



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0148/15</b>
<b>2</b>	<b>Advertiser</b>	<b>South African Tourism Australasia</b>
<b>3</b>	<b>Product</b>	<b>Travel</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Promo Material</b>
<b>5</b>	<b>Date of Determination</b>	<b>29/04/2015</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>
<b>7</b>	<b>IR Recommendation</b>	<b>Reconfirm original decision</b>

## ISSUES RAISED

2.1 - Discrimination or Vilification Ethnicity

## DESCRIPTION OF THE ADVERTISEMENT

This advertisement features on the Facebook page for South African Tourism and features an image of a woman smiling. Her face is painted and her top front teeth are missing. The text reads, "Johannesburg return economy from \$1549\* \*conditions apply. Qantas spirit of Australia. South Africa".

## THE COMPLAINT

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

*The photos of indigenous people that reflect a South African dental mutilation of front teeth extractions are distasteful. To stereotype the unfortunate victims of these wilful healthy teeth extractions and to present these people as circus creatures for the amusement of the Australian public is tantamount to the Sarah Baartman, French episode. We have long ago stopped at being amused at any physical impairment, including the dental impairment of indigenous people. A dental cripple is not an amusing image to decent people. To blame the victim under the pretext that it is "cultural" is not acceptable.*

## THE ADVERTISER'S RESPONSE

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

*South African Tourism is running a skill-based competition with registered Australian Travel Agents to encourage them to learn more about South Africa and become specialists on the country. The prize is a trip to join a trade-only familiarisation to the country in 2015.*

*The ad was placed on South African Tourism's closed Facebook page for Australian and New Zealand Travel Industry on 10 March. This post was not boosted or promoted with any additional advertising within Facebook or other platforms.*

*This ad links to the South African Tourism website competition page:  
<http://country.southafrica.net/country/au/en/content/page/become-a-south-africa-specialist>*

*The same advertisement was used in Travel Daily, a travel trade publication. The campaign ran in the Travel Daily newsletter – which is distributed to subscribers only from 1 October, 2014 to 25 February 2015. Please note: The advertisement text was consistent throughout these dates, however the use of the image pertaining to this specific complaint was only on used 03-Oct-14, 23-Oct-14 and 28-Jan-15. The same image was used in a co-operative partnership advertisement with Qantas, to promote their special fare to Johannesburg. This advertisement was posted on South African Tourism's public Facebook page (SouthAfricanTourismAU) on 12 August, 2014 and boosted with ad spend.*

*Comprehensive comments in relation to the complaint:*

*As the local office of South African Tourism in Australia we are concerned by the feedback and complaint raised, however refute that there has been any wrong doing in the use of this specific imagery in the campaign. As such we have refused to remove the images in question based on the complainant's opinion of other peoples' choices which are neither illegal nor enforced.*

*South African Tourism as an agent of the South African government has not been advised of any changes in relation to the legislation around the practice depicted in the imagery in question. In line with the South African Constitution which has a paramount focus on human rights and anti-discrimination, we would not knowingly engage in such. In the same breath, we would also not discriminate by omitting imagery of the diverse cultures within the country.*

*Specifically in relation to Section 2 of the AANA Advertiser Code of Ethics – we respond to the following points:*

*· 2.1 - Discrimination or vilification*

*South African Tourism does not believe that the imagery used in this campaign portrays people in a way which discriminates or vilifies a person of the community on account of race, age, sexual preference, religious or political belief, disability or mental illness.*

*South Africa is a vast country with a rich heritage and great cultural diversity. South African Tourism, as a government agency of South Africa, focuses on celebrating and showcasing South Africa's diversity – including the diversity of its residents - regardless of age, gender,*

*race, ethnicity, sexual preference, and disability, religious or political belief.*

*Most importantly, the imagery used by South African Tourism always aims to showcase the interactions that an Australian traveller might experience when they visit the shores of the Rainbow Nation.*

*The role of South African Tourism's content and imagery that is portrayed across a variety of platforms, including advertising and marketing materials, is that it is a truly, authentic representation of the unique style and warmth of the South African people – regardless of their own history, ethnicity, lifestyle preferences or cultural choices.*

*The Cape Flats Smile is commonly known within the region and its community as a cultural expression and one that has a long history in South Africa for a variety of reasons. There are a number of studies and endless commentary on the procedure and it remains a legal practice within South Africa. Legislation approves extraction of teeth at the discretion of the dentist and their patient with their consent.*

