



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0125/12</b>
<b>2</b>	<b>Advertiser</b>	<b>Pepsico Australia Holdings Pty Ltd</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>11/04/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.2 - Objectification Exploitative and degrading - women

### DESCRIPTION OF THE ADVERTISEMENT

In the "Cash or Car" television advertisement, the main character emerges from a corner store with two mates. He has a 600ml bottle of Pepsi Max in his hand. It is the promotional "Cash or Car" bottle identifiable with the green graphics.

After taking a sip he begins to day dream about the dilemma he would encounter should he win the main prize. In the day dream, V8 racing driver Greg Murphy appears, tempting the hero to choose the HSV E3 GTS prize, before being interrupted by a young man in a hot tub with the Pepsi Max Twins and being served by a butler, suggests he takes the money. The ad finishes with the voice over: "Which will you choose in the Pepsi Max Cash or Car competition - \$50,000 cash or the car?"

### THE COMPLAINT

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

*A diet drink has nothing to do with two large breasted women in a hot tub with one male this has nothing to do with prize money only to do with the advertising companies perverted notion that two women with sell their drinks very poor taste. Sexually demeaning to women, sleazy attempt of an ad. Pepsi should be ashamed of this ad!*

## THE ADVERTISER'S RESPONSE

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

*The Bureau advises the following issues with respect to the AANA Code of Ethics were raised by an anonymous complaint made on 19 March 2012:*

*Issues Raised to date with respect to :*

- *2.4 Sex/sexuality/nudity S/S/N – general*
- *2.2 Objectification*

*Complaint Details: Ad Details: 'Diet soft drink'. TV - various times through the day.*

*Advertising prizes you can receive by buying a Pepsi Max*

*Reason for Concern: A diet drink has nothing to do with 2 large breasted women in a hot tub with one male, this has nothing to do with prize money, only to do with the advertising companies perverted notion that 2 women sell their drinks, very poor taste. Sexually demeaning to women sleazy attempt of an ad. Pepsi should be ashamed of this ad!!*

*The advertisement referred to by the Bureau is part of PepsiCo Beverages campaign to promote the 2012 execution of its popular dilemma-based sales promotion "Cash or Car", whereby the winner of the promotion is able to select the prize they would prefer: \$50,000 cash or an HSV E3 GTS worth \$100,000.*

*The promotion brings to life the Pepsi Max's sponsorship of V8 Supercar racing team, the Pepsi Max Crew, which is operated by Kelly Racing using an HSV vehicle driven by renowned driver Greg Murphy. The team races at V8 Supercar events, at which the Pepsi Max Twins promotional models appear as part of on track activation for the team. The lead promotional twins are Emma Sayers and Laura Sayers. Murphy and the Sayers all appear as talent in the "Cash or Car" advertisement.*

*Pepsi Max is a no sugar cola with the taste of full sugar cola that appeals to 20-something males that has become renowned for its irreverent, light-hearted, larger-than-life advertising campaigns over the past decade. The target audience is males aged 20 to 30.*

*The dilemma of the choice between the prizes has been key to the success of the Pepsi Max Cash or Car promotion, now in its third year, with much banter in social media and media content about what consumers might do if they won – and how they might spend the cash prize.*

*The 30-second Pepsi Max 2012 "Cash or Car" advertisement, and 15-second cut down commercial, brings to life the prize dilemma in the entertaining manner for which Pepsi Max advertising is known.*

*In the advertisement we see our hero who, upon taking a sip of his promotionally marked Pepsi Max bottle, enters a curbed side day dream of the dilemma he would encounter should he win the main prize with Pepsi Max Crew driver Greg Murphy appearing before the hero and tempting him with the HSV E3 GTS prize, while a young man in a hot tub with the Pepsi Max Twins and being served by a butler, suggests he takes the money. The ad finishes with the voice over: "which would you choose?"*

*With the action occurring "miraculously" before our hero's eyes on the street in front of a local store, it is clear the scenario is meant to be larger than life and humorous with Murphy entering into a "banter like" situation with the "money-prize" young man in the hot tub, complete with a dollar sign chain around his neck.*

*The complaint received by the Bureau concerns the three 1-2 second sections of the commercial featuring the "Money winner" who is shown sitting in a hot tub positioned on the*

*road. He is being served Pepsi Max by a butler and is sharing the spa with the Pepsi Max twins, Emma and Laura Sayers, who are each wearing a typical green bikini.*

*The scenario was used as a way to very quickly suggest a lifestyle of leisure that would be associated with having spare cash if one selected the cash prize: being able to afford the luxury of owning a spa and the services of a butler and having time to spend with friends.*

*In the spa scene, the twins are wearing green two-piece (Bikini) swimwear typical of the summer and pool fashion and are friendly but not suggestive or sexual toward the male in the hot tub, nor is the male character suggestive or sexual toward the two women.*

*We do not believe sections of the commercial featuring Emma and Laura Sayers contravenes either the letter or the intent of any of the Codes the Bureau administers. With reference to the Codes we would make the following points:*

*The video imagery treats sex, sexuality and nudity with sensitivity to the relevant audience (Code of Ethics 2.3).*

*Neither the video imagery or the voice over during the spa scene and the ad in its entirety employ sexual appeal in a manner that is exploitative and degrading of any individual or group of people. (Code of Ethics 2.2)*

