



Case Report

1	Case Number	0268/15
2	Advertiser	L'Oreal Australia Pty Ltd
3	Product	Toiletries
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	08/07/2015
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.5 - Language Inappropriate language

DESCRIPTION OF THE ADVERTISEMENT

There are four different versions of this television advertisement. Each version features the same woman walking through an office environment with her hair billowing around her head. In each version different colleagues comment, "F 'n' L!" and a female voiceover says, "Introducing new Garnier Fructis Full and Luscious".

THE COMPLAINT

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

FNL is short for cursing, I'm sure we all get the joke that is implied but it's offensive and inappropriate. I wouldn't want my kids telling me I have hair that makes them say FNL. It wouldn't be appropriate to stand up and say FNL at your workplace, church or children's school so why is it ok for TV?

Deliberate attempt to swear using f word.

THE ADVERTISER'S RESPONSE

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

We refer to your letters (Letter) in relation to complaints made to the Advertising Standards Bureau (ASB) concerning television advertisements for Garnier Fructis Full & Luscious hair products (Advertisement).

Thank you for providing L'Oréal Australia with the opportunity to respond to the Complaints, as set out below.

1. Background

L'Oréal Australia is the exclusive authorised distributor of Garnier products in Australia.

Garnier is an energetic, happy, honest, inclusive yet smart and uncomplicated brand that prides itself on delivering simple and effective beauty solutions for the young and young at heart consumer. With over 100yrs of innovation, Garnier is beauty 'know-how' that is uncomplicated and affordable: a beauty short cut that does the trick without the trouble.

Garnier's key brand connection point is the simple consumer truth that when you are feeling your best, you feel amazing; you are more confident and your day is ultimately going to be a great one! Garnier aims to create active beauty solutions powered by nature that deliver a boost of energy to hair, face and skin.

After successfully launching in Australia in 2002, Garnier Fructis has cemented itself as a market leader with its signature bright and fun packaging and irreverent sense of style.

2. The Full & Luscious Campaign

The Advertisement showcases Garnier's most recent and innovative range of haircare which focuses on creating hair fullness and volume. It aims to inform consumers of Garnier products' intrinsic characteristics and performance while conveying Garnier's brand identity in an entertaining manner. Garnier's playful brand spirit lends itself well to such a bold and game changing approach to advertising in the haircare category.

The Advertisement is intended to convey a sense of energy, youthful irreverence and fun. L'Oréal Australia acknowledges that while the Advertisement is attention grabbing, it is not intended to be inappropriate, offensive or lack sensitivity.

Further, it is noted that the L'Oréal Group's own internal Code of Ethics extends to advertising and marketing. In preparing the Advertisement, L'Oréal Australia took that Code and social expectations into account when creating the campaign.

3. General responses to Section 2 of the Code

In Your Letter, you requested that L'Oréal Australia does not limit its response to the Complaints as the Board will also review the advertisement in its entirety against Section 2 of the Advertiser Code of Ethics (Code).

We have considered Section 2 of the Code and for the reasons set out below, L'Oréal Australia denies any allegations that the Advertisement breaches the Code. We note that section 2.5 of the Code is addressed in section 4 of this response.

2.1 - Discrimination or vilification

L'Oréal Australia does not believe that the Advertisement portrays people or depicts material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

2.2 - Exploitative and degrading:

L'Oréal Australia does not believe that the Advertisement employs sexual appeal in a manner which is exploitative and degrading of any individual or group of people. In fact, the Advertisement seeks to depict a strong and confident female character whose hair has been tastefully styled in a manner that is not unusual for the style of a female haircare campaign.

2.3 – Violence

L'Oréal Australia submits that the Advertisement does not present or portray violence of any kind.

2.4 - Sex, sexuality and nudity

L'Oréal Australia submits that the Advertisement does not present or portray sex, sexuality or nudity.

2.6 - Health and Safety

L'Oréal Australia does not believe that the Advertisement depicts material contrary to Prevailing Community Standards on health and safety. While the entrance of the main character causes a whirlwind of impact resulting in loose leaf paper flying about the office, a painting falling off a wall and one character falling off his chair in shock, this is a humorous dramatisation only and L'Oréal Australia does not believe that the Advertisement depicts unsafe practices contrary to public health and safety.

4. Specific responses to alleged breaches referred to in the Complaints

2.5 – Language

The name of the Garnier products the subject of the Advertisement is Full & Luscious, which in shorthand is F'n'L. It is intended, in a cheeky manner, to express exclamation and shock at the improved look of one's hair after using Full & Luscious products.