*For the women specifically who are featured in these advertising materials, their appearance is one of personal choice and in no way are they being discriminated against, vilified or ridiculed. These women were not targeted for use in the campaign because of their personal choices and were more than happy to consent to being involved in the campaign, to show off their smiles and promote the diversity of their culture through their personal style and dress. South African Tourism had no previous knowledge as to their personal choice to change their appearance in any way.*

*The presence these women portray is a true reflection of the warm nature of the South African people and South African Tourism would never knowingly project an image that wasn't supportive of the South African people and their personal choices.*

#### *· 2.2 - Exploitative and degrading*

*The imagery or advertisement in no way employs sexual appeal in a manner that is exploitative of an individual or group of people.*

#### *· 2.3 - Violence*

*There is no violence depicted in the imagery or advertising.*

#### *· 2.4 - Sex, sexuality and nudity*

*Sex, sexuality or nudity is not depicted in the imagery or advertising.*

#### *· 2.5 - Language*

*The script used in the advertisement does not use strong, offensive language or language of an obscene or derogatory nature.*

#### *· 2.6 - Health and Safety*

*The imagery used in the advertisement does not depict material contrary to Prevailing*

*Community Standards on health and safety.*

## **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’ concern that the advertisement is discriminatory against people of a certain cultural background as it shows an old age practice of front teeth extractions.

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 the advertisement features a dark skinned woman of African descent wearing head dress and face paint. She has a large smile which shows that her front teeth are missing. The writing underneath includes the details of the cost of a flight with QANTAS to Johannesburg.

The Board noted that the image of the woman is very bold and colourful and that the woman appears very happy. She is smiling, almost laughing.

The Board noted that the airfare and package being advertised is for South Africa and that the woman is intended to represent a traditional South African woman.

The Board noted the complainants concerns that the extraction of teeth in South Africa was a forced practice of dental mutilation and that showing an image such as this is negative and distasteful.

The Board noted that there are a number of reasons related to the extraction of teeth including dental hygiene and aesthetic reasons and most members of the community would view the image without knowledge of any possible cultural practices associated with this. The Board agreed that they were unable to know from the image the reason for the woman’s missing teeth and whether this was in fact a personal choice, a dental requirement or some other reason.

The Board considered that the woman is not depicted in a way that discriminates or vilifies her, or a section of the community on account of race and determined that the advertisement did not breach Section 2.1 of the Code

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.

## **INDEPENDENT REVIEWER'S RECOMMENDATION**

This is an application by the original complainant (the appellant) for review of the decision of the Advertising Standards Board (the Board) dated 29/4/15, Case Number 0148/15 finding

that an advertisement on the Facebook page for South African Tourism was not in breach of the AANA Code of Ethics.

The advertisement is described in the Case Report as follows:

This advertisement features on the Facebook page for South African Tourism and features an image of a woman smiling. Her face is painted and her top front teeth are missing. The text reads, “Johannesburg return economy from \$1549\*\* conditions apply. Qantas spirit of Australia. South Africa.”

### Review Application

The grounds for seeking a review of the decision of the Board are as follows:

1. Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided.
2. Where there was a substantial flaw in the Board’s determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence).
3. Where there was a substantial flaw in the process by which the determination was made.

In his review application the Appellant does not articulate clearly which of the above grounds he relies upon when making his application for review of the Board’s determination. A careful reading of his review application letter seems to indicate that he was of the view that the Advertiser, in its response to the original complaint, had not addressed his complaint in full as it had responded to ‘ a single image’ when the Complainant ‘complained about the images (plural)’. The Appellant continues, emphasising the importance as he saw it, of the use of a single image of one woman as opposed to an image of more than one woman: “This is important because if a single image was used then one may assume that the image of a dentally mutilated person is a ‘random accident’. As the Advertiser portrays the collective of women with their front teeth removed, therefore their bias is evident. ...For the advertiser to selectively respond to the images of the single woman, when my complaint is clearly addressed to their use of all the images, is less than honest.”

The appellant also goes on to list a number of what he sees as ‘blatant untruths’ on the part of the Advertiser regarding where the advertisement appeared, whether ‘the Cape Flats smile’ is a cultural expression, studies about the ‘Cape Flats Smile’, whether the women (emphasis added) were

targeted for use in the campaign, the question of the women’s consent to appearing in the campaign and whether South African Tourism had any previous knowledge of the choice of those appearing in the advertisement to change their appearance in any way.

