



Case Report

1	Case Number	0131/11
2	Advertiser	Scotch and Soda
3	Product	Clothing
4	Type of Advertisement / media	Poster
5	Date of Determination	27/04/2011
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.6 - Health and Safety - within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

Collage of images of models wearing Scotch and Soda clothing. In one image the female model is holding a cigarette. The text on the advertisement reads, "Scotch and Soda Amsterdam Couture. Autumn/Winter 2011. www.scotch-soda.com.

THE COMPLAINT

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

I believe that it is illegal in Queensland for advertising to show a person smoking. Tobacco & Other Smoking Act 1998.

THE ADVERTISER'S RESPONSE

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

1. The advertisement in question was only a small section of a large 3000x1700 Poster in a shop window within the Scotch & Soda Brisbane Fashion store . The image was supplied by

Scotch & Soda, Amsterdam, as part of the official campaign images for the release of the Scotch & Soda Winter 2011 Season Collection.

2. The image is copyright to Scotch & Soda, Amsterdam and cannot be released in the public domain without their approval.

3. The image is not a close-up photograph of a woman with a cigarette in her mouth. The image is showcasing Scotch & Soda clothing. On close inspection, the model has a cigarette in her hand.

4. The Poster will be only displayed on the shop window for the period until June 30th to promote the Scotch & Soda Winter 2011 Season.

I submit this information for your consideration and understand that the attached image will not be made public in any form.

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 concern that the advertisement depicts a person smoking which is illegal in Queensland.

The Board noted section 26PA of the Queensland Tobacco and Other Smoking

Products Act 1998(Qld) which states:

Image of consumption of smoking product

(1) A supplier must not, at a retail outlet, display an image that promotes a person or thing consuming, using or being otherwise associated with, a smoking product.

Maximum penalty—140 penalty units.

(2) Subsection (1) does not apply to a trademark.

The Board noted that smoking product is defined as means a tobacco product, herbal cigarette, loose smoking blend or smoking related product and that supplier is a person who, as part of a business activity, supplies smoking products to the public, but does not include a person who supplies smoking products to the public as an employee of another person.

The Board noted that its role is not to determine whether an advertisement complies with the provisions of legislation but noted that the provisions of the Act do not apply to the current situation.

In relation to the advertisement’s compliance with the Code of Ethics the Board considered whether the depiction of a person who appears to be smoking a cigarette was a depiction of material that contravened prevailing community standards on health and safety. The Board noted that government policy is to reduce the exposure of the public to messages and images that may persuade them to start or continue smoking or use tobacco products. The Board

considered that while the community tolerates a level of smoking it does not tolerate images which promote smoking as glamorous or cool.

The Board noted that the image in question is one of a number of images and that only this one image depicts a woman holding a cigarette which she is clearly smoking.

The Board noted its strong view that images that glamorise smoking should not be permitted as they are a depiction of material contrary to prevailing standards on community health and safety and contravene section 2.6 of the Code.

The Board considered that the image of the woman did glamorise smoking. On this basis the Board determined that the advertisement breached section 2.6 of the Code.

The Board determined that the advertisement breached section 2.6 of the Code and upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

9th May 2011: The advertisement is no longer being displayed in any form and will not be used again in the future.