



CASE REPORT

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| 1. Complaint reference number | 467/08 |
| 2. Advertiser | Tartarus |
| 3. Product | Food & Beverages |
| 4. Type of advertisement | Print |
| 5. Nature of complaint | Discrimination or vilification Religion – section 2.1
Advertising to Children Code – Other – section 2.4
Advertising to Children Code - Social value – section 2.4
Language – use of language – section 2.5
Food and Beverage Code – other |
| 6. Date of determination | Wednesday, 26 November 2008 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This two page letterbox flyer depicts on the first page a red devil with horns and a tail and two smaller characters dressed in sheets (one white and one black) carrying red bags. There are two cut-out pumpkins and the words "Trick or Halloween Treat" and the "Hell" logo above white flames. The second page provides information about what is available in the "Satan's Little Helper Bag", indicates that the bag costs \$10, states that "Evil kids under 12 in Halloween costume get the bag for free", provides the telephone number (13HELL) and web address (www.hellpizza.com.au) and location of stores.

THE COMPLAINT

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

Implicit message to kids under 12 is that they will be rewarded for being evil; or, in their language, that being evil is cool.

THE ADVERTISER'S RESPONSE

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

We are unsure to which section of the code this complaint is addressed – Section 2.3 Placement or Section 2.6 Social Values, as the complainant has written Section 2.3 Social Values; so we have addressed both.

Advertising to Children Code Section 2.3 – Placement

This section states: Advertising or Marketing Communications to Children must not be placed in Media where editorial comment or program content, in close proximity to that communication, or directly accessible by Children as a result of the communication is unsuitable for Children according to Prevailing Community Standards.

This section does not apply to the advertisement in question, which was sent as a DL letterbox flyer to households surrounding Hell Stores via a commercial distribution network. There was no adjacent editorial comment or program comment that was unsuitable for children according to Prevailing Community Standards.

Advertising to Children Code Section 2.6 – Social Values

Part a) states that advertising must not portray images that are unduly frightening or distressing to Children.

Clearly our images in cartoon form do not fall into this category. If they were deemed to be so we would have to join the queue behind the creators of Scooby-Doo, Casper the Ghost and the Transformers.

Part b) states that Advertising to Children must not demean any person or group on the basis of ethnicity, nationality, gender, age, sexual preference, religion, or mental or physical disability. We dismissed this section as not being relevant to the complaint.

General Comment

The complainant writes: Implicit message to kids under 12 is that they will be rewarded for being evil; or, in their language, that being evil is cool.

We have not asked Children to act in an evil manner, but to look evil by dressing up in traditional Halloween costume.

My understanding of Halloween tradition, and I'm sure the understanding of most kids is that you dress in a costume and go door to door "trick or treating" for free goodies. Our flyer promoted this in a safe in store environment, and this was borne out by the fact that almost without exception, Children were accompanied by their parents, many of whom were also in costume. I am sure the tens of thousands of Children across Australia who did not receive our flyer, yet dressed in costume and went trick or treating are no more or no less evil than Children that attended our stores. They were kids, having fun.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code"), Sections 2 or 3 of the AANA Food & Beverages Advertising & Marketing Communications Code (the "F&B Code") and Section 2 of the AANA Code for Advertising & Marketing Communications to Children (the "Children's Code").

The Board considered the application of Sections 2.1 (discrimination or vilification), 2.2 (violence), 2.4 (Children's Code) 2.5 (language) and 2.8 (F&B Code).

The Board noted that the images and language used in the flyer were derived from the name of the company and used in the context of Halloween. The Board noted it was not unreasonable for the advertiser to use the name of the company to create marketing for its products. The Board considered that the reference to religious terms or concepts in a non-religious context and in the context of a Halloween promotion did not of itself amount to vilification or discrimination on the basis of religion and therefore found no breach of Section 2.1. The Board considered the images and language used in the flyer were not a portrayal of violence and therefore found no breach of Section 2.2. The Board also considered that the language used was cheeky, but appropriate in the context of the name of the company and the Halloween promotion, and therefore found no breach of Section 2.5.

The Board then considered the application of Section 2 of the Children's Code. The Board noted that the nature of the marketing communication was such that the target audience would generally be parents, rather than children, although it was agreed that children may collect the mail for their parents and viewing the flyer in that context may be attracted to the cartoon-style images and the depiction of a Halloween goody bag. The Board considered Section 2.6, relating to social values. Section 2.6 requires that advertising or marketing communications to children must not portray images or events in a way that is unduly frightening or distressing to children. The Board considered that the images were unlikely to be frightening to children. The Board also considered section 2.7 of the Code and whether the advertisement was encouraging children to be badly behaved. The Board considered the reference to "Evil kids under 12" was not a general denigration of children or seriously suggesting evil behaviour would be rewarded. Rather the Board considered the reference was in the context of both Halloween and the company name, and the goody bag promoted was a "reward" for the wearing of a Halloween costume, not for "evil" behaviour and did not undermine parental authority. The Board found no breaches under the F&B Code.

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

complaint.