



## Case Report

1	Case Number	0139/16
2	Advertiser	McCain Australia and New Zealand
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	13/04/2016
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

2.3 - Violence Violence

2.6 - Health and Safety Within prevailing Community Standards

### DESCRIPTION OF THE ADVERTISEMENT

The Advertisement features several young men blind taste-tasting two types of pizza. One pizza has been stolen from a pizza delivery van when he was distracted and the other is a McCain pizza. The McCain pizza is declared the winner and all men give each other 'high-fives' as a gesture of celebration however, being blindfolded, one man misses and accidentally connects with his friend's head.

### THE COMPLAINT

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

*I object to the portrayal of bailing up and stealing from the young pizza driver, as being something that is acceptable behaviour. Similarly, I object to a punch in the head being portrayed as acceptable behaviour. Seeing these behaviours portrayed as what blokes do and as funny, is a contributing factor in children behaving similarly and thinking it's okay. It's not.*

### THE ADVERTISER'S RESPONSE

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

*The complainant alleges that the Advertisement raises issues under section 2.3 of the Australian Association of National Advertisers Code of Ethics (Code), which provides that –*

*Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.*

*For the reasons set out below, McCain strenuously denies that the Advertisement infringes section 2.3 or any other section of the Code.*

#### *Background to the Advertisement*

*The Advertisement was created to promote the launch of the McCain “Takeaway Pizza” range, which includes the Angus Steak and Bacon Pizza as featured in the Advertisement (Takeaway Pizza). The Takeaway Pizza range is McCain’s premium frozen pizza product and the range was created to emulate the taste of takeaway pizza and remove the need for consumers to order-in or leave the house to enjoy restaurant-quality pizza at home.*

*The Advertisement is targeted at males 18-34 and aims to convey that Takeaway Pizza offers consumers a convenient, high-quality and affordable alternative to regular takeaway pizza, without compromising on flavour.*

#### *The Advertisement*

*The Advertisement incorporates the “slapstick” style of humour, which involves deliberately exaggerated physical activity. It is intended to be fun, light-hearted and humorous.*

*In summary, the Advertisement features several young men blind taste-tasting two types of pizza – a pizza from the Takeaway Pizza range and a traditional takeaway pizza.*

*The traditional takeaway pizza is sourced from a pizza delivery driver who is parked on a motorised scooter. While the pizza delivery driver is distracted by one of the men performing a ridiculous*

*dance, another man sneaks up behind the pizza delivery driver to remove the pizza from the rear storage box of the scooter. This particular scene is shot and edited in a way that is clearly intended to be over-the-top and comedic.*

*The men gather in their friend’s garden to participate in the blind taste-testing. At the end of the Advertisement, the men, all of whom are depicted as enjoying themselves, attempt to give each*

*other “high-fives” as a gesture of celebration and to indicate their satisfaction with the Takeaway Pizza, which is the winner of the taste-test. However, because they are blindfolded for the taste testing, one man misses the high-five and accidentally connects with his friend’s head instead.*

*The Advertisement has been the subject of extensive internal and external approval processes, including CAD approval, prior to being broadcast.*

## *The complaint*

*McCain takes compliance with the Code very seriously. McCain considers that the Advertisement could not, in any circumstances, be reasonably considered to be presenting or portraying violence or*

*to be in breach of any other provision of the Code.*

### *1. Depiction or presentation of violence in the Advertisement*

*The content of the Advertisement does not depict or present violence.*

*The definition of “violence” is not set out in the Code, meaning that the Advertising Standards Board (Board) will apply the ordinary English meaning of that word and will also consider concerns raised*

*by the complainant as well as other relevant factors in its determinations. “Violence” is defined in the Oxford Dictionary as “behaviour involving physical force that is intended to hurt, damage, or kill*

*someone or something” [emphasis added].*

*The complainant seems to consider that the Advertisement portrays or depicts violence on the basis that the “ad ends with one of these young men punching one of his friends in the head (both blindfolded) for what appears to be the fun of doing so.” With respect, the complainant has*

*misinterpreted this scene. As mentioned above, the man in the scene that the complainant is referring to is actually trying to high-five his friend, but misses due to his sight being obscured by a blindfold from the earlier blind taste-testing of the pizzas.*

*Applying the ordinary meaning of “violence” to this scene, the Advertisement does not present or depict violence as contemplated under section 2.3 of the Code. In particular, there is clearly no*

*intention to cause any harm or apply any physical force.*

*Additionally, in determinations relating to complaints alleging contravention of section 2.3 of the Code, the Board has previously considered how the majority of people who view an advertisement*

*would interpret the advertisement in its whole context and whether they would consider it humorous rather than offensive (see, for instance, ASB Determination 286/04 (Tiles Plus)). McCain considers that the broad majority of people would, in seeing this scene in the whole context of the*

*Advertisement, consider it humorous rather than sharing the complainant’s view that it is offensive or violent. In particular, McCain considers that the use of the slapstick style of comedy in the*

*Advertisement would be clear to the audience, including by reference to the other exaggerated physical activities in the Advertisement (for example, the scene featuring the ridiculous dancing and*

