



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0258/18
2	Advertiser	Woolworths Supermarkets
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	06/06/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement begins with a father and three children getting into a car. The mother tells the father that they need coffee. During the drive, the children say other things that they think are needed at Woolworths. The scene cuts to the father coming back to the vehicle and the children asking if he'd got everything.

THE COMPLAINT

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

The ad portrays the father going into the supermarket whilst leaving his children sitting in the car in the carpark. My understanding is that children should not be left in the car by themselves whatever their age. This ad suggests that it is permissible to do because there are 3 children in the ad and because they appear to all be over the age of 5 years but even if this is not illegal it can surely not be good parenting practice and it is not necessary for the purposes of the advertisement.

This advertisement goes against a child safe message, as all 3 kids have clearly been left in the car while their father does the shopping. Leaving children in the car on their own



is a criminal offense and is heavily advocated against. The definition of a child in Australia is a person under 18 years old. I seriously doubt that this advertisement would not be running in summer. Why should it be allowed to be shown just because the weather is cooler?

THE ADVERTISER'S RESPONSE

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

Ad Standards Complaint No 0258/18 - Woolworths Supermarkets

I refer to your letter dated 16 May 2018 in respect of Woolworths Supermarkets 30 second TV advertisement relating to a father and his 3 children driving to the Woolworths supermarket and the father purchasing groceries at the Woolworths supermarket (the Advertisement).

Thank you for the opportunity to respond to the complaints received on 12 May 2018 and 13 May 2018 in respect of the Advertisement.

Please be advised that the Advertisement was a limited run promotion and will cease airing from 23 May 2018. At this stage, for commercial reasons, unrelated to this complaint, Woolworths Supermarkets does not intend to air the 30 second TV Advertisement in its current form in the future. For completeness, we note that there are other advertisements similar to the Advertisement, featuring the father and the family, which Woolworths intends to air in the future, but none of the other versions contain the issues raised in the present complaints.

Notwithstanding the fact that the Advertisement will cease airing from 23 May 2018, for completeness we set out our response to the complaint below.

In respect of the information specifically requested, we note as follows:

Description of the Advertisement

Since launching 'Prices dropped' campaign, Woolworths has dropped the price of almost 3000 lines across 1166 product families (as at 12/4/18).

This Advertisement features products which are included in the 'Prices Dropped' campaign.

CAD reference number and CAD rating

CAD Number: G5PKLRSA

CAD Rating: G



A digital copy of the Advertisement is enclosed with this letter.

Woolworths Group Limited (“Woolworths”) takes its advertising obligations seriously. It is however Woolworths’ submission that the complaint should be dismissed and that no further action should be taken in respect of this matter for the reasons set out below.

Issues raised in the complaints

The complainants are both concerned that the Advertisement depicts the father going into the supermarket to buy groceries whilst his three children are left sitting in the car in the car park.

Woolworths response

In response to these concerns, Woolworths submits as follows:

The three “children” actors cast in the Advertisement are aged as follows:

- Elder son seated in the back seat dressed in plain clothes is an adult, 21 years of age and his character is intended to depict him as someone who is not a school student (therefore in plain clothes, perhaps a university student);*
- The daughter seated in the front seat of the car dressed in a school uniform is 16 years of age and her character is intended to depict her as a school student in Year/Grade 10; and*
- The younger son seated in the back seat dress in a school uniform is 10 years of age and his character is intended to depict him as a school student in Year/Grade 6.*

Woolworths notes that it is open to interpretation given the ages of the “children” in the car and the fact that they are old enough to get out of the car themselves, that the “children” were seated in the car the whole time whilst their dad was purchasing groceries. Nevertheless, given the importance of the issue of safety of children, Woolworths does not wish to press this point.

The table below summarises relevant state and territory legislation in relation to leaving children unattended/unsupervised (including unattended in motor vehicles):

NSW

Children and Young Persons (Care and Protection) Act 1998

s 231 Leaving children and young persons unsupervised in motor vehicles

A person who leaves any child or young person in the person's care in a motor vehicle without proper supervision for such period or in such circumstances that: (a) the child or young person becomes or is likely to become emotionally distressed, or (b) the child's or young person's health becomes or is likely to become permanently or temporarily impaired,



is guilty of an offence.

Vic

Children, Youth and Families Act 2005

s 494 Offence to leave child unattended

(1) A person who has the control or charge of a child must not leave the child without making reasonable provision for the child's supervision and care for a time which is unreasonable having regard to all the circumstances of the case.

Qld

Criminal Code 1899

s364A leaving a child under 12 unattended

(1) A person who, having the lawful care or charge of a child under 12 years, leaves the child for an unreasonable time without making reasonable provision for the supervision and care of the child during that time commits a misdemeanour.

(2) Whether the time is unreasonable depends on all the relevant circumstances.

WA

Children and Community Services Act 2004

s102 Leaving child unsupervised in vehicle

A person who has the care or control of a child and who leaves the child in a motor vehicle (as defined in the Road Traffic (Administration) Act 2008 section 4) without proper supervision for such period or in such circumstances that

(a) the child becomes or is likely to become emotionally distressed; or

(b) the child's health becomes or is likely to become permanently or temporarily impaired,

is guilty of a crime, and is liable to imprisonment for 5 years.

SA

South Australia's Criminal Law Consolidation Act (1935).

