

Case Report

1 Case Number 0481/10
2 Advertiser FOXTEL Management Pty Ltd
3 Product Telecommunications
4 Type of Advertisement / media TV
5 Date of Determination 19/01/2011

DETERMINATION Upheld - Modified or Discontinued

ISSUES RAISED

2.6 - Health and Safety within prevailing Community Standards

2.1 - Discrimination or Vilification Religion

DESCRIPTION OF THE ADVERTISEMENT

The advertisement depicts a family preparing their home for the festive season, whilst singing a jingle with lyrics that detail the FOXTEL offer. The lyrics include reference to "FOXMAS time" and the footage shows a light display at the end of the Advertisement which reads "MERRY FOXMAS".

THE COMPLAINT

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

As a Christian I am very offending that Foxtel have desecrated one of our most sacred celebrations and religious observances by deleting Christ from Christmas and replacing it with "Fox". Would Foxtel dare tamper with another faith's religious observances such as Ramadan or Hanukkah? I sincerely doubt it.

I consider this advertisement highly irresponsible from a safety aspect. The "highlight" of the ad is when the man makes a great show of plugging together two electrical extension leads with the power obviously 'ON' to activate the lighting display!

One of the main safety precautions emphasised in respect to electricity is ALWAYS ENSURE THAT THE POWER IS 'OFF' before joining/disconnecting any appliances or extensions! This display flies in the face of what should be common-sense and is compounded by the fact that the sound of the Christmas carol attracts the attention of (especially) young children and conveys to them the message that this is a fun thing to do.

As a Christian I am used to having my faith/Jesus/the church ridiculed or criticised unfairly from time to time during which times I simply change channels or else turn the page. I can even take a joke about the portrayal of these subjects if done in good humour/taste; however this particular advertisement goes a step too far in removing the "Christ" from "Christmas" and completely demeans the entire basis for the celebration of Christmas.

This advert is condoning UNSAFE practices around the home.

Depiction of unsafe practices. Firstly the father figure appears to be on a roof and at risk of falling. My principal concern is the father figure is shown plugging together the ends of a live extension cord. His family are all close around him. It is common knowledge and is widely promoted that it is unsafe to handle extension cords in that way. The advertisement demonstrates to a wide audience that this action is OK.

I object to and find this commercial hugely offensive as it makes a mockery of and is grossly sacrilegious toward the Christian festival of Christmas. Not only is the entire commercial based on the concept of "Foxmas" but the wording of the jingle that is sung is structured in such a way to highlight the commercial gain and benefit of Christmas as the primary focus of such a time of year.

The origin of the word "Christmas" comes from the combination of the word "Christ" and the word "Mass". Therefore coming together means a Mass to commemorate the birth of Jesus Christ. To take such liberties with such an important religious festival is both grossly inconsiderate and highly offensive.

Liberties such as this tend to be taken as it is a Christian festival that is being played upon for the use of commercial advertising. I have no doubt that other religious periods of importance such as Ramadan Hanukkah and so on would never be disrespected in such as way. Whether or not the viewing audience is of Christian faith is irrelevant in this case as we in Australia should be respectful of all peoples and their beliefs.

As Christians we were distressed to see the new Foxtel ad changing CHRISTMAS to Foxmas. The practice is potentially lethal if undertaken by adults and would be deadly if attempted by children.

I request that the advertisement be withdrawn immediately in the interests of public safety. The advert depicts a house decorated with Christmas style lighting however it spells out FOXTEL. In the advert a central character connects 2 plug ends together which instantly powers up the roof lighting. Clearly this signifies that the cabling has a live electrical current when he joins the 2 cables. While it may seem trivial it in fact gives children or impressionable people that it is okay to plug devices into an active current. Instead the advert should have shown the guy clicking a switch which is of course the correct and safe way of operating any mains powered electrical device.

Contrary to all electrical safety guidelines sets a poor precedence and should be urgently removed before others particularly children copy this practice and are electrocuted. It should be removed or adjusted immediately.

No Safety Standards....total negligence....of all required Safety Standards...

I object to the substitution of the name of Christ by the word Fox; advertising "Foxmas" time. Thus removing the Christian element from a Christian celebration and using it to promote a commercial opportunity.

Object on grounds of safety. Electricians would tell you never to connect two power boards directly without using a switch. It is extremely dangerous. People, especially children, may try to imitate.

