



Case Report

1	Case Number	0335/12
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	22/08/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.6 - Health and Safety - Bullying (non violent)
- 2.1 - Discrimination or Vilification - Age

DESCRIPTION OF THE ADVERTISEMENT

A young, male labourer entertains his male colleagues while they are on their lunch break by demonstrating some tricks with bricks including juggling them and then throwing them so they land on the wall their older male colleague is building. We then see a shot of a KitKat Chunky 3 bar whilst a voiceover describes the product.

THE COMPLAINT

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

They have obviously 'set-up' the older man as evidenced by one of the young males saying 'good one' - i.e. a good prank. Not only is the older man the only one doing any work, one of the three males proceeds to throw three bricks right next to him while he is laying bricks on the wall. Clearly a case of physically intimidating someone.

I believe the advertisement is an example of both workplace bullying and ageism! It sends the message to younger workers that it's OK to harass/bully older workers. It also encourages people to dream-up even more elaborate pranks to belittle, denigrate, single-out etc. one individual on the basis of their age, gender, nationality etc. With an aging population there will be increasing older workers and it is unfair to model 'blokey' behaviour like that to anyone-irrespective of age. I believe the advertisement contravenes State and Federal bullying and harassment in workplace laws - specifically Brodie's law!

THE ADVERTISER'S RESPONSE

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

I refer to your letter of 31 July 2012 regarding a complaint received from a member of the public concerning the KIT KAT CHUNKY 3 television commercial (Advertisement). Thank you for the opportunity to comment on the issues raised in the complaint.

Nature of Complaint

The primary reasons for concern identified by the complainant is that the Advertisement allegedly depicts an older man being set up in a prank and then shows the same older man being physically intimidated by his younger workmates. The complainant alleges that the Advertisement "is an example of bath workplace bullying and ageism."

In relation to the codes administered by the Advertising Standards Board (ASB), the complaint refers to:

1. Section 2.1 of the AANA Advertiser Code of Ethics (Ethics Code) which provides that "Advertising or Marketing Communications 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.

2. Section 2.6 of the Ethics Code which provides that "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

Nestle Response

We note that the ASB has previously considered this Advertisement in relation to a complaint it depicted unsafe work practices and dismissed that complaint.

Nestle has also considered the AANA Code for Advertising and Marketing Communications to Children and the AANA Food and Beverages Marketing and Communications Code and considers that the Advertisement complies with those codes in all relevant aspects.

The tone of the Advertisement and the campaign for KIT KAT CHUNKY 3 is characteristic of the wry sense of humour that is used to advertise KIT KAT. The primary focus of the Advertisement is a light hearted depiction of a young labourer entertaining his friends whilst they are on their break. The labourer entertains them with his amazing 'skill' to demonstrate how much more you can get out of your break with a KIT KAT CHUNKY 3. It is a play on the number three• with three labourers, three tricks and three bricks as this corresponds to the three chunks in the KIT KAT CHUNKY 3 bar.

1. Section 2.1 of the Ethics Code

The complainant states that the Advertisement encourages the belittling or denigration of a person based on their age - and this is done in the Advertisement by setting up a prank so that the older labourer spills his bricks and by the actions of the three younger labourers in relation to the older labourer.

Nestle submits that the Advertisement does not portray the older labourer in a way which discriminates against or vilifies him because of his age.

We acknowledge that, while the Advertisement deliberately includes two contrasting ages, this is done to highlight the mateship between the young labourers who are the focus of the Advertisement. And while this contrast exists, the older labourer is not depicted in a negative

manner at all - rather he wryly acknowledges the activities of the younger labourers. Nestle's intention with this brief (as with all of our advertising) was to engage our target audience - being the younger male.

Nestle has not received any other complaints (including through our Customer Service line, KIT KAT Facebook page or otherwise) that the Advertisement belittles or denigrates older people.

2. Section 2.6 of the Ethics Code

In relation to section 2.6 of the Ethics Code, the definition of "Prevailing Community Standards" is "the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to Advertising or Marketing Communications".

