



Case Report

1	Case Number	0257/11
2	Advertiser	KMart Australia Ltd
3	Product	Toys & Games
4	Type of Advertisement / media	TV
5	Date of Determination	27/07/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

A mum is driving a car and her daughter is in the middle back seat talking incessantly. They are then shown on an elevator and walking in to a Kmart store. When they reach the toy section the daughter finally stops talking and we hear a voice over state that you can find hundreds of toys at Kmart.

THE COMPLAINT

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

The issue is that the little does not appear to be secured in the vehicle correctly (no seatbelt) at the start of the ad.

The girl is clearly not wearing a seat belt as the seat belt can be seen next to her. The girl is also not using a booster seat contrary to legislative requirements. The car appears to be moving at the time.

It appears she has no seat belt on when seated in the rear seat of the vehicle. Additionally recent laws in NSW require children under the age of eight to be seated in a booster / child seat in the rear of a vehicle.

It appears that this child is either unrestrained and/or not seated on the correct seat within the vehicle.

My concern is that the girl does not appear to be wearing a seatbelt while she is travelling in the car. This can send wrong messages to viewers particularly children and is particularly

ironic in light of recent legislative revisions regarding child restraints and booster seats etc. In any case it is illegal to not use a seat belt or suitable restraint in a moving vehicle. In the start of the advert the girl is shown in the back seat of the car the mother is driving. The girl does not appear to be wearing her seatbelt. The child in the ad is not wearing a seatbelt on the way to the shops in the car with her mother. She is also sitting in the middle back seat of the car and doesn't have a kiddie car seat? Maybe she is too old which is okay but surely it is safer to sit behind one of the front seats PARTICULARLY WHEN NOT WEARING A SEATBELT! A young child in the car without a car seat on. The child (10yr old girl) featured in the ad within the first 10 seconds is not secured (strapped) in the vehicle nor is there any booster seat. Seat belt is clearly visible as not being used. Vehicle is clearly moving as demonstrated by vehicle movement and mother check rear vision mirror. Seat belts and child booster seats are required by Australian law.

THE ADVERTISER'S RESPONSE

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

Kmart's advertising campaign was prepared to promote Kmart's toy event which commenced on 30 June 2011 and concludes on 13 July 2011. It is Kmart's position that this advertisement does not contravene the AANA Advertiser Code of Ethics and indeed is consistent with the Code's object of being 'legal, decent, honest and truthful'. This light-hearted advertisement, based on real customer insight, was prepared to communicate the low prices available in our annual toy catalogue.

Kmart understands that each of the complaints relate to the initial sequence of the advertisement, in which a young girl is travelling in the back seat of a moving car. Specifically, the complainants state that the child does not appear to be wearing an appropriate restraint, nor is she sitting on a booster seat.

Kmart can advise that the child featured in the advertisement is seven years of age. Whilst it is compulsory under State and Territory legislation for all passengers in a car to wear a seat belt, there is no requirement for a child seven years of age or over to be seated in a booster seat. Kmart further advise that the young girl is in fact secured by a child harness, which is identifiable against her pink top in the opening sequence. Kmart appreciate that the child's long hair which obscures the upper straps of the restraint, may have resulted in some consumer misunderstanding.

It is Kmart's firm view that the advertisement does not contravene the AANA Advertiser Code of Ethics in any way, however as the Advertising Standards Board will consider any issues raised under Section 2 of the Code, we provide the following additional information.

Section 2.6

It is Kmart's position that the 'Quiet time' advertisement is sensitive to Prevailing Community Standards on health and safety.

Kmart is well aware of State and Territory requirements in relation to road safety and more specifically, child restraints. Kmart is also conscious that these requirements apply equally to the portrayal of a child in a car, such as in the example of the advertisement. Under Kmart's direction, Sapient Nitro engaged a professional accredited with the Australian Child Restraint Resource Initiative (ACRI) to assist with the production of this advertisement. This

resource ensured that the correct restraint was used and fitted correctly to the young girl in the scene in which she is seen travelling in the back seat of a car. I trust that this assists the Advertising Standards Board when it assesses the complaints made against Kmart's 'Quiet time' advertisement.

THE DETERMINATION

The Advertising Standards Board (Board) considered whether this advertisement breaches Section 2 of the AANA Advertiser Code of Ethics (the "Code") and the AANA Code for Advertising and Marketing Communications to Children (the Kids Code).

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

The Board noted the complainants' concerns that the advertisement features a young girl as a passenger in a moving vehicle and that she is not wearing the appropriate restraint.

The Board considered the advertisement under the AANA Code for Advertising and Marketing Communications to Children. The definition of what is advertising and marketing communications to children in the AANA Children's Code is "Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product".

The Board noted that Children means, "children 14 years old or younger" and Product means, "goods, services and/or facilities which are targeted toward and have principle appeal to children."

The Board noted the advertisement features a young girl talking incessantly to her mother whilst en route to a Kmart store, and that she only stops talking when she sees the range of toys available at the store.

The Board noted the advertisement has been rated G by CAD and although this does not apply to Pay TV would most likely be viewed by children. The Board considered that whilst the advertisement features a young girl and is for toys, the overall theme, visuals and language used are directed at adults who may have been in similar situations and is to highlight a toy sale.

The Board considered that whilst the advertisement could have appeal to children, it is not directed at children. The Board considered that Kmart is a store which sells many products and that although the advertisement focuses on toys Kmart itself is not of principle appeal to children.

As the advertisement is not directed primarily to children and is not for product, the Board considered that the Kids Code does not apply to this advertisement.

The Board then considered whether the advertisement was in breach of 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 that at the beginning of the advertisement the mum is driving a car with the young girl in the back seat.

The Board noted the advertiser’s response that the girl in the advertisement is over the age of 7 years and therefore does not need to use a booster seat when travelling in a car, and that the girl is secured by a child harness.

The Board noted that the girl’s long hair partly obscures the seatbelt but noted that the girl is clearly restrained with a harness.

Based on the above, the Board determined that the advertisement did not depict material contrary to prevailing community standards on health and safety and did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach any of the Codes on any grounds, the Board dismissed the complaint.