



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0319-20
2. Advertiser :	Ferrero Australia Pty Ltd
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	21-Oct-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a boy and girl sitting together. The girl is wearing a fairy costume and the boy is wearing dinosaur pyjamas. They open Kinder Surprises. The girl opens a pink egg to find a fairy. The boy opens a blue egg to find a dinosaur.

THE COMPLAINT

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

I have two young children (a boy (1) and girl (4)) and I have to turn the TV off every time this ad is displayed as it promotes gender biases and perpetuates gender specific social roles and perceptions. Exposing children or even adults to this form of advertising further contributes to the gender inequality and biases within society. Pink and fairies for girls and blue and dinosaurs for boys in the advertisement is clearly reinforcing gender stereotypes.

THE ADVERTISER'S RESPONSE



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

We write in response to your letter dated 9 October 2020 in relation to Complaint 0319-20 (the "Complaint") made in respect of a Free to Air television advertisement for Kinder Surprise Fairy Friends and Dino Dash range (the "Advertisement"). The Advertisement has a CAD rating of "W", lasts approximately 15 seconds and is not shown during children's programs, nor is it shown adjacent to children's programs. This is intentional to make the advertisement appropriate for our target audience, being parents of young children, further evidenced by the narrative of the Advertisement, which uses language directed to parents.

Thank you for providing Ferrero the opportunity to respond to the Complaint. Ferrero confirms its support for the Ad Standards Community Panel and its commitment to ensuring that the marketing and advertising of Ferrero products complies with the relevant laws, industry codes and initiatives.

Advertisement Description

The Advertisement depicts a scene at home with a girl, dressed in blue and pink as a fairy, telling her brother, dressed in blue dinosaur pyjamas, a story. In telling the story, the girl says, "Once upon a time, there was a huge dinosaur." The two children are sitting together in a makeshift cubby made with sheets of various colours, with lanterns, cushions and toys around them of various colours and types including plush toys, dinosaur toys and butterfly wings. The Advertisement then cuts to a close up of the mother of the children with a proud look on her face. The mother then opens a drawer to reveal two Kinder Surprise products and proceeds to present them to her children. The girl takes a bite of the Kinder Surprise and then each child is shown playing with a toy from the Kinder Surprise: the boy is playing with a dinosaur toy from the Dino Dash range and the girl, a fairy toy from the Fairy Friends range. The Advertisement finishes with the mother and children hugging and then a close up of the Kinder Surprise products and a selection of toys from each range with the voice-over "New toys to discover" and the tagline "Discover Magical New Worlds".

Description of Complaint

The complainant has raised an issue that falls within the Australian Association of National Advertisers (AANA) Advertiser Code of Ethics ("Code of Ethics"), specifically, under Section 2 of the Code of Ethics.

The complainant has asserted that the Advertisement "promotes gender biases and perpetuates gender specific social roles and perceptions", "further contributes to the gender inequality and biases within society" and "is clearly reinforcing gender stereotypes".

Section 2.1 of the Code of Ethics states that:

Advertising or Marketing Communication shall not portray people or depict 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.

The practice notes related to section 2.1 defines discrimination as, “Unfair or less favourable treatment”, and defines vilification as behaviour that, “Humiliates, intimidates, incites hatred, contempt or ridicule”. The practice note further specifies as follows:

Stereotypes may be used to simplify the process of communication in relation to both the product offered and the intended consumer. As such, advertisements may feature people undertaking gender-stereotypical roles e.g. a woman cleaning the house or a man doing DIY, or displaying gender-stereotypical characteristics e.g. a man being assertive or a woman being sensitive to others’ needs, but they should take care to avoid suggesting that stereotypical roles or characteristics are:

- always associated with that gender;*
- the only options available to that gender; or*
- never carried out or displayed by another gender.*

as this may amount to discrimination on the basis of gender.

Portrayals may amount to discrimination or vilification as determined by the Community Panel where they depict unfair or less favourable treatment of gender; and/or humiliate or invite contempt or ridicule of gender. For example, advertising which:

- depicts family members creating a mess while a woman has sole responsibility for cleaning it up;*
- suggests that a specific activity is inappropriate for boys because it is stereotypically associated with girls, or vice-versa; or*
- features a man trying and failing to undertake simple parental or household tasks.*

Advertisement does not amount to discrimination or vilification on the basis of gender.