Indeed a key purpose of the Advertisement is to convey the energetic, youthful irreverence and fun associated with the Garnier brand. The overall aesthetic of the Advertisement reflects Garnier's aim to strengthen its connection with consumers, reinvigorate its brand personality and make a bold statement. This bold statement is visually illustrated by a woman with luxuriously thick hair causing a whirlwind of awe and amazement in an otherwise conventional office environment. This visual statement is then complemented by various exclamations of 'F'n'L!' in a humorous, comedic context.

Overall the Advertisement creates a dramatised visual analogy to depict the confidence

gained by maximizing the potential of one's hair to create a confident look. It also seeks to provide a visualization of the impact of such confidence on those around us.

It is important to note that there is no use of any expletives in the Advertisement. Rather, only the shorthand product abbreviation "F'n'L" is used throughout. In the Australian vernacular 'F'n'L!' ('Effin' hell!') is an innocuous expression that is commonly used for dramatic effect to describe something that is awesome or has a high impact. Indeed, the reference to 'F' or 'Eff' demonstrates a specific effort by one using the expression to avoid using the direct swear word. This is in itself a form of self-censorship to avoid causing potential offence (if any, and in which case Garnier denies). The use of F'n'L is clearly a play on words, such as WTF or LMFAO – it is unequivocally distinguishable from the 'f' word and is used in a light hearted, humorous way in line with the overall context of the Advertisement and its purpose as stated above.

We consider that the shorthand use of F'n'L is used by Garnier in a manner consistent with its colloquial usage by Australians, to humorously describe the high impact of thicker, fuller and more lusciously beautiful hair that results from the use of Full & Luscious products.

Further, L'Oréal Australia believes that the Advertisement uses language which is appropriate in the circumstances, having regard to its relevant audience and medium. L'Oréal Australia's media placement plan has been structured to target women aged between 25-54 years, relying on audience measurement data. As a result, the Advertisement has, and will continue to, air during primetime and daytime television programs generally viewed by women in L'Oréal Australia's target audience for the Advertisement. L'Oréal Australia submits that the relevant audience is mature and, as affirmed by the nominal number of complaints received by the ASB to date, unlikely to consider the language of the Advertisement as inappropriate.

As an aside, L'Oréal Australia notes that the Advertisement has not been scheduled to air during television programs whose target audience includes children. We further confirm that Full & Luscious products are not products whose target market is children, nor are the products recommended for use by children. Indeed, despite the target audience not including children, L'Oréal Australia nonetheless produced different variations of the Advertisement to be used in accordance with CAD's rating system in an effort to showcase its consumer social responsibility.

Accordingly, L'Oréal Australia submits that while some may consider the use of 'F'n'L' is a bit tongue-in-cheek, it is not (for the purposes of section 2.5 the Code) strong or obscene language nor is it used in a demeaning or aggressive manner.

The Complaints

As set out above under the paragraphs "2.5 Language" in section 4 of this letter, we refute the allegation that the verbal expressions of F'n'L in the Advertisement are 'deliberate attempts to swear using the f word'. It is most certainly not L'Oréal Australia's intention that the Advertisement convey language that is considered to be 'swearing...in the worst possible way' or 'grossly inappropriate', and if such subjective perceptions exist, L'Oréal Australia submits that these are the views of a few and are not in line with Prevailing Community Standards. While attention-grabbing, the Advertisement is not inappropriate for its target audience.

The fact that only a nominal number of complaints have been received by the ASB to date, indicates that the Advertisement has not caused serious or widespread offence (having regard to Prevailing Community Standards). To that end, we query whether the sentiments expressed in the Complaints are in fact representative of the view of the general public.

5. *Previous ASB decisions*

L'Oréal Australia notes that the ASB has previously dismissed numerous complaints in relation to advertising where the 'f' word has been bleeped or acronyms such as OMFG and WTF have been used. Specifically, L'Oréal Australia refers to the following decisions:

- *Game Australia (0092/11)*
- *Fox Sports (Premier Media Group) (0094/11)*
- *Volkswagen Group Australia Pty Limited (0129/12 and 0131/12)*
- *BMW Group (0158/12)*
- *Spudbar (0095/13)*
- *Fuller Brothers (0159/13)*
- *Just Group Ltd (0187/13)*
- *Sportingbet Australia Pty Ltd (0073/14 and 0068/14)*

In the interests of transparency, as at the date of this letter L'Oréal Australia is planning to continue to use the Advertisements until mid-July and potentially later in the year.

