



CASE REPORT

1. Complaint reference number	133/08
2. Advertiser	Trading Post Australia Pty Ltd
3. Product	Media
4. Type of advertisement	TV
5. Nature of complaint	Violence Cruelty to animals – section 2.2 Violence Other – section 2.2 Other - Social values
6. Date of determination	Monday, 19 May 2008
7. DETERMINATION	Upheld – discontinued or modified

DESCRIPTION OF THE ADVERTISEMENT

A little girl is seen standing in the front room of the house, playing with her toys. Her father is sitting on the sofa. Her brother comes into the room with his hands outstretched and pushes/shoves his sister causing her to fall to the floor. The little girl cries out "Mummy" and the father raises his eyebrows. Their mother shouts from the laundry "Gavin sort it out now, will you?".

The next scene is in the garden. The father is digging and the little girl is standing playing with her toys. The little boy runs toward her, arms outstretched, pushing her into the garden. The mother is then seen shouting from a window of the house "Gavin - today!".

In the next few scenes the little boy throws the cat across the room and pushes the bathroom door from the inside preventing the little girl from getting in. After each incident the mother shouts, "Gavin!". The mother and father watch as the boy pushes furniture around. The father is then seen sitting at the kitchen table circling advertisements in the Trading Post newspaper. The little boy is pushing the kitchen table across the room. The father is now on the phone "He's four years old, uh, 3 by 2", as the little boy pushes his father's chair across the room where he has piled the rest of the kitchen furniture. The father is then looking at Trading Post on his computer whilst you hear the noise of things breaking in the background and the mother screaming "On the edge". The little boy is then seen pushing the garage door shut, the car is running and the car horn is honking. Again the mother is heard shouting "Gavin!". The father is seen on the phone saying "Can I come right now?".

In the next scene the father and a female (presumably woman from whom he has purchased the swing set) are standing smiling and shaking hands in the garden with the little boy pushing his father's leg. In the final scene the little boy is shown holding out his hands. He happily pushes the little girl, who is laughing, on a swing. The husband and wife stand with their arms around each other, the mother says "Oh Gavvy." A voice over states 'At Trading Post, we love happy endings'.

THE COMPLAINT

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

I find it unbelievable that an advertising company would place such a violent depiction of a child in an add. I saw the add the night before and didn't even know what was being advertised as I found it totally unbelievable with the violence being acted out in small children. Imagine a small child watching the add (5pm) and then going to pre-school and acting the same way. Don't want to even think about the poor kids that made the add.

A young boy of approximately 8 years of age, pushing his sister, in the back, forcing her unexpectedly to the ground on two separate occasions. In one instance, she is very close to a stairwell. The young boy throws his pet cat out of his bedroom. The young boy is outside the garage, attempting to close the auto garage door, while it appears that the car is in the garage, ready to depart. This advert is irresponsible, poses serious OHS issues, and could inadvertently

influence impressionable youngsters.

It is teaching our kids to be a bully and not listen to parents.

The advertisement showed a child with very challenging behaviour. His parents became so frustrated with him that they used the trading post newspaper to advertise for a more pleasant and delightful child. The ad is highly offensive to parents who have children with behavioural problems and suggests that the solution for this problem is to replace one child with another. This is clearly a disgraceful message to be presenting in the media.

My son who is 2 1/2 years old has seen this ad. Since then he has done nothing but push people. He started pushing his 5 year old sister but it has now progressed to myself, my husband and various other family members. We have tried telling him that the boy in this ad is a naughty boy that he shouldn't be doing those things and he agrees. Yet as soon as he sees the ad again he starts with his pushing behaviour again.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

Complaints have been received in relation to the portrayal of violence in the Advertisement. We address the substance of these complaints below.

(i) AANA Advertiser Code of Ethics

Clause 2.2 of the Code of Ethics states that "Advertisements shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The Advertisement is a humorous depiction of a young boy's actions in a home environment. The actions of the young boy are not acceptable to the parents in the Advertisement, hence they find a means of rectifying their son's behaviour through the purchase of a product via the Trading Post®. In Sensis' view, the Advertisement does not condone any form of violence or OH&S risks, nor does it impliedly encourage violence towards other children. Instead, the purpose of the Advertisement is to portray a situation in a comical and light hearted manner to demonstrate the utility of the Trading Post®.

We attach a letter from Publicis Mojo which explains in some detail the efforts that were made to ensure that the actors were not distressed or otherwise hurt when filming the "pushing" aspects of the advertisement. For example, the advertisement does not actually show the sister falling on the floor at any stage. We also attach an email from the parent of one of the child actors stating how participation in the advertisement was a positive experience for him, as well as a letter from the actor's agent in similar terms.

As part of our planning for this Advertisement, Sensis thoroughly tested the creative concept through consumer market research. The results of the research were positive, with no respondents perceiving that the advertisement inappropriately depicted violent behaviour or was otherwise in poor taste.

Further, the CAD (Commercials Advice) approved this commercial prior to broadcast with a "W" rating. This is the equivalent of a "G" rating, as they were comfortable with the depiction of the "pushing" incidents in the context of this advertisement.

(ii) AANA Code for Advertising to Children

Sensis' view is that this Code is not relevant to this Advertisement. The Code defines Advertisements to Children as: "Advertisements which, having regard to the theme, visuals and language used, are directed primarily to Children and for Product".

The Advertisement is not directed primarily to children, instead it is aimed at an adult audience in order to encourage them to use Trading Post®. The media scheme for broadcasting this Advertisement reflects this, as the Advertisement will be broadcast at times where parents (not children) are most likely to be viewing television.

