

COMPLAINT NUMBER	17/151
COMPLAINANT	W. Hema and C. Dixon
ADVERTISER	BurgerFuel Worldwide
ADVERTISEMENT	BurgerFuel Worldwide, Out of Home
DATE OF MEETING	11 July 2017
OUTCOME	Upheld

SUMMARY

The BurgerFuel advertisement appeared on the in-store serviette tins and showed a caricature of two pin-up style women back to back wearing only knee-high fishnet tights, one holding a cleaver and one holding a knife. The advertisement included the BurgerFuel branding and logo and said, “Death before bad burgers”.

Complainants, W. Hema and C. Dixon, said the advertisement was offensive, objectified women and was not appropriate for a family restaurant. C. Dixon also said the advertisement was sexually explicit, had no relationship to the product, as well as promoting the inappropriate sexualisation of women in the context of a family restaurant.

The Advertiser said the image should be viewed as artwork, not an advertisement, as it was not intended to influence consumers. It said the nudity in the image was consistent with a child’s doll but the advertisement was not targeting children and was unlikely to cause serious or widespread offence to women or people in general. It said the advertisement did not use sexual appeal to sell an unrelated product and was not degrading to women.

The majority of the Complaints Board said the advertisement was offensive, the caricature of the two women was sexually explicit, showing them wearing only fish net stockings in sexually suggestive poses which were likely to cause offence to women, and people in general. It said the advertisement was placed in a burger restaurant where it was exposed to a wide audience, including children and used sexual imagery to sell an unrelated product, in breach of Basic Principle 5 of the Code for People in Advertising and Rules 4 and 5 of the Code of Ethics.

A minority of the Complaints Board disagreed and said the cartoon nature of the advertisement saved it from breaching the Code for People in Advertising and the Code of Ethics.

In accordance with the majority, the Complaints Board ruled the complaint was Upheld.

[Advertisement to be removed]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

Jurisdiction

The Chairman directed the Complaints Board to first consider whether BurgerFuel's in-store serviette tins were an advertisement for the intent and purpose of the Advertising Standards Codes of Practice. The Complaints Board discussed the application of the definition of "advertisement" which stated: "Advertising and advertisement(s) are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed."

The Complaints Board noted the Advertiser was specifically asked to respond to whether the serviette tin was an advertisement and in its response stated, in part: "The tins are simply a table accessory with a practical purpose (to hold napkins) that happen to contain a piece of classic BurgerFuel artwork on them. They are not intended to influence choice, opinion or behaviour."

The Complaints Board disagreed. In its view the serviette tins went further than serving a practical function as the imagery perpetuated the BurgerFuel brand, showed a conspicuous image, included the direct messaging "Death before bad burgers" and were placed throughout the stores. The Complaints Board agreed those factors culminated in the serviette tins helping to influence consumer behaviour and said the statement, "Death before bad burgers" acted to reinforce the consumer's choice to eat at BurgerFuel.

The Complaints Board said the imagery on the serviette tins met the definition of an advertisement and therefore fell within the jurisdiction of the Complaints Board.

Codes of Practice

The Complaints Board noted one of the Complainants, C. Dixon, raised concerns under the Code for Advertising to Children. The Complaints Board said while children could be exposed to the advertisement, it was not targeting them directly, and taking in to account the intent of the Code for Advertising to Children, it ruled it did not apply to the advertisement before it.

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rules 4 and 5 of the Code of Ethics and Basic Principle 5 of the Code for People in Advertising.

This required the Complaints Board to consider whether the advertisement contained anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services) and if it was likely to cause serious or widespread offence. The Complaints Board considered whether the advertisement employed sexual appeal in a manner which was exploitative and degrading and used sexual appeal simply to draw attention to an unrelated product. Basic Principle 4 of the Code of Ethics required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and society.

The Complaints Board ruled the complaint was Upheld.

The Advertisement

The BurgerFuel advertisement appeared on the in-store serviette tins and showed a caricature of two pin-up style women back to back wearing only knee-high fishnet tights, one holding a cleaver and one holding a knife. The advertisement included the BurgerFuel branding and logo and said, “Death before bad burgers”.

The Complaints

Two complaints were received about the in-store advertisement.

W. Hema said the advertisement was offensive, objectified women and was not appropriate for a family restaurant.

C. Dixon shared similar views and said the advertisement was sexually explicit and the image had no relationship to the product, and promoted the inappropriate sexualisation of women in the context of a family restaurant.

The Advertiser’s Response

The Advertiser, BurgerFuel, responded to the Complainants’ concerns, maintaining the image should be viewed as artwork and said its intent was not to influence consumers or target children.