*And the ad does not portray people or depict materials in a way that discriminated against or vilifies a person or section of the community on account of gender (Code of Ethics 2.1).*

*Sections 2.3, 2.5 and 2.6 do not apply to this commercial.*

*In addition we would like to draw the board's attention to the following explanations in The AANA 2012 Code of Ethics Practice Note:*

*"Portraying a woman as attractive does not in itself constitute discrimination or vilification of women.*

*"Not all images of people who are scantily clad will be unacceptable under this section. This section restricts the use of such images only if they are exploitative and degrading.*

*"Exploitative means clearly appearing to purposefully debase or abuse a person, or group of person, for the enjoyment of others, and lacking moral, artistic or other values.*

*"Degrading means lowering in character or quality a person or group of persons.*

*"Images of women in bikinis are permitted, however, unacceptable images could include those where a woman (or man) is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person), or where there is clear sexual innuendo from the ad (e.g. depicting woman as sexual objects). Sexualised images where only the woman's torso is shown are generally found in breach. However, an image of a women's torso in a non sexualised pose to promote a relevant healthy product, have been found to be acceptable."*

*We assure the Bureau our intention in the commercial was to entertain viewers and to bring to life and explain the "Cash or Car" promotion and we apologise if we have done otherwise. We have a responsibility to ensure advertising and promotion meets appropriate community standards. We believe we met these standards in this commercial.*

*Consumer feedback to date confirms Australians are enjoying the commercial and the promotional concept. We have not received any comments on our Facebook page or You Tube Channel that show consumers share the view of the complainant. In fact, as of 0900am 27 March 2012, there had not been any comments at all made about the Sayers twins who appear in the commercial. Rather, consumers have engaged in participating in the dilemma of the choice they would make, indicating they understand the creative presented to them in the commercial.*

*Pepsi Max has had a long history of light-hearted tongue in cheek and hyper real advertising and we believe this advertisement continues in this vein.*

*The TV commercial is but one part of the campaign, which also includes radio advertising, point of sale, online advertising, social media and activation at V8 events including the use of*

*the Pepsi Max Crew vehicle livery. All material features the words “Cash or Car?”, presenting the concept through the use of the question mark.*

*The advertisement received CAD approval and has a “W” rating. The target audience for the commercial is 20 to 30 year old people, with a male skew – which is reflected in the vehicle prize component, relevant to people with a license and in particular most relevant to drivers with a full license over the age of 20.*

*We assure the ASB that in scheduling the placement of the commercial were mindful of the “W” rating guideline as well our commitment under the AFGC Responsible Children’s marketing Initiative. The advertisement has not and will not knowingly be placed in programs promoted for viewing by children.*

*The 2012 “Cash or Car” advertisement commenced on air on Sunday 18 March 2012 during the Formula 1 Grand Prix, also featuring the Pepsi Max Crew V8 race. Other programs in which the advertisement appears include sporting programs including V8 Supercars, Friday Night Football (NRL), AFL, The Footy Show and Top Gear as well as programs that rate highly among our target including Fox Sports, Alcatraz, Modern Family, Balls of Steel and NCIS.*

*The advertisement will run for five weeks, while the promotion, including point of sale, runs from 1 March 2012 until 2 September 2012.*

*Included in materials provided are examples of the “Cash or Car” campaign.*

*We do not believe the latest Pepsi Max commercial is in breach of the code.*

## **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 complainant’s concerns that the advertisement is offensive and features sexualized scenes that are inappropriate, particularly for young children to see.

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

The Board considered whether the advertisement complied with Section 2.2 of the Code which 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 that in the "Cash or Car" television advertisement, three men emerge from a corner store. One has a 600ml bottle of Pepsi Max in his hand. It is the promotional "Cash or Car" bottle identifiable with the green graphics. He begins to day dream about the dilemma he would encounter should he win the main prize ie: take the car or the cash? The ad finishes with the voice over: "Which will you choose in the Pepsi Max Cash or Car competition - \$50,000 cash or the car?"

The Board noted that in the choice for winning the cash, the temptation is presented as a man in a spa bath with two women in bikinis in the spa also. The Board noted that the women are posed in a manner however which is clearly intended to appeal to him and is mildly

sexualized in nature. The Board considered that the women are not represented in a manner which could be considered exploitative and degrading.

The Board determined that the advertisement did not employ sexual appeal in a manner which is exploitative and degrading and did not breach Section 2.2 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 the advertisement is designed to appeal to a target audience of males aged 20-30 years. The Board considered that it is reasonable to use imagery that would likely be attractive to young men ie: cars and luxury spas. The Board considered that the scenarios shown are intended to appear as a fantasy and imaginary situations should the young man win one of the prizes associated with buying the Pepsi beverage.

The Board noted the advertiser’s response that the advertisement complied with Commercial Television Industry Code of Practice and the advertisement was classified with a “W” rating and appears in the appropriate timeslots for the rating given.

The Board considered that the women are wearing swimsuits (bikinis) which is appropriate for a spa and that there are no inappropriate close ups of the women’s breasts.

The Board considered that the women were not overtly sexualized in this particular advertisement.

Based on the above the Board considered that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and 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.