



## **CASE REPORT**

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|-------------------------------|---|
| 1. Complaint reference number | 422/09  |
| 2. Advertiser                 | Peregrine Smokeart & Gift Shop                                    |
| 3. Product                    | Other   |
| 4. Type of advertisement      | Print   |
| 5. Nature of complaint        | Language – use of language – section 2.5<br>Other - Social values |
| 6. Date of determination      | Wednesday, 9 September 2009                                       |
| 7. DETERMINATION              | Dismissed   |

## **DESCRIPTION OF THE ADVERTISEMENT**

Print catalogue selling various male-related items for fathers' day.

## **THE COMPLAINT**

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

*I wish to register a complaint regarding the attachment which features a variety of items with logo "harden the fu\*k up". My friends and I consider it offensive. Thank you.*

*Front page of catalogue is advertising mugs etc directed at fathers day gifts. This could entice children to browse this catalogue, as it did me, only to find on pages 2-3 the inappropriate items advertised. This catalogue should be directed towards adult readers, however, the front page does not give any indication or warning of this and advertises what a child may look to for a gift for their father.*

*I object to what is essentially adult material being delivered into my home via Australia Post.*

*If adults want to visit these shops and view and purchase these items, good luck to them.*

*However advertising this stuff in a catalogue accessible to all (including children) I think represents an erosion of public standards.*

## **THE ADVERTISER'S RESPONSE**

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

*Peregrine Corporation ('Peregrine') trading as Smokemart & GiftBox does not consider the Advertisement to be in breach of the Code. We thank you for the opportunity to make this submission.*

*1. The Advertisement is a mail catalogue distributed to households in a geographic territory. It consists mainly of images of products available from Smokemart & Gift Box stores together with accompanying text describing those products. We have distributed about one million copies of this catalogue nationally and we have only received three complaints which indicate that this catalogue has been well received by the adult consumers.*

*2. No part of the Advertisement relates to Food or Beverage products. Accordingly the Advertisement complies with Section 2.8 of the Code.*

3. *The intended recipient of the Advertisement is the owner or dominant occupier of the households it was distributed to. This specifically excludes children.*

4. *The target audience of the Advertisement consists exclusively of adult consumers. This is clear from the nature of the products advertised. The catalogue is also clearly labelled "Smokemart & GiftBox". Smokemart & GiftBox is a well known chain of tobacconists that also sells giftware. The consumer base of Smokemart & GiftBox consists exclusively of adults, not children.*

5. *Accordingly Advertisement does not consist of "Advertising or Marketing Communications to Children" and the products advertised are not "Products" for the purposes of the Code - they are not "targeted toward" nor do they have any "principal appeal/", to Children.*

6. *It follows that the Advertisement complies with sections 2.4 and 2.5 of the Code.*

7. *The images complained of are appropriate for inclusion in a marketing communication targeted to adults. They consist of actual photos of novelty products available from Smokeman & GiftBox stores. The novelty products contain cartoon-like and non-realistic inferred nudity. I use the word "inferred" as the reader of the Advertisement is required to infer that the products represent nudity - it is not obvious at first instance. The photos cannot be reasonably altered without trade practices issues arising i.e. misleading and deceptive conduct. In any case, they have been intentionally excluded from the front page of the Advertisement and featured only in the inside pages. In this way the Advertisement has treated "sex, sexuality and nudity with sensitivity to the relevant audience." and thus complies with section 2.3 of the Code.*

8. *Contrary to the allegations, the language employed is "appropriate in the circumstances". One of the words complained of is written on the product advertised. For reasons similar to the above, the product cannot be altered for the purposes of the Advertisement without raising trade practices issues. HTFU is a registered trade mark and has passed all of IP Australia's low tolerance for obscenity and offensiveness etc. "fu\*k" is an acceptable alternative use of the word in the circumstances and having regard to the adult audience. The word appears in this form in publications generally. A search of the IP Australia trade mark database reveals similar uses of the word as registered trade marks. For these reasons, the Advertisement complies with section 2.5 of the Code.*

9. *For the above reasons, the Advertisement specifically complies with sections 2.3, 2.4, 2.5, 2.8 of the Code as well as other sections generally.*

*Notwithstanding that the Advertisement complies with the Code, we take all complaints seriously. We will continue to exercise extreme sensitivity in regards to the type of images we display in our catalogue.*

## **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 complaints' concerns that the images portrayed in this print suggest bad language.

The Board then considered whether the imagery and language was in breach of section 2.5 of the Code.

Section 2.5 of the Code states: "*Advertising or marketing communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided*".

The Board noted the concern about the use of swear language which is intended to imply the word 'fuck'. The Board noted that there is no actual mention of the word 'fuck' or of any other inappropriate language. Although the advertisement may be suggestive of inappropriate language to some people, the Board determined that the advertisement did not contain strong or obscene language and that the language used was not inappropriate for the product being advertised.

The Board also noted that while some of the products depicted in the advertisement may be distasteful to some members of the community they are targeted to an adult audience and are advertised in a

manner that does not breach the Code.

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