



Case Report

1	Case Number	0477/15
2	Advertiser	7-Eleven Stores Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	Cinema
5	Date of Determination	09/12/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

2.1 - Discrimination or Vilification Nationality

DESCRIPTION OF THE ADVERTISEMENT

This cinema advertisement features two boys in a 7 Eleven store choosing a Slurpee when a Maori-like man jumps in front of them and starts performing what is intended to be a Haka. The text reads, "Can you haka Kiwiberry?"

THE COMPLAINT

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

As a New Zealander and someone of Maori descent, I found this advertisement incredibly racist and offensive.

The character in the advertisement that is apparently meant to be a "Maori warrior" is a totally inaccurate and offensive representation of Maori people. Nowhere is this inaccuracy more evident than in the character's performance of what is supposed to be a haka (traditional Maori war dance). The haka is a highly meaningful part of Maori culture and in the advertisement, a version of one of our most famous haka, "Ka Mate" (originally composed and performed by a chief from the Ngati Toa tribe, and now frequently used by the New Zealand national rugby team, with permission from the tribe, as part of their pre-game ritual) is completely bastardised. The awkward performance depicts Maori people as illiterate savages who simply grunt and yell their way through their own native songs and dances, when authentic performances of the haka involve chanting meaningful words in the Maori language, which are accompanied by specific hand gestures that act out the words. Moreover, the Maori character in the advertisement wears a red blanket around his waist,

when traditional Maori dress for men is a piupiu (a skirt made from dried flax and patterned with black dye). Through the use of this prop, the advertisers conceal the beauty and intricacy of traditional Maori clothing and instead depict it as being cheap and ugly. Finally, there has been an attempt to replicate "ta moko" (traditional Maori tattoos) on the character's face and right arm using what appears to be a marker pen. As with the clothing issue, the beauty, intricacy and significance of our traditional body art is concealed and instead depicted as being unthoughtful and ugly. The overall outcome of these deliberate and reckless decisions by the advertiser is a racist representation of Maori people as mute simpletons who are not even capable of speaking their own language properly in their traditional songs and dances, let alone performing more advanced tasks like producing beautiful handmade clothing or drawing intricate body art.

I fear that because this advertisement is specifically targeted at young Australians, there is a real risk that the satirical representation of Maori people will propagate a racist attitude amongst young people towards not only Maori, but indigenous people and cultures more broadly. Indeed the advertisement even appears to encourage such attitudes in the opening text. The Maori word "haka" (correctly pronounced "hah-kah") is suggested as a pun on the English slang phrase "hack a" (i.e., to tolerate something). Clearly, the pronunciation of the two words could not be any more different, but this attempted pun implicitly grants a license to others, especially young people who are the obvious target of this advertisement, to deliberately mispronounce indigenous words, when as a developing post-colonial society we should be trying to encourage the exact opposite.

Put simply, the fact that a non-Maori organisation is cheaply exploiting (not even respectfully appropriating) my culture and customs for its own commercial gain is utterly offensive and unethical.

Given the seriousness of the above concerns, I request that you please uphold my complaint, request that this advertisement be removed from circulation immediately, and impose the appropriate sanctions on the advertiser at fault.

THE ADVERTISER'S RESPONSE

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

We have considered the complaint and the advertisement in question in light of the provisions of the AANA Code of Ethics ("the Code"). We note that the nature of the complaints relate generally to the Code and specifically to the concern that the advertisement portrays material that discriminates against and vilifies the Maori people indigenous to New Zealand.

We have carefully considered the Code, and have assessed its provisions against the content of this advertisement. We submit that the advertisement does not breach the Code on any of the grounds set out in the same.

Looking at the Code, Provision 2.1 provides that advertisements "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 advertisement depicts two teenage boys near a Slurpee machine in a 7-Eleven store being surprised by a man dressed as a Maori warrior. The man then briefly performs a traditional "haka" dance before the advertisement finishes with an end frame promoting a

“kiwi berry” slurpee flavour.

We note that at no time in the advertisement are the teenage boys threatened in any way. They appear surprised and slightly nervous however they are also smiling indicating the man does not truly intimidate them. The man’s appearance is reminiscent of a Maori warrior however, his depiction is not in any way intended to ridicule or portray Maori people in a negative manner. His appearance in the middle of a 7-Eleven store is deliberately out of place and is intended to be humorous, however the humour is derived from the surprising nature of his appearance at the location and not due to his own appearance, and the advertisement in no way passes any form of judgement on the haka dance he performs or depicts it in a ridiculous or negative light. The performance itself is respectful of Maori customs and culture and does not ridicule the same at any point.