I am not a very religious person but I wish to complain about the Foxmas advertisement that has removes the Christ from Christmas. The essence of Christmas I think had been commercialised bastardised and corrupted enough and the Foxtel Ad has overstepped the mark. If I was thinking of purchasing pay TV Foxtel would not be a consideration.

I'm Chair of a Christian based charity which is non denominational and welcomes and embraces all faiths. Some of our members were offended by the slogan in this ad which substitutes the word 'Christ' in Christmas with 'Fox' and wishes everyone a Merry Foxmas. We believe other Christians may feel disrespected offended or even find the substitution blasphemous because the word Christ has spiritual significance with the heart of the Christmas message being the birth of The Christ – hence Christmas.

We appreciate the offence is probably unintentional and stems from a lack of understanding of the Christian faith. Many non-Christians are unaware of the link between Christmas and the Christian story seeing it as a cultural or family celebration or a holiday and we respect each person's individual approach to Christmas.

However in the public arena broader perspectives need to be taken into account. Australians come from many ethnic backgrounds, faiths and cultures and our laws ensure that non-Anglo cultures and faiths are shown respect and consideration. However as in this case there are times when the secular nature of our own Western culture overshadows our traditional faiths and Christianity is not afforded the same levels of respect and consideration.

THE ADVERTISER'S RESPONSE

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

The television commercial is for FOXTEL's latest campaign which offers new subscribers FOXTEL's starter package for \$6 per week for 6 months on a 12 month plan (the "Advertisement").

The aim of the Advertisement is to celebrate the festive season and promote FOXTEL's end of year sale. The Advertisement depicts a family preparing their home for the festive season, whilst singing a jingle with lyrics that detail the FOXTEL offer. The lyrics include reference to "FOXMAS time" and the footage shows a light display at the end of the Advertisement which reads "MERRY FOXMAS".

The basis of the Complaint is "religion" and the Complaint alleges a potential breach of section 2.1 of the AANA Code of Ethics (the "Code"), which provides:

"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, sex, age, sexual preference, religion, disability or political belief."

FOXTEL submits that the Advertisement does not deal directly with "religion" in any respect, nor does it believe that the Advertisement "portrays people or depicts material in a way which discriminates against or vilifies a person or section of the community on account of religion".

Pursuant to the Australian Human Rights Commission Act 1986, "discrimination" is defined as being:

"any distinction, exclusion or preference made on the basis of... religion... that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation." This interpretation highlights that discrimination is an act that impairs equality and on that basis FOXTEL submits that the Advertisement cannot be regarded as discriminatory in any sense.

The term "vilification" is typically understood as engaging in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of a person or class of persons. FOXTEL believes that the Advertisement cannot in any way be regarded as inciting hatred on the basis of religion or giving rise to any of the other relevant elements.

The creative concept of "FOXMAS" was developed as a humorous play on words of "Christmas" to draw a connection between the festive season of Christmas and FOXTEL's end of year celebratory sale. FOXTEL takes the concerns of its subscribers and its commitment to the community very seriously and it was never FOXTEL's intent to cause any offence.

Further complaints suggest a potential breach of section 2.6 of the AANA Code of Ethics (the Code) which provides:

"Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety."

The Code applies a very broad interpretation of 'prevailing community standards' which gives little guidance on how this obligation is to be met in practice. FOXTEL is not aware of any general prevailing community standards relevant to electrical health and safety which the advertisement has contravened.

In addition the Advertisement is intended to be a humorous display of a family decorating their home with Christmas lights. The Advertisement ends with the father gathering his family together to reveal the light display (by connecting two extension leads), and after a slight delay, the "MERRY FOXMAS" display is revealed. The family then celebrates the father's success and their neighbours walk over to take in the spectacle. FOXTEL submits that any electrical safety concerns have been mitigated as the children in the advertisement are not responsible for connecting the power; this is the role of the adult father and needs to be assessed in the context of the entire Advertisement being comedic. The advertisement is in no way intended to encourage or endorse unsafe practices.

FOXTEL will take this feedback from viewers into consideration for its future marketing campaigns.

FOXTEL submits that the Advertisement has not breached section 2.1, 2.6 nor any other section, of the Code.

I hope that I have been able to satisfactorily respond to the Complaint.