The appellant goes on to comment that:

“By the Advertiser showing a group photo (emphasis added) of women who are dentally

mutilated for the practise of fellatio ... there exists a strong bias by the Advertiser”.

The Appellant also addresses Section 2.6 of the Code regarding Prevailing Community Standards on Health and Safety, stating that the prevailing community standard in Australia is that it is illegal for dentists to extract healthy front teeth. He characterises the removal of front teeth depicted in the advertisement as ‘dental mutilation’ which renders the patient with ‘a permanent dental impairment’. He states that the Advertiser ‘chose to narrow the advertisement to the use of an image portraying the group mutilation (emphasis added) in a stereotypical bias of women together, all with the same form of dental mutilation. This orchestrated bias smells like a racist attack on indigenous women of South Africa.’ The Appellant states that ‘this form of dental extraction is extremely rare and the rarest form of all types of dental extractions. (1 in 100,000 population). To find two women with the same edentulous saddles is rich in bias’.

The Appellant, in closing his review application states:

“I beg the Board to review their determination in the light that the advertiser has not presented a truthful response. Further, I wish the Board have [sic] a fresh look at section 2.1 and section 2.6 in the light of my appeal”.

The Appellant appears to be relying on ground 3 to mount his appeal although he nowhere articulates the grounds he relies on. He appears to be indicating that the Board made a decision based on incorrect and/or incomplete evidence supplied by the Advertiser, based largely on the Appellant’s contention that the Advertiser did not respond to his original complaint in full, in that he complained about advertisement images (plural) and the Advertiser responded to a single image.

The issue of the use of a single image as opposed to more than one image is also related to the contention of the Appellant that the Advertiser did not correctly advise where the advertisement had been placed.

It is also possible that the Appellant is relying in part on ground 1, in that he supplies new material in his review application concerning the cultural implications of the ‘Cape Flats Smile’, studies regarding the phenomenon and issues concerning the choice of those featured to appear in the advertisement(s). He also supplies new information addressing section 2.6 of the Code. The Applicant does not supply a reason why any of this new information was not supplied previously.

Issues pertaining to the raising of case 0148/15

At the outset, it should be said that this review application has come to the Independent Reviewer complicated by a series of misunderstandings and accidental events, which go to the core of the Applicant’s review application in respect of his claim that the Advertiser did not respond truthfully to his complaint. These complications centre upon where the advertisement(s) originally appeared and

whether one image or more than one image was the subject of the advertisements and subsequently of the original complaint. Further complications go to whether the Advertiser responded to a complaint about one advertisement containing one image (of a single woman) or to more than one advertisement, one containing the single image and one containing an image of two women. In both cases, the person(s) appearing in the image were displaying the “Cape Flats Smile”. These complications ultimately raise the issue of the Board’s determination being based on one advertisement, containing the single image of a woman, as a result of the ASB case being raised only in respect of the single woman image.

In order to appreciate how these complications have affected the Appellant’s review application it is necessary to start with the original complaint of the Appellant. The original complaint stated, with the Reviewer’s emphasis added:

“The photos of indigenous people that reflect a South African dental mutilation of front teeth extractions are distasteful. To stereotype the unfortunate victims of these wilful healthy teeth extractions and to present these people as circus creatures for the entertainment of the Australian public is tantamount to the Sarah Baartman, French episode. We have long ago stopped at being amused at any physical impairment, including the dental impairment of indigenous people. A dental cripple is not an amusing image to decent people. To blame the victim under the pretext that it is ‘cultural’ is not acceptable.”

It is clear from the original complaint that the Appellant was referring to more than one photo and more than one person. The original complaint lists Travel Daily and Facebook as the places he had seen the advertisement(s) from November 2014 to the date of the complaint (received 25/3/15). The complications begin to arise during email exchanges between the Appellant (then the complainant) and staff of ASB.

- On 30/3/15 having been asked by ASB for the URLs and /or screen shots of the advertisement, the Appellant replied that the “images” (emphasis added) had been removed from the Travel Daily online magazine. However, the Appellant clearly states that his complaint is still ongoing as the “images” had not been taken down from the Facebook page of South African Tourism AU. The Appellant includes in that email the URL of the site’s photo archive and indicates where the images complained of can be located. The email goes on to make comments about the practice of front teeth extraction in South Africa.

