



ADVERTISING
STANDARDS
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Case Report

1	Case Number	0136/14
2	Advertiser	Witchery
3	Product	Clothing
4	Type of Advertisement / media	Internet
5	Date of Determination	23/04/2014
6	DETERMINATION	Upheld - Modified or Discontinued
7	IR Recommendation	Reconfirm original decision

ISSUES RAISED

2.4 - Sex/sexuality/nudity S/S/N - sexualisation of children

DESCRIPTION OF THE ADVERTISEMENT

The image complained of is a still shot taken for the “WitcheryKids” AW14 campaign “It’s Our World”. The image features a girl wearing WitcheryKids product, dancing and listening to music.

THE COMPLAINT

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

*The still video frame image shows a young girl with legs apart wearing a short skirt that has been shot on a low angle that focuses on the models crotch.
I find this image extremely offensive as a mother to a daughter.*

THE ADVERTISER’S RESPONSE

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

WitcheryKids is a brand operated by the Country Road Group (CRG).

CRG was disappointed to receive the complaint regarding the Image. CRG always ensure that the WitcheryKids’ product range and brand campaigns reflect community standards and

portray children in a dignified and respectful manner.

WitcheryKids' philosophy is that fashion, fun and imagination are at the center of every child's universe. The Image and the Campaign Video reflects this philosophy capturing the model dancing and having fun. The Image was selected as the still shot for the Campaign Video because the hero product in the model's outfit, the t-shirt, is on clear display enabling the customer to see the beautiful patterns and triangle detailing in the garment.

TalentPay Pty Ltd, an independently owned, compliance and talent rights management company, employ the model used in the Image. To safeguard the welfare of the model and other children on set, a trained nurse from TalentPay Pty Ltd was on set for the duration of the shoot monitoring the wellbeing of the child.

The complaint accuses CRG of sexualising children on the grounds that the Image "has been shot on a low angle that focuses on the model's crotch". CRG do not consider the imagery to be sexual in nature nor does it imply that children are sexual beings. The model featured in the Image was encouraged to dance and have fun and was not forced to hold poses that were not natural to her. CRG considers that the Image has been misconstrued in a manner that was not intended.

Following the complaint received from the Complainant through CRG's Customer Service Department on 4 April 2014, the Image was, on that same date, replaced as the still for the Campaign Video whilst CRG undertook an internal review of the matter complained. CRG resolved that whilst it did not consider the Image to be sexual in nature, it would use a different image as the still for the Campaign Video to appease the Complainant's concerns. The Image has not been used for any other marketing or advertising purposes.

CRG do not consider there to be any breach of section 2 of the AANA Code of Ethics. In particular, CRG does not support the sexualisation of children, and rejects the insertion that it would intentionally convey children in this light. CRG is aware of community sensitivity surrounding the sexualisation of children and implements procedures to ensure the protection of children appearing in its campaigns.

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 an image of a young girl wearing a short skirt which is inappropriate and offensive.

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

The Board considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience."

The Board noted that the advertisement features a still image taken from a video on the Witchery internet home page and is one of many images featured on the advertiser's internet page.

The Board noted the advertiser's response that the image was not intended to be inappropriate and that it had since been removed from their website.

The Board noted that there is strong community concern regarding the sexualisation of children.

The Board noted the Practice Note to the Code which states:

“Advertisements with appeal to younger people which contain sexualised images or poses are to be used with caution. Models which appear to be young should not be used in sexualised poses.”

The Board noted that it had previously dismissed a complaint about a print advertisement for the same advertiser in case 0342/12 where:

“The Board noted that the three girls in the advertisement are wearing age appropriate clothing which covers their bodies. The Board noted the girls are all looking directly at the camera and do not appear to be wearing excessive make-up. The Board considered that the poses of the girls are not sexualised or provocative and that most reasonable members of the community would consider the girls to be portrayed in a manner which is confident and befitting of their actual ages.