*the scene featuring the men being pricked by cactus spikes) and the use of exaggerated and comedic sound effects.*

## *2. Contravention of social values*

*The complainant expresses concern that the Advertisement allegedly portrays “the bailing up and stealing from the young pizza driver, as being something that is acceptable behaviour”.*

*The Advertisement does not condone or normalise theft in any way, and does not contravene social values.*

*The Board has previously noted in determinations relating to complaints that allege the promotion of stealing in an advertisement, that this is not a matter that is specifically dealt with under section 2 of the Code (see, for instance, ASB Determination 114/06 (Just Jeans Group)). Accordingly, the Board generally considers such complaints in light of whether, in the context of prevailing community standards, the majority of people would find the advertisement humorous rather than offensive. It also looks at whether the advertisement contravenes social values.*

*This scene in the Advertisement is depicted in a light-hearted way, using the same stylistic elements of the slapstick genre, including exaggerated physical movement and an over-the-top and playful prank. As the Board is aware, community members tend to find advertisements that use humour more acceptable (see: 2008 Community Standards Research Report – Advertising Standards Bureau). In particular, the use of humour in an advertisement is clearly a mitigating factor when considering whether an advertisement would reasonably be considered to promote or condone a particular message. McCain is firmly of the view that, having regard to the Advertisement in the context of its overall presentation, the majority of people would find the Advertisement humorous rather than offensive.*

*Additionally, McCain is of the view that the Advertisement, in its depiction of the removal of the pizza from the motorised scooter, does not contravene social values. The Board has previously considered whether a depiction of someone taking something from someone else, in a humorous context, would contravene social values (see, for instance, ASB Determinations 116/04 Kellogg (Aust) Pty Ltd (Be Natural)), 183/04 (Hans Continental Smallgoods Pty Ltd (Lean and Tasty Ham)), 218/04 (George Weston Foods Limited (Don)), and 106/07 (Austereo Pty Ltd (Triple M)). In each of those circumstances, some of which involved explicit references to stealing, the Board found there to be no contravention of social values.*

## *Other Considerations under the Code*

*McCain notes that in addition to considering specific issues raised by the individual complainant, the ASB will also review the Advertisement in its entirety against the Code.*

*McCain is of the view that the Advertisement does not raise any further issues under 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 portrayed stealing and punching as acceptable behaviours.

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

The Board noted that the Code does not contain provisions relating to the depiction of illegal acts such as stealing.

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 considered that the advertisement is slapstick and comedic and many scenes are exaggerated to emphasise these elements.

The Board considered the scene where the men are blindfolded, having undertaken the pizza taste-testing, and attempt to high five each other. The Board noted that the man misses and hits his friend’s head instead of his hand, and considered that this is accidental in a comedic context and not a purposeful act.

The Board considered that the advertisement is using humour and there is no indication that anyone has been hurt or injured in the ‘high five’ incident. The Board considered that the scenes of the men touching the cactus plant and having cactus prickles in their hands were also humorous depictions and not images of a violent act.

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

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted that the advertisement portrays a pizza delivery man being distracted and his pizza stolen. The Board considered Case 0016/13 where “The Board noted the complainant’s concerns that by showing the lady taking the mangoes that she is stealing and that children will consider this acceptable behaviour. The Board noted that although the lady has taken the mangoes from the man, she will still have to pay for the product at the checkout herself and is in turn not stealing from the store. The Board considered that most reasonable members of the community would recognise that the depiction of the elderly lady is intended to show “cheekiness? rather than anything dishonest or offensive to community standards. The Board did not consider that this portrayal was condoning or encouraging people to steal”.

The Board noted that in the current advertisement the pizza is labelled as 'stolen' and therefore the Board considered that there was never any intention to pay for the pizza. The Board noted that although the scene of stealing the pizza is exaggerated, the act of stealing from the pizza delivery man is a realistic event and in the context of Prevailing Community Standards, the majority of people would see this particular scene in the advertisement, as breaking the law.

The Board noted that the advertiser had cited a number of cases to demonstrate that the advertisement does not condone or normalise theft. The Board noted that these reports date back over ten years and that community standards will have changed over this time. As this particular activity - stealing from a pizza delivery person - is an actual crime, this portrayal in the advertisement may be seen to condone stealing.

The Board considered that the victims of crime in such circumstances were often traumatised and such experiences were covered under the provisions of workplace health and safety obligations.

The Board considered that the comedic and humorous nature of the advertisement was not sufficient to mitigate the impact of stealing the pizza. The Board considered that the advertisement did depict material contrary to Prevailing Community Standards.

The Board determined that the advertisement did breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.6 of the Code, the Board upheld the complaint.

## **THE ADVERTISER'S RESPONSE TO DETERMINATION**

We refer to your letter advising we were in breach of Section 2.6 of the Code in relation to depicting material contrary to prevailing community standards on health and safety.

We can confirm that the 30 second commercial is no longer scheduled for free to air television and will not appear again in its current form. Our 15 second commercial which does not breach Section 2.6 of the Code will continue to air.