



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0544/18
2	Advertiser	Cheap as Chips
3	Product	Retail
4	Type of Advertisement / media	Print
5	Date of Determination	23/01/2019
6	DETERMINATION	Dismissed

ISSUES RAISED

Advertising to Children Code 2.04 Sexualisation
2.2 - Objectification Exploitative OR degrading - children
2.4 - Sex/sexuality/nudity S/S/N - general
2.4 - Sex/sexuality/nudity S/S/N - sexualisation of children

DESCRIPTION OF THE ADVERTISEMENT

This print advertisement features a man wearing a Christmas themed 'mankini'.

THE COMPLAINT

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

This publication is showing a young man in a sexualised manner.

*The AANA CODE FOR ADVERTISING & MARKETING COMMUNICATIONS TO CHILDREN states in Section 2.4 "2.4 SEXUALISATION Advertising or Marketing Communication to Children:
(a) must not employ sexual appeal;
(b) must not include sexual imagery; and
(c) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will*



enhance their sexuality." I believe that this advertisement breaches Section 2.4.

The tutu is advertised to what would appear to be young children as the girl looks quite young and this would be appropriate for a child to ask their parents for on seeing the advertisement, however, the young man in the obviously sexual 'manikini' right next to her is completely inappropriate for children. This is obviously a family store, there is a picture of a man and lady and a child on the front of the brochure.

This is something one would imagine is available in a sex shop, and I do not believe even sex shops advertise like this, let alone deliver to the mailboxes of a mass target audience of families and children.

I note that it is stated on the adstandards website: "Although legally allowed to be advertised, sex products or services advertisements can breach Section 2.4 of the Code if they are overly sexualised and/or depict a high level of nudity." (<https://adstandards.com.au/products-issues/sex-sexuality-and-nudity-determination-summary>) and I believe this is overly sexualised and contains a high level of nudity.

THE ADVERTISER'S RESPONSE

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

The images you are referring to appear on page 3 of the 8 page weekly Catalogue. Published and distributed for week commencing 14th November 2018.

Both images (Christmas Tutu and Christmas Mankini) have been supplied to Cheap as Chips to support the marketing of these products. The images have been sent by the supplier of the products: Uncle Bills Pty Ltd.

The model appearing in Christmas Tutu has been confirmed (by Uncle Bills Pty Ltd) as being a young woman aged 22 years old and not a child.

The image appears on a page of adult biased products. The referred image does not appear on or in relation to the children's products. Children's products are featured on Pg4.

We pride ourselves on being a family friendly business with strong ethics and values, we sincerely apologise for any offence taken and this was not our intention.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Code for Advertising and Marketing



Communications to Children (the Children's Code).

The Panel noted the complainant's concern that the advertisement features sexualised images of a minor in a catalogue that has children's products.

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

The Panel considered whether the Children's Code applied.

The Panel 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 Panel 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 Panel considered whether the advertisement is directed primarily to children (14 years or younger). The Panel noted the practice note for the Children's Code which states that whether an advertisement or marketing communication is "directed primarily to children" is an objective test based on several factors including, but not limited to the combination of visual techniques, product and age of characters and actors. The use of any one factor or technique in the absence of others may not necessarily render the marketing communication "directed primarily to children."

The Panel noted that the dictionary definition of "primarily" is "in the first place" and that to be within the Children's Code the Panel must find that the advertisement is aimed in the first instance at children.

The Panel noted the marketing communication is a catalogue for a variety discount store which featured Christmas products, electronics and homewares amongst other things. The Panel noted that Page two and three of the advertisement feature Christmas products including trees, lights and Christmas costumes, and page four (over the page) features children's toys and wall decorations.

The Panel noted the theme of the advertisement, specials at a variety store. The Panel noted that the advertisement features a variety of products with prices and considered that while it may be of interest to children, it would primarily be of interest to adults looking to do shopping before Christmas.

The Panel noted the visuals of the advertisement and considered that while there are some depictions of toys on page four of the advertisement, the first three pages of the catalogue mainly feature Christmas products, such as trees and lights which would be appealing to both adults and children, and not primarily to children.



The Panel then considered the language used in the advertisement. The Panel noted that the advertisement uses the words 'get your sparkle on this Christmas' on the front page. Other than this the advertisement mainly features product descriptions, prices and disclaimers. The Panel considered that this language would be directed primarily towards adults.

