



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0069/16</b>
<b>2</b>	<b>Advertiser</b>	<b>Merivale</b>
<b>3</b>	<b>Product</b>	<b>Food / Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Internet - Social</b>
<b>5</b>	<b>Date of Determination</b>	<b>09/03/2016</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.2 - Objectification Exploitative and degrading - women
- 2.3 - Violence Domestic Violence
- 2.4 - Sex/sexuality/nudity S/S/N - general

### DESCRIPTION OF THE ADVERTISEMENT

The Facebook post consists of a photo of a well-dressed woman, wearing a dress and an elaborate silver necklace whose eyes are covered by a black blindfold while she is offered a single strawberry on a fork. The text which accompanies the image reads:

“March into Merivale Food and wine festival/ 14 February – 20 March 2016 Launch Party  
Wednesday 10 February”

The text of the Facebook post reads “Everything you love about Merivale in one place, for one supercharged night. Kick off #marchintomerivale in style with our launch part on 10 Feb. Grab your tickets before they sell out! <http://bit.ly/book-now>”.

### THE COMPLAINT

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

*Sexism, sexualisation of models, gratuitous portrayal of women. Promotion of domestic violence to sell a product. Use of a blindfold to sell a food and wine festival.*

## THE ADVERTISER'S RESPONSE

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

*Complaint reference number: 0069/16 - Merivale*

*We act for Merivale and are instructed to respond to your letter regarding a complaint made about Merivale's Facebook advertising for its "Walk into Merivale Food and Wine Festival".*

*It is not entirely clear from the copy of the complaint provided to Merivale which advertisement is the subject of a complaint. However, our client believes that the complainant is referring to the post made on its Facebook page on 15 January 2016.*

*The Facebook post consists of a photo of a well-dressed woman, wearing a dress and an elaborate silver necklace whose eyes are covered by a black blindfold while she is offered a single strawberry on a fork. The text which accompanies the image reads:*

*"March into Merivale Food and wine festival/ 14 February – 20 March 2016 Launch Party Wednesday 10 February"*

*The text of the Facebook post reads "Everything you love about Merivale in one place, for one supercharged night. Kick off #marchintomerivale in style with our launch part on 10 Feb. Grab your tickets before they sell out! <http://bit.ly/book-now>".*

*The Facebook post is part of a coordinated advertising campaign to promote our client's March into Merivale festival and in particular its launch party which took place last week. The festival, which is now in its 8th year, celebrates the range of restaurants and bars which form part of the Merivale group, including Uccello, Felix, est. and the recently opened The Paddington.*

*Each year, the March into Merivale festival has a theme around which the events of the festival and the advertising campaign are organised. This year, the theme of the festival is "Guilty Pleasures" which refers to the food and beverages exhibited through the festival and presented on a scale ranging from "mildly mischievous" to "blissfully bad". Consumers are also assured that "at Merivale, we've always believed in treating yourself".*

*The image of the blind folded woman has been used throughout this year's March into Merivale advertising campaign and is a specific reference to the March in Merivale "Mystery Feasts", whereby consumers can book a dinner at one of a selection of Merivale restaurants for a fixed price per head and are informed of the precise restaurant location only hours before their dinner.*

*The March into Merivale advertising was created around a brief covering the themes of "Guilty Pleasures" and "Mystery" and "Daring". The image in the Facebook post is a playful one, created in order to convey the concept of mystery and food. The model used is aged over 18 years and the target audience for all Merivale advertising is over 18s.*

*Merivale submits that it is clear from the Facebook post that there is no:*

*(a) Discrimination or vilification on gender grounds;*

*(b) Objectification of women;*

*(c) Any hint of domestic violence;*

*(d) Any sex, sexuality or nudity.*

*Consistent with the reasoning set out in previous determinations of the Bureau, we also note that:*

*(a) There is no use of sexual appeal in a matter that is either exploitative or degrading;*

*(b) The blind folded woman is not presented in a matter that uses sex appeal in such a way;*

*(c) There is no suggestion that the woman has been blind folded without her consent, or is otherwise restrained or not wishing to taste the food which she is being offered;*