The Board noted that the issue of the sexualisation of children is an issue of concern to the community however the Board considered that in this instance the advertisement does not present images of children which would be considered sexualised.”

The Board noted that in the current advertisement the girl is wearing a short skirt and has her legs apart and considered that this pose is more adult than child-like. The Board noted that the clothing the young girl is wearing is clothing available to buy from the advertiser as part of their WitcheryKids range. The Board noted that the camera angle means that the image of the girl highlights the shortness of the skirt she is wearing.

The majority of the Board considered that overall the image amounted to a depiction of a child which is sexualised and is therefore not appropriate.

The Board determined that the advertisement did breach Section 2.4 of the Code.

Finding that the advertisement did breach Section 2.4 of the Code the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

While the Country Road Group (CRG) respects the determination of the ASB Board, it will be seeking a review of the determination as it does not consider the WitcheryKids image to be sexual in nature, nor in breach of Section 2 of the Advertiser Code of Ethics. A request for review of the determination will be submitted shortly.

INDEPENDENT REVIEWER'S RECOMMENDATION

This is an application by Country Road Group (CRG) (the advertiser) for review of the decision of the Advertising Standards Board (the Board) dated 23/4/14, Case Number 0136/14 finding that an internet advertisement was in breach of Section 2.4 of the Advertiser Code of Ethics (the Code).

The advertisement is described in the Case Report as follows:

The image complained of is a still shot taken for the "WitcheryKids" AW14 campaign "It's Our World". The image features a girl wearing WitcheryKids product, dancing and listening to music.

The grounds for seeking a review of the decision of the Board are as follows:

1. Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided
2. Where there was a substantial flaw in the Board's determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence)
3. Where there was a substantial flaw in the process by which the determination was made

The Appellant's application for review is based on ground (2) above.

The original complainant's comments are summarised in the Case Report as follows:

The still video frame image shows a young girl with legs apart wearing a short skirt that has been shot on a low angle that focuses on the models [sic] crotch.

I find this image extremely offensive as a mother to a daughter

The Advertiser's response to the complaint included the following:

CRG always ensure that the WitcheryKids' product range and brand campaigns reflect community standards and portray children in a dignified and respectful manner. WitcheryKids' philosophy is that fashion, fun and imagination are at the centre of every child's universe. The Image and the Campaign Video reflects this philosophy capturing the model dancing and having fun. The image was selected as the still shot for the Campaign

Video because the hero product in the model's outfit, the t-shirt, is on clear display...

CRG do not consider the imagery to be sexual in nature nor does it imply that children are sexual beings. The model...was encouraged to dance and have fun and was not forced to hold poses that were not natural to her. CRG considers that the Image has been misconstrued in a manner that was not intended.

Following the receipt of the complaint, CRG replaced the image as the still for the campaign video and undertook an internal review of the matter complained of. CRG states that while it did not consider the image to be sexual in nature, it would use a different still image for the campaign video to 'appease the Complainant's concerns'. The image has not been used for any other marketing /advertising purposes.

CRG continues in its response to the complaint:

CRG do not consider there to be any breach of section 2 of the AANA Code of Ethics. In particular, CRG does not support the sexualisation of children, and rejects the insertion [sic] that it would intentionally convey children in this light. CRG is aware of community sensitivity surrounding the sexualisation of children and implements procedures to ensure the protection of children appearing in its campaigns.

The Determination

The Board, in considering whether the advertisement breached the Code considered in particular section 2.4 of the Code which states:

“Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.”

The Board noted that the advertisement features a still image taken from a video on the Witchery internet Homepage and that the image is one of many images on that Homepage. It further noted that the Advertiser, in its response, stated that the image was not intended to be inappropriate and that it had since been removed from the website. The Board noted the strong community concern regarding the sexualisation of children.

The Board also noted the relevant Practice Note to the Code which states: “Advertisements with appeal to younger people which contain sexualised images or poses are to be used with caution. Models which [sic] appear to be young should not be used in sexualised poses.”