The Advertiser said, in part: “the artwork is a cartoon caricature style image of the back of a female, unclothed (in a non-explicit manner), wearing a pair of stockings. This piece of art is executed in the traditional, hand-drawn tattoo style that has been around for many years. Various degrees of female nudity has always been, and continues to be depicted in many different styles of art. The women in the image are smiling and look strong and empowered – they are not depicted as exploited, unhappy, or upset. This artwork has been used in the BurgerFuel system for many years.”

The Advertiser argued the level of nudity shown was similar to that seen in everyday society, on children’s toys, and other advertising. It said the cartoon style women in the artwork were displaying nudity similar to a Barbie doll and fishnet stockings were widely available in supermarkets and department stores across New Zealand and worn by many women.

The Advertiser said, in part: “we do not believe that showing the naked body of a female is automatically a sexual thing” and the image “in no way implies that ownership or enjoyment of the napkin tin or eating BurgerFuel will enhance their sexuality.” It continued that the “women in the image, all be it a cartoon depiction, are smiling and look strong and empowered – they are not depicted as exploited, unhappy, or upset.”

The Advertiser also advised that the serviette tins would typically be eliminated from stores over time, creating space for another design.

Deliberation

The Complaints Board firstly considered whether the advertisement employed sexual appeal in manner which was exploitative of, and degrading to, women and whether it employed sexual appeal to sell an unrelated product.

Code for Advertising People

The majority said the advertisement degraded and objectified women and used sex to sell an unrelated product. It said the caricature of the two women was sexually explicit, showing them wearing only fish net stockings in sexually suggestive poses which were likely to cause offence to women, and people in general. The minority noted the exposure of the women’s

body and said there was no connection between the product and the graphic and sexualised imagery used in the advertisement before it.

The majority of the Complaints Board ruled the advertisement was in breach of Basic Principle 5 of the Code for People in Advertising.

A minority disagreed. In its view, the cartoon image was not overtly sexual and did not reach the threshold to be considered to degrade or objectify women. The minority noted the Advertiser's point that the image displayed a similar amount of nudity to a children's toy and was consistent with the look and feel of the BurgerFuel branding. It said the cartoon style softened the advertisement and saved it from reaching the threshold to breach Basic Principle 5 of the Code for People in Advertising.

Code of Ethics

The Complaints Board turned to consider whether the advertisement was in breach of Basic Principle 4 and Rules 4 and 5 of the Code of Ethics.

Taking in to account generally prevailing community standards, the context, medium, audience and product, the majority of the Complaints Board said the advertisement was likely to cause serious or widespread offence to most people. It noted the placement of the serviette tins in-store, particularly on tables, and said the advertisement was likely to reach a wide number of consumers and demographics, including children. It was of the view BurgerFuel was a family restaurant and the advertisement should have been targeted towards an adult audience, rather than available to a general audience.

The majority said the advertisement was likely to cause serious or widespread offence, in breach of Basic Principle 4 and Rules 4 and 5 of the Code of Ethics.

A minority disagreed. In its view, the advertisement did not reach the threshold to effect a breach of the Code of Ethics due to the cartoon style and consistency with the Advertiser's brand. The minority said the advertisement was unlikely to cause serious or widespread offence to most consumers and was not in breach of the Code of Ethics.

Conclusion

The Complaints Board confirmed the serviette tin was an advertisement and fell within its jurisdiction.

The majority of the Complaints Board said the advertisement was offensive and degrading to women, would cause widespread offence to most people and employed sexual appeal to sell an unrelated product. It said the advertisement was sexually explicit and graphic in nature, and was placed where it was exposed to a wide audience, including children. As such, the majority of the Complaints Board said the advertisement was in breach of Basic Principle 5 of the Code for People in Advertising and Rules 4 and 5 of the Code of Ethics. The majority said the advertisement had not been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics and ruled the complaints were Upheld.

A minority of the Complaints Board said the cartoon nature of the advertisement saved it from breaching Principle 5 of the Code for People in Advertising and Rules 4 and 5 of the Code of Ethics. It said the advertisement had been prepared with a due sense of social responsibility and was not in breach of Basic Principle 4 of the Code of Ethics.

In accordance with the majority, the Complaints Board ruled to Uphold the complaint.

DESCRIPTION OF ADVERTISEMENT

The BurgerFuel advertisement on the in-store serviette tins showed a caricature of two pin-up style women back to back wearing only knee-high fishnet tights, one holding a cleaver and one holding a knife. The advertisement included the BurgerFuel branding and logo and said "Death before bad burgers".

COMPLAINT FROM W HEMA

The images attached are of the branding used on Burger Fuels serviette holder which was sitting on the tables. The image is offensive it objectifies woman and is not appropriate for a restaurant in which my young family are having dinner. The woman is basically naked and it is crude and offensive. The holders are on every table and very much in plain sight.

