



**ADVERTISING
STANDARDS
BUREAU**

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CASE REPORT

1.	Complaint reference number	0099/11
2.	Advertiser	Rivers (Aust) Pty Ltd
3.	Product	Clothing
4.	Type of advertisement	Mail
5.	Date of determination	1 April 2011
6.	DETERMINATION	Upheld - Modified or Discontinued
7.	Date of Reviewed Determination	11 May 2011
8.	DETERMINATION ON REVIEW	DISMISSED

ISSUES RAISED

- 2.3 - Sex/sexuality/nudity - Treat with sensitivity to relevant audience
- 2.2 - Violence - Domestic violence
- 2.2 - Violence - Other
- 2.1 - Discrimination or Vilification - Sex

DESCRIPTION OF THE ADVERTISEMENT

Cover of Rivers Catalogue titled '10 Deadly Deals'. The image is of a woman's legs sticking out from under a sofa. She is wearing fishnet stockings and high heels and her right hand appears to be poking out from the right of the sofa. The accompanying text says there is a Sale for the next 12 days and there are details of some of the clothing offers.

THE COMPLAINT

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

This advertisement eroticises violence against women and glamorises the victimisation of women. It suggests that a sexy woman is a dead woman, one who cannot express herself or defend herself. No woman should be made to feel that she is better off dead and that is exactly what this advertisement suggests.

The object of the campaign is 10 dead women - thus 10 deadly deals.

Just heard on the radio this morning about a young woman who was found dead in her apartment - and her body found inside a wheelie bin in her bathroom - recently a woman in Sydney was found dismembered in a suit case - floating down a river - a 19 year old student, the victim of a brutal attack by a male stalker. Yes, totally unrelated however I believe that this ad highlights the objectification and senselessness of imagery which seeks to promote violence against women

This catalogue is offensive on every level. That you would use an image of a dead woman to sell your product is simply disgusting! This company knows that and this is a case of them believing any publicity is good publicity. They have pushed the boundaries and got what they set out to do and that is people talking about their company. I find it frightening that a young female Marketing Manager actually thought this form of degrading women in advertising was moral or appropriate. I believe that this ad sends a very strong message to people about the mistreatment of women. It also reeks of, well she's a whore so it's ok to kill her ". The company's response to the criticism on news.com regarding this ad was enough for me to make a formal complaint something I normally wouldn't take the time to do. The fact that they justified their actions suggests to me that this company needs the advertising watchdog to closely monitor any further advertising. I think if this ad is not pulled and this company continues to use women as objects of men's pleasure and abuse, then the message we are sending our girls is one of absolute hopelessness. Why was the use of a woman in that position used? Because the mistreatment of women still sells and this company knows it! I appeal to you to stop this form of degradation of women in advertising!

I find this image to be highly offensive and inflammatory in its use of sexualized violence against women as a marketing tool. This is especially true because the company sells 'family' clothing including items for children. I perceive that this advertisement glorifies sexual violence against women and has absolutely no contextual justification. There is enough exploitation of women in the media without having a family clothing company begin to use these images in routine advertising.

THE ADVERTISER'S RESPONSE

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

Rivers (Australia) had no intent to offend anyone with the cover of our catalogue #4-2011. However, we have no control over the way people perceive images. We do not believe the image is either promoting or in any way condoning violence against women.

Something that the complainants are clearly not aware of is that through our point of sale system in our stores, we allow (and in fact encourage), our customers to donate their change from a sale to the registered charity "Mercy Care", which seeks to provide crisis accommodation to

women and their accompanying children who are victims of family violence during times when refuges are closed.

A couple of additional points for consideration as well.

- Our Marketing Director is female*
- Her sub dept heads are also all female.*
- Most of the staff in the marketing department is female.*

Our marketing director chose the front cover for the catalogue in question.

Given what is out there in mainstream media, and the fashion industry in general, we have to wonder why it is that we are being singled out for far more tame art work compared to most of what goes on in the fashion industry.

At the time of these complaints, there were several online articles published regarding this image. It is worth noting that there was overwhelming support from the general public (in the form of commentary that accompanied the article) that it was not inappropriate. In addition, more than 60% out of over 3,000 voters found that there was nothing wrong with the ad. Furthermore, current news events such as women's bodies found in bins, while tragic, have no connection to this image and to suggest that we are condoning this sort of act is outrageous.

