

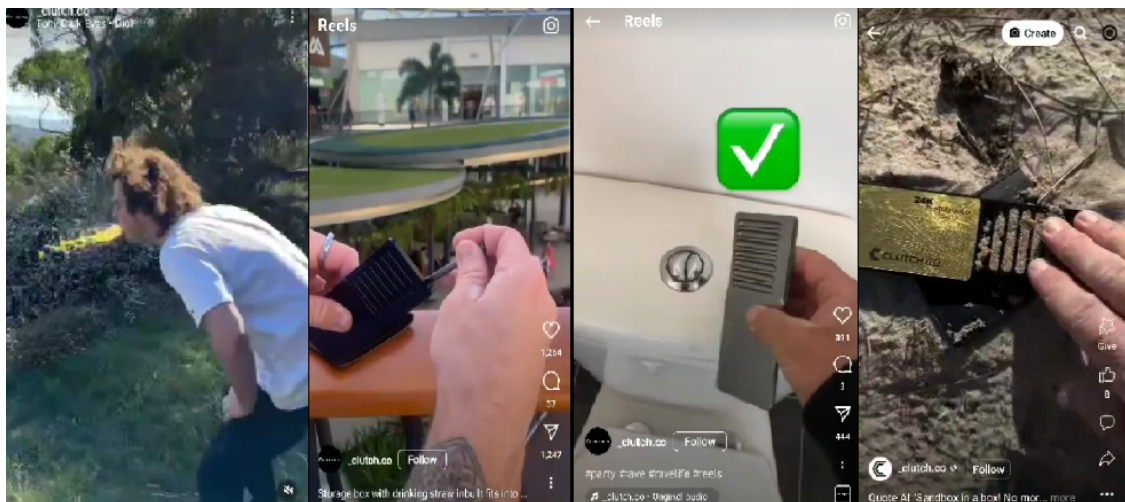
Case Report

1. Case Number :	0176-23
2. Advertiser :	Clutch Co
3. Product :	Retail
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Decision:	23-Aug-2023
6. Decision:	Upheld – Not modified or discontinued

ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety
AANA Code of Ethics\2.5 Language

DESCRIPTION OF ADVERTISEMENT



These Instagram posts feature promotion of the Clutch Co products.

The first post features the caption, "Our gold snake skin storage box, link in bio #rave #festival", and a video of a person vomiting before another person holds up the product and shows its features.

The second post features the caption, "Storage box with drinking straw inbuilt fits into your wallet so easily. More on our website. #festival #festivalseason #festival #ravelife #rave #festivallife", and a video of someone showing the product's features.

The third post features a video of a toilet and a voice-over saying, "Don't be a dirty cunt at the club. Fuck. Think about how much shits on there you know. Fucking have a bit of class about yourself. Be a bit safe. You know. Shit. Oh yeah [unintelligible]."

The fourth post features the caption, "Sandbox in a box! No more sandy surprises in your pockets. Just scoop, store, and stay sand-free! The ultimate solution for beach lovers and vacuum cleaners everywhere #rave #ravestyle #ravefestival #ravelife"

THE COMPLAINT

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

The organisation tries to advertise the product as a "storage box with drinking straw" which is an attempt to circumvent the CAP code and it is evident that the product isn't used for this purposes -

<https://www.instagram.com/reel/CqgF3wrtNtH/?igshid=Y2I2MzMwZWM3ZA==> \n\nO n another post the organisation says this product is "the ultimate solution for ... vacuum cleaners" also suggesting this is for drug related purposes as this slang for someone who snorts a lot of drugs -

<https://www.instagram.com/reel/CuANNsXtsq9/?igshid=Y2I2MzMwZWM3ZA==> \n\nI n this ad, someone is picture vomiting in the background loosely inferring the use of drugs -

<https://www.instagram.com/reel/Crge2R4puiB/?igshid=Y2I2MzMwZWM3ZA==> \n\nO n another post, the idea that is product is used to drink liquid out of is untrue as this ad suggests it for snorting drugs as it shows that you shouldn't be using the top of a toilet basin a club (I.e to snort drugs from as is commonly done) -

https://www.instagram.com/reel/CkfeErXpon_/?igshid=Y2I2MzMwZWM3ZA==

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

The complaint begins with:

"This organization's product and advertisements depict drug paraphernalia. Their product is a storage container which holds lines of powder with a built-in straw to snort powder."

The organisation tries to advertise the product as a "storage box with drinking straw" which is an attempt to circumvent the CAP code and it is evident that the product isn't used for this purpose" (vid ref 17)

Firstly, our product does not "hold lines of powder" nor is it advertised or posted online to depict this. The link provided in this accusation simply shows a storage box with a drinking straw, being opened and closed and placed inside a wallet. We are not trying to "circumvent the CAP code", we have clearly put the description (caption) on this clip saying "Storage box with drinking straw inbuilt, fits into your wallet so easily".

To suggest that it is “evident” that this product isn’t used for this purpose is inaccurate and unfair. We do not suggest any other use. We have also added/adding a page to our website for anyone else worried enough to go to this extent, where they can locate the GS1/GTIN code for products for each product on the page and not have to make a complaint to find out that it has just been perceived incorrectly. The complainant specifically says “evidence”, that it is used for drug use, yet there is no evidence provided. We actually mention on our website that we do not condone anything to do with illegal substances and our product must not be used for this purpose.

The next link provided by the complainant states that in another post the organisation says this product is “the ultimate solution for...vacuum cleaners” also suggesting this is for drug related purposes as this is slang for someone who snorts a lot of drugs”

This is a complete fabrication of words. Nowhere in this link do we refer to the vacuum to be used for snorting drugs, and we are unaware of why the complainant would make this connection, as we are not familiar with this slang/language in any dictionary. This is simply a vacuum trinket and we only advertise it as a mini vacuum, depicted in our hashtag “#pocketdyson”. I have attached a screenshot in it’s original form, however, we have since removed this image (see notes at the bottom).

The third link provided by the complainant is meant to be a funny video of somebody throwing up in the middle of the day, to capture attention, and then draw the attention to our decorative box. With the clip once again just showing off our new box, it is a big stretch for the complainant to jump straight to an illegal substance. Their accusation that someone (a friend) filmed vomiting, “loosely refers to the use of drugs” is absurd and unfounded.

Lastly, the final link was made a very long time ago, after we received a suggestion from a follower that one could put protein powder in our box. I believe this clip was made before our business/website was even launched, and was used to get some clout to kick off our business. Looking back at the clip now, it was created as a joke, but we can see that it is distasteful, and not depicting the intended use of our product. We forgot this clip even existed, and have now since removed it.

Personally, I just wanted this to go away, as I have too much work to do, other than deal with this sort of nonsense. I have taken down the last three clips, even though there is no justification for this, but if this solves the issue and makes it go away, then I’m happy to do that.

In saying that, this accusation, seems like a personal vendetta, potentially from another rival company or somebody else, trying to destroy someone, who works very hard for their business. Without actual evidence, their complaint is simply invalid. Surely they must need to provide more reasoning behind this, and actual evidence of their claim, other than the links they quoted, which simply show us opening the box and turning it around to show it off? If we are working off the accused theory, (not

facts and evidence), that a container, which can fit "powder in it" IS MADE FOR, AND ONLY PURPOSE IS RELATED TO "drug paraphernalia" then does this apply to a plate if somebody was to do powder off a plate? Or any other object for that matter? I think not! It is a very big leap, to suggest that somebody throwing up, behind an image of a verified storage container, means that it needs to be filled up with illegal substances and sold for that purpose. The same goes with the other quoted links also.

We wish to confirm, that our Clutch Co Box is a storage container, and has a trademark/patent, which is a legal product, within a category that falls under a "storage container". That is a fact. And that is the definition of evidence.

*Here you can search in bulk our GTIN numbers for the Clutch Co Box
<https://www.mygs1.gs1au.org/MyGS1/vbg>*

THE DECISION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement is promoting drug paraphernalia.

The Panel viewed the advertisement and noted the advertiser's response.

Section 2.6: Advertising shall not depict material contrary to Prevailing Community Standards on health and safety.

The Panel noted the advertiser's response that the advertisements are promoting storage containers and that there is no reference to drugs or drug use in the advertisements.

The Panel noted that the advertiser had gone to some lengths to avoid using terms relating to drugs and drug use, and that the advertisements do not show the containers being used for those purposes. However, the Panel considered that most members of the community would understand that the "drinking straw" was too short to be used to drink beverages effectively, and that the depiction of a short straw in combination with a container designed to store lines of powder would be understood by most members of the community to be promoting a product to store and use drugs.

The Panel considered that most members of the community would view such products as being storage for powdered drugs intended to be consumed by inhaling through the tube. The Panel considered that this is most often done with drugs which are illegal in Australia, or through the misuse of prescription medicine. The Panel noted that promoting illegal drug use, or prescription drug misuse, of any kind is generally viewed as contravening prevailing community standards.

The Panel noted that the posts use hashtags such as “#festivallife”, “#rave”, “#ravefestival” and considered that these were designed to draw the attention of people who attended such events to the products. The Panel considered that most community members would be aware of the issue of drug misuse at music festivals, including publicised overdoses at such events.

Overall, the Panel considered that the promotion of drug paraphernalia and linking this to festivals would be against prevailing community standards on health and safety.

Section 2.6 conclusion

The Panel considered that the advertisement did contain material contrary to Prevailing Community Standards on health and safety and determined that it did breach Section 2.6 of the Code.

Section 2.5: Advertising shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

The Panel noted the third advertisement includes the word ‘cunt’.

The Panel noted that the Practice Note for this section of the Code includes:

“The “f” and “c” words are generally viewed as harmful, unacceptable and not permitted.”

The Panel noted that this word may be common vernacular in some Australian communities, however considered that most members of the community would still find the word offensive and inappropriate.

The Panel considered that the third video of the advertisement did use the term in a manner which would be considered strong and obscene language by most members of the community.

Section 2.5 conclusion

The Panel determined that the advertisement did contain strong or obscene language and did breach Section 2.5 of the Code.

Decision

Finding that the advertisement breached sections 2.5 and 2.6 of the Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DECISION

The advertiser has not provided a response to the Panel's decision. Ad Standards will continue to work with the relevant authorities regarding this issue of non-compliance.