



## Case Report

1	Case Number	0290/17
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	12/07/2017
6	DETERMINATION	Dismissed

### ISSUES RAISED

2.4 - Sex/sexuality/nudity S/S/N - general

### DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on a candle-lit bathroom and a person getting into a bubble bath to enjoy a new Inspired by Kit Kat chocolatory product. We see a close up of two hands snapping the Inspired by Kit Kat chocolatory Mint Cream & Cookie Smash finger into two pieces. The Advertisement then shows imagery of the new Mint Cream & Cookie Smash product being broken apart and its ingredients. The scene is abruptly cut short when it is shown the man in the bath is actually in a bathroom showroom where he is employed. The manager glances back at the customers nearby and tells the man in the bath that his break has finished. However when the manager catches sight of the Kit Kat product sitting on a side table next to the bath, he starts adjusting his tie before telling the man in the bath to “move over”. The man in the bath starts to get out of the bath. A super “Break from the Ordinary” is then displayed. The Advertisement closes with an end frame showing the new Inspired by Kit Kat chocolatory product range and branding.

### THE COMPLAINT

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

*Having my young child view homosexual innuendo.*

*I rang channel 7, told the person who answered, a man, that the ad had homosexual connotations. The channel 7 person became very very angry. He said that regardless of what I complained about, the ad would continue to be screened and screened. Please have a look*

*at the ad. I found it very disturbing.*

*The implication that he is going to join him in the bath. The inappropriate nature of the ad insinuating the initiation of foreplay or sexual activities. Even my children are shocked at this ad and have voiced their disapproval of this ad. Totally inappropriate for TV advertising. Especially regarding chocolate which would be considered a child's treat.*

## **THE ADVERTISER'S RESPONSE**

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

*Section 2.4 of the Code of Ethics provides that an advertiser shall treat sex, sexuality and nudity with sensitivity to the relevant audience.*

*We do not consider the Advertisement to contain a sexual theme. We acknowledge that the Advertisement contains imagery of a man in a bath and therefore his shoulders and arms are displayed.*

*The primary concern articulated in the Complaints appears to be that the Advertisement portrays a man wanting to join another man in the bath which is sexually suggestive and has homosexual connotations.*

*In Nestlé's view, this is not a reasonable interpretation of what took place in the Advertisement. The Advertisement follows the long standing positioning of the KIT KAT brand to "HAVE A BREAK: HAVE A KIT KAT" which this Advertisement takes to a new luxurious level reflective of our new Inspired by KIT KAT CHOCOLATORY decadent range which encourages our consumer to "Break from the Ordinary".*

*The Advertisement opens to a dreamy scene as we can see a person climbing into a candlelit bath and "breaking" into their Inspired by KITKAT CHOCOLATORY Mint Cream & Cookie Smash – a fittingly decadent treat for such a luxurious and relaxing experience. The Advertisement cuts to his manager who interrupts him from his KIT KAT induced fantasy to highlight the stark reality which actually shows a man in a display model bath in a bathroom showroom where he is employed. The manager, evidently embarrassed by what his employee is doing, glances at customers nearby in the store and sternly tells the man in the bath that his break is over, implying that he must get out of the bath and get back to work.*

*They both look to the block of Inspired by KITKAT CHOCOLATORY Mint Cream & Cookie Smash sitting beside the bath, the manager also seemingly drawn into the same KIT KAT fantasy of taking a luxurious out of the ordinary break, telling the man currently occupying the bath to "move over" as he adjusts his tie. It is clear that this is intended by the way the manager eyes the block of chocolate sitting on the side table next to the bath and the way he tells him to move over whilst not making eye contact with the employee in the bath. The language used by the manager is formal and directive and in a tone one would expect between an employer and an employee.*

*While the actions of the manager are suggestive that he wants to get into the bath, there is no depiction, nor any suggestion the two men will share the bath, nor is there any degree of nudity depicted of the man currently depicted in the bath given the water level of the bath is*

*to chest height and the bubbles ensure no part of the man is shown aside from the top of his shoulders. Furthermore the employee is unhappy that his KIT KAT fantasy break is finished and reluctantly moves in an ungraceful motion to lift himself out of the bath. The scene abruptly stops at this point so that no nudity is shown. This is in line with previous decisions of the ASB, the ASB Sex, sexuality and nudity: determination summary and the Code of Ethics Practice Note where it is acknowledged that it is normal to be naked while bathing, and depictions showing no “nipples or genitals visible” are considered appropriate.*

*Further, the Advertisement is filmed in a deliberately humorous and light-hearted manner, given there could be no expectation that any bathroom fixtures in a showroom are operational – especially given the bath is shown on a platform with no visible tapware. Therefore, in line with the core positioning, the scene is “out of the ordinary”.*

*The portrayal of the man in the bath is in no way sexualised, and the suggestion that the manager wants him to vacate the bath to get back to work further reinforces the power the new Inspired by KITKAT CHOCLATORY products have in suggesting any break can be a luxurious one.*

*The Advertisement was given a CAD Rating of W and was placed in programming accordingly. Our advertising agency and our media buyers and planners have taken care to ensure that the relevant audience for this Advertisement is P25-54 and the scheduling of our television commercials complies with the provisions of the Code.*

*In light of the above and as the classification for the advertisement demonstrates, on any reasonable assessment it is appropriate for the audience and it is apparent that sex, sexuality and nudity has been treated with sensitivity to the relevant audience and therefore the Advertisement does not breach Section 2.4 of the Code of Ethics.*

#### *Consideration of other Codes*

*In addition to the other provisions of the Code of Ethics, Nestlé has also considered the AANA Food and Beverages Marketing and Communications Code and considers that the Advertisement complies with those codes in all relevant aspects.*

#### *Conclusion*

*Nestlé acknowledges the Complaints and the importance of responsible marketing, however disagrees with the allegation in the Complaints that the Advertisement is in contravention of any of the matters set out in Section 2 of the Code of Ethics and requests that the Complaints be dismissed.*

## **THE DETERMINATION**

The Advertising Standards Board (the “Board”) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement features homosexual innuendo and insinuates sexual activity which is not appropriate for a television advertisement, particularly as children could view it.

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

The Board considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

The Board noted this television advertisement features a man enjoying a relaxing bath before we see that he is actually in a bathroom showroom and not his private bathroom.

The Board noted the complainants' concerns over the man's boss's reaction to him taking a bath and that this is suggestive of sexual activity between two men.

The Board noted that the man in the bath appears to be naked but considered that the amount of bubbles in the bath completely cover his body and in the Board's view the level of nudity – the man's naked shoulders and arms – is very mild and not inappropriate.

The Board noted that the man in the bath is interrupted by his boss who asks him to move over when he sees the family-sized Kit-Kat sitting on the table next to the bath. The Board noted the complainants' concerns that this scene insinuates homosexual activity but considered that the boss is asking to share a bath and a Kit-Kat, not engage in sexual activity.

The Board acknowledged that some members of the community could find the suggestion of two men sharing a bath to be inappropriate but considered that in this instance the depiction of a man asking another man to move over so he can share his bath and food is not sexualised or strongly suggestive of sexual activity and is meant to be a funny insight into how good the advertised product is.

The Board noted the advertisement had been rated W by CAD and considered the actual content of the advertisement was not inappropriate for the broad W audience which would include children.

The Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and determined that the advertisement did not breach Section 2.4 of the Code.

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

