



**ADVERTISING
STANDARDS
BUREAU**

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Case Report

1	Case Number	0113/14
2	Advertiser	Advertising Standards Bureau
3	Product	Community Awareness
4	Type of Advertisement / media	TV
5	Date of Determination	25/06/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

- Other Other - miscellaneous
- 2.1 - Discrimination or Vilification Ethnicity
- 2.1 - Discrimination or Vilification Gender
- 2.1 - Discrimination or Vilification Race
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

Two children are watching TV whilst their mother browses the Advertising Standards Bureau (ASB) website. A voiceover explains that if you find an advertisement offensive, violent or sexist you can lodge a complaint with the ASB. We then see some of the ASB Board members participating in a Board meeting and the voiceover says you can go online and lodge a complaint.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

I found it inappropriate how it showed woman in their underwear, in sexually implied poses. I object to this ad being shown at 4:20 PM when children could be watching television. I was watching 'Get Smart' with my younger siblings and I did not find it appropriate for them to watch. If the ad was shown at a later time I would be more understanding. However the sexual connotations of the ad were an unnecessary inclusion.

I find it offensive that a group of people think that they know what I want to watch on TV.

Throughout the ad only Caucasian people were shown, I found this extremely racist and offensive.

With all due respect, I think that what your committee is doing and the message it promotes, to in effect limit and restrict speech, humour or content of other sort to what is "appropriate" based on your self-regulated bias is a big insult to the charade of a "free society" that we are supposed to be enjoying in Australia (but we`re not.)

Having the government put a jury together which decides what goes and what doesn`t go on air is a huge suppression of our freedom to watch content we want to see.

I believe the ad contravenes the basic human right of free speech by attempting to encourage people to complain about adds that may offend them. The bureau is another example of political correctness gone mad and a complete waste of time and money.

It listed the reasons why a complaint could be made. When 'sexist' was listed, the background pictures were of bikini/lingerie-clad women. I believe this gives the impression that only images of women can be sexist, completely disregarding the fact that men can be inappropriately sexualised.

Your advertisement has sexual pictures in it at an inappropriate time. A lot of young children are not in bed at this hour. I think people can understand what type of "pictures" you are talking about by using words. Children may start asking parents questions about why the women were dressed like that and why the woman and man were on top of each other. It is inappropriate and as a teacher I think the images should be removed from the advertising. 6-6:30pm is an hour of dinner where family's sit around and spend time together possibly watching television.

It seems racist and is offensive in the sense that the makers of this ad only seem to think that only white Australians would like to file a complaint.

THE ADVERTISER'S RESPONSE

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

Response from the Advertising Standards Bureau to complaints regarding the ASB public awareness television commercial

The television advertisement complained about is part of a public awareness campaign promoting the advertising self-regulation system's complaint resolution process, administered by the Advertising Standards Bureau (Bureau).

The campaign was prepared in response to recent research indicating that, while spontaneous awareness of the Bureau as a complaints organisation remained high, not everyone understood that the Advertising Standards Board (Board), which considers the complaints, is made up of people independent of the advertising industry. The campaign aims to increase the level of awareness, while also highlighting the ease of using the complaints system and that all complaints are given careful consideration.

The advertisement is being broadcast on television and online. The advertisement highlights that Board members are everyday people, "People just like you". Several members of the Board feature in the advertisement.

All still images used in the advertisement are stock photos, which do not represent actual cases, but are used to depict key concepts covered in the Code of Ethics and which may be

complained about by members of the public.

The Bureau prepared this public awareness advertisement with due care to ensure that the advertisement was compliant with the AANA Advertiser Code of Ethics while communicating the concepts covered by the Code.

I note that you have received complaints regarding the abovementioned advertisement, specifically:

- the advertisement has sexual pictures in it at an inappropriate time as a lot of young children are not in bed at this hour;*
- it seems racist and is offensive in the sense that the makers of this ad only seem to think that only white Australians would like to file a complaint;*
- it misleadingly implies that only images of women can be sexist, completely disregarding the fact that men can be inappropriately sexualised.*

We have addressed each section of the Code of Ethics, and in relevant places the complaints, in turn below:

2.1 The advertisement depicts a mother using a laptop while her children watch television in the background. The actors appear of Caucasian background, but we consider this of itself is not racial discrimination.

