



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0186-20
2. Advertiser :	Lactalis Australia
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	24-Jun-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Advertising to Childrens Code\2.6 Social values
AANA Code of Ethics\2.5 Language
AANA Code of Ethics\2.0 Other

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a white teddy bear who is standing in front of a prize wall of stuffed animals at a showground. He gets up and walks through the showground.

The bear says, "I'm alive. Just kidding I'm dead inside. Emotionally. But that's neither here nor there. There's still only one cure for Hungrythirsty, and that's OAK."
A drink carried by a balloon floats down and is taken by the bear.

He says, "With its full strength and full taste, it's full-on. OAK doesn't just hit the spot, it slides into the spots DMs and leaves an inappropriate emoji... OAK kills Hungrythirsty dead, then negotiates the rights to a Netflix doco about the murder... But what would I know about Hungrythirsty? I'm a teddy bear... I only drink OAK cause I like the taste. OAK. Kill Hungrythirsty Dead."

The bear goes to drink but spills it all over his white fur. He makes a gesture with his paw which is pixelated.



THE COMPLAINT

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

The teddy bear which is an identifiable character with children is quite aggressive. I have young children who watch it and are confused and a bit upset with the advertisement. At the end the teddy bear sticks its finger up - which even though it is blurred out, it is obvious what it is doing. Completely unnecessary and offensive.

THE ADVERTISER'S RESPONSE

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

The OAK Teddy advertisement (the "TVC") is a new iteration of the OAK Hungrythirsty campaign which has been in market for more than 10 years. This TVC features an irreverent bear, who was initially seen in OAK's 2012 advertisement.

In this TVC, the fairground character comes alive to deliver our distinctive brand messaging which centres on OAK's full-on flavoured milk killing hungrythirsty dead. This creative reinforces the rational benefit of OAK flavoured milk being to quench thirst and satisfy hunger, and therefore is completely in line with our tangible product proposition.

The TVC has appeared on the programs set out in the attached spreadsheet.

None of these programs are targeted at or have audiences that are primarily children. Given the target market for OAK is 18+, the TVC is not directed at children and is not broadcast in programs primarily directed at children. The TVC does contain adult themes and language as it is targeted at adults. The visuals for the TVC include a fairground late at night, some strange characters in the background and the OAK tagline "Kills Hungrythirsty dead". These clearly indicate the neither the product nor the TVC are aimed at children. As such, the Code for Advertising and Marketing to Children does not appear to be applicable here.

The applicable code for the complaint appears to be the AANA Code of Ethics. Lactalis rejects any notion that the TVC breaches the following provisions of the Code

- 2.1 – Discrimination or vilification;*
- 2.2 – Exploitative or degrading;*
- 2.3 – Violence;*
- 2.4 – Sex, sexuality and nudity;*
- 2.6 – Health and safety; or*
- 2.7 – Not distinguishable as advertising.*

Provision 2.5 of the Code states:



"Advertising or Marketing Communication 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 TVC has no obscene or strong language. The entire script is both irreverent and clearly unrealistic. That the content is not offensive to children is reinforced by the Clear Ads approval (ref: 2868901) from 15 May 2020, granting the TVC a G Classification with a W Placement Code. The W Code refers to the requirement of special care with regards to placement of this TVC in programs principally directed to children. In compliance with this, Lactalis has not placed the TVC in programs principally directed to children.

The language employed in the TVC is, at most, forceful. The bear has a deep voice and speaks quickly. This does not make it aggressive. As well, near the end of the TVC the bear's apparent forceful disposition is negated by the statement "what would I know, I'm only a teddy bear", in an injured tone that is at odds with the rest of its delivery.

The Complainant also states:

"At the end the teddy bear sticks its finger up which even though it is blurred out, it is obvious what it is doing. Completely unnecessary and offensive".

Given the bear is clearly portrayed throughout the TVC as not having any fingers or claws, it is evident that it is not a finger. The actual script for the TVC says "the bear gestures in frustration", which may have different meanings to different people.. The viewer is left to decide for themselves. The bear may be:

1. Hitting itself in the head for spilling the OAK product (in a Homer Simpson 'duh' style moment);
2. Gesturing a 'talk to the hand' motion
3. Waving goodbye;
4. Clenching or waving its fist: or
5. Something else.

With this TVC, Lactalis' aim is to provide an irreverent TVC for adult consumers that continues the previous themes used for OAK advertising and that is 'different' to other TVC's. The TVC and the product are not aimed at children.

In conclusion, Lactalis does not believe the TVC has breached the Code of Ethics. While intended for adults, Lactalis did not intend to, and does not believe it has, developed a TVC that is offensive to either children or adults, or contains strong or offensive language.

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 Children's Code) and the AANA code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement is targeted towards children and features an aggressive character giving the finger.

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, or Section 3 of the Food 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".

The Panel considered whether the advertisement is directed primarily to children (14 years or younger). The Panel noted the Practice Note for the Food and Beverages Code which states that whether an advertisement or marketing communication is "directed primarily to children" is an objective test based on several factors including, but not limited to the combination of visual techniques, product and age of characters and actors. The use of any one factor or technique in the absence of others may not necessarily render the marketing communication "directed primarily to children."

The Panel considered that the advertisement featured OAK flavoured milk and considered that this is a product that is targeted towards people of all ages and is not a product of principal appeal to children.

The Panel considered that although the advertisement depicts a stuffed teddy bear in a carnival setting, the advertisement has adult themes. The bear talks in a deep male voice, and makes reference to inappropriate emojis and being dead inside.

The Panel considered that although the carnival background may have appeal to children, it has muted colours, the carnival sounds are almost non-existent and very quiet, and there are no other people in the advertisement. The Panel considered that while the concept of a carnival may be attractive to children, the overall theme of the advertisement would not be considered by most members of the community to be directed primarily to children under 14.

The Panel considered that the theme, visuals and language used would appeal to a broad audience and were not directed primarily to children, and that the advertisement was not for a product of principal appeal to children.

The Panel determined that as the advertisement is not directed primarily to Children, the Children's Code and Part 3 of the Food Code do not apply.

The Panel then considered the AANA Code of Ethics.



The Panel 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 Panel noted that it is reasonable to include gestures as part of considerations regarding language and therefore it is appropriately considered within section 2.5 of the Code.

The Panel noted that the advertisement had been given a ‘W’ rating by ClearAds which meant it would be broadcast to a general audience, but not broadcast during children’s programming.

The Panel noted that it is clear that the bear does not have fingers, but considered that by pixelating the bears hand it was suggestive to the viewer that the bear is giving an “up yours” gesture.

The Panel considered that although specific words are not used to express the bears irritation for spilling milk on himself, the closing scene with the pixelated image is suggestive of saying “up yours” in general frustration at spilling the milk and is not aimed at a particular person.

The Panel considered noted that it had considered a similar issue in case 0477-17, in which:

“The Board noted that whilst most members of the community would not expect an image to be displayed of a teenager holding their middle finger up it considered that the overall tone of the image is not aggressive and with the finger touching the boy’s mouth there is less impact and did not promote anti-social behaviour or endorse inappropriate language.”

Similar to the previous case, the Panel considered that in the current advertisement the image is displayed fleetingly at the very end of the advertisement, and the fleeting nature of the image and the pixelated scene meant that the gesture was less impactful.

The Panel considered that the advertisement did not use strong or obscene language and the gesture was not inappropriate in the context of the product advertised and the overall context of the advertisement.

The Panel determined that the advertisement did not breach Section 2.5 of the Code.

Finding that the advertisement did not breach the AANA Children’s Code or the AANA Code of Ethics the Panel dismissed the complaint.