COMPLAINT FROM C DIXON

Speaks for itself really... Highly offensive, sexually explicit, inappropriate for children (this is a family restaurant, has a kids menu, plenty of kids/families/teens seen there when we eat there). Tin is located on every table: within reach/handling of children and difficult for anyone to avoid viewing. Context clearly inappropriate: image also bears no relationship to the product (healthy burgers).

According to the "New Children and Young Persons Advertising Code", this image is an offence under multiple categories: ie General Principles which suggests ad "special duty of care" for advertising to avoid "moral harm caused by indecent, immoral or adult themed visuals". Also, the image infringes under Principle 1: Rule 1(e): "Advertising must not provide an unrealistic sense of body image or promote an unhealthy lifestyle". Also infringes under Rule 1(f): "Children or young people must not be portrayed as sexual beings nor that ownership/enjoyment of a product will enhance their sexuality".

Also, in reference to The General Code of Ethics, (which relate to all ages, not just children/youth) I feel that the product is also generally unacceptable under Basic Principle (4) as it fails to promote a due sense of social responsibility, as it sends a clear message of disrespect for women and their bodies and promotes inappropriate sexualisation of women in a highly inappropriate context (ie a family restaurant). Under Rule (4), the graphic also offends against prevailing community standards, taking into account context/medium/audience/product, and furthermore, under Rule (5) I believe it would be found generally offensive to the prevailing community. I base this on comments from friends/colleagues who universally find it definitely and clearly offensive.

As a Doctor who works with children/youth/women and all sectors of society, I feel this type of subversive advertisement in this context is potentially setting a new all-time low in demonstrating the sheer lack of ethics/morals and concern for social, family and individual values that exists within some (not all!) companies/marketing teams. The product at Burgerfuel is great, and they have a great marketing angle with their healthier/high-quality/environmentally conscious product and their retro-classic car theme, so why,why, why would they spoil that by putting out what I personally believe to be a smutty, cheap, offensive and unimaginative image???

Of course I have tried contacting burgerfuel directly but they have declined to withdraw/replace the graphic, which has led me to make this formal complaint. I also make it on behalf of my girls aged 9 and 7, who felt strongly that the image was "dumb" and "yuk"

and "embarrassing.... Please help remove this graphic immediately and restore our faith in justice and integrity.

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 4; Decency: Advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services).

Rule 5; Offensiveness: Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).

CODE FOR ADVERTISING TO CHILDREN

Principle 1: Advertisements should be prepared with and observe a high standard of social responsibility.

Guideline 1(h): Advertisements should not include sexual imagery and should not state or imply that children are sexual beings and /or that ownership or enjoyment of a product will enhance their sexuality.

CODE FOR PEOPLE IN ADVERTISING

Basic Principle 5: Advertisements should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people in society to promote the sale of products or services. In particular people should not be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product. Children must not be portrayed in a manner which treats them as objects of sexual appeal.

RESPONSE FROM ADVERTISER: BURGERFUEL WORLDWIDE

We are responding to two complaints made to the ASA by W Hema on 11 May 2017, and C Dixon on 11 June 2017. The complaints relate to artwork on napkin tins that sit on some tables in some BurgerFuel stores in New Zealand.

We do not agree that the artwork referred to in the complaints breaches any standards laid out in the Advertising Standards Authority's Code of Practice.

Firstly, we would like to address The Chair's request as to whether or not the tin is an advertisement or not.

The tins are simply a table accessory with a practical purpose (to hold napkins) that happen to contain a piece of classic BurgerFuel artwork on them. They are not intended to influence choice, opinion or behaviour.

The artwork is a cartoon caricature style image of the back of a female, unclothed (in a non-explicit manner), wearing a pair of stockings. This piece of art is executed in the traditional, hand-drawn tattoo style that has been around for many years. Various degrees of female

nudity has always been, and continues to be depicted in many different styles of art. The women in the image are smiling and look strong and empowered – they are not depicted as exploited, unhappy, or upset. This artwork has been used in the BurgerFuel system for many years.

The tins have been in store since April the 1st, and we have received 16 complaints in total from customers in the 12 weeks they have been on our tables. Every week we have over 100,000 customers through our doors so at this level, complaints make up 0.00133% of the total number of people who could have seen the tins each week. Based on these numbers, we feel that while the napkin tin artwork may have upset a small amount of people, no major mass market offence has been caused.

We would also like to let the chair know that we freshen up our artwork on a regular basis and have recently introduced a second napkin tin design into the system. Our stores now have the choice of which designs they put out in the tables. Over the next few months, the napkin tins with the female artwork will be diluted from the system as they sustain wear and tear, and will eventually be eliminated, creating space for another new design.

We would now like to address the Advertising Codes of Practices that the complainant has alleged have been breached.

Code of Ethics, Basic Principle 4

All advertisements should be prepared with a due sense of responsibility to consumers and to society.

Firstly, we do believe these napkin tins to be in store artwork, not an advertisement.