Finally, it is worth noting that this was a single use catalogue which is no longer in circulation (save for any copies that have been kept by individuals).

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 offensive in suggesting the death of a woman is acceptable, that it condones sexualised violence against women, that it objectifies women, has no relevance to the product being advertised and is sexualised.

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

The Board considered whether the advertisement was in breach of section 2.1 of the Code. Section 2.1 of the Code states: “Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of ... sex...”

The Board noted that the advertisement is on the cover of a Rivers magazine and features a pair of fishnet-stocking clad legs in high heels sticking out from under a lounge, with the headline of “10 Deadly Deals”.

The Board noted the complainants’ concerns that the image objectifies women as it shows just a woman's legs and thereby depicts the woman as an object. The Board noted that in previous cases where it had upheld complaints about objectification of women, (0334/10, 0517/10) the images had focused on the torso of the women and were accompanied by sexualised responses or comment. In this case however the Board considered that the image of a woman’s legs sticking

out from under a sofa suggested a dead person but did not depict the woman as an object and did not discriminate against or vilify women.

Based on the above, the Board determined that the advertisement did not depict any material that discriminated against or vilified any person or section of the community on account of their sex. The Board determined that the advertisement did not breach Section 2.1 of the Code.

The Board then considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 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 complainants' concerns that the combination of the text and the image suggests that this is a dead woman.

The minority of the Board considered that most members of the community would view this image as contrived and artificial and not as representative of a serious act of violence.

The Board noted community concern about depictions of sexualised images in a violent context.

The Board considered that the depiction of a woman in fishnet stockings and high heels would be most likely construed as being intended to evoke a suggestion of sexual behaviour – but noted that such a depiction is not of itself sexually suggestive.

The majority of the Board considered that the image was disturbing as, in the Board's view, most consumers would consider the image, accompanied by the caption 'deadly deals' to be a suggestion of a dead woman. The Board considered that the suggestion of a dead woman under a lounge was likely to be seen as a suggestion of violence against a woman.

The Board also considered it possible that the mildly sexually suggestive image of the woman could also lead some readers to a suggestion of sexualised violence – which is not acceptable.

The majority of the Board considered that the most likely interpretation of the image that most people would make is that the woman is supposed to be dead and that she has met an untimely death and the depiction is suggestive of violence or the consequences of violence. The Board also considered that some members of the public would find the image suggestive of sexualised violence. The Board noted that the advertisement is for clothing and that the depiction of violence or the consequence of violence is not relevant to the product advertised.

On the basis that the advertisement depicted the consequence of a violent act, was suggestive of sexualised violence, and was not relevant to the advertised product, the Board determined that the advertisement did breach Section 2.1 of the Code.

The Board then considered whether the advertisement was in breach of section 2.3 of the Code. Section 2.3 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone".

The Board noted that whilst some members of the community may find this image to be inappropriate, in the Board's view the image is relatively mild and not overtly sexualised.

The Board noted that the advertisement is featured on a clothes catalogue and is able to be seen by children, but considered that overall the advertisement is not sexually explicit, graphic or inappropriate.

The Board determined that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach section 2.3 of the Code.

Finding that the advertisement did breach Section 2.2 of the Code the Board upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

We are in receipt of 6 April “Final Case Reports” from the Advertising Standards Bureau (ASB)’s Advertising Standards Board (Board) in relation to a complaint against our client, Rivers (Australia) Pty Ltd (Rivers). That complaint dealt with the image on the cover of a Rivers’ catalogue entitled “10 Deadly Deals” (the Image).

The Image depicts the legs of a female model or mannequin, clad in fishnet stockings and black high-heeled shoes, protruding out from underneath a sofa. The words “10 Deadly Deals” appeared superimposed over the top of the Image. Various clothing products are referenced as being on sale in the Image as well. The complaint against this advertisement was upheld on the grounds that the ad breached Section 2.2 of the Code of Ethics of the Australian Association of National Advertisers (the **Code**), with the Board concluding as follows:

On the basis that the advertisement [1] depicted the consequence of a violent act, [2] was suggestive of sexualised violence and [3] was not relevant to the advertised product, the Board determined that the advertisement did breach Section 2.2 of the Code.