- On 8/4/15 the Appellant again emailed ASB saying “I informed your office of the removal of one of the images (emphasis added), however, since my email to you, the image has reappeared and may be found at Travel Daily, Competitions, then search in “Competitions” for “win a trip to South Africa”. The questionnaire for entry to the competition carries the image of a woman with the colloquial term of “Passion Gap” teeth extractions. Also named “Cape Flats Smile”. I will send the images (emphasis added) to you in two following emails.

In the following emails the Appellant sent to ASB two different images: one of a woman with the Cape Flats smile over a banner advertising a Qantas fare to Johannesburg and jointly

branded South African Tourism; the second image shows two women with the Cape Flats smile and is unbranded. The Appellant also copied to ASB an email (dated 1/4/15) from him to a Mr Starke at South African Tourism in South Africa, relating to 'the images' (emphasis added) he had complained of.

Following inquiries with ASB the Reviewer has been able to ascertain the following chain of events:

- After the complainant advised ASB on 30/3/15 that the image appearing on the Travel Daily site had been removed, the ASB staff decided to look only at the Facebook page of South African Tourism. When the ASB staff used the URL supplied by the complainant (as he then was) they could see the image of the single woman and therefore felt comfortable to progress with that one image.

- When the complainant sent the email of 8/4/15 (referring to images) including a copy of the image of the two women, the ASB staff took the view that this second image "seemed only to add further support of his argument but did not appear to be directly complained about or directly linked to the existing promotion. Another email of the same day included the individual woman and therefore again we were convinced the matter was to do with the single woman image".

- ASB staff have confirmed that it is their practice to contact the relevant Advertiser to provide a copy of whatever advertisement has been complained of. In this case, the Advertiser provided the image of the single woman.

- Subsequently, the Advertiser confirmed to the ASB that the image of the single woman appeared in three different places: the South African Tourism Facebook page, South African Tourism website and Travel Daily publication. The Advertiser also mentioned that the complainant may have obtained the copy of the image of the two women from the large gallery of images on their website and the Advertiser undertook to follow this up. At the time of writing this review no further information had been received from the Advertiser regarding this.

- ASB staff have confirmed that the case 0148/15 was raised solely based on the image of the single woman on the Facebook page of South African Tourism. Further they confirm that no case was raised regarding the image of the two women sent to them on 8/4/15 by the complainant which they viewed as "different advertisements on a different medium".

- Given the case was raised in respect of one image only of the single woman, the Advertiser seems initially to have responded to the complaint in terms of the single image only, referring to "the ad" and "the advertisement", which it stated in its response had appeared on their closed Facebook page, on the Travel Daily website and on the Advertiser's public Facebook page. However, on the other hand, the Advertiser's response also refers to "the women (emphasis added) specifically who are featured in these advertising materials... These women were not targeted for use in the campaign because of their personal choices ... South African Tourism had no previous knowledge s to their personal choices to change their appearance in any way". The Advertiser in its response also refers to having "refused to remove the images (emphasis added) in question". Again, there appears to be confusion as to how many images are being referred to even in the Advertiser's response to the complaint.

As a result of the foregoing events, the Board, in making its determination, only considered the image of the single woman that appeared on the South African Tourism Facebook page. The Advertiser's Response to the Complaint

As noted above, the Advertiser responded to the original complaint regarding placement of the image(s) in three different locations. As indicated above, that response seems also to conflict as to whether there was one or more than one image being responded to. The Advertiser stated that it refused to remove the images in question as the choices of the people



concerned were “neither illegal nor enforced”. The response further states that South African Tourism has not been advised of any changes in relation to the legislation around the practice depicted in the imagery in question. However, the Advertiser continues: “we would also not discriminate by omitting imagery of the diverse cultures within the country”.

The Advertiser, in relation to section 2.1 states that it:

“...does not believe that the imagery used in this campaign portrays people in a way which discriminates or vilifies a person of the community on account of race, age, sexual preference, religious or political belief, disability or mental illness”.

The Advertiser continues:

“The Cape Flats Smile is commonly known within the region and its community as a cultural expression and one that has a long history in South Africa for a variety of reasons. There are a number of studies and endless commentary on the procedure and it remains a legal practise within South Africa. Legislation approves extraction of teeth at the discretion of the dentist and their patient with their consent.

For the women (emphasis added) specifically who are featured in these advertising materials, their appearance is one of personal choice and in no way are they being discriminated against, vilified or ridiculed. These women were not targeted for use in the campaign because of their personal choices and were more than happy to consent to being involved in the campaign, to show off their smiles and promote the diversity of their culture through their personal style and dress. South African Tourism had no previous knowledge as to their personal choices to change their appearance in any way.