The Board noted it had dismissed a previous complaint about a print advertisement for CRG in case 0342/12 where “The Board noted that the three girls in the advertisement are wearing age appropriate clothing which covers their bodies. The Board noted that the girls are all looking directly at the camera and do not appear to be wearing excessive make-up. The Board considered that the poses of the girls are not sexualised or provocative and that most reasonable members of the community would consider the girls to be portrayed in a manner which is confident and befitting of their actual ages. The Board noted that the issue of sexualisation of children is an issue of concern to the community however the Board considered in this instance the advertisement does not present images of children which would be considered sexualised.”

The Board noted that the girl in the current advertisement “is wearing a short skirt and has her legs apart and considered that this pose is more adult than child-like”. It was further noted that the clothing worn by the girl was available for purchase as part of the WitcheryKids range. The Board was of the view that “the camera angle means that the image of the girl highlights the shortness of the skirt she is wearing”. In conclusion, the majority of the Board considered that “overall the image amounted to a depiction of a child which is sexualised and is therefore not appropriate”. Accordingly, on 23/4/14 the Board determined that the advertisement did breach Section 2.4 of the Code and therefore upheld the complaint.

Review Application

As noted above, the Advertiser cites ground 2 as the basis for its application for review of the Board’s determination.

In its review request letter dated May 12, 2014 the Advertiser elaborates on its reasons for citing ground 2 as follows:

- That the Board had given undue weight to the length of the model’s skirt. This skirt is clothing available to purchase from the WitcheryKids range and the skirt is everyday childrenswear, of typical length for a child’s skirt and appropriate for children of the target market;

- That the Board failed to take into consideration that the still captures the model dancing as the reason for the model’s legs being apart. Dancing is an activity enjoyed by children of all ages and particularly children of the relevant audience. The pose was captured while the model was dancing. The model was not forced to hold the pose. We do not consider a dancing pose in any way to be adult-like. We do not consider this to be sexual in anyway which is suggested;

- That the Board has given undue weight to the angle of the image. The angle from which the image was taken was chosen as it captures the model in a dancing motion and also captures the model’s outfit, in particular the t-shirt which was the hero product in the model’s outfit;

1. That the Board has not referenced the content of to [sic] the video which features the model dancing, which dancing is then reflected in the image complained of. We attach the complete video for your viewing and consideration.

The Advertiser goes on to state that it takes all reasonable steps to ensure the WitcheryKids’ product range and brand campaigns reflect community standards, and portrays children in a dignified and respectful manner. It states that the Board’s determination “is not only contrary to the WitcheryKids brand philosophy but also inconsistent with the high ethical values for which CRG stands and adopts in its day to day business and charitable commitments. CRG maintains that the overall image does not depict the model in a sexualised manner and this

was not the intent of the image or the campaign or a direction which CRG would adopt.”

The Advertiser continues: “The overall image captures a child dancing, having fun, wearing WitcheryKids clothing. For the reasons outlined above, we consider that the Board’s determination was made against the weight of evidence and that the image does not breach Section 2.4 of the Code. Accordingly, we consider there has been a substantial flaw in the Board’s determination and seek that the determination be reviewed by the Independent Reviewer.”

The original complainant was invited to comment on the Advertiser’s review application but did not do so.

Independent Reviewer’s Recommendation

Ground 2

In its application for review the Advertiser has cited four issues in support of its contention that the Board’s determination satisfies ground 2 for a review. These issues are addressed as follows:

1. The Board gave undue weight to the length of the model’s skirt.

The Practice Notes to the Code provide no formula for the weight which the Board should allocate to different elements when considering advertisements. The Board is free to exercise its judgement on such elements as it sees fit according to the particular case. In this case the Board’s determination was based not simply on the length of the skirt but also on the model’s legs being apart, rendering the pose “more adult than child-like”. In addition, in the view of the Board the camera angle used highlighted the shortness of the skirt worn by the model. This combination of elements is reflected in the Board’s comment that: “overall the image amounted to a depiction of a child which is sexualised and is therefore not appropriate” (my emphasis). Had the pose been different but the skirt the same length the Board’s decision may well have been different. On the subject of the length of the skirt, the Reviewer has noted, in examining the advertisement, that the skirt appears quite creased and has accordingly ridden up somewhat in the photo complained of, appearing shorter than it actually is. The Board also recognised that the skirt was a clothing item available for purchase from the WitcheryKids range and nowhere states that the length of the skirt per se is inappropriate. As noted above, the decision of the Board is based on a combination of factors not just the length of the skirt.

