



Case Report

1	Case Number	0522/14
2	Advertiser	Mattel Pty Ltd
3	Product	Toys and Games
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	10/12/2014
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

Advertising to Children Code 2.07 Parental Authority

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement showcases the Hot Wheels Max-D monster truck product twirling and moving around in a simulated stadium environment. We see Hot Wheels cars move along the orange track, and slam into the Max D. The advertisement ends with a product packshot scene, following by an end tag with a call-to-action for viewers to visit the website which helps kids to write a templated "letter to santa".

THE COMPLAINT

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

This advertisement is on after toys advertised saying "Please add this on your letter to Santa" Is this fair? Should we encouraged children to add expensive gifts on Santa letters, some parents can not afford lots of gifts at Christmas.

THE ADVERTISER'S RESPONSE

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

We act for Mattel Pty Ltd ("Mattel").

We refer to your letter in respect of the "Your Letter to Santa" competition ("the advertisement") broadcast on the Nickelodeon channel on FOXTEL on behalf of our client.

We are instructed to respond to the issues raised as follows:

AANA Code of Ethics

1. The advertisement the subject of the complaint does not breach section 2 of the AANA Code of Ethics because:

(a) it does 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;

(b) it does not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people;

(c) it does not present or portray violence;

(d) there is no reference or depiction of sex, sexuality or nudity;

(e) it only uses language which is appropriate in the circumstances (including appropriate for the relevant audience and medium);

(f) the advertisement does not depict material which is contrary to any prevailing community standard in relation to health and safety; and

(g) it complies with the AANA's Code of Advertising & Marketing Communications to Children (see further below).

AANA Code for Advertising and Marketing Communications to Children

2. The advertisement complies with the AANA Code for Advertising and Marketing Communications to Children ("Code") for the following reasons:

(a) the advertisement complies with each of the obligations imposed by advertisers by sections 2.1 - 2.14 of the Code;

(b) The complaint appears to have been based on an alleged breach of section 2.7 of the Code in that the complainant alleges that the advertisement is encouraging children to add expensive gifts on their letters to Santa whereas some parents cannot afford lots of presents at Christmas.

(c) Our client denies that there has been any breach of clause 2.7.

(d) The advertisement the subject of the complaint relates to a promotion which children can enter to win 1 of 500 Mattel products. Each child has one chance to complete an entry in the form of a letter to Santa that requires them to nominate gifts they would like for Christmas

from the Mattel range of products.

(e) The toys able to be nominated by the children vary in price from \$2.99 to \$299.99. Of the 174 toys nominated, 10 are in the price bracket \$100-200 and 3 are in the price bracket \$200-300. 134 of the items have a retail price less than \$50. Our client has been careful to ensure that the range of toys the subject of the promotion includes toys which will comply with most budgetary constraints. What is "expensive" is a subjective notion and is dependent on the financial capacity of the viewer.

(f) Children throughout the world write letters to Santa each year. It is submitted that at least the majority of those letters will contain requests for toys that are either too expensive for their parents or are inappropriate. A simple Google search of "Letter to Santa" attracted 137,000,000 hits. The fact that an inappropriate or expensive gift is included in a letter to Santa does not carry with it an expectation that that gift will be received.

(g) Further, the complaint assumes that children who visit the "Your Letter to Santa" website will be aware that their parents or carers are Santa. As a matter of logic this is simply incorrect. Only those children who believe in Santa will go to the effort of visiting the website and writing a letter. Those children will not be doing so to urge their parents to buy the nominated product(s) for them. It is nothing more than an expression of hope or desire.

3. The promotion does no more than encourage children to write a letter to Santa nominating gifts from the list that they would like for Christmas and in doing so have a chance to win a toy. There is no guarantee given, express or implied, that the children who enter will get those toys.

4. Finally, we note that the promotion the subject of the advertisement has been approved by the relevant gaming authorities in each Australian state and territory where a permit is required (namely NSW, Victoria, South Australia and the ACT). Generally a condition of such approval is that the promotion is conducted in accordance with decency, dignity and good taste.

