



Case Report

1	Case Number	0280/17
2	Advertiser	Ug Manufacturing Co Pty Ltd
3	Product	Clothing
4	Type of Advertisement / media	Email
5	Date of Determination	12/07/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

2.5 - Language Inappropriate language

DESCRIPTION OF THE ADVERTISEMENT

This advertisement is an Electronic Direct Mail (“EDM”) to Quiksilver database subscribers promoting adult long-sleeve t-shirts. The main image which is the subject of the complaint depicts one of Quiksilver’s sponsored surfers, Mikey Wright, smiling into the camera and with his middle finger raised. The EDM includes a link to an interview with Mikey Wright titled “The Wild Mind of Mikey Wright”. (Link to advert: <http://mailchi.mp/quiksilver/long-sleeve-tees-may-2017?e=587ac43a69>)

THE COMPLAINT

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

I am offended by the main photo. It clearly shows the gentleman 'flipping the bird'. I find it offensive and I do not believe they should be advocating such behaviour as ok, especially if children are able to see. I do not want my son thinking this is ok to behave like this.

THE ADVERTISER’S RESPONSE

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

We have checked the AANA Code of Ethics and the complaint does not fit within any of the 'consumer complaint' criteria set out in the code. We feel strongly that the advertisement in question is not offensive and complies with the AANA Code of Ethics. The use of the middle finger has become pervasive in popular culture and in many circumstances is seen as a playful gesture. Mikey Wright is the face of our current campaign and is well-known in the surfing world as a lovable larrikin. Whilst we acknowledge some people may find the gesture offensive, in the context of the EDM, the gesture coupled with Mikey's smile is mischievous and light hearted.

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 complainant's concerns that the advertisement depicts an image of a man sticking his middle finger up which is offensive and not appropriate for an email.

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

The Board 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 this email advertisement sent by the advertiser to the complainant features an image of a man, surfer Mikey Wright, with his middle finger raised and a link to an interview with Mikey.

The Board noted that it had previously upheld a billboard advertisement featuring a depiction of a hand with the middle finger raised (0288/12) where it found that

"...the use of this gesture with the phrase "stuff paying tax" amounted to a negative and inappropriate depiction not suitable for an outdoor advertisement which could easily be seen by children."

The Board noted the current advertisement is an email. The Board noted the advertiser's response that the email was sent to Quiksilver's subscribers and considered that the relevant audience is unlikely to include young children. The Board noted that unlike in case 0288/12, the current depiction of a raised middle finger is not specifically targeted at a person, or thing, and considered that the manner in which the gesture is being made is edgy and counter-culture rather than aggressive or negative.

The Board acknowledged that some members of the community may find an image of a man with his middle finger raised to be offensive but considered that the man is smiling, and the most likely interpretation is he is responding in a cheeky, light-hearted manner to something his companion, also pictured, has said or done. The Board considered that there is no suggestion of violence or anger in Mikey's behaviour, and in the Board's view the relevant

audience of subscribers to a clothing retailer would be unlikely to find the image so offensive as to be inappropriate.

The Board considered that, consistent with a previous determination in case 0194/15 where actors were depicted raising their middle fingers to showcase their nail polish, the tone of the current advertisement was light-hearted, there was no suggestion of aggressive or insulting behaviour, and in the context of the relevant audience of email subscribers the content was not inappropriate.

Overall the Board considered that the advertisement did not use strong or obscene language and determined that the advertisement did not breach Section 2.5 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.