



Case Report

1	Case Number	0201/11
2	Advertiser	Peregrine Corp (Smokemart & Gift Box)
3	Product	House goods/services
4	Type of Advertisement / media	Mail
5	Date of Determination	22/06/2011
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.5 - Language Use appropriate language

DESCRIPTION OF THE ADVERTISEMENT

Smokemart Gift Catalogue which features products with the logo HTFU on them, as well as products containing the F word spelled out in full.

THE COMPLAINT

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

This language and the word used is not acceptable to my family especially for general distribution as this has been. It amazes me that recent moves to prevent children being advertised in underwear have been undertaken and yet this type of printed advertising is placed in letterboxes for children to see and subsequently to feel is OK.

THE ADVERTISER'S RESPONSE

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

This complaint relates to a recent Smokemart & GiftBox mail catalogue (the "Advertisement"). We have attached a copy of this catalogue as requested.

We understand that the Advertising Standards Board (the "Board") will consider the complaint as well as review compliance of the Advertisement against section 2 of the Code of Ethics (the "Code").

We understand that the complainant has been offended by the following in the Advertisement:

- language at page 4 ("offending language");*
- a particular word at page 5 (the "offending word").*

We are embarrassed by and apologise unreservedly for the inclusion of the offending word at page 5 of the Advertisement. The offending word appeared because a photo of a product on which that word is printed was included in the Advertisement. This was due simply to human error. There was no deliberate use of that word - as a family business that would be contrary to our company ethos. Each advertisement is reviewed by several staff prior to publication for compliance with the Code pursuant to our internal policies and procedures. It was regrettable in this instance that the use of the offending word was not seen by those staff or by the publishing agency.

Unfortunately human errors do arise and to this end we have reviewed our internal procedures and implemented changes to reduce the chances of this occurring again. More specifically, these changes include:

Specifically identifying whether any products in photo shoots contain offending works which need removal; the addition of a further proof-reading stage of advertisements prior to publication.

Notwithstanding the above, Peregrine's position is that the use of the offending word is not in breach of the Code. With respect to the offending language, we note that this has previously been considered by the Board and found not to contravene the Code and we refer to the Board's decision and reasoning (and our prior submissions). We thank the Board for the opportunity to make this submission.

Submission:

1. The Advertisement is a mail catalogue distributed to households in a geographic territory. It consists mainly of images of products available from Smokemart & GiftBox stores together with accompanying text describing those products. Peregrine have distributed this catalogue across five states nationally and understands there to be only one complaint in this instance which indicates that this catalogue has been well received by the adult consumers.

2. This catalogue was designed in-house by our Products and Marketing team and accordingly there is no advertising agency and media buyer involved.

3. No part of the Advertisement relates to Food or Beverage products. Accordingly the Advertisement complies with Section 2.8 of the Code.

4. The target audience of the Advertisement consists primarily of adult consumers. This is clear from the nature of the products advertised as well as the nature of the business. The catalogue is also clearly labelled "Smokemart & GiftBox". Smokemart & Gift Box is a well known chain of tobacconists that also sells giftware.

5. The offending word complained of on page 5 was inadvertently included in the Advertisement. We note the following:

- the offending word does not appear on the front page of the Advertisement and therefore not readily visible.*
- the use of the word is obscure, discrete and in very small font. There is no attempt to draw attention to its use in the Advertisement.*
- the word is printed on the actual products being advertised and was (obscurely) included because photos of these products were used.*

6. In this way, the Advertisement does treat "sex, sexuality and nudity with sensitivity to the relevant audience." and thus complies with section 2.3 of the Code.

7. *Peregrine has previously provided submissions in respect of the offending language complained of on page 4 and the Board has previously decided that the use of this language does not contravene the Code. We note however the following:*

- *"HTFU" is a registered trade mark and was accepted for registration by IP Australia who did not consider the mark to be obscene or scandalous such as to prohibit registration under the Trade Marks Act.*

*"fu*k" is an acceptable alternative use of the word in the circumstances and having regard to the adult audience. The word appears in this and alternate forms in unrestricted publications generally, for example as "FCUK" by the French Connection clothing brand. A search of the IP Australia trade mark database also reveals similar uses of the word as registered trademarks.*

8. *For these reasons, the Advertisement complies with section 2.5 of the Code.*

9. *For the above reasons, the Advertisement specifically complies with sections 2.3, 2.4, 2.5 and 2.8 of the Code as well as other sections generally.*

Notwithstanding that the Advertisement complies with the Code, Peregrine takes all complaints seriously. We will continue to exercise extreme sensitivity and caution in regards to the type of images we display in our catalogue and have specifically implemented those measures discussed above.

We trust we have responded to all the queries in your letter. However, please do not hesitate to contact the writer if you require clarification on any of the above.