Ferrero is committed to complying with the Code of Ethics (and all other AANA Codes) and denies that the Advertisement breaches Section 2 of the Code of Ethics (including its sub-sections), primarily because the Advertisement does not portray the children in a negative or unfavourable light or open them to contempt or ridicule, and because the Advertisement does not amount to discrimination or vilification on the basis of gender. The Advertisement was created for an intended target audience, being parents of young children and although the Advertisement does show a girl and boy in a manner that could be seen to represent a fairly typical play environment, the purpose of this is to communicate an emotive and memorable message to the target audience. Depicting a girl in a fairy costume and a boy in dinosaur pyjamas or showing a girl playing with a fairy toy and a boy playing with a dinosaur toy does not of itself portray them in any unfair or unfavourable light, or suggest that these things are gender exclusive. The children are shown to be happy, and playing together in a caring manner, the girl is telling the boy a story and they are each given a surprise at the same time. They are enjoying the play time and the surprise in equal measure.



Neither of the children is mocked, ridiculed or shown negatively, or given any unfair or unfavourable treatment. There is no suggestion that any of their choices or behaviours are inappropriate.

There is no suggestion that certain toys, interests or activities would be inappropriate for any one gender, or only associated with one gender.

Further, the Advertisement was designed to specifically avoid any implications that the character depictions above are rigid and the actions depicted in the Advertisement are meant to be only for one gender. The Advertisement begins with the girl excitedly telling a story about dinosaurs, with various dinosaur toys all around them and the second set of fairy wings visible in the background (intended for the boy), clearly indicating that both dinosaurs and fairies can be topics of interest for both boys and girls. The background environment suggests that they are both playing together in a made up world filled with different colours, and toy choices. The girl's demonstrated interest in both fairies and dinosaurs, and the various colour and toy choices shown in the scene, directly refutes that specific activities or interests are inappropriate, or that one range of toys should always be associated with only one gender. There is nothing in the Advertisement to suggest that having a particular toy, clothing or colour choice would be inappropriate. The Advertisement promotes two different ranges of new toys that are available, but there is no reference in the Advertisement or the packaging that either range is only available for boys or girls.

In this regard, there are no references to girls or boys on the packaging of the products either by words, pictures or otherwise. It is open to the parent's choice as to which type of product to purchase and give to their children as they see fit and it is intentionally not shown which Kinder Surprise products the children choose in the Advertisement after the mother presents the products to the children. There is no suggestion that certain toys would be inappropriate for any one gender, or that any toy is better than the other, or that certain toys are never played with by any one gender, or that children of a certain gender only play with these sorts of toys. The Advertisement promotes open discovery of these new toys and is intended to encourage curiosity and exploration. This is intentional and in line with Ferrero's own internal governance and directives to comply with all AANA Codes. To confirm, the Advertisement does not promote invariable gender norms or depict any of the characters in a harmful or negative manner.

In line with the above, Ferrero considers that the Advertisement does not discriminate against or vilify any person based on their gender and does not portray the characters in any light that would be considered discriminatory and therefore does not breach Section 2.1 of the Code of Ethics.

Panel's previous decision on the same issue: Toyota Free to Air television advertisement & PharmaCare Free to Air television advertisement

We would also submit that this result would be consistent with the Panel's previous determinations below.



In 0377-18, the Panel dismissed a complaint under Section 2.1 of the Code of Ethics for a Toyota Free to Air television advertisement where the complainant asserted that the advertisement portrayed sexism by utilising gender stereotypes. The advertisement depicted a school careers day where several parents spoke about their jobs including a pilot, a firefighter, a nurse and a man who 'drives a Hilux'. The complainant took particular issue with the nurse being a female.

In assessing this complaint, the Panel's report stated:

"The Panel considered that the advertisement did feature some people in gender stereotypical roles, however there was no suggestion in this advertisement that these roles are only associated with this gender, that they are the only options available to those genders, or that they are never carried out or displayed by another gender. The Panel considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did not breach Section 2.1 of the Code."

In 0110-20, the Panel dismissed a complaint under Section 2.1 of the Code of Ethics for a PharmaCare Free to Air television advertisement where the complainant asserted that describing a girl as a 'fussy eater' and two boys as a 'sports star' and 'having a growth spurt' amounted to portraying a negative stereotype. The complainant also suggested that the advertisement communicated the notion that "young girls are weaker than young boys and cannot be classed as a 'sports star' or strong enough to have a growth spurt and flex their muscles, instead, treated as the belittled 'fussy eater.'"