For the reasons outlined above, the complaint should be rejected.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the Children's Code).

The Board noted the complainant's concerns that the advertisement is encouraging children to ask for expensive gifts for Christmas.

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

The Board considered whether the Children's Code applied.

The Board considered the definition of advertising or marketing communication to children. Under the Children's Code, Advertising or Marketing Communications to Children means "Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product." The Board noted that Children are defined as "...persons 14 years old or younger" and Product is defined as "...goods, services and/or facilities which are targeted toward and have principal appeal to

Children.”

The Board noted the advertisement features scenes of the Hot Wheels Monster Jam toys inclusive of the truck and monster as part of the maximum destruction battle play set. The voice over describes the toys and the additional parts available. At the end of the advertisement a picture of a website appears on screen and a different voice states “Add this toy to your letter to santa.com.au”

The Board considered the theme of the advertisement (the promotion of a car and robot monster), the visuals, (children putting the track and launch ramp together) and the language used (an excited male voice talking about the features of the toy and accessories).

The Board considered that although it is likely that the toy would be purchased by an adult, the overall tone of the advertisement was directed primarily to children under the age of 14 years.

The Board then considered whether the advertisement meets the definition of Product. The Board noted the advertised product is a Hot Wheels play set. The Board considered that the toy was a product of principal appeal to children.

Finding that the advertisement is directed primarily to Children and is for Product the Board considered the advertisement against the Children’s Code.

The Board considered Section 2.7 (b) of the Children’s Code which provides: “Advertising or Marketing Communications to Children for food or beverages must not contain an appeal to Children to urge their parents, carers or another person to buy a Product for them.”

The Board noted the complainant’s concern that the advertisement is encouraging children to add expensive gifts to their letter to Santa and that this is unfair as some parents/carers cannot afford a lot of gifts at Christmas.

The Board noted that the majority of the advertisement is depicting the toy in action moving around in a simulated stadium environment and the voiceover describes the toy to the viewer. The Board noted that at the end of the advertisement there is a call to action that says “add this toy to your letter to santa.com.au”

The Board noted that the website referred to gives opportunities to the user to form a gift list of toys that they are hoping to receive and this list can be distributed to friends and family. The Board noted that for the purposes of this case, it could only consider the advertisement before it and that the website and the functionalities within it were not under consideration as part of this matter.

A minority of the Board considered that the suggestion of adding the toy to a letter to Santa was not a suggestion that children should form an extensive list of toys that are difficult to find or are outrageously expensive so as to pressure parents into buying gifts they cannot afford, but that this could be an idea of a type of toy that is of appeal particularly at Christmas. The majority of the Board however, felt that during the Christmas period in particular, the suggestion that a particular toy should be added to a letter to Santa does put extra pressure on parents and carers to purchase the toy for Christmas.

The Board considered the specific section of the clause that states that “...marketing communications to children... must not contain an appeal to children to urge their parents, carers or another person to buy a Product for them.” The Board considered that the call to action by the voiceover at the end of the advertisement was a call to children to urge their parents to either help them to access the website in order to direct a letter to Santa requesting this toy or from a child’s perspective is an appeal to children to urge Santa to provide a present. The Board noted the terms of the Code, “parent, carer or other person” and considering that the Code must be considered from the perspective of a child, the Board considered that this amounts to an appeal to children to urge someone to obtain the toy for

them.

The Board considered the term “buy” a product and considered that in the context of a reference to Santa “buy” should be interpreted broadly and would include the suggestion to ask Santa to provide the toy.

The Board considered that the suggestion to "add the toy to your letter to santa.com" was an appeal to children to urge someone to obtain the product for them and this was urging parents to purchase this toy and that in doing so did breach section 2.7(b) of the Children’s Code. Finding that the advertisement did breach the Children’s Code the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

The advertiser strongly disagrees with the decision of the majority of the Board. Nevertheless, we have been asked by our client to inform you that the advertisement the subject of the complaint is no longer running and as a consequence it does not propose to seek a review of the determination.