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| COMPLAINT NUMBER | 21/277 |
| ADVERTISER | LullabyLoom |
| ADVERTISEMENT | Plush Toy Elephant, Instagram |
| DATE OF MEETING | 22 June 2021 |
| OUTCOME | Upheld Advertisement to be Removed |

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about an Instagram advertisement for a plush toy from LullabyLoom. The Complaints Board said the advertisement portrayed an unsafe sleeping position which went against the official Safe Sleep guidance issued by the Ministry of Health and could encourage a disregard for safety to a vulnerable audience.

Advertisement

The Instagram advertisement for LullabyLoom shows a young baby sleeping on its side with its arms wrapped around a giant soft-toy elephant which is larger than the child.

Summary of the Complaint

The Complainant was concerned the advertisement shows an unsafe sleeping position for babies which contradicts the Safe Sleep Guidelines issued by the Ministry of Health.

Issues Raised:

- Social Responsibility
- Safety

Summary of the Advertiser's Response

The Advertiser said its plush toy is used only for photography and picture keepsakes. The Advertiser said it takes children's safety seriously and includes emails with all orders stating never to leave a baby in the crib with a plush toy alone.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(e) Safety: Advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 20/594, which settled and 10/659 which was Upheld.

The full versions of decisions after 2015 can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 20/594 concerned a display advertisement for a Fullair mattress which showed a baby sleeping on its front. The Complainant was concerned this promoted an unsafe sleeping position.

Upon receipt of the Complaint, the Advertiser amended the advertisement by removing the image of the child from the display. The Chair of the Complaints Board ruled the complaint had been settled.

Decision 10/659 concerned an advertisement a television advertisement for Puraz collagen capsules which showed a baby sleeping on its stomach on a sheepskin surface.

The majority of the Complaints Board upheld the complaint and said showing a baby lying face down asleep on a soft surface depicted a dangerous practice and send the wrong message to some viewers.

Complaints Board Discussion

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised, which in this case is:
 - Context: New Zealand's high rate of Sudden Infant Death Syndrome (SIDS)
 - Medium: Instagram account of an overseas company advertising to a New Zealand audience
 - Audience: Instagram users looking for baby gifts
 - Product: Large soft toy for babies

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was it promoted a soft toy that babies can sleep with. The Board said the image in the advertisement showed a sheet in the background which indicated the baby was in a cot or bed setting and the baby had its eyes closed.

The Complaints Board noted the Ministry of Health Safe Sleep guidance states:

“To keep your baby safe while sleeping, make sure they always sleep on their back to keep their airways clear.”

“Baby's bed is safe when there is nothing in the bed that might cover your baby's face, lift their head or choke them – no pillows, toys.”

Does the advertisement encourage or condone an unsafe practice, or portray a situation which encourages or condones a disregard for safety?

The Complaints Board said the image of a young baby, asleep on its side, on a bed, with its face touching a soft toy did portray a situation which encourages or condones a disregard for safety. The Board said the aesthetic value of the image was not a reason to portray a sleeping position which the Ministry of Health stated was dangerous to a baby's health.

The Complaints Board also noted the advertisement directs the consumer to the Advertiser's website, which includes the wording "Whether napping, reading a book or just lounging...." The Complaints Board said this could further reinforced the message that the toy was suitable for a baby to sleep with.

Has the advertisement been prepared and placed with a due sense of social responsibility?

The Complaints Board said the advertisement had not been prepared or placed with a due sense of social responsibility.

The Complaints Board noted the Advertiser's response that a warning email is sent with orders saying not to leave a baby alone with the toy was not sufficient to mitigate the potential risk of promoting the product in this manner. The Complaints Board said the advertisement must stand on its own with regard to adhering to the relevant rules in the Advertising Standards Code. The Board also noted the product could be purchased as a gift, and the recipient of the toy would not necessarily be the person who would receive the warning email.

The Complaints Board also noted that some new parents may not be aware of the Safe Sleep guidelines and the consequences of a baby being put to sleep in an unsafe way could be significant.

The Complaints Board unanimously ruled the advertisement was Upheld, taking into account context, medium, audience and product and was in breach of Principle 1 and Rule 1(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement to be removed.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.

APPENDICES

1. **Complaint**
 2. **Response from Advertiser**
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Appendix 1**COMPLAINT**

This is a very unsafe advertisement. A baby should never be placed to sleep... On their back with a soft toy with anything under their head It contradicts the "Safe Sleep" Guidelines in accordance with the Ministry of Health and sends the totally wrong message to parents!

Appendix 2**RESPONSE FROM ADVERTISER, LULLABYLOOM**

Thank you for your email. Our plush toy is used only for photography and for picture keepsake. We assure you that we take children's safety very seriously. We send out emails to all orders regarding never leave their baby in the crib with the plush alone.