



CASE REPORT

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| 1. Complaint reference number | 157/09 |
| 2. Advertiser | K-Mart |
| 3. Product | clothing |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | Language – use of language – section 2.5 |
| 6. Date of determination | Wednesday, 22 April 2009 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

Television advertisement for K-mart underwear sale. As the camera moves across, the images show a number of male and female models wearing briefs. The models are viewed from behind. On the back side of each pair of briefs is a different brand name. The models are dancing/swaying to overlay music. The theme/words are “bum, bum, bum.....”. Voice over promotes underwear sale.

THE COMPLAINT

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

I object to the deliberate sexually provocative nature of the ad and the fact that the camera is taking a close up shot of the models' bottoms. I also find the use of the word "bum" being repeated quite crude, rude and unnecessary especially as it is being aired when young children are still very likely to be watching television.

I didn't think it was appropriate as my 3 year old grandson repeated it and i had to tell him it was bottoms, as bum is not an appropriate word for daycare.

THE ADVERTISER'S RESPONSE

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

I refer to your emailed letter of 7 April 2009 in which you notify Kmart Australia Limited ('Kmart') of two complaints received by the Advertising Standards Bureau concerning a Kmart television commercial.

As requested, accompanying this response is a copy of the relevant television advertisement titled 'Cheeky Bums', together with the script for the advertisement. I advise that the advertising agency involved in the preparation of this advertisement for Kmart Australia Ltd was Cummins Nitro.

Kmart's advertising campaign 'Cheeky Bums' was prepared to promote Kmart's 25% off underwear tactical. It is Kmart's position that this advertisement does not contravene the AANA Advertiser Code of Ethics, and indeed is consistent with the Code's object of being 'legal, decent, honest and truthful'. By way of background, Kmart has aired several versions of its 'Cheeky Bums' campaign on approximately six occasions over the past two years. Whilst there are subtle nuances between the versions, (i.e. the number of models and the background music) the theme remains essentially the same. The 'Cheeky Bums' advertising campaign was prepared as a light and fun way of communicating to consumers the underwear sale. Each of the male and female models featured in the advertisement are wearing their underwear as is appropriate given the nature of the sale the commercial is promoting.

As the Advertising Standards Board has found in numerous previous determinations, 'images of people wearing underwear to advertise underwear are not uncommon' (see for example complaint 145/08).

The first complainant states that the advertisement is of a 'deliberate sexually provocative nature' and that 'the camera is taking a close up shot of the models' bottoms.' Kmart disagrees that the focus of the advertisement is as the complainant describes. The underwear worn by each of the models features an underwear brand name, as a means of highlighting to customers the variety of brands that are on offer as part of our 25% off underwear promotion.

The complainant further states that 'the use of the word "bum" being repeated [is] quite crude, rude and unnecessary' and that the advertisement was aired at time when young children are still very likely to be watching television. Kmart wishes to note that the word 'bum' is referenced in the Oxford English Dictionary as an informal term for 'a person's bottom'¹ and is, in Kmart's view, by no means an offensive word. This term has been used purely in keeping with the light and fun theme of the advert. Furthermore, Kmart can confirm that the advertisement was not aired during programs classified as P (preschool) and C (children).

I refer to the matters outlined above in relation to the comments made by the second complainant. It is Kmart's strong view that the advertisement does not contravene the AANA Advertiser Code of Ethics in any way, however as the Advertising Standards Board will consider any issues raised under Section 2 of the Code we provide the following additional information.

Section 2.3

It is Kmart's position that the 'Cheeky Bums' advertisement is sensitive to prevailing community standards regarding the depiction of the human form. We note that the models are not nude, but are wearing underwear, and that further the underwear is clearly of the full brief style.

Further, the models are dancing side by side throughout the advertisement, there is no sexual innuendo or overt sexual theme contained in the advertisement and we disagree with the first complainant's claim that the advertisement is 'sexually provocative'.

Furthermore, in relation to sensitivity to audience and relevant programme time zone we advise that the 'Cheeky Bums' advertisement received a 'W' classification from the Commercials Advice Pty Ltd (CAD), which classifies commercials under the Commercial Television Industry Code of Practice. The 'W' placement code classification states that care should be exercised in the placement of the advertisement in a program likely to attract a substantial child audience, but that material so classified may be broadcast at any time except during programs classified as P (preschool) and C (children). The airing of 'Cheeky Bums' was at all times consistent with its classification.

Section 2.5

It is Kmart's position that the 'Cheeky Bums' advertisement uses language which is appropriate to the theme of the advertisement and has not used any form of strong or obscene language.

As noted previously, the word 'bum' is an informal term for a person's bottom and is in keeping with the theme of a fun and lighthearted underwear advert.

I trust that this assists the Advertising Standard Board when it assesses the complaints made against Kmart's 'Cheeky Bums' underwear advertisement.

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 was sexually provocative and used inappropriate language. The Board considered the application of Section 2.3 of the Code, relating to sex, sexuality and nudity and Section 2.5, relating to the use of language.

The Board considered the advertisement's depiction of the model's bottoms, wearing only underwear and swaying to the music was clearly in the context of communicating the message about the underwear on sale. The Board considered the advertisement was not sexualised at all and noted no nudity was depicted. The Board found no breach of Section 2.3 of the Code.

The Board noted that the word "bum" is in common usage and did not consider this to be strong or obscene language or inappropriate in the context of the advertisement and applicable timezone. The Board found no breach of Section 2.5 of the Code.

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