The advertisement also depicts members of the Advertising Standards Board considering a complaint. These are not actors, but are real members of the Board who were available to participate in the advertisement. While the members featured in the advertisement do appear of Caucasian appearance, we again do not consider this amounts to racial discrimination or vilification. We also note that this is only a handful of the members of the full Board, which includes a broad range of age groups, backgrounds and ethnicities, and is gender balanced. The full range of Board member profiles can be viewed on the Bureau website, www.adstandards.com.au.

We consider that depictions of Caucasian actors in the context of the advertisement is not discriminatory.

We also consider that the advertisement makes no specific or implied suggestion that people of any particular race or ethnic background should or should not complain about the content of any advertisement. We therefore consider that the advertisement does not breach section 2.1.

2.2 The images shown under the banner across the screen reading “Sexist” are used to highlight the fact that the Board considers complaints that relate to images that use sexual appeal in an exploitative and degrading manner. We note that several images involve both men and women but agree that the images in relation to sexist are only images of women. We do not consider that the depiction only of women leads to an implication that men cannot be sexualised or demeaned. We note that most complaints received by the Bureau do however relate to sexualised images of women. In our view the images used in the context of the advertisement do not employ sexual appeal or women to promote our service in an

exploitative and degrading manner.

2.3 *The images shown under the banner across the screen reading “Violent” are used to depict the fact that complaints may be made that relate to portrayals of violence in advertising. The images are still images and are fleeting. The use of the images is justifiable in the context of communicating the public awareness message that the Board considers complaints about violence, including domestic violence, physical bullying and so on.*

2.4 *The advertisement shows a number of images shown under the banner across the screen reading “Sexist” that are used to depict the fact that complaints may be made about images of a sexual nature. The advertisement uses a compilation of still images shown at speed to give an overall impression of “sexy images”, rather than single out one type of image.*

The advertisement was given a CAD rating of “PG”, meaning “Parental Guidance”. This rating is applied to advertisements which “contain careful presentations of adult themes or concepts which are mild in impact and remain suitable for children to watch with supervision”.

Based on this rating, the advertisement may be broadcast during the following hours, except during P (Preschool) and C (Children) programs or adjacent to P or C periods (with care to be exercised when placing in cartoon and other child-appeal programs):

Weekdays 8.30am – 4.00pm

Weekdays 7.00pm – 6.00am

Weekends 10.00am – 6.00am

Given the important public service role carried out by the Advertising Standards Board we consider that it is necessary to give an appropriate indication to viewers of the type of images that may be of concern. We believe this is a relevant matter to consider in deciding whether the image is appropriate for the relevant audience.

In our view the overall advertisement is mild in impact given the fleeting nature of the images, the clear context in which they are shown, the subsequent images of Board members and information about the Advertising Standards Board.

We consider that the images used in the overall context of this advertisement are within the bounds of what the community would find sensitive to the audience having regard to the PG classification.

2.5 *The advertisement depicts symbols commonly used to suggest expletives in images under the banner across the screen reading “Offensive”. No strong or obscene language is used in this advertisement. The use of symbols to suggest expletives is appropriate to the audience and to the message of the advertisement.*

2.6 *We consider that there is nothing in the advertisement contrary to prevailing community standards on health and safety.*

I note that you have also received complaints raising concern that the Advertising Standards Board and the advertising self-regulation system are a restriction on freedom of speech. I note that this is not an issue under the AANA Code of Ethics and will not address these concerns in this response.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement is racist as it suggests only white Australians would like to complain, sexist by suggesting that only women can be sexualised, and that the images used are of a sexualised nature and are not appropriate for children to view.

The Board viewed the advertisement.

The Board noted that some complainants were concerned that the advertisement was encouraging people to complain and was therefore contrary to free speech. The Board noted that the product, a complaints adjudication body, is legally allowed to exist and to be advertised and considered that this aspect of the complaints falls outside of the Code and therefore would not be considered by the Board in its determination.

The Board noted that the advertisement is a public awareness campaign promoting the Advertising Standards Bureau and the role of the Board.

The Board noted that several members of the Board feature in the advertisement. The Board noted that those members had chosen to absent themselves from the discussion of the advertisement due to their close connection with the advertisement.