*(d) The woman is dressed entirely appropriately for a glamorous dinner without any hint of sexual imagery.*

*In the circumstances, our client does not believe there is any basis whatsoever for a complaint to be maintained, either on the grounds outlined in your letter or otherwise.*

*We are instructed that Merivale has received glowing feedback about its March into Merivale launch event, not only in relation to the function but also the advertising of the function, which was considered both beautiful and artistic.*

*We are also instructed to assure the Bureau that Merivale takes its legal obligations very seriously and has in place procedures to ensure that its advertising is true, accurate and legally compliant. We trust that we have responded adequately to any questions which the Bureau may have but would also be happy to answer any additional questions the Bureau may have.*

## **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 features a sexist and sexualised image of a woman wearing a blindfold which is inappropriate and promotes domestic violence.

The Board viewed the advertisement and noted the advertiser’s response.

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 that this Facebook advertisement features an image of a blindfolded woman being fed a strawberry on a fork.

The Board noted the complainant's concern that the use of a woman in the advertisement is gratuitous and sexist.

The Board noted that advertisers are free to use whomever they wish in their advertisements provided it is done in a way that does not breach the Code and considered that use of a woman to promote a Food and Wine Festival is not of itself discriminatory.

The Board noted that the advertised product is a Food and Wine Festival and considered that a depiction of a woman eating a strawberry is not inappropriate in the context of the product advertised.

The Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender.

The Board determined that the advertisement did not breach Section 2.1 of the Code.

The Board considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: "Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people."

The Board noted the complainant's concerns that the advertisement depicts women as sex objects and noted that in order to breach this Section of the Code the images would need to be considered both exploitative and degrading.

The Board noted that the woman in the advertisement is wearing a blindfold and the focus is on her open mouth. The Board noted that the woman is being fed a strawberry and considered that in the context of an advertisement for a Food and Wine Festival it is not exploitative to focus on a person eating.

The Board noted that the woman is blindfolded and considered that the use of the blindfold is intended to demonstrate the focus on the taste of food. Overall the Board considered that a depiction of a woman wearing a blindfold to taste food is not degrading.

The Board considered that the advertisement did not employ sexual appeal in a manner which is exploitative and degrading to any individual or group of people.

The Board determined that the advertisement did not breach Section 2.2 of the Code.

The Board considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 states: "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The Board noted the complainant's concern that the use of the blindfold promotes domestic violence.

The Board noted that although we cannot see the woman's whole face in the advertisement due to the blindfold the Board considered that the woman appears to be opening her mouth willingly to try the food she is being fed on a fork.

The Board acknowledged the high level of community concern over the issue of domestic violence but considered that the advertisement did not depict, encourage or promote violence of any form.

The Board determined that the advertisement did not breach Section 2.3 of the Code.

The Board then 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 it had previously dismissed a similar complaint about a woman being fed food whilst blindfolded in case 0436/14 where:

"The Board noted that when the woman is fed yoghurt she is blindfolded and therefore cannot see what she is eating. The Board noted that the woman does react with a gasp after unexpectedly being fed a spoonful of yoghurt and berries. The Board noted that the voiceover says we all enjoy surprises and considered that the woman's reaction to the yoghurt does appear to be one of surprise at what she has just tasted. The Board noted that the advertisement is depicting a situation where a mum is being spoilt by her daughter and partner and considered that the manner in which the woman eats the yoghurt and her reaction to its taste could be seen as sensual but, in the Board's view, is not sexualised or inappropriate. The Board considered that the complainants' interpretation of the advertisement would be unlikely to be shared by the broader community."

The Board noted in the current advertisement that we cannot see who is feeding the blindfolded woman but considered that we can see part of the woman's clothing so the level of nudity is extremely mild and although the woman's mouth is parted this not inappropriate in the context of eating food.

Overall the Board considered that whilst the woman is presented in a manner which is glamorous the overall impression is not sexualised and in the context of a food and wine festival a depiction of a woman blind-testing food is not inappropriate in the circumstances.

The Board noted the advertisement is on Facebook which is targeted at persons aged 13 and over and considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant 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 complaint.

