does not mislead or deceive in regards to the nature and composition of the water beads – it is clear that the product being advertised are water beads in hydrated form with a clear focus of the advertisement being the ability to get creative and colour/customise Orbeez according to colour preference. This is further emphasised by the words appearing on screen and voiceover which focuses on the "colouring" aspect of the products. Further, water beads in dehydrated form do not feature in the Advertisement in any way.

In the circumstances, we do not consider that the Advertisement misleads or deceives children in breach of section 2.2(a) of the AANA Children's Advertising Code, either by creating a false or misleading impression in the minds of children about the content or nature of the product or otherwise.

For the reasons set out above, the assertions made in the complaint regarding Orbeez Colour Meez products are not true or substantiated. In those circumstances, the Advertisement does not breach section 2.5(b) or any other section of the AANA Children's Advertising Code. Given the nature and subject matter of the



Advertisement, we do not consider that the matters outlined in sections 2.4, 2.6 – 2.13 (inclusive) of the AANA Children’s Advertising Code are relevant considerations which require a response.

We also do not consider that the Advertisement breaches any section of the AANA Code of Ethics. Specifically, the Advertisement:

- *does 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 orientation, religion, disability, mental illness or political belief (section 2.1);*
- *does not employ sexual appeal where images of minors are used (section 2.2(a)) or in a manner which is exploitative or degrading of any individual or group of people (section 2.2(b));*
- *does not present or portray violence (section 2.3);*
- *does not contain content related to sex, sexuality or nudity (section 2.4);*
- *uses language appropriate for the audience and medium (section 2.5);*
- *and*
- *is clearly distinguishable as advertising (section 2.7).*

For the reasons mentioned above, we also do not consider that the Advertisement depicts material contrary to prevailing community standards on health and safety (section 2.6). As outlined in the AANA Code of Ethics Practice Note, section 2.6 is “intended to prevent advertisers from depicting unsafe behaviour as a means to demonstrate potential negative effects, such as an advertisement for road safety depicting someone driving in a car after drinking alcohol.” This section of the Code is clearly directed at matters which are not the subject of the Advertisement. In any event, the visuals, language and theme of the Advertisement are consistent with other advertisements directed primarily at children and no unsafe connotations or depictions are present in or arise from the Advertisement. In summary, the Advertisement does not in any way encourage or promote individuals, whether adults or children, to engage in unsafe or dangerous behaviour or practices.

In light of the above matters, Spin Master submits that the Complaint should be dismissed in its entirety and thanks the Panel for the opportunity to respond to the Complaint.

Please let us know if you have any questions about any of the matters raised in this letter, or if we can be of further assistance.



THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children.

The Panel noted the complainant's concern that the advertisement promotes expanding colour balls - a product which has been declared unsafe and dangerous by an Australian government authority.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel considered whether the advertisement complied with the Children's Code. To fall within this Code, "Advertising or Marketing Communications to Children means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product".

Is the advertisement directed primarily to children?

The Panel considered whether the advertisement is directed primarily to children (14 years or younger). The Panel noted the Children's Code defined advertising and marketing communications to children as means Advertising or Marketing Communication which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product."

The Panel noted that Product is defined as: "goods, services and/or facilities which are targeted toward and have principal appeal to Children."

Is the theme of the advertisement directed primarily to children?

The Panel considered that the theme of the advertisement is that the toys are exciting and can be coloured depending on a child's preference. The Panel considered that this is a theme which would be directed primarily to children aged 14 and under.

Is the language of the advertisement directed primarily to children?

The Panel noted that the language used in the advertisement is high-energy and excited and that this is designed to appeal to children. The Panel noted that in particular the advertisement voiceover is performed by a child and that the voiceover invited the viewer to choose their own colour and to play and the Panel considered that this would appeal to children.

Overall the Panel considered that the language of the advertisement was directed primarily to children aged 14 and under.



Are the visuals of the advertisement directed primarily to children?

The Panel considered that the advertisement featured bright colours and hands playing with the coloured balls, as well as quick-paced visuals showing the product being used. The Panel noted that the advertisement contained images of hands interacting with the products.

The Panel considered that the visuals of the advertisement were directed primarily to children aged 14 and under.

Is the content of the advertisement overall directed primarily to children?

The Panel reiterated that it is essential that they consider all elements of the advertisement and to make a decision based on how all of the elements of the advertisement interact, and the overall impression that they make, in determining whether an advertisement is clearly directed primarily to children.

The Panel considered that the overall advertisement was clearly designed to attract children's attention through the use of themes visuals and language and that it was clearly directed primarily to children.

Is the advertisement for a product of principal appeal to Children?

The Panel noted that the advertisement is for a children's toy and that this is a product of principal appeal to children.

Conclusion: is the advertisement directed primarily to children?

Finding that the theme, visuals and language used in the advertisement are directed primarily to Children, and are for a Children's Product, the Panel determined that the advertisement was directed primarily to children under 14 and the provisions of the Children's Code apply.

Section 2.5: Advertising or Marketing Communication to Children:

(a) must not portray images or events which depict unsafe uses of a Product or unsafe situations which may encourage Children to engage in dangerous activities or create an unrealistic impression in the minds of Children or their parents or carers about safety; and

(b) must not advertise Products which have been officially declared unsafe or dangerous by an authorised Australian government authority.

The Panel noted that the complainant was concerned with section (b) of the Children's Code as the product of expandable colour balls have been officially declared unsafe and dangerous by an authorised Australian government authority.



The Panel noted that the complainant had provided a media release detailing such a declaration.

The Panel noted the advertiser's response that the product being advertised are not expandable beads. Rather, the beads are purchased at full size and they can be coloured.

The Panel noted that expandable beads are purchased as dehydrated products, which are then combined with water and increase their size. The Panel noted this is of concern as children can swallow the dehydrated beads which then expand, causing blockages and health issues.

The Panel considered that the advertiser's assertion that the advertised product is not the same as a product that has been declared unsafe is reasonable as the product advertised does not expand upon contact with water.

The Panel considered that the product advertised had not officially been declared unsafe or dangerous by an authorised Australian government body.

Section 2.5 Conclusion

The Panel considered that the advertisement did not breach Section 2.5 of the Children's Code.

Conclusion

Finding that the advertisement did not breach the AANA Children's Code the Panel dismissed the complaint.