



CASE REPORT

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| 1. Complaint reference number | 408/08 |
| 2. Advertiser | Jamba! GmbH |
| 3. Product | Mobile Phone/SMS |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | Discrimination or vilification Ethnicity – section 2.1
Violence Other – section 2.2
Health and safety – section 2.6 |
| 6. Date of determination | Wednesday, 12 November 2008 |
| 7. DETERMINATION | Upheld – discontinued or modified |

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement is for a Jamba! GmbH mobile phone ring tone. It shows a skeleton named Achmed the dead terrorist saying "Silence I kill you!" several times. Viewers are asked to text a number (19 4000) to subscribe to the ring tone.

THE COMPLAINT

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

I find it offensive that in this time of political uncertainty that a ring tone company is trivializing the war on terror. The content of the ring tone is also offensive - imagine standing in the line for the bank and it comes on from someone in the queue. I also object to the fact that adolescents are usually the targets of these commercials, and something such as this may upset a lot of people. It upset me - and I just watched the ad.

The last ring tone was called "Achmed the Dead Terrorist". I object on the basis that the ad stereotypes certain people and infers that they may all be terrorists. Its offensive in the way it portrays people of a middle eastern background.

This ad is discriminatory and arguably racist in its depiction of a religious stereotype. I find this product and advertisement highly offensive. I believe this contravenes Section 2.1 of the Code of Ethics.

I feel its offensive because it features heavy stereotyping of Middle Eastern people as terrorists. It also makes fun of Middle Easterners in general by mocking their accent. I also feel that featuring a 'terrorist' skeleton is offensive and makes light of the real situation that exists with racial intolerance. This add will make people, especially children and teens, feel that it is acceptable to mock people like this, and I feel that it fosters an attitude of racism as a 'joke'.

Ad portrays a dead 'terrorist' as a skeleton of a Muslim man with a turban and beard and an Arab accent. It reinforces typical racial stereotypes of a terrorist as a Muslim, encouraging the public to be judgemental and suspicious of Arab people who wear turbans. It is extremely inappropriate and racially offensive.

THE ADVERTISER'S RESPONSE

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

We have received a few email complaints regarding the "Dead Terrorist" commercial (1044

series) and to be more exact referring to the content within the spot, a skeleton saying “silence – I kill you”. We at Jamster have taken serious note of these complaints, and have undertaken an internal review of the complaint(s) and through this response seek to address the issues raised.

Jamba/Jamster was founded in 2000 in response to the growing demand for mobile services and has since grown to become one of the largest providers of mobile content and services in the world. Jamba has around 750 employees based throughout Europe/US and Australia with our headquarters based in Berlin, Germany. It is our aim to become a global force in the mobile entertainment markets. To that end we continuously strive to make our brands synonymous with quality, value and the highest level of customer service. As such, we have dedicated teams whose sole responsibilities are to ensure that we comply with the legal requirements of each country we operate in, including Australia.

We launched our operations more than 4 years ago in Australia and work closely with regulatory advertising bodies including AANA and Commercials Advice / Free TV (CAD) and all of our media partners to ensure we meet the present standards of Australian society.

We have read through the frustrations of the complainants in relation to the content in which there is claimed to be racist and offending to Muslims. We would at this point like to point out that the advertisement in question offers a ring tone quoting one of the most famous and successful ventriloquist, Jeff Dunham, throughout the world. The TV-Spot in question says at no time where this “Dead Terrorist” comes from. Also, this is one of the most clicked videos on YouTube with nearly 70mio. views, and by now one of the most well know comedy skits worldwide. Furthermore, since the “dead terrorist” is only a skeleton, there is no skin colour which could indicate racism towards a group.

Jamster takes this complaint and concerns of these nature very seriously and we remain in the belief that the advertisement in question “dead terrorist” is one which neither is racist nor support racism. The TVC in question does have an humorous sense. We at Jamster feel as if we have addressed the main issues in concern.

We will continue to defend the airing of this advertisement in its original form however we can not, and will not defend people’s creativity in assuming racism in a well known comedy skit.

Jamster intends to be a leader in social standards and as a result of this action we feel as if the issues raised by the complainant will now have been solved as a result of our reply.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board considered the application of Sections 2.1, 2.2 and 2.6 of the Code, relating to discrimination and vilification, violence and health and safety.

The Board considered whether the character's repeated statement of the words "I kill you" was a portrayal of violence in breach of Section 2.2 of the Code or contrary to prevailing community standards of safety under Section 2.6. The Board noted this advertisement was shown in a late time slot and that the words were stated with a robotic repetition. The Board considered that the reasonable person would not regard the repeated statements "I kill you" in the context of the advertisement as suggesting or encouraging violence. The Board therefore determined the advertisement was not in breach of either Sections 2.2 or 2.6.

The Board considered whether the depiction of the character was discriminatory against, or vilified, any section of the community in contravention of Section 2.1 of the Code. The Board noted the advice of the advertiser that the character depicted was a dummy used by a well-known ventriloquist, although the Board questioned the familiarity of the Australian community with this particular character.

The Board was split in its decision on this section of the Code. The majority considered that, while the character's skeletal appearance did not suggest any particular race, the overall depiction was suggestive of a Muslim and the reasonable person would find the advertisement was suggestive that terrorists are Muslim. The minority of the Board had a different view that the depiction of a well-known ventriloquist's dummy was intended to be humorous and was not a serious suggestion that all

Muslims are terrorists.

By majority, the Board determined that the advertisement vilified people who are Muslim and upheld the complaint.

ADVERTISER'S RESPONSE TO DETERMINATION

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

We will change the advertisement from „Achmed“ The Dead Terrorist to purely “The Dead Terrorist” in order to change any public, or to be more precise, Board ideas that this may be a “racist” slur although a skeleton or any further thoughts that this is a racist skeleton at that. I would like to add that the racial persuasion and therefore ideologies this skeleton may have can not be truly confirmed as he is a skeleton or to be more precise a puppet.