With specific regard to complainant’s concerns, we note that the actor in the advertisement depicted as a Maori warrior is indeed of Maori descent and is a member of a Maori tribe, and he willingly agreed to participate in the advertisement and perform a haka from his tribe. We note that whilst the details of the dance may not conform exactly to traditional methods, most reasonable viewers would not be offended by this and we note that the performance is consistent with the spirit of a haka dance, and most viewers would recognise this.

Accordingly, we submit that the advertisement does not breach Provision 2.1, of the Code.

Lastly, although the complaint against this advertisement relates solely to the Code, for completeness we have also considered the AANA Food and Beverages: Advertising and Marketing Communications Code. In this respect, we note that at no time are any nutritional or health related claims made in the advertisement, nor any claims related to consumption of the product. Accordingly, we submit that the advertisement is not in breach of any provision of the AANA Food and Beverages: Advertising and Marketing Communications Code.

In conclusion, we submit that the advertisement is completely compliant with the AANA Code of Ethics and the AANA Food and Beverages: Advertising and Marketing Communications Code, and therefore, submit that this complaint should be dismissed.

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 features a man imitating a Maori and performing a satirical version of a haka which is racist and offensive.

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 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 Board noted this cinema advertisement features two teenagers in a 7-Eleven store being confronted by a Maori who performs a haka-like dance in front of them.

The Board noted the complainant's concerns that the advertisement is racist and offensive.

The Board noted the advertiser's response that the actor is of Maori descent and that he willingly agreed to perform a Haka from his tribe.

The Board acknowledged the importance of the Haka within Maori culture. The Board noted that the Haka, Ka Mate, is protected in New Zealand by legislation which prevents it from being used without the permission of the Ngati Toa tribe (<http://www.ajpark.com/ip-central/news-articles/2014/05/the-haka-ka-mate-attribution-act-the-right-of-attribution/>) and that its use must be accompanied by a clear statement which acknowledges the composer of the Ka Mate and the chief of the tribe. The Board acknowledged that this legislation is a rule for New Zealand and considered that the advertisement under review is to be judged by Australian Community Standards.

A minority of the Board considered that the depiction of a Maori man performing a Haka in a 7-Eleven store, albeit in an Australian advertisement where the New Zealand legislation does not apply, trivialises this important cultural symbol and would be seen as demeaning by Maori people.

Following considerable discussion however the majority of the Board acknowledged the argument put forward by the complainant but considered that the Maori man is depicted in a positive manner and appears in control of the situation. The Board noted the link between the name of the product, Kiwiberry, and the reference to a cultural practice in New Zealand and considered that the focus of the advertisement is to highlight the link to New Zealand. The Board noted that the Haka forms a significant role in Maori culture and that it had previously upheld a complaint about the use of a central part of Aboriginal culture in case 0037/15 where:

"The Board noted the advertisement features a male voiceover with a strong Australian accent describing the features of the new Subaru Outback vehicle and that his closing statement is, "...to pay more for a car this good would be just highway corroboree"...

...The Board noted that corroboree is a serious and central part of Aboriginal culture...

...the Board noted that corroboree is being used because it rhymes with robbery and that it was chosen because of its Australian connection and rhyming slang rather than any meaning of the word or its relevance to the advertised product. The Board considered that the casual use of a word with such important social and cultural meaning would be likely to be found offensive by Aboriginal people. The Board acknowledged that the intent of the advertisement was not to be offensive but considered that overall the advertisement did depict material in way which discriminates against or vilifies a section of the community on account of their race."

In the current advertisement the Board considered that, unlike in case 0037/15, there are no negative connotations of the use of the Haka and in the Board's view the Maori man is not

ridiculed or presented in a light which suggests he is to be laughed at or thought less of. The Board noted that the Haka has become more commercialised over the years due to its use in sport and considered that whilst the use of the Haka in an advertisement for a product may be viewed as poor taste by some members of the community, in the Board's view one person performing a Haka is not representative of the whole Maori culture and the manner in which the Maori man is depicted in this advertisement is not negative or demeaning. The Board noted that the use of the Haka for commercial gain such as in this advertisement would not be allowed in New Zealand but considered that the legislation protecting it over there does not apply in Australia and overall the broad Australian community is unlikely to interpret the use of the Haka in this instance as discriminatory or vilifying of a particular race or culture.

The Board considered that the advertisement did not portray or discriminate against a person or section of the community on account of race or nationality.

The Board determined that the advertisement did not breach Section 2.1 of the Code.

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