



CASE REPORT

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| 1. Complaint reference number | 74/04 |
| 2. Advertiser | Ferrero Pty Ltd (Kinder Surprise) |
| 3. Product | Food |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | Advertising to Children Code – Other – section 2.4
Health and safety – section 2.6 |
| 6. Date of determination | Tuesday, 13 April 2004 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

The advertisement promotes the new Kinder Surprise chocolate egg which now contains a toy and a “magicode” which is a password to an adventure on the internet.

A young boy is depicted jumping into his computer screen and becoming a part of the virtual animated world inside the computer.

The tagline of the advertisement was “Where will your next egg take you?”

THE COMPLAINT

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

“Yesterday my grand daughter was over visiting. She is four years old. Her mother and brother were here as well. Her mother purchased her a kinder surprise, she was so excited about the ticket, a minute later we heard the noise of glass, we run into the room and she was in front of the area where the TV is and there was blood coming from her mouth.”

“She stated that she had the ticket to get into the games out of the egg, she tried to jump through the TV. ... I believe this advertisement to be not appropriate for the age group. If one has done it how many more.”

THE ADVERTISER’S RESPONSE

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

“The scene in the advertisement where the boy jumps into the PC screen and enters the video game is clearly intended to depict a situation of fantasy and not of reality: as soon as the boy enters the video screen he becomes part of an animated cartoon, and there are no persons, things, animals or places of the real world around him. Everything is in cartoon animation.”

“We believe that this incident, while regrettable, is extremely unusual and is the result of extraordinary circumstances.”

“Children are highly unpredictable and can have all sorts of unusual accidents. They have very active imaginations and can react in unforeseeable ways to certain images.”

THE DETERMINATION

The Advertising Standards Board (“the Board”) considered whether this advertisement breaches

section 2 of the Advertiser Code of Ethics (“the Code”).

The Advertising Standards Board (“Board”) was also required to determine whether the material before it was in breach of the AANA Code of Advertising to Children.

To come within the AANA Code of Advertising to Children, the material being considered must be an “advertisement”. The AANA Code of Advertising to Children defines an “Advertisement” as follows:

“matter which is published or broadcast other than via internet, direct mail, point of sale, packaging or direct distribution to individuals, 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 a Kinder Surprise Chocolate Egg “in a manner calculated to promote... that product”. Having concluded that the material is an “advertisement” as defined by the AANA Code of Advertising to Children, the Board then had to determine whether the advertisement is for a “Product”. “Product” is defined in the AANA Code of Advertising to Children as meaning:

“goods, services and facilities which are targeted toward and have principal appeal to Children”

“Children” are defined in the AANA Code of Advertising to Children as being 14 years old or younger. The Board determined that, because the Kinder Surprise Chocolate Egg includes a toy that appeals to Children, it is a “good” targeted toward and having principal appeal to Children and accordingly is a Product. The Board then needed to determine whether the advertisement is an “Advertisement to Children”, which is defined in the AANA Code of Advertising to Children as meaning:

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

The Board determined that the theme of the advertisement was of an internet interactive adventure which is clearly directed to children. The Board also considered that the visuals of the interactive computer video game including animated animals and places have principal appeal to Children. Finally, the use of young children actors and the setting of the childrens’ bedroom used confirmed the Board’s decision that the advertisement is an Advertisement to Children and therefore one to which the AANA Code of Advertising to Children applies.

The Board then analysed the specific sections of the AANA Code of Advertising to Children and their application to the advertisement. The Board identified that clause 2.2.1(a) was relevant in the circumstances.

In order for clause 2.2.1(a) to be breached, the advertisement must:

“portray images or events which depict ... unsafe situations which may encourage Children to engage in dangerous activities.”

The Board reviewed the advertisement carefully and noted that the use of animation created a feeling of fantasy and the visual effect of the child leaping into the computer screen was also not realistic.

On the above basis, the Board held that the material before it did not constitute an Advertisement to Children in breach of section 2.2.1(a) of the AANA Code of Advertising to Children.

The Board also determined that the advertisement did not contravene the provision of the Code relating to health and safety, or any other provision.

Accordingly, the complaint was dismissed.