It would have been of benefit for the Board to further elaborate on its view of the various elements underpinning its decision as they relate to Section 2.4, as it did in similar case 0342/12 which is mentioned in the determination of the Board. However, its failure to do so does not constitute a substantial flaw in its determination rendering it clearly in error considering the Code provisions or clearly made against the weight of evidence.

1. The Board failed to take into consideration that the still captures the model dancing

as the reason for the model's legs being apart.

The Board was aware that the Advertiser had stated twice in its response to the complaint that the model was dancing when being photographed. The Board's determination states that it has noted the Advertiser's response. That response was one of the factors taken into consideration by the Board in making its determination.

It is important to emphasise that the advertisement complained of is a still photo and not the campaign video of the model dancing, which the Advertiser refers to in its review application and its response to the complaint. What the model is doing in the video is not the subject of the complaint, only the still photo is in contention and must be judged on its own terms. The Reviewer is advised that the Board did not view the video when making its determination and properly, concentrated on the still image complained of. The Board would have been aware of the campaign video, as it was mentioned in the Advertiser's response to the complaint. If the Advertiser had felt that viewing the video could be helpful to the Board's determination process, it could have provided the video to the Board at that stage or specifically directed the Board to it. It appears from the correspondence that the first time the Advertiser provided the video to ASB was in support of this review application.

It is clear from the Board's determination that they had received information from the Advertiser that the advertisement "features a still image taken from a video on the Witchery internet home page..." On this point, the Reviewer notes that having viewed the video multiple times and compared it with the still photo, it is clear that this particular still image is not taken from the video provided to the Reviewer in support of the Advertiser's review application. The particular pose in the still image does not appear at any stage of that video.

As noted above, it would have been helpful for the Board to have elaborated on the various elements underpinning its determination; however, it was correct to address the still image on its own terms as this was the image complained of. There was no substantial flaw in the Board's determination based on this issue.

1. The Board gave undue weight to the angle of the image.

As noted under 1) above, there is no weighting formula which the Board must observe in considering the various elements of its decision regarding any advertisement. The Advertiser, in its response to the complaint, while noting that the model is dancing and having fun, does not specifically address the issue of the camera angle which was cited by the original complainant in her complaint. The Board was quite entitled to take the view that the low camera angle "highlights the shortness of the skirt she is wearing". The Board based its determination on a combination of elements, not just the camera angle. Though as noted above, the Board could have elaborated further on these elements, there was no substantial flaw in the Board's determination based on this issue.

1. The Board has not referenced the content of the video which features the model dancing, which dancing is then reflected in the image complained of. We attach the complete video, for your viewing and consideration.

As noted above in 2) above, the Board did not view the video when making its determination.

The Advertiser only provided the video when making its review application and not when responding to the complaint prior to the Board making its determination. The image complained of was a still photo and the Board acted properly in wholly concentrating its consideration on that still image and not the video. As noted above, the video was not the advertisement complained of and the Board was not obliged to view it or to reference it in any way. If the Advertiser had wanted the Board to consider the video while making its determination, it could have provided the video to the Board at that stage, but did not do so. The Board was correct to consider the still image on its own terms. There was no substantial flaw in the Board's determination based on this issue.

In summary, it was open to the Board to determine that the advertisement complained of breached Section 2.4 of the Code. None of the four issues raised above discloses that there was a substantial flaw in the determination of the Board and therefore Ground 2 is not satisfied. No other grounds for review are satisfied. Accordingly, I recommend that the determination of the Board be confirmed.