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' concerns that the advertisement is offensive as it desecrates a Christian celebration by deleting Christ from Christmas, and that the advertisement depicts dangerous behavior with electrical extension leads (particularly plugging together live extension cords), and electrical lights.

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

The Board considered whether the advertisement was in breach of section 2.1 of the Code. Section 2.1 of the Code 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 ...religion..."

The Board noted that the advertisement depicts a family preparing their home for the festive season, whilst singing a jingle with lyrics that detail the FOXTEL offer. The lyrics include reference to "FOXMAS time" and the footage shows a light display at the end of the Advertisement which reads "MERRY FOXMAS".

The Board considered that the reference in the advertisement to FOXMAS instead of Christmas is a play on words closely related to XMAS which is commonly used as an abbreviation for the word Christmas. The Board considered that the use of the term 'Foxmas' would be offensive to some people with strong Christian beliefs. However the Board considered that the use of this term in the manner depicted in the advertisement does not denigrate Christianity or Christians and would be seen by most people as a humorous play on words with no reflection on the beliefs underpinning the words. The Board determined that the use of the term FOXMAS in this advertisement did not discriminate against or vilify any section of the Community and that the advertisement 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 the advertisement depicts a family preparing their home for the festive season, whilst singing a jingle with lyrics that detail the FOXTEL offer and at the end of the advertisement, the male plugs the ends of 2 power leads together to illuminate the lights that are covering the home and the words "Merry Foxmas".

The Board asked that the Bureau obtain advice about the safety or otherwise of the images depicted in the advertisement:

"WorkSafe ACT recognises that the advertisement is likely a parody of a well known movie and, as such, artistic licence is expected. Also, it would be inappropriate for this organisation to comment on the particulars of an advertisement that is portraying work being undertaken at home.

Nonetheless, in the context of health and safety in the workplace (for which WorkSafe ACT is responsible), this organisation would be concerned about a number of issues including: falls from height - some form of falls protection is required for people working at heights; and people looking on from the middle of the road. This counters safety measures taught to children about road safety. Under normal conditions, temporary traffic management procedures are required.

In relation to the power cords, the following comments were received from the ACT Planning and Land Authority (the regulatory body for electrical works in the ACT):

"This advertisement portrays unsafe electrical practice (other than licensable wiring work).

For instance, when the father connects electricity to decorative lighting with a cord extension socket and three pin plug he could be exposed to electrical burns if there was a lighting fault. Safer presentation would be to have the father closing a switch on a power point in a dry environment (e.g. on a front veranda or at a dedicated temporary lighting switchboard with his family watching on).

In the scene showing the mother and daughter stringing lights around a metal outdoor clothes line (Hills hoist), the danger lies in the fact that the clothes line is earthed by default as it is in the ground.

There is a risk of shock if the Christmas lights on the clothes line were 240 volt types and the light string was to become damaged. This also applies to lighting strung on the roof top.

The risk is much higher where safety switches are not common on power circuits. Electrical installations in pre-1991 housing are not covered by safety switch mandatory protection introduced in the 1991 Wiring Rules and not all older homes have been upgraded with safety switches.

While we believe there is some licence to exaggerate in the advertising world, subtle portrayal of physical and electrical safety can always be incorporated and in so doing deaths may be prevented."

The Board considered the information provided and considered that the advice clearly indicates that a number of the practices depicted in the advertisement would be unsafe if performed at home and that these practices would breach prevailing community standards on health and safety. The Board noted that the advertisement is a parody or reference to a popular movie and that in the movie the practices with the electricity are seen to be dangerous and inappropriate. The Board considered however that the Code clearly requires that advertising not undermine health and safety messages and that this particular advertisement does clearly depict unsafe behavior and is broadcast at a time when people will be decorating their homes in similar manner. The Board agreed that although the advertisement is exaggerated, it is not sufficiently unrealistic to overcome the depiction of unsafe practices with electrical equipment. The Board determined that the advertisement breaches section 2.6 of the Code by depicting material that is contrary to prevailing community standards on health and safety.

Finding that the advertisement breached section 2.6 of the Code, the Board upheld the complaints.

ADVERTISER RESPONSE TO DETERMINATION

FOXTEL confirms that the "Merry FOXMAS" advertisement was discontinued on 24 December 2010.