The Board also noted that a conflict of interest may exist for all Board members in considering the advertisement because it promoted the role of the Board within the self-regulation system. However the Board considered that while the advertisement did promote the role of the Board, its focus was on informing the public that there was a place to complain about advertising and a benefit can be seen for the broader self-regulatory system from the advertisement continuing to run. The Board considered that there was not any material benefit to be derived by individual members of the Board as a result of their participation in making a decision regarding this advertisement. The Board considered it in fact had an increased duty to ensure its determination was above reproach: in this instance – by being clearly consistent with the Code and with recent prior decisions it had made. The Board considered it could objectively apply each provision of the Code of Ethics to the advertisement, by having due regard to past decisions it had made on similar advertising images, messages and themes.

The Board noted the Advertising Standards Bureau (the Bureau) had consulted the complainants to seek their consent for the Board, minus those members who feature in the advertisement, to consider their complaints. The Bureau received responses from several of the complainants to say they were happy for the Board to proceed. The remaining complainants did not provide a response.

The Board therefore determined it would proceed to consider the complaints on the basis that:

1. the five Board members who appear in the advertisement will absent themselves from the meeting;
2. there is no material benefit to be derived by individual Board members as a result of their participation;
3. the public benefit of the advertisement, in informing the public about the ability to complain to the Bureau, outweighs the detriment of any potential conflict of interest;
4. the Board considers it can objectively apply the Code of Ethics to the ad, by having regard to past determinations on similar issues;
5. the Board is the most qualified body to determine the complaint as opposed to an arbitrarily chosen body without the experience, structure and focus of the Board; and
6. if the Board does not determine the advertisement there is an absence of regulation (including consistent regulation) in relation to advertising by the Advertising Standards Bureau.

The five Board members who appeared in the advertisements then absented themselves from the meeting the remaining Board members proceeded to consider the complaints.

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted the complainants' concern that the advertisement is racist in its depiction of only white Australians and in thereby suggesting that only white Australians would like to complain.

The Board noted the Bureau's Determination Summary on Discrimination and Vilification in Advertising. The Board noted that 'Discrimination' is described as being to 'Act with inequity, bigotry or intolerance or gives unfair, unfavourable or less favourable treatment to one person or a group because of their race, ethnicity, nationality, sex, age, sexual preference, religion, disability and/or political belief.'

The Board noted a number of advertisements in which the Board has determined that a negative depiction of people of a particular racial or ethnic background did breach the Code (Energy Watch 0267/11, Wicked 0373/12, Tyres4U 0135/14). In all these cases the Board

had determined there was a breach of the Code by use of a depiction of a person of an identifiable race presented negatively.

The Board noted that the actors used in the advertisement are Caucasian and considered that the use of a woman and children of Caucasian background to represent an Australian family in an advertisement does not of itself give unfair treatment to any people. The Board noted that only five of its members are featured in the advertisement. The Board noted that it is made up of people from different walks of life with a diverse cross-section of views and skills and that it represents a broad range of age groups and is gender-balanced. The Board noted that whilst the members of the Board used in the advertisement did appear to be Caucasian, one of the members is of Greek heritage. The Board noted that the profile of the Board is readily available on the ASB website, which is clearly mentioned in the advertisement, and shows the diversity of the Board.

The Board noted that the voice over which accompanies the images states: ‘If you [emphasis added] find a commercial on TV or radio or an advertisement in a newspaper, magazine or online...we’ll give your (emphasis added) complaint a fair hearing by people just like you – from all walks of life...and the ASB will give your (emphasis added) complaint the fair hearing it deserves’

The Board noted that the voice over reference to a complaint being heard by ‘people just like’ in conjunction with images of the five Board members was also accompanied by the superimposed text of each Board members state of residence and profession and the depiction of women and men. The Board considered that most reasonable members of the community would understand that the advertisement is directed to any listener, with its focus on ‘you’, and on describing how to complain about an advertisement. The Board considered that the reference to ‘people just like you’ suggests a range of differences among the Board members, only one of which relates to their appearance. The Board considered that the depiction of the range of Board members in this situation does not amount to a suggestion that only Caucasian people will or should complain as the overall text of the advertisement clearly focuses on the desirability of any viewers raising their concerns with the Bureau if they find an advertisement offensive.

The Board determined that the advertisement did not discriminate against any group of people on account of race, ethnicity or nationality.

