

Case Report

1. Case Number :	0293-23
2. Advertiser :	Espresso 600
3. Product :	Other
4. Type of Advertisement/Media :	Billboard
5. Date of Decision:	24-Jan-2024
6. Decision:	Upheld – Not Modified or Discontinued

ISSUES RAISED

AANA Advertising to Childrens Code\2.1 Prevailing Community Standards
AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

This poster advertisement features an image of a young woman with smoke coming out of her mouth, and a list of products offered by the business.



THE COMPLAINT

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

It promotes vaping and tobacco consumption in very close proximity to a primary school.

THE ADVERTISER'S RESPONSE

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

Advertiser did not provide a response.

THE DECISION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Children's Advertising Code (the Children's Code) or the AANA Code of Ethics (the Code).

The Panel noted the complainant's concerns that the advertisement includes content which is inappropriate for advertising targeting children.

The Panel viewed the advertisement and noted the advertiser had not provided a response.

The Panel noted that for the provisions of the Children's Code to apply, the advertisement must be found to target children under 15 years of age.

Does the advertisement target children?

The Panel noted that the Children's Code defines "target children" as:

"Target Children is determined by the context of the advertisement and the following three criteria:

- 1. Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
- 2. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;*
- 3. Expected average audience at the time or place the advertisement appears includes a significant proportion of Children."*

The Panel noted that the Practice Note provides guidance on the interpretation of "target children":

"All three criteria will be considered by the Community Panel in determining whether or not advertising targets Children. The weighting given by the Community Panel to each of the three criteria will be determined on a case by case basis. In the event of a complaint being considered by the Community Panel, the advertiser should be in a

position to provide details in terms of the nature and intended purpose of the product, the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears.

“In relation to the third criteria, measures to determine if Children are likely to be a ‘significant proportion’ of the expected average audience may include one or a combination of the following:

- Where data exists, 25% or more of the predicted audience will be Children. In relation to outdoor advertising, if across a campaign the data shows a predicted audience with less than 25% Children, and there is a Children’s event or concert that is incidental to the ad placement, the audience of that incidental Children’s concert or event will not be captured.*
- C&P programmes.*
- Programs, artists, playlists, video, movies, magazines or other content with significant appeal to Children (e.g. featuring personalities or characters popular with Children).*
- Compliance with the Outdoor Media Association Placement Policy and Health & Wellbeing Policy which regulate the placement of advertising at primary and secondary schools which are locations where Children regularly and predictably gather. Where accurate program audience data is not available, the Community Panel may have regard to other factors listed above such as the program content, the time or the location where the advertisement is being shown (in line with the above provision).”*

Point 1: Is the nature and intended purpose of the product principally or significantly appealing to children?

The Panel considered that the advertisement is promoting a number of products available from the business. The Panel noted that products such as coffee, gifts, and shisha would be unlikely to be of principal or significant appeal to children.

The Panel noted that one of the products was American candies and considered that lollies are a product which would have significant appeal to children.

The Panel noted that there is an increasing problem in the community of young high school students vaping. The Panel considered that vapes come in a variety of flavours which appeal to children. The Panel considered that while vapes may be intended for adults, the nature of the product does have significant appeal to older children aged 12-14.

Overall, the Panel considered that the products being advertised were not principally appealing to children, but some would have significant appeal to children.

Point 2: Is the content of the advertisement principally appealing to children?

The Panel considered the main theme of the advertisement is to list what products are sold by the business, and that this is a theme of general appeal to a broad audience and which is not principally appealing to children. The Panel noted that the advertisement features a young woman exhaling smoke. The Panel considered the woman appeared to be in her late teens or early 20s and considered that this age group is aspirational for younger teenagers and would likely attract their attention.

Overall, the Panel considered that the pastel colours of the product along with the image of the young woman exhaling smoke was an image which would be principally attractive to younger teenagers.

Point 3: Does the expected average audience of the advertisement include a significant proportion of children?

The Panel noted that the business was located opposite a primary school (prep-year 5). The Panel noted that the practice note for the Code stated that outdoor advertisements should comply with the Outdoor Media Association Placement Policy and Health & Wellbeing Policy. The OMA Policy states that adult products should not be advertised within a 150 meter sightline of a primary or secondary school.

The Panel noted that the advertiser had not provided a response, and it was unclear from the information provided by the complainant whether the advertisement was within sight of the school. The Panel noted that the advertisement was outside, and the driveway of the business faced the school, so it would be likely that the advertisement was visible from the school and to children walking to and from school.

Taking into account the Outdoor Media Association's placement guidelines the expected average audience of the advertisement is likely to include a significant proportion of children.

Targeting children conclusion

The Panel considered that some of the advertised products would have significant appeal to children, the content of the advertisement would be principally appealing to children, and the expected average audience of the advertisement is likely to include a significant proportion of children. Overall, the Panel considered the advertisement was targeting children.

Children's Code Section 2.1: Advertising to Children must not contravene Prevailing Community Standards.

The Panel noted that the Practice Note includes:

“Advertising to Children must not contravene prevailing community standards, including by promoting products or services unsuitable or hazardous to children or encouraging unsafe practices. Advertising to Children that encourages bullying or promotes unhealthy ideal body image may also breach this rule.”

The Panel considered that vapes and tobacco products are unsuitable and hazardous to Children. The Panel considered that advertising such products to children is against prevailing community standards.

Children’s Code Section 2.1 conclusion

The Panel considered that the advertisement did contravene prevailing community standards and determined that it did breach Section 2.1 of the Children’s Code.

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

The Panel noted that the advertiser is a café and tobacconist and the posters were intended to advertise the business, and not particular tobacco or smoking products.

The Panel noted that it has consistently upheld complaints about advertising which showed people smoking, such as in cases 0219-23, 0180-23, 0087-23, 0073-23, 0024-22, 0205-20, 0164-20 and 0331-19. In these cases the Panel considered that while the community tolerates a level of smoking it does not tolerate images which promote smoking as glamorous or fashionable, or in a manner which attracts the attention of children.

For the reasons discussed above, the Panel considered that the advertisement would likely attract the attention of children. The Panel noted that the business sells tobacco products and considered that while the imagery is relevant to the product being promoted, it presents smoking in a positive light. The Panel noted that smoking of any kind is generally viewed as contravening prevailing community standards.

Overall, the Panel considered that the image promoting smoking amounts to a depiction which is 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.

Conclusion

Finding that the advertisement did breach Section 2.1 of the Children's Code and Section 2.6 of the Code of Ethics 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