The Panel then considered whether the advertised product itself met the definition of Product as set out in the Children's Code. The definition in the Children's Code states that "product means goods, services and/or facilities which are targeted toward and have principal appeal to Children."

The Panel considered that while some of the products (such as toys) featured in the advertisement were for children, the majority of the products, including the 'mankini' specified by the complainant were not products which are targeted towards or which would have principal appeal to children.

Overall the Panel considered that the advertisement is not directed primarily to children and the product is not a product targeted to and of principal appeal to children therefore the provisions of the Children's Code do not apply.

The Panel then considered whether the advertisement was in breach of the AANA Code of Ethics.

The Panel noted the complainant's concern that the advertisement featured a sexualised image of a young man next to a picture of a young girl.

The Panel noted that Section 2.2 of the Code states:

"2.2 Advertising or Marketing Communication shall not employ sexual appeal:
(a) where images of Minors, or people who appear to be Minors, are used; or
(b) in a manner which is exploitative or degrading of any individual or group of people."

The Panel noted that page three of the catalogue featured a number of images of people in Christmas costumes and Christmas products, including an image of a young woman in a red tutu and stockings next to a young man in a red mankini which has "jingle my bells" written on it. Packaging for three other styles of mankini are also shown.

The Panel first considered whether the advertisement contained sexual appeal. The Panel noted that the male in the advertisement was wearing an outfit which exposed a lot of skin and which featured the sexual innuendo 'jingle my balls'. The Panel



considered that while the overall effect of the advertisement was more humorous than sexualised, the image could be considered by some to have sexual appeal.

The Panel noted the advertiser's response that the images had been supplied to them by the distributor who confirmed that the young woman in the advertisement was 22 years old and not a child.

The Panel considered that the young woman in the advertisement may look like a teenager, however considered that she was dressed appropriately in a Christmas costume and that the depiction did not use sexual appeal. The Panel considered that the image of the woman was clearly photoshopped next to the man in the mankini and that this did not amount to a depiction of the woman which would employ sexual appeal.

The Panel then considered the depiction of the man. The Panel noted that the advertiser had not provided the age of the young man in the advertisement. A minority of the Panel considered that the man did appear to be very young, and may be under 18. The majority of the Panel however considered that the man appeared as though he was 19-20 and did not appear to be a minor.

The Panel considered that the advertisement did not breach Section 2.2 (a) of the Code.

The Panel then considered Section 2.2 (b) of the Code, and whether the depiction of the man employed sexual appeal in a manner which is exploitative or degrading of the man.

The Panel noted the AANA Practice Note which provides guidance on the meaning of the terms exploitative and degrading:

Exploitative - (a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or (b) focussing on their body parts where this bears no direct relevance to the product or service being advertised. Degrading – lowering in character or quality a person or group of people.

The Panel considered that the man in the image was depicted as being confident and happy in the advertisement and considered that he is not being shown as an object or commodity. The Panel considered that while there was quite a bit of the man's skin exposed this was directly related to the design of the mankini being advertised. The Panel considered that the advertisement depicted a man dressed in a humorous novelty Christmas outfit and that the advertisement did not lower the man in character or quality.

The Panel considered the advertisement did not use sexual appeal in a manner which



was exploitative or degrading of an individual or group of people and did not breach Section 2.2 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”.

The Panel noted that this catalogue advertisement was delivered to people’s home and available in stores and considered that the relevant audience would be broad and would include children.

The Panel noted the complainant’s concern that the advertisement featured sexualised imagery.

The Panel considered that the image of the man was not the focus of the overall advertisement and was in the context of a page of other people in Christmas costumes. The Panel considered that while the mankini meant that the man had a large amount of skin visible, his genitals were covered and there was no nudity in the advertisement.

The Panel considered that the man’s pose was not sexualised and there was no suggestion of sexual activity in the advertisement.

The Panel considered that the wording ‘jingle my balls’ was an innuendo, however considered the text was small and was unlikely to attract the attention of children. The Panel considered that this phrase was used in a humorous and light-hearted context and was not overly-sexualised.

The Panel considered that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant broad audience, and did not breach Section 2.4 of the Code.

Finding that the advertisement did not breach the Children’s Code or the Code of Ethics, the Panel dismissed the complaint.