The Board noted the complainants’ concerns that the images used to represent sexism only feature women. The Board noted that there are three images used: one featuring a woman’s chest, one featuring a line-up of women in lingerie and the final one showing a man and woman embracing. The Board noted that a man does feature in one of the images. The Board noted that the majority of the complaints it receives regarding imagery concerns images of women and considered that the images used accurately reflect the types of images about which the Board considers complaints.

The Board noted a number of cases where it has determined that it is up to an advertiser to choose to use only men or only women in an advertisement and that omission of people of one gender does not of itself have negative implications for either gender.

For example in Coles 331/08 the Board ‘noted that the relative absence of fathers in the advertisement was not of itself discriminatory and that there was nothing to suggest that the

presentation of mothers as "unsung heroes" in the advertisement was to the exclusion of others. The Board also noted that there was no negative portrayal of men in the advertisement. The Board accepted the advertiser's response regarding the depiction of real parents and children following a casting call. The Board therefore concluded that there was no breach of Section 2.1.'

Similarly, in Female Plumbing 0002/14 'The Board noted the advertiser's response that a male tradesman was used as men are more likely than women to be in the plumbing trade and considered that the advertisement is not suggesting that all plumbers or all men would behave or present themselves in the same manner as the man in the advertisement. The Board noted the complainant's concerns about the reaction to the advertisement if the roles had been reversed and a female plumber had been used. The Board considered that its role is to consider each advertisement on its own merit and that addressing hypothetical alternatives is not part of their role.'

With the focus of the advertisement being to give viewers an idea of the type of issues that can be complained about, the Board considered that the images accurately reflect images which could cause offense if used in advertising material. In the context of the current advertisement the Board considered that the images, primarily of women, do not suggest that only images of women can be sexist. Based on the above the Board determined that the advertisement did not discriminate against women or men in its depiction of images of women in sexualised poses and did not breach Section 2.1 of the Code.

The Board considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

The Board noted that this public education campaign advertisement has been rated 'PG' by CAD. The Board noted that the advertisement features a montage of images which are sexualised and feature a level of nudity. The Board noted that these images are presented in the context of being images which might be of concern to the community in the sense of being considered to be sexist or offensive.

The Board noted a number of similar decisions which concerned advertisements that included sexualised images. In Reckitt Benckiser 0138/11, this M rated advertisement for condoms depicted a couple in an intimate position in bed and was considered to be 'mildly suggestive and not likely to be offensive to most of the community viewing M rated material'. The Board considered that the present advertisement, rated PG, was less impactful as it contained fleeting still images (rather than an active depiction of lovemaking) and as it was highlighting the ability to complain about such images was less sexually suggestive than an advertisement for condoms.

In Windsor Smith 0331/13, a G rated advertisement which featured women in lingerie and several fleeting images in close up, the Board considered 'whilst some of these poses are mildly sexualised they are highly stylised and are consistent with a dance or fashion show scenario and are not strongly sexualised. The Board noted that the camera zooms in on various parts of the body of all the actors in the advertisement and considered that there is no nudity or inappropriate focusing on private areas. The Board noted that the advertisement has a G rating and is not dissimilar in its images of women to many lingerie advertisements recently considered'. The Board considered that the current advertisement depicts similar

content but has a higher classification (PG) and so can be considered to be treating sexualised images with sensitivity to this PG audience.

In Fantasy Lingerie 0437/13 the Board 'noted that in this instance the women in the advertisement are not naked but are covered by lingerie and considered that whilst some of the lingerie is sheer the women's private areas are adequately covered. The Board noted that the music which accompanies the images is 'racy' however the Board considered that the text on screen was factual and overall the advertisement was not overtly sexualised. The Board noted that the advertisement had been rated 'M' by CAD and had been viewed by the complainant in an 'M' rated timeslot. The Board considered that the style and content of the advertisement was not inappropriate for the relevant 'M' audience.' The Board noted that the Fantasy Lingerie advertisement consisted for the most part of a montage of images of women in sexy lingerie. The Board considered that the advertisement before it was far milder, consisting of a small number of images which were a small, albeit impactful, component of the advertisement.

Having considered several previous determinations made about similar images used in television advertising, the Board considered that the majority of the advertisement was not sexualised and depicted people in a home or Board environment and that it was highlighting that viewers can raise concerns about advertising content then the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant PG rated audience.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaints.