



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0534/18
2	Advertiser	Sports Locker
3	Product	Retail
4	Type of Advertisement / media	Poster
5	Date of Determination	12/12/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

2.5 - Language Inappropriate language

DESCRIPTION OF THE ADVERTISEMENT

This poster advertisement features an African American man 'giving the finger' with the words "he's been paying full retail price on asics GEL-KAYANO nobody should pay retail - nobody".

THE COMPLAINT

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

I don't like the middle finger being used for all of the general public to see, especially young people. I believe this does not set a good standard for anyone !!

THE ADVERTISER'S RESPONSE

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

I address the complaint regarding the ad we have on our shop window. It depicts an angry shopper showing the middle finger, an act of defiance, with the words "he's



been paying full retail prices on Asics Gel -Kayano, nobody should pay retail - nobody." The reaction is of customers and indeed ourselves who fought Asics, who have been ripped off by the big retailers and Asics, by trying to force people to pay full retail price.

It is a theme of Sports Locker that we have promoted for years, of breaking the cartel, between big retailers and global footwear suppliers, where they try to control retail prices. Our customers, we have been in business for over 40 years, know of our fight with Asics where they attempted to close our business down because of our aggressive prices. It's the old "if they can't beat you, they'll cheat you and this fight, well know by our customers, who have been forced to pay full retail price, has been well known.

This fight has taken us to filing a complaint with the Australian Competition & Consumer Commission, travel to Japan with then Senator Nick Xenophon, FOI requests via the ACCC, resulting in well over 120 pages of documents and on going legal issues. And it's not finished. It took us three years of finding an alternative supply, parallel importing, legal in this country and actually encouraged by the Australian Government, to return to business.

Our response in this ad is to depict an Australian Ocker's response to authority. The response from an Aussie, is to show an act of defiance. "Stuff you, up yours, sit on that". We have received two phone calls on that ad, and on ringing back the number, they were from retailers, some of whom were subject of our complaint to the ACCC on Section 45, 46 and 47 and other anti competition sections. In over three months we have had that ad, three million cars have passed by. Almost with out exception our long time customers have loved the irreverence of the ad and the encapsulation of the good old fashioned Aussie retort. We think it is a traditional Aussie response to authority and to bullies who believe it's ok to manipulate and be rewarded from it.

It is an Aussie tradition that goes back to the founding of this country, back to our soldiers at Gallipoil! "Don't mess with an Aussie mate" and in this "make believe' vanilla politeness", there should in our opinion be more of it, bring back the Aussie spirit. We know, from former reps, the opposition retailers hate our themes, where we use terms like "don't get ripped off" or "you paid how much for a Kayano?" or "you paid \$260 for a Kayano, you have got to be galah". Sports Locker will continue to be aggressive with this theme of "don't mess with an Aussie".

THE DETERMINATION

The Ad Standards Community Panel (the 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 is inappropriate for a broad audience.



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

The Panel considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: "Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided".

The Panel noted the complainant's concern that the advertisement featuring someone presenting their middle finger is inappropriate for a broad audience.

The Panel considered that this advertisement features a man 'giving the finger' to the audience.

The Panel noted that it is reasonable to include gestures as part of considerations regarding language and therefore it is appropriately considered within section 2.5 of the Code.

The Panel considered that although specific words are not used to express distaste for paying retail price for footwear, the advertisement contains an image that is a universally recognised gesture meaning "up yours" and in this context it is suggestive of saying "up yours" to paying retail pricing.

The Panel considered that the gesture depicted is not aimed at a person or business, but rather the concept of paying a higher price for products. The Panel noted that the gesture is a small part of the advertisement and that the main focus is the text "he's been paying full retail price on asics gel-kayano nobody should pay retail – nobody".

The Panel considered that the advertisement did not use strong or obscene language and the gesture was not inappropriate in the context of the product advertised and the overall context of the advertisement. The Panel determined that the advertisement did not breach Section 2.5 of the Code.

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

