



Case Report

1	Case Number	0132/13
2	Advertiser	OPSM Pty Ltd
3	Product	Professional Service
4	Type of Advertisement / media	TV
5	Date of Determination	01/05/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

The ACCUFIT TVC shows the evolution of everyday articles to promote the new ACCUFIT technology. These include:

- A woman brushing her teeth with a manual toothbrush that turns into an electric one;
- A man running on a treadmill with a Discman that turns into a small MP3 player;
- Two boys playing in a backyard with small plastic water pistols, where the smaller boys' water pistol turns into a pump action 'super soaker';
- A man reading a newspaper that turns into an electronic computer tablet.

The ACCUFIT TVC concludes by following a consumer into an OPSM store with large orange posters, "See what the future has in store" with the voiceover, "At OPSM, we're happy to say that getting glasses has just gotten better too. Come see what the future looks like in-store..."

THE COMPLAINT

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

The advert makes me cringe every time I see it (which has been reasonably often) - at the very least it should come with a big warning not to squirt water at someone's eyes. I've had personal experience with a family member spending weeks in PMH with his eyes bandaged and head packed inside sandbags after having sand thrown in his eyes in a friendly prank. Other friends and family have similar feelings about the advert so I thought I'd put our

concerns in writing.

THE ADVERTISER'S RESPONSE

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

The Advertiser expresses their sympathy to the complainant if the advertisement had the unintended effect of reminding them of their own personal and distressing circumstances. OPSM maintains that the ACCUFIT TVC is compliant with the Advertiser Code of Ethics ("Code") and relevant codes, including the AANA Code for Advertising and Marketing Communications to Children ("Children's Code").

1. No breach of Code 2.6 – Health and Safety

The Board has identified that the complaint potentially raises Code 2.6 - Health and Safety, which states:

2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

OPSM believes that the ACCUFIT TVC complies with prevailing community standards on health and safety. Playing with water pistols on a hot summer day is a childhood pastime. This commercial draws on that pastime by showing two boys playing in the backyard with water pistols in the sunshine. The scene is entirely consistent with safe use of a children's toy and accordingly, community standards on health and safety.

This 5-second scene opens with a boy filling a small, plastic water pistol from a garden tap. As he does so, his older playmate squirts him with water from a water pistol. The younger child spins around and his water pistol is transformed into a pump action 'supersoaker' and he playfully squirts water at his playmate. The boys are smiling, running around the garden and laugh playfully.

The children are using the toys in a safe manner. They are a safe distance from one another and the water pistols are aimed in each others' general direction and not directly at the eyes or face. In the last second of the scene, water appears to spray one child's hair. This is as a result of the child running towards his playmate and into the water spray. There is no inference that the children are intending to aim at each other's eyes or intend to cause each other any physical harm.

The children are of appropriate ages to play with water pistol toys. There is no indication, as the complainant suggests that children would be encouraged to use the water pistol with any other substance (for instance, sand as suggested by the complainant). If children were to imitate the water pistol activities in the ACCUFIT TVC, it is highly unlikely that there would be any resulting harm.

The context of the scene is also relevant to the Board's determination. Here, the intention of the advertisement is to demonstrate advances in eye care technology by reference to everyday articles and activities. For instance: the advertisement compares a Discman to an MP3 player, a newspaper to a computer tablet or iPad. Similarly, the younger child's water pistol is transformed into a larger 'supersoaker'. In this context, the overall message of the advertisement is advancement and improvement of technology. There is no counter message of inappropriate behaviour that would breach the Code.

The depiction of children playing innocently is far removed from the examples of breaches set out in the Guideline, such as riding a bike without a helmet or not wearing a seatbelt. The representation is also far removed from the concerns raised by the complainant, relating to throwing of sand. There is no demonstration of unsafe practices or images.

As such, the ACCUFIT TVC complies with Code 2.6 on Health and Safety.

2. No Breach of Code 2.3 - Violence

For completeness, OPSM is of the view that there is no breach of Code 2.3 Violence, which provides:

2.3 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

There is no suggestion of violence or menace. The audio representation of the children is one of playfulness and having fun. Both the children laugh loudly and show no sign of distress.

There is no depiction of ailment or injury resulting from the play.

The interaction between the children is intended to be playful, harmless and viewers would interpret the advertisement as such. We note that the younger of the boys has the largest water pistol and accordingly, there is no inference of unequal play or 'bullying'. Nor does the advertisement does not suggest that one child has an unfair advantage over the other, or any sense of 'unfair' play. Naturally, the children show no sign of distress or injury. In addition, there is no physical contact between the children.

For the reasons above, there is no breach of Code 2.3 Violence.

3. No breach of Children's Code

For completeness, we note that Section 2 of the Code incorporates the AANA Code for Advertising and Marketing Communications to Children ("Children's Code).

Whilst the ACCUFIT TVC features children as part of the commercial as a whole, we maintain that the advertisement is not a marketing communication to children within the meaning of the Code.

Relevantly, the Children's Code defines Advertising or Marketing Communications to Children as "Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product."

The ACCUFIT TVC is not directed to children, or advertising water pistol products. The featured product is ACCUFIT. In any event, we consider that ACCUFIT TVC complies with the general principles of the code, including the principles relevant to safety and social values:

2.5 Safety

Advertising or Marketing Communications 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; ...

2.6 Social Values

Advertising or Marketing Communications to Children:

(a) must not portray images or events in a way that is unduly frightening or distressing to Children.

OPSM maintains that the demonstrated use of the product is in consistent with its intended use, is not inherently a dangerous activity and supports a realistic impression about the intended and safe use of a water pistol.

Similarly, the absence of any signs of violence and distress of the children as they play with the water pistols, coupled with their playful laughter, shows that the ACCUFIT TVC complies with the Children's Code.

In conclusion, the ACCUFIT TVC is fully compliant with the Code and Children's Code. We apologise for any unintended offense caused to the complainant as a result of her and her family's personal circumstances.

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 sends a message to children squirting water in the face of others which is contrary to prevailing community standards on health and safety.

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 the advertisement is promoting the OPSM store and the new and improved changes to buying glasses. The advertisement includes scenes of various products “getting better” including a CD Walkman turning into an ipod and a child’s small water pistol transforming into a larger, more powerful toy pistol.

The Board noted that the complainant’s concerns relate to the scene of the two young boys playing outside. One of the boys fills his small blue water pistol at the tap outside and as he turns, it changes into a much larger pistol. He squirts the water at his friend and the water hits the boy directly in the face.

The Board noted that the advertisement features a typical scene of active play that commonly takes place in homes around Australia and that there is no malice or evidence of negative play. The Board noted that the change in size of the water pistol is reflective of the theme of the advertisement that things are getting better at OPSM, just as the water pistol gets bigger and more powerful.

The Board considered that although the second boy does appear to receive the force of the shot of water to his face, he is clearly unharmed and continues to play on in the battle between the two children.

The Board noted that there are instances where members of the community will be affected by certain advertising due to their own personal experiences but considered in this case that the actions depicted by the boys are not contrary to prevailing community standards on health and safety and does not breach section 2.6 of the Code.

Further finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaint.