



## **CASE REPORT**

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|-------------------------------|---|
| 1. Complaint reference number | 330/06  |
| 2. Advertiser                 | Blink Mobile (silent ringtones)   |
| 3. Product                    | Mobile phones/SMS   |
| 4. Type of advertisement      | TV  |
| 5. Nature of complaint        | Violence Cruelty to animals – section 2.2<br>Advertising to Children Code - Parental authority – section 2.4<br>Other - Social values |
| 6. Date of determination      | Tuesday, 10 October 2006  |
| 7. DETERMINATION              | Upheld – discontinued or modified   |

## **DESCRIPTION OF THE ADVERTISEMENT**

This television advertisement shows an image of a mobile phone and a voiceover stating “Cool! Fool your parents and teachers with this unique silent ringtone (sound indicator bars shown on screen but no actual sound). This ringtone is so high pitched adults cannot hear it! Test it yourself: to subscribe text SILENT to 191 196.”

## **THE COMPLAINT**

Comments which the complainant/s made regarding this advertisement included the following:

*It is bad enough that young kids are conned into buying ringtones at horrendous costs....but even to be allowed to advertise a product on the basis of deception of parents and teachers is just plain unacceptable.*

*I feel it is improper for any company to be advocating subterfuge and devious practices. To openly and explicitly incite this sort of sneaky defiance is a destructive force to the family and to school discipline.*

*It is silent because the tone produces a high frequency pitch which humans can not hear – however animals can!!! When this ad comes on it extremely distresses my dog and I am concerned for his health. It's very cruel.*

## **THE ADVERTISER'S RESPONSE**

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

*What we mean to say is download this silent ringtone on your mobile and see if your hearing really is better than your parents' or your teachers'.*

*We never mean to create any kind of rebellion from youngsters against their parents or teachers and I don't think we do that by giving everybody the opportunity to download the Silent Ringtone.*

## **THE DETERMINATION**

The Advertising Standards Board (the Board) considered whether this advertisement breached the AANA Advertising to Children Code (the Children's code).

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To come within the Children's Code, the material being considered must be an "advertisement". The Children's Code defines an "Advertisement" as follows:

*"matter which is published or broadcast in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct"*.

The Board decided that the material in question was broadcast in all of Australia or a substantial section of Australia for valuable consideration, given that it was being broadcast on television in Australia. The Board determined that the material draws the attention of the public or a segment of it to a "product" being the downloadable mobile phone ringtone "in a manner calculated to promote... that product".

The Board then needed to determine whether the advertisement is an "Advertisement to Children", which is defined in the Children's Code as meaning:

*"Advertisements which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product"*.

"Children" are defined in the Children's Code as being 14 years old or younger. The Board noted that the advertisement specifically referring to fooling parents. The Board had regard to the product, and the content of the ad, and considered that although mobile phone may not be used by many young children, that the product being advertised was a product that was directed towards children including children 14 years or younger. The Board considered that the advertisement was directed primarily towards children and was therefore within the scope of the Children's Code.

Having concluded that the material is an "advertisement to Children" as defined by the Children's Code, the Board then had to determine whether the advertisement is for a "Product". "Product" is defined in the Children's Code as meaning:

*"goods, services and facilities which are targeted toward and have principal appeal to Children"*.

The Board determined that the mobile phone ringtone is a "good" targeted toward and having principal appeal to Children and accordingly is a Product.

The Board considered whether the advertisement depicted material that contravened section 2.4.1(a) of the Children's Code relating to parental authority, specifically, advertisements:

*"... must not undermine the authority, responsibility or judgment of parents or carers..."*

The Board considered the language used in the advertisement, specifically "Fool your parents and teachers". The Board determined that the language clearly encourages children to purchase a ringtone that can be used behind parents and teachers backs most likely in direct contradiction to their parents or teachers instructions. The Board considered that this message to children is likely to undermine the authority and responsibility of parents or teachers and on this basis the Board determined that the advertisement breached the Children's Code.

The Board also considered whether this advertisement breaches section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted that a complainant had asserted that the advertisement caused discomfort to their pet. The Board was unable to determine whether the advertisement was likely to cause distress to animals and noted that the complainant should raise this issue with an organisation such as the RSPCA. The Board noted that the advertisement does not depict or portray any violence and determined that the advertisement did not encourage or cause cruelty to animals and hence did not depict or imply any violence.

On the basis that the material contravened the provisions of the Children's Code relating to parental authority, the Board upheld the complaint.

## **ADVERTISER'S RESPONSE TO DETERMINATION**

*What we will do is revise the commercial and not tell that it's to fool your parents and your teachers, but 'can't be heard by adults'. All to prevent that it may suggest that we set up children to go around the rules and ignore parental or teachers authority.*