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 complaints' concerns that the wording in this catalogue is offensive and inappropriate.

Section 2.5 of the Code states: "Advertising or marketing communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided".

The Board noted the concern about the use of swear language which is intended to imply the word 'fuck', particularly in relation to the products labelled with the acronym 'HTFU'. The Board noted that there is no actual mention of the word 'fuck' or of any other inappropriate language in this part of the advertisement. Although the writing on the HTFU products may be suggestive of inappropriate language to some people, the Board determined that this part of the advertisement did not contain strong or obscene language and that the language used was not inappropriate for the product being advertised.

The Board also noted the complainant's concern that the catalogue contains products which are advertised in a manner so that the word 'fucking' is clearly visible. The Board noted that it is not its role to determine whether particular products may be advertised – simply whether the manner in which such products are advertised meet the requirements of the Code.

The Board considered that the use of the word 'fucking' clearly visible in a catalogue is a depiction of strong and, to many people in the community, offensive language. The Board noted the advertiser's response that these images had been included in error in the catalogue.

The Board noted that this image in the catalogue was delivered to people's homes and that some of the products in the catalogue are attractive to children although the advertised store is a store containing products predominantly directed to adults. The Board considered that the image of the products with the word 'fucking' on it contains content that is strong and obscene and to most people, in the context of a home delivered catalogue, is inappropriate.

Based on the above the Board determined that the advertisement used strong and obscene language which was not appropriate and that it did breach Section 2.5 of the Code.

Finding that the advertisement breached the Code, the Board upheld the complaints.

ADVERTISER RESPONSE TO DETERMINATION

We refer to your letter dated 22 June 2011 in respect of a complaint received by the Advertising Standards Bureau and the draft case report detailing the Board's determination sent by you along with the above mentioned letter.

With respect to the opportunity provided to us to provide an 'Advertiser's Statement' please note our response for the two items complained against in the recent Smokemart & GiftBox mail catalogue (the "Advertisement"):

1. language at page 4 ("offending language") of the Advertisement: With respect to the offending language with the acronym "HTFU" we note and appreciate the Board's determination that this part of the advertisement did not contain strong or obscene language and that the language used was not inappropriate for the product being advertised.

We reiterate that Peregrine has previously provided submissions in respect of the offending language complained of on page 4 and the Board has previously decided that the use of this language does not contravene the Code and we refer to the Board's decision and reasoning (and our prior submissions). We note however the following:

- "HTFU" is a registered trade mark and was accepted for registration by IP Australia who did not consider the mark to be obscene or scandalous such as to prohibit registration under the Trade Marks Act.
- "fu*k" is an acceptable alternative use of the word in the circumstances and having regard to the adult audience. The word appears in this and alternate forms in unrestricted publications generally, for example as "FCUK" by the French Connection clothing brand. A search of the IP Australia trade mark database also reveals similar uses of the word as registered trademarks.

For the above mentioned reasons and the reasons as explained in our previous letter dated 20 June 2011, this item of the Advertisement specifically complies with sections 2.3, 2.4, 2.5 and 2.8 of the Code as well as other sections generally.

2. a particular word at page 5 (the "offending word") of the Advertisement: As explained in our previous letter we apologise unreservedly for the inclusion of this offending word. The offending word appeared because a photo of a product on which that word is printed was included in the Advertisement. This was simply due to human error and inadvertence and there was no deliberate use of that word. We note that the Board has considered that the image of the products with the word "fucking" on it contains content that is strong and obscene and to most people, in the context of a home delivered catalogue, is inappropriate.

We also note that based on the above the Board determined that the advertisement used strong and obscene language which was not appropriate and that it did breach Section 2.5 of the Code and that as the advertisement breached the Code, the Board upheld the complaints. Please note that each advertisement is reviewed by several staff prior to publication for compliance with the Code pursuant to our internal policies and procedures. It was regrettable in this instance that the use of the offending word was not seen by those staff or by the publishing agency.

Unfortunately human errors do arise and to this end we have reviewed our internal procedures and implemented changes to reduce the chances of this occurring again. More specifically, these changes include:

i) specifically identifying whether any products in photo shoots contain offending works which need removal;

ii) the addition of a further proof-reading stage of advertisements prior to publication.

We confirm that we have discontinued the advertisement in all the five states and that the Advertisement is no longer in circulated by us.

We understand that the use of the modified word "F*ck" or such other similar words appearing on the products which may be advertised in our catalogue is not considered to be strong, obscene and inappropriate as the same is obscure and discreet given that such advertising is targeted particularly towards our adult customers.

Please note that Peregrine takes all complaints seriously. We will continue to exercise extreme sensitivity, care and caution in regards to the type of images we display in our catalogue and have specifically implemented those measures as discussed above.

We trust we have responded to all the queries in your letter.