In this regard, Nestle submits that the Advertisement is entirely in line with the community standards and expectations that would reasonably apply to a communication of this nature and that there is no evidence of bullying or harassment in the workplace taking place.

The Advertisement does not depict a 'set up' of the older labourer but rather shows the wheelbarrow catches something on the ground. The spilling of the bricks is necessary to set up the rest of the Advertisement and the tricks which are shown. The "good one" which is heard in the Advertisement is the start of the idea that the young labourer has to get more out of his break by entertaining his mates and is not having a laugh at the expense of the older labourer.

The complainant states that the throwing of the bricks on to the wall being laid by the older labourer is depicting the physical intimidation of someone. The Advertisement shows quite the opposite of this as the older labourer is bemused by the activities of his younger colleagues/ the "youth of today" and shakes his head at the tricks being performed with the bricks.

The Advertisement was shot carefully to ensure that it did not look like the bricks were going to hit the older labourer and his reaction (shaking the head with a wry smile) and the positioning of the bricks (leaving space for the bricks to land) clearly demonstrates this.

Nestle does not consider that the Advertisement depicts any bullying or harassment - whether in the workplace or otherwise. The actions of the younger labourers do not amount to physical intimidation rather the Advertisement is a humorous play on the nature of the KIT KAT CHUNKY 3 bar. It is worth noting that Nestle has not received any other complaints (including through our Customer Service line, KIT KAT Facebook page or otherwise) that the Advertisement depicts bullying and harassment.

For the above reasons, we respectfully submit that we have not contravened Section 2 of the code.

Please do not hesitate to contact me should you require any further information or wish to discuss our response.

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' concern that the advertisement depicts ageism and bullying.

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

The Board considered whether the advertisement complied with Section 2.1 of the Code. Section 2.1 states: "Advertising or Marketing Communications 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 Board noted the advertisement features three male construction workers laughing as an older male construction worker drops some bricks from his wheel barrow and that one of the younger construction workers uses three of the dropped bricks to juggle before throwing them at the wall the older man is building.

The Board noted the complainant's concerns that the advertisement is ageist in its depiction of the treatment of the older male worker. The Board considered that the depiction of the three younger men laughing when the older man spills some bricks is laughter aimed at a colleague's clumsiness and is not aimed specifically at the age of the colleague. The Board noted that although the older man is shown to be working it is clear that the younger men are on their break and considered that there is no indication that the older man is being prevented from taking a break.

The Board noted that when the younger man throws the bricks at the wall the older man is building, the older man reacts to the bricks landing perfectly in line on his wall with amusement and considered that the most likely interpretation of the situation is that the older man is amused by the antics of his younger colleagues who are on their break.

Based on the above the Board found that the advertisement did not discriminate against or vilify any section of the community, and did not breach Section 2.1 of the Code.

The Board then considered whether the advertisement was in breach of 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 Board noted that it had previously dismissed this advertisement under Pay TV, ref 0307/11, where it found: "...that the advertisement is a light hearted depiction of a young labourer entertaining his friends whilst they are on their break and although the scene is based in an everyday workplace environment, the actual activity shown is unlikely to be achievable in real life. The Board considered that the stunt shown is clearly fictitious and exaggerated. The Board considered that this depiction does not condone or endorse throwing bricks in any situation."

The Board noted that in this instance the complainant is concerned that the advertisement depicts and encourages bullying, specifically towards older members of the community.

The Board considered that the overall tone of the advertisement is one of camaraderie between all of the construction workers depicted. The Board noted that whilst the younger men laugh when the older man spills some bricks from his wheelbarrow, and considered that

this laughter is not malicious and is not intended to belittle the older worker. The Board noted that the younger men are on a break and that the older man is still working and considered that there was no suggestion that the older man was not allowed to have a break or that he was being prevented from having one. In the Board's view most members of the community would consider that the older man is not being treated in a manner which would be considered bullying.

The Board considered that the advertisement did not depict, encourage or condone bullying and did not depict material contrary to prevailing community standards on health and safety.

Based on the above, the Board determined that the advertisement did not depict material contrary to prevailing community standards on health and safety and did not breach Section 2.6 of the Code.

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