Most notably, the Board also concluded that the ad in which the Image appeared did NOT breach sections 2.1 (depicting material that discriminates against or vilifies any person or section of the community on account of their sex) or 2.3 (treatment of sex, sexuality or nudity without sensitivity to the relevant audience) of the Code. Rivers does not dispute the Board’s findings on the section 2.1 and 2.3 complaints.

Findings under section 2.2 of the Code

In holding that the Image breached section 2.2 of the Code, the Board made conclusions that are inherently unsupportable, either by reference to any facts in the Report or any other facts. The Board’s findings also lack a basis in the language of the Code itself. Finally, the considerations and conclusions of the Board are internally contradictory, and based upon difficult to understand language that cannot be used to support a finding of a breach of section 2.2 of the Code.

The Board’s decision should be overturned and the complaint dismissed on all grounds.

We will address each of the Board’s three findings in turn.

(1) The advertisement does not “depict the consequence of a violent act”

The Board held that the advertisement “depicted the consequence of a violent act.” A finding that the image breached section 2.2 on this ground is not factually or legally supportable.

Section 2.2 of the Code clearly requires that “Advertising or Marketing Communications shall not **present or portray violence** unless it is justifiable in the context of the product or service

advertised” (emphasis supplied). This provision clearly requires a “present[ation] or portray[al] of violence” for a breach to occur.

Even acknowledging that the woman in the image may have died (which we dispute is readily concluded; the woman may just as well be alive and searching under the sofa for her contact lens or some other lost item), there is nothing in the image that points to the woman having died as a result of “of violence or the consequence of violence.”

Notably, the Board has not bothered to identify what the violent act that led to the woman’s death is. But how could it? There are no weapons depicted. There is no blood on the floor. There is no bruising on the woman’s legs. Her shoes and stockings are not dishevelled. The rug and the sofa are perfectly ordered and in place. Simply put, if one concludes that the woman has died, she appears equally likely to have died from a heart attack whilst crawling under the couch searching for a lost wedding ring as she did from “violence” – let alone as a “consequence of violence.”

As well, the Board’s finding on this point clearly exceeds the plain language of section 2.2 of the Code. The Image was not found to “present or portray violence” as the Code requires. This is logical, as it cannot arguably be found to present or portray any such thing. Whether death occurred at all, one can only guess at how it might have occurred.

Notably, a minority of the Board members noted that “most members of the community would view [the Image] as *contrived and artificial* and not as representative of a serious act of violence.” Rivers argues that this is clearly the interpretation of the Image that most viewers already came to on their own.

Although they cannot declare that violence is portrayed or presented in the Image as required under the Code, however, a majority of the Board improperly expands section 2.2 to cover situations where an image may, in some viewers’ minds, depict “the **consequence** of a violent act.” Such a test is clearly beyond the language of section 2.2 and cannot be used to support a finding of a breach thereof.

Moreover, taken to its logical extreme, such a standard would prevent the publication of any image in which a given viewer might possibly conclude the person depicted could have been the victim of violence—in spite of the fact that the person might just as easily NOT have been such a victim. Section 2.2 of the Code could be used by the Board to prevent the depiction of an individual with a black eye—because a viewer could imagine that the advertiser meant to evoke a suggestion that the man was punched in the face (or perhaps he walked into a door...?). No image could be shown of a person with a cast on their arm either—as it might be intended to hint that the arm was broken in a fight (or perhaps the individual injured themselves skiing...?) It would also forbid an image of someone with a cut or scar on their face—the advertiser might be suggesting that the person was slashed by a mugger (or perhaps they cut themselves shaving?).

Here, the Board has used section 2.2’s prohibition on violent images to prohibit an ambiguous image, open to a broad range of interpretations, simply because one of those interpretations is that the Image arguably “depict[s] the consequence of a violent act,” in spite of the fact that it cannot even identify with any specificity what that violent act may have been.

In spite of there being nothing in the Image that establishes definitively that the woman is dead, or if she is, that she has died of other than natural causes, the Board permits the most extreme

possible interpretation of the Image to be held as the conclusive one, finding a breach of section 2.2 of the Code as the Image “depicts the consequence of a violent act.”

