

CARU's First Decision on “Gender-Restrictive” Ads Also Addresses Jurisdictional Issues

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In a February 2021 [blog post](#), CARU encouraged advertisers to focus on diversity and inclusion in their ads. In August 2021, they went a step further when they [announced](#) that the new version of the CARU Guidelines would include a provision stating that ads “should not portray or encourage negative social stereotyping, prejudice, or discrimination.” Last week, CARU released the first decision involving that new provision.

During the course of CARU’s routine monitoring, they found clothing on Primark’s website that included different slogans on shirts advertised to girls and boys. For example:

- Slogans on shirts advertised to girls such as “Be Kind, Be Happy,” “Kindness always wins,” “Always Perfect,” “Grateful, humble and optimistic,” and “Be good, do good.”
- Slogans on shirts advertised to boys such as “Change the game,” “Born to win,” “Power,” “Champion,” “Total Icon,” and “Awesome Adventures.”

CARU found that “Primark’s separate lines of messaging advertised to girls and boys created a dichotomous world of goals and attributes – those appropriate for girls and those appropriate for boys – that portrayed or encouraged negative stereotyping, prejudice, or discrimination.” Based on these findings, CARU recommended that the company modify ads “so that the messages do not portray or encourage negative stereotyping, prejudice, or discrimination.”

Beyond CARU’s analysis of this new provision, this case involved some unique jurisdictional issues. The CARU Guidelines only apply to “national advertising that is primarily directed to children under age 13 in any medium.” And the term “advertising” is defined, in part as “any commercial message or messaging primarily directed to children under age 13... that promotes the sale of one or more products or services.”

Primark argued that the CARU’s concern related to products, not ads for those products. CARU disagreed, finding “that the messages on the clothing are indeed commercial messages whose purpose is to promote the sale of the clothing.” Moreover, CARU disagreed with Primark’s argument that the clothes were advertised to parents, who are the purchasers, rather than to children. They held that the “messages are designed to be attractive to kids who are enticed by their colorful and eye-catching advertising messages and will want the clothes and urge their parents to buy them.”

This case provides some hints about how CARU is going to interpret its new provisions and suggests that they will take an expansive view of what constitutes national advertising primarily directed to children under 13. Companies that design products for children will want to keep a close eye on

future decisions involving these issues to see how this line of thinking develops.