Additionally, with a total of 16 complaints received across 12 weeks, equating to 0.00133% of our customer base each week (of over 100,000 people), we can draw the conclusion that a majority of those exposed to the artwork did not take issue with it.

The artwork on the napkin tins is a homage to traditional, classic, tattoo artistry and is a nod to the heritage of our brand, with the image having appeared in various places throughout the world of BurgerFuel over the years.

The artwork depicts two cartoon style woman who are unclothed in a non-explicit way, displaying a similar level of nudity to a Barbie doll and the human form seen in other advertisements and pieces of artwork. The women in the image are smiling and look strong and empowered – they are not depicted as exploited, unhappy, or upset.

The women are wearing fishnet stockings, a product widely available in supermarkets and department stores across New Zealand and worn as a fashion item by many women. We reference the attached images taken from the Farmers website and the Countdown supermarket website that can also be found on the shelves as similar to what the artwork on our tins depict.

For context, we would also like to reference Trade Me's 'New or Used' campaign from 2013, which shows a fully nude male riding a bicycle. The man shows a similar amount of nudity to the women depicted in our artwork.

Given that the decorative napkin tins were designed as artwork for our stores, are not intended to influence anyone, and show similar levels of cartoon-like nudity seen in everyday society on children's toys as well as other advertising, we do not feel this advertisement breaches Code of Ethics, Basic Principle 4.

Code of Ethics, Rule 4: Decency.

Advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services).

Firstly, we do believe these napkin tins to be in store artwork, not an advertisement

Secondly, we do not believe this artwork contains anything which clearly offends against generally prevailing community standard for the following reasons:

- With a total of 16 complaints received across 12 weeks, equating to 0.0013% of our customer base each week of over 100,000 people, we do not believe the artwork offends against generally prevailing community standards.
- The cartoon style artwork shows similar levels of nudity seen on popular children's toys (I.e. Barbie Doll).
- The female in the artwork is wearing hosiery that is advertised using similar imagery and sold in all major supermarkets and department stores.

Code for people in advertising, Rule 5: Offensiveness.

Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).

Firstly, we do believe these napkin tins to be in-store artwork, not an advertisement.

Secondly, we do not believe the advertisement portrays the subject in a manner that would cause serious or widespread offence. We draw this conclusion based on the fact that out of the more than 100,000 people that go through the doors of our stores each week, only 0.0013% of them took issue with the tins, and only 2 of these complaints made it as far as the ASA.

Code for Advertising to Children Guideline 1(h), Principle 1

Advertisements should not include sexual imagery and should not state or imply that children are sexual beings and /or that ownership or enjoyment of a product will enhance their sexuality.

Firstly, we do believe these napkin tins to be in-store artwork, not an advertisement.

Secondly, the artwork is not specifically child facing, and not intended to directly target children.

Thirdly we do not believe the artwork includes sexual imagery, and does not state or imply that children are sexual beings and that ownership or enjoyment of a product will enhance their sexuality:

- The number of complaints received about the tins represents only 0.0013% of our weekly customer base thus we can draw the conclusion that a majority of our customers did not view the cartoon image as overly offensive in a sexual manner not suitable to be viewed by children.
- We do not believe that showing the naked body of a female is automatically a sexual thing/image – this comes down to the personal views of the individual.
- The artwork in no way implies that children are sexual beings.
- The artwork in no way implies that ownership or enjoyment of the napkin tin or eating BurgerFuel will enhance their sexuality.

Code for people in advertising – Basic Principle 5.

Advertisements should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people in society to promote the sale of products or services. In particular people should not be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product. Children must not be portrayed in a manner which treats them as objects of sexual appeal.

Firstly, we do believe these napkin tins to be in-store artwork, not an advertisement.

We do not believe that the image is overly sexual, exploitative or degrading to any individual or group of people in society for the following reasons:

- The number of complaints received about the tins represents only 0.0013% of our weekly customer base thus we can draw the conclusion that a majority of our customers did not view the cartoon image as overly offensive in a sexual manner.
- Viewing the naked female form as sexual comes down to the complainants personal views – we do not believe that the female form is something to hide, or be ashamed of.
- The women in the image, all be it a cartoon depiction, are smiling and look strong and empowered – they are not depicted as exploited, unhappy, or upset.
- Should the use of fishnet stockings in the image be considered to be contributing to sexualisation, we would like to note that this item of clothing is worn by many women today as a fashion item, and can be purchased in all major supermarkets and department stores – often advertised using a similar image to ours.

To conclude, we could like to state once more that we do not agree that the artwork referred to breaches any standards laid out in the Advertising Standards Authority's Code of Practice.

We would also like to acknowledge that we do understand we may have caused some offence to a particular group of people that do not agree with the use of the human body, especially the female body in advertising, and would like to apologise for upsetting these individuals.