This “test” cannot stand as a basis upon which to enforce the Code and should be rejected. As well, any finding premised upon this test, unsupported by facts or, indeed the plain language of the Code itself, must be rejected.

(2) *The Advertisement is not “suggestive of sexualised violence”*

The Board’s finding that the Image is “suggestive of sexualised violence,” again, even in the absence of a single element that definitively points to the woman being dead or, more importantly here, dead by unnatural causes, appears premised wholly upon the fact that the model is wearing “fishnet stockings and high heels.”

The Board’s discussion on this point, however, is circular, internally contradictory, and based on outdated interpretations of sexual suggestiveness and “sexual behaviour” (a term the Board importantly leaves wholly undefined).

For example, in its Determination, the Board states as follows:

“The Board considered that the depiction of a woman in fishnet stockings and high heels would be most likely construed as being intended to evoke a suggestion of sexual behaviour...”

This “test” simply cannot be used as a premise for a finding of a breach of section 2.2 of the Code. How could any advertiser determine if an image they wished to use “would be most likely **construed** as being **intended** to **evoke** a **suggestion**” of anything? Such a broad test would be readily satisfiable if **any** viewer of an image could **ever possibly** come to a conclusion that an advertiser **might possibly** have intended to **evoke any suggestion whatsoever** of an offending notion—whether or not that suggestion is actually evoked or the evocation actually intended. That is not a fair basis upon which to judge a breach of the Code.

As well, Rivers takes as strong an issue with the assertion that “fishnet stockings and high heels” suggest “sexual behaviour.” Would the same conclusion have been reached if the woman had been wearing flat shoes? Or if the stockings were black? If not, such a consideration clearly ignores the plain fact that millions of women wear fishnet stockings and high heeled shoes on a daily basis, including, most importantly, in the workplace—with nary a hint of “sexual behaviour” or an allusion to such behaviour on their part.

To suggest that the mere depiction of attire readily acceptable in both women’s daytime (including workplace) and night time fashion suggests that the Board is giving far too much credence to complainants fixated on finding “sex” in every image they encounter.

Even more confusingly, however, and although the Board declares that the Image would be “most likely construed as intended to evoke a suggestion of sexual behaviour,” the Board nevertheless finds that the image is “**not of itself sexually suggestive.**”

Without addressing the question of how an image can “*evoke a suggestion of sexual behaviour*” but not be “*of itself sexually suggestive,*” the Board, two paragraphs later, contradicts its own earlier finding that the image is **NOT** sexually suggestive by now declaring that the Image is “mildly sexually suggestive.” On the basis of this conclusion, the Board then pronounces that some readers might be “led” to “a suggestion of sexualised violence.” The mere fact that the model is wearing fishnet stockings and high heels cannot support an assertion that the image is suggestive of violence, let alone that it is suggestive of sexualised violence.

Worse yet, this finding of “suggested sexualised violence” directly contradicts the Board’s decision that Rivers did NOT breach section 2.3 of the Code, because the Image was neither “overtly sexualised,” nor “sexually explicit, graphic or inappropriate.”

The Board’s findings on this point are outdated, internally contradicted, and unsupported by relevant facts. What is worse, they provide no clear basis upon which Rivers or other advertisers can predict with any certainty what the Board will identify as a breach of the Code.

A “construed intention to evoke a suggestion” of violence—particularly where there is no indicia of a violent act, and where the violence is labelled as “sexualised” simply because a model is wearing a particular type of clothing—cannot constitute a breach of section 2.2 of the Code. In the absence of a presentation or portrayal of violence, the Board’s finding on this point must be rejected.

The Board’s finding on the relevance of “violence or the consequence of violence” is unfounded

The Board’s conclusion that “the advertisement is for clothing and that the **depiction of violence** [in spite of the Board’s contradictory admission elsewhere that no violence was depicted] or the consequence of violence is not relevant to the product advertised,” is unsupportable.

As has already been argued above, the Image does not “present or portray violence” as is prohibited under section 2.2 of the Code. Neither can the Board’s assertion that the Image portrays the “consequence of violence” or “suggestive of sexualised violence” be shoehorned within the plain language of section 2.2 of the Code on this point. Absent any portrayal or presentation of violence, this finding should be rejected outright.