The Panel's report stated:

"...in the current advertisement, the advertisement did refer to the girl in a negative tone, in comparison to her brothers. The Panel considered that the negative characteristic of 'fussy eater' was associated with the young girl, however there was no suggestion in the advertisement that all girls are fussy eaters, or that being a fussy eater is a trait only associated with girls."

Finally, the Panel concluded that the PharmaCare advertisement did not breach Section 2.1 of the Code of Ethics and dismissed the complaint, stating:

"The Panel considered that the content of the advertisement did not show the girl to receive unfair or less favourable treatment because of her gender, and did not humiliate, intimidate or incites hatred, contempt or ridicule of the girl because of her gender. The Panel considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did not breach Section 2.1 of the Code."

Accordingly, Ferrero submits that based on the Panel's previous decisions, in conjunction with the reasonings above that the Advertisement does not breach Section 2.1 of the Code of Ethics, the Complaint should be dismissed.



Is the Advertisement otherwise in breach of the Code of Ethics?

Notwithstanding all of the above, if the Panel were to assess whether the Advertisement breaches any other section of the Code of Ethics, Ferrero considers that the Panel would find that no such breach has occurred. Other sub-sections of Section 2 of the Code of Ethics relate to (2.2) sexual appeal of minors or sexual appeal used in an exploitative/degrading manner; (2.3) the portrayal of violence; (2.4) sex, sexuality and nudity; (2.5) language; (2.6) Prevailing Community Standards on health and safety; and (2.6) distinguishability as advertising. Ferrero confirms that in its view the Advertisement does not breach any of these sub-sections.

Summary

In summary, Ferrero submits that the Advertisement does not breach any section of the Code of Ethics. Specifically, in regard to Section 2.1 of the Code of Ethics, no breach has occurred, as no discrimination or vilification, nor any discriminatory representation is present.

Ferrero submits that the Complaint should be dismissed in its entirety and thanks the Panel for the opportunity to respond to the Complaint.

Ferrero also notes that it is aware of the updated Code of Ethics and Practice Note which will come into force on 1 February 2021. Ferrero wishes to affirm its commitment to complying with the updated Code of Ethics once it comes into effect.

THE DETERMINATION

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

The Panel noted the complainant's concern that the advertisement contains gender stereotypes which contributes to gender inequality and bias within society.

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

The Panel considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict 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.'

The Panel noted the Practice Note to Section 2.1 provides the following definitions:

"Discrimination – unfair or less favourable treatment.

Vilification – humiliates, intimidates, incites hatred, contempt or ridicule."



The Panel noted the Practice Note for this section of the Code states:

“Stereotypes may be used to simplify the process of communication in relation to both the product offered and the intended consumer. As such, advertisements may feature people undertaking gender-stereotypical roles ... or displaying gender stereotypical characteristics... but they should take care to avoid suggesting that stereotypical roles or characteristics are:

- *always associated with that gender;*
- *the only options available to that gender; or*
- *never carried out or displayed by another gender.*

as this may amount to discrimination on the basis of gender.”

The Panel noted that the girl in the advertisement is shown to receive a fairy figurine and the boy is shown to receive a dinosaur figurine. However, the Panel also noted that the children are shown to be playing together in an area with twinkly lights and wings and dinosaurs and the girl is telling a story about dinosaurs at the beginning of the advertisement.

The Panel noted that it had previously considered a similar issue in case 0377-19, in which:

“The Panel considered that the advertisement did feature some people in gender stereotypical roles, however there was no suggestion in this advertisement that these roles are only associated with this gender, that they are the only options available to those genders, or that they are never carried out or displayed by another gender. The Panel considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did not breach Section 2.1 of the Code.”

The Panel considered that advertisers should take care when producing advertisements that characteristics referred to should not be exclusively and negatively associated with a particular gender. The Panel considered that the new part of the Code of Ethics Practice Note, quoted above, was designed to encourage advertisers to avoid using gender stereotypes in advertising and also considered that advertisers should take into account that social attitudes are evolving and the community is becoming less tolerant of gender stereotyping.

The Panel considered that the current advertisement did not refer to either child in a negative tone and did not suggest that they are only able to play with certain themed toys on account of their gender. Rather it showed that themed toys are available – a fact not usually associated with the product.

The Panel considered that the content of the advertisement did not show either child to receive unfair or less favourable treatment because of their gender, and did not humiliate, intimidate or incites hatred, contempt or ridicule of the children because of their gender.



The Panel considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did not breach Section 2.1 of the Code.

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.