We respectfully submit that the Board should not uphold the Complaints, permitting L'Oréal Australia to continue to freely use the Advertisements in the market place at its discretion.

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 complainants' concerns that the advertisement features inappropriate language which strongly resembles a swear word.

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

The Board then 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 Board noted that there are different versions of this television advertisement but that the overall theme and tone of each is similar in nature and features a person exclaiming “F ‘n’ L!” when they see a woman who has used the advertised hair product on her hair.

The Board noted the complainants’ concerns that ‘F ‘n’ L’ is a deliberate attempt to swear and that it is a reference to the “F” word and that this reference to the “F” word is not appropriate.

The Board noted that there is some similarity between the exclamation “effing hell” and the phrase “F ‘n’ L’”. The Board noted that the phrase ‘effing hell’ is language which most members of the community would consider as a politer version of “fucking hell” but would still consider it to be stronger than other expressions such as ‘bloody hell.’

The Board noted that in each of the advertisements the phrase, ‘F ‘n’ L’ is used by a person as an exclamation. The Board noted the advertiser’s response that the phrase, ‘effing hell’ is innocuous and is part of common Australian vernacular but considered that most members of the community would find this phrase to be a clear reference to ‘fucking hell’ and thus language which should not be used around children. The Board noted the complainants’ concerns that children could hear this advertisement and repeat the phrase and considered that the phrase ‘effing hell’ is not a phrase which most people would find appropriate for a child to use.

The Board noted the advertiser’s response that it has previously dismissed the use of the ‘f’ word where it has been beeped out, and that it has dismissed cases where acronyms such as WTF have been used. The Board noted that its role is to consider each case on its own merit and considered that unlike previous cases where the ‘f’ word has been beeped out and obscures the original word, in the current advertisement the phrase, ‘F ‘n’ L’ sounds very similar to ‘effing hell’ and that there is no immediate association between the words being exclaimed and the product being advertised. The Board also noted that generally acronyms do not sound like a particular word (for example, WTF) and considered that ‘F ‘n’ L’ as an acronym actually sounds like a phrase which most people would find offensive.

In addition, the Board noted the findings of the ASB’s Community Perceptions 2012 Research Report which states:

“The main reasons provided by the general public regarding why the ads portraying the potential use of Strong Language were unacceptable included the concern that society is normalising and mainstreaming strong language to shock people into noticing the advertisement. There was widespread concern over the exposure of children to strong language, and this was noted in regard to the mediums on which the 2012 ads were shown: mail and radio.”

A minority of the Board considered that whilst there is a strong similarity between the phrase ‘F ‘n’ L’ and the phrase ‘effing hell’ in their view the advertisements uses on screen wording and images of the product to provide a context for the phrase and the product’s name, ‘Full and Luscious’ and that this link sufficiently justifies the use of the acronym as spoken by the characters.

The majority of the Board however considered that the manner in which the phrase ‘F ‘n’ L’ is spoken in the advertisements and the context of this exclamation following sighting of a woman walking past, is more suggestive of the phrase ‘effing hell’. The Board acknowledged the link between the phrase, ‘F ‘n’ L’ and the product’s name but considered that overall the use of the phrase, ‘F ‘n’ L’ in the advertisements, more clearly comes across as ‘effing hell’ and considered that that most people would consider this strong language and not appropriate in an advertisement for hair product.

The Board noted the advertiser’s response that having regard to its relevant audience and medium, L’Oréal Australia’s media placement plan has been structured to target women aged between 25-54 years. The advertisement has been aired during primetime and daytime

television programs generally viewed by women in L'Oréal Australia's target audience for the advertisement. In addition, the advertiser stated that the Advertisement had not been scheduled to air during television programs whose target audience includes children and that the products themselves are not products whose target market are children.

The Board noted that based on the advertiser's response there would be a more mature audience viewing the advertisements but considered that even with less children viewers the strong message of the advertisement is that it says 'effin hell' and that most people would consider this strong language.

Consistent with the decision of the Board regarding the 'PG' rated versions of the television advertisement, the Board determined that the Pay TV versions of the advertisement did breach Section 2.5 of the Code.

Finding that the advertisement did breach Section 2.5 of the Code, the Board upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We thank the ASB for considering our responses to the Complaints.

Taking into account the ASB's decision to uphold the Complaints, L'Oréal Australia will no longer use the PG-rated advertisements being the subject of the Complaints on Free to air television, On Demand television and Pay TV.