Conclusion

Without any indication that violence is “portrayed or presented” in the Image, as is plainly required to find breach of section 2.2 of the Code, the Board stretches the language of section 2.2 to arrive at its conclusion. As a result, many of its findings are unsupportable, or even flatly contradicted by other findings in the same decision:

- The Image depicts a “*consequence of violence*”—in the clear absence of any indicia of violence actually being presented or portrayed.
- The Image could be “**construed** as being **intended to evoke a suggestion of sexual behaviour**” (an unworkable test in and of itself)—purely because the model is wearing “fishnet stockings and high heels.”
- The Image is “not of itself sexually suggestive”; but
- The Image is “mildly sexually suggestive.”
- The Image could “lead some readers to a suggestion of sexualised violence” and thus is in Breach of section 2.2 of the Code; but
- The Image is “relatively mild and not overtly sexualised” and is not in Breach of section 2.3 of the Code.

The mere presence of ambiguity in the Image, and the plain difficulty that this ambiguity created for those Board members intent on finding a breach of some section—any section—of the Code, is not sufficient reason to stretch the language of the Code of Ethics beyond its plain meaning and intent.

Such an exercise not only wrongly punishes Rivers; it provides no assistance whatsoever to other advertisers attempting to divine the Board's thought process in designing advertisements.

This decision cannot be supported in fact or by the plain language of the Code and should be rejected.

INDEPENDENT REVIEWER RECOMMENDATION

This is a review of two (identical) advertising images created by Rivers (Aust) Pty Ltd (the advertiser) to promote their products. The image is titled "10 Deadly Deals".

The Board decided to uphold the complaints on the basis that the image breached section 2.2 of the Code of Ethics which relevantly states "advertising or marketing communication shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The request for review was accepted on the ground that the decision is legally flawed.

In a detailed submission (dated 14 April), the advertiser submitted that "a majority of the Board improperly expands section 2.2 to cover situations where an image, in some viewers' minds, depict the consequence of a violent act. Such a test is clearly beyond the language of section 2.2 and cannot be used to support a finding of a breach thereof".

I agree with this submission.

Complainants expressed concern that the combination of the text and the image suggests that this is a dead woman. I agree that the image suggests that the woman is dead. However, no violence is presented or portrayed in the image.

A minority of the Board considered that most members of the community would view this image as contrived and artificial and not as representative of a serious act of violence.

Many complainants were also offended by the image because they claimed it objectifies women and has no relevance to the product being advertised. They submitted that the image sexualises women. The Board dismissed this complaint as not breaching section 2.1 and section 2.3. The advertiser, however, submits that the Board's decision is, in some instances contradictory in its findings. For example, the Board makes a finding that the image is "not of itself sexually suggestive" but then says that the image is "mildly sexually suggestive". I note that one of the complainants criticised the decision for its inconsistency even while upholding the complaint.

Although the Board found that there was an inference that the body had met a violent death, it made no finding of actual presentation or portrayal of violence which is required by section 2.2. If an advertiser were to rely upon this decision as to the operation of section 2.2 they would receive little assistance.

I recommend that the Board reconsider the matter.

BOARD DECISION FOLLOWING INDEPENDENT REVIEWER RECOMMENDATION

The Board noted the Independent Reviewer's recommendation that the decision be reconsidered on the basis that a proper interpretation of section 2.2 of the Code of Ethics requires that there be actual presentation or portrayal of violence in the advertisement.

The Board noted the Independent Reviewer's interpretation of section 2.2 and noted that such an interpretation could lead to a result that advertisements which make strong suggestions of violence without actually depicting the moment of violence could be considered appropriate under section 2.2 of the Code. The Board asked that this interpretation be brought to the attention of the AANA for consideration as to the need for any amendment to the Code to capture industry's intention.

A minority of the Board considered that the depiction of a woman's legs coming from under the lounge, in conjunction with the advertisement's text 'Deadly deals' did amount to a depiction of violence as the use of the words in conjunction with the woman's body indicated a violent act had occurred.

The majority of the Board considered that the advertisement suggests violence towards the woman however acknowledged that there is not depiction of violence.

The Board determined that the advertisement does not present or portray violence and that therefore the advertisement does not breach section 2.2 of the Code.