Notwithstanding the above, even if this Code were to apply, we do not think that the Advertisement contravenes sections 2.2 or 2.3. The Advertisement does not encourage children to engage in dangerous activities. On the contrary, the actions of the little boy are not condoned by the parents, and the Advertisement is focused on finding a solution to the little boy's behaviour. Nor does the Advertisement portray unduly frightening or distressing events. Instead, the events are portrayed in a light hearted manner in a home based environment under parental supervision.

This complaint asserts that the Advertisement depicts parents using the Trading Post® "to advertise for a more pleasant and delightful child". It appears that this viewer has misunderstood the Advertisement. In the Advertisement, the parents use the Trading Post® to purchase a swing for their children; at no time is the Trading Post® portrayed as a source of selling or buying children.

This complaint also alleges that the Advertisement is highly offensive to parents who have children with behavioural problems, and that the Advertisement breaches section 2.1 of the AANA Advertiser Code of Ethics in that it discriminates against or vilifies a person or section of the community on account of disability. Neither of the children in the Advertisement were portrayed as having a disability, nor did the Advertisement discriminate or vilify a person or section of the community on account of disability.

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 and reviewed the advertisement under Section 2.2 of the Code which deals with the use of violence.

The Board viewed the television commercial and noted the many incidences of the young boy pushing his sister including one occasion where she fell to the ground.

The Board considered that the actions of the boy were of a violent nature and that they could inflict harm on the victim. The Board further considered that the pushing was depicted as serious actions on the part of the boy and were not lighthearted or an acceptable depiction of sibling interactions.

The Board also noted the depiction of the cat flying through the air and considered this to be an unnecessary and unacceptable portrayal of cruelty to animals.

The Board considered that the advertisement could convey its message with less violent actions on the part of the boy.

On consideration the Board agreed that the advertisement, by depicting violence that was not justified in the context of the product being advertised, did breach the Code under Section 2.2.

The Board further noted the complainants concerns regarding the perceived rewarding of bad behaviour by the parents who gave their son a swing set. The Board considered that this was a depiction of a humorous solution to the problem at hand.

The Board did not consider that reasonable adults viewing the advertisement would believe that the advertiser was recommending that parents reward the violent actions of their children with gifts.

As such the Board did not consider that the advertisement was portraying images that were contrary to prevailing community standards on social values.

Finding that the advertisement did not breach any other sections of Code, the Board upheld the complaint under Section 2.2.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Comments which the advertiser made in response to the determination regarding this advertisement included the following:

Sensis is disappointed with the Advertising Standards Bureau's decision that the Trading Post television commercial depicting a little boy pushing things contravenes Section 2.2 of the AANA Advertiser Code of Ethics. In particular, Sensis strongly disagrees with the Advertising Standards Bureau's position that the television commercial depicts violence that is not justified in the context

of the product being advertised. To the contrary, Sensis maintains that the television commercial depicts a humorous family interaction and the availability of a practical solution through the Trading Post.

Sensis would like to advise that it intends to make an application for the decision to be reconsidered under the Advertising Standards Bureau's independent review process. Notwithstanding this, Sensis does respect the Advertising Standard Bureau's role in administering the AANA Advertiser Code of Ethics and confirms that it will discontinue screening the television commercial in its current format until the outcome of any review is known.

THE INDEPENDENT REVIEWER'S RECOMMENDATION

The appellant, Sensis is appealing the determination of the Board which portrays a young boy pushing his sister. The Board determined that the advertisement breached Section 2.2. of the AANA Code of Ethics which states:

“Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.”

The application for review of this determination is on two grounds:

- (1) the advertisement does not portray violence; and
- (2) the determination was made against the weight of evidence (which include prevailing community views and the advertisement itself).

In the course of conducting this review the Independent Reviewer considered:

- the advertisement itself;
- submissions made by the advertiser and those associated with the production of the advertisement;
- the complaints made by the viewing public; and
- subsequent responses from complainants to the advertiser's submissions to the review (seven of the original complainants chose to do this).

The advertiser submits that the boy's actions depict “comical light-hearted and playful” behaviour which is, it concedes, “exaggerated and unusual”. It also submits that there is no portrayal of distress by people or animals. All complainants, however, characterised the boy's actions as “violent” and “bullying”. They also emphasised the inappropriate role model the boy's actions was creating for other children, particularly as his behaviour is rewarded with a gift. In respect of the “happy ending” i.e. the gift of a swing, the advertiser submits that this context justifies the child's actions as portrayed.

There were a number of sections in the Code of Ethics which were considered by the Board in making its determination on the material before it. They decided, however, to base their determination on the provision of Section 2.2 as stated above.

The Independent Reviewer determined that the Board considered all the materials and argument both for and against the portrayal and characterisation of the child's behaviour as violent literally and contextually. The Independent Reviewer's role is to evaluate the process, consider all the material including new material and argument and evaluate the determination in that light. There is no definition of violence for guidance in the Standards. Complainants and the advertiser have differing views on this. However, the advertisement pictures the child's sibling crying and a yell from the animal. The Board has a discretion in these matters. It concluded that the violence is not “comical, lighthearted and playful” behaviour but a serious and unacceptable depiction of sibling interaction. It thus resulted in a breach of Section 2.2 of the Code. The Independent Reviewer found this conclusion to be well founded on the material before the Board.

The Independent Reviewer recommended that the decision to uphold the complaint under Section 2.2 be confirmed by the Board.