Section 14 Criminal liability for neglect where death or serious harm results from unlawful act

TAS

Children, Young Persons and their Families Act 1997

92(1) Offence to leave child unattended

A person who has the control or charge of a child must not leave the child without making reasonable provision for the child's supervision and care for a time which is unreasonable.

NT

No specific law on leaving children unattended

Under the law, parents are responsible for caring for their child and keeping them safe.



Parents can be charged with an offence if children are left alone in a dangerous situation and are not fed, clothed or provided with adequate shelter.

Woolworths submits that the Advertisement does not breach any state or territory legislation including the ones listed above given the following circumstances:

- The eldest son in the Advertisement is not a child but an adult aged 21 years of age;*
- Leaving the other children aged 16 and 10 in the care of their older brother who is an adult aged 21 for a short period of time is not unreasonable given that the other children are not infants, able to exit the car on their own and old enough and mature enough to understand and respond to various everyday situations;*
- None of the children appear to be in distress;*
- The car is parked in an open car park bay with the windows open;*
- All of the “children” actors in the car are properly restrained by seat belts.*

Woolworths understands that infant car safety is a significant community issue. However, the circumstances presented in the Advertisement need to be distinguished from infants and young children left unattended in cars. In the Advertisement, mature and older children aged 16 and 10, able to exit the car on their own, are left in the care of their older brother, a university student aged 21 for a very short period of time. Accordingly, Woolworths submits that the circumstances presented in the Advertisement do not breach any law and are not contrary to prevailing community standards on health and safety.

In addition, for completeness, Woolworths wishes to address an additional issue relating to the Advertisement being the egg carton dinosaur’s head peeking out of the window of the car. The egg carton dinosaur was intended as a humorous and light-hearted touch in the Advertisement. Woolworths submits that the egg carton dinosaur’s head peeking out of the window of the car does not breach any law or prevailing community standards on health and safety. The egg carton dinosaur’s head does not stick out significantly from the car window such that it creates a hazard for other vehicles. The egg carton dinosaur is very large and firmly held by the younger son such that there is no reasonable prospect of it falling out of the car window. We note that the body of the younger son holding the egg carton dinosaur is completely inside the car at all times.

In light of the above, Woolworths further submits that:

The Advertisement does not breach Section 2.6 of the Code as the Advertisement does not show people engaging in behaviour that would breach the law or be seen contrary to prevailing community standards on health and safety.

The Advertisement does not breach any other provisions of Section 2 of the Code.



Woolworths appreciates the ASB's careful consideration of the complaint and trusts that it will accept Woolworths' submission that the complaint should be dismissed.

THE DETERMINATION

The Ad Standards Community Panel (the "Panel") considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the "Code").

The Panel noted the complainants' concerns that the advertisement features unsafe behaviour.

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

The Panel 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 Panel noted the complainants' concerns that the advertisement features a parent leaving his children in the car by themselves and that this goes against child safety advice.

The Panel considered the advertiser's response that various state and territory legislation provides that leaving a child unsupervised without making reasonable provisions for their care or for such a time that they become distressed or their health is at risk.

The NSW legislation for leaving children and young persons unsupervised in motor vehicles is provided for in the 'Children and Young Persons (Care and Protection) Act 1998 s 231' which states:

"A person who leaves any child or young person in the person's care in a motor vehicle without proper supervision for such period or in such circumstances that:

- (a) the child or young person becomes or is likely to become emotionally distressed, or
- (b) the child's or young person's health becomes or is likely to become permanently or temporarily impaired, is guilty of an offence."

The Panel noted that other states and territories have similar legislation. The Panel considered the advertiser's response that the advertisement therefore did not breach state or territory legislation given that the eldest child appears to be a university student and therefore over 18, and consequently the other children were in the care of an adult, the children are left for a short amount of time as the father only had two shopping bags, and the children are not depicted as being distressed or harmed waiting for his return.



The Panel noted that there is significant community concern regarding children being left in vehicles unattended, however noted that the legislation does not state that older child(ren) may not be left in a vehicle at all.

The Panel noted the advertiser's response that the circumstances in the advertisement should be distinguished from leaving infants and very young children unattended in a vehicle and agreed that not all depictions of children in vehicles would be acceptable.

The Panel considered that whilst the father does leave his children in the vehicle unattended, in the Panel's view most members of the community would consider that this scene does not promote or condone unsafe behaviour given that the circumstances around their being in the car are that the windows are down, the children appear to have been recently fed as the teen boy is still eating, it is early in the day as they are on their way to school, they are left for an apparently short amount of time and they appear to be of an age that can open the door.

The Panel then considered scenes in the advertisement in which the child's egg carton dinosaur's head is seen to be outside the vehicle. The Panel noted that the majority of states have a Regulation 292 stating that a driver must not drive or tow a vehicle if the vehicle is carrying a load that...projects from the vehicle in a way that is likely to injure a person, obstruct the path of other drivers or pedestrians, or damage a vehicle or anything else. (http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_reg/rr2014104/s292.html?context=1;query=insecure%20or%20overhanging%20load;mask_path=)

The Panel noted the advertiser's response that the egg carton dinosaur's head does not protrude significantly from the vehicle in such a way that it would be a hazard for other drivers, and that it is being firmly held by the child and there is no reasonable expectation that it will fall from the vehicle.

The Panel considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety regarding children in vehicles or objects outside a vehicle. The Panel determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaints.