The Advertiser goes on to deny that the advertisement breaches sections 2.2, 2.3, 2.4, 2.5 or 2.6 of the Code.

#### The Board’s Determination

As a result of events previously chronicled, the Board, in making its determination, only considered the advertisement image of the single woman, as the case had been raised in respect of this image alone. In its Determination, the Board makes no mention of the references in both the original complaint and the Advertiser’s response, to more than one image.

In considering whether the advertisement complied with section 2.1 of the Code the Board described the appearance of the woman in the image and stated:

“The Board noted that the image of the woman is very bold and colourful and that the woman appears very happy. She is smiling, almost laughing.

The Board noted ... that the woman is intended to represent a traditional South African woman”.

Further, the Board “noted the complainant’s concerns that the extraction of teeth in South Africa was a forced practice of dental mutilation and that showing an image such as this is negative and distasteful.

The Board noted that there are a number of reasons related to the extraction of teeth including dental hygiene and aesthetic reasons and most members of the community would view the image without knowledge of any possible cultural practices associated with this. The Board

agreed that they were unable to know from the image the reason for the woman's missing teeth and whether this was in fact a personal choice, a dental requirement or some other reason."

The Board concluded:

"The Board considered that the woman is not depicted in a way that discriminates or vilifies her or a section of the community on account of race and determined that the advertisement did not breach Section 2.1 of the Code."

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.

The terms of the Appellant's review application have been noted above. The Appellant did not articulate in his application which of the grounds for review he relied upon and the Reviewer has endeavoured to extrapolate possible grounds from his comments supporting his application. As noted above, these possible grounds appear to be:

Ground 3. The Appellant indicates that he wishes the Board "to review their determination in the light that the advertiser has not presented a truthful response". Thus it appears the Appellant is indicating that there was a substantial flaw in the process by which the determination was made as in his view, the Board did not have the correct and/or complete information on which to base its determination.

Ground 1. As noted above, it is also possible, though by no means clear, that the Appellant is relying on Ground 1, as he supplies additional material in his review application concerning, inter alia, the cultural implications of the Cape Flats Smile, comments on studies of the phenomenon and comments concerning the choice of those featured to appear in the advertisement(s). The Appellant also supplies new information addressing section 2.6 of the Code regarding Community Standards on Health and Safety. The Appellant does not supply a reason why this information was not provided previously but it appears that at least some of the information is in response to comments made by the Advertiser in its response to the original complaint which were described by the Appellant as untruthful. Thus, it appears that the Appellant is attempting to provide what he sees as the correct information.

The Advertiser was invited to respond to the Review Application and submitted a response which addressed the question of the use of an image of a single woman or an image of two women and where the images were used. The Advertiser indicates the image of the single woman was used in Travel Daily, on South African Tourism's local Australian public Facebook page and on the South Africa Travel Industry Facebook page (dedicated to registered travel agents/wholesalers looking to promote South Africa). The Advertiser clarifies that there may have been a misinterpretation of its previous description of the travel industry Facebook page as 'closed'. Rather, it has a specialised target audience to whom the content is directed: travel agents/trade partners that sell and promote South Africa to Australian and New Zealand consumers. The Advertiser indicates that the image of the two women was used on its website competition landing page and in certain editions of a trade newsletter "CHISA" distributed to trade audiences. Screen shots of the use of both images are provided.

Importantly the Advertiser comments regarding the image of the two women:

"This second image was not referred to in the initial response as the complaint only referred to the advertisement used on the Facebook page and in the trade publication Travel Daily".

The Advertiser in its response rejects the Appellant's claims that the advertisement breaches section 2.1 or 2.6 of the Code and addresses points made by the Appellant regarding these sections of the code and the advertisement in question. The Advertiser also emphasises that it has not received from the Appellant any request regarding removal of past images or the image in question or any other images prior to February 2015.

### Independent Reviewer's Recommendation

As indicated above the Reviewer has had to attempt to divine what grounds the Appellant is relying on to support his application for review.

#### Ground 3

Where there was a substantial flaw in the process by which the determination was made. It appears that the Appellant is indicating that the Board made a determination based on incorrect or incomplete evidence supplied by the Advertiser, based on the Appellant's contention that "the Advertiser's response does not address my complaint in full. I complained about the images (plural) and the advertiser responded to a single image".

The Appellant goes on to indicate his view that a single image of a dentally mutilated person might be assumed to be a 'random accident'. He continues:

"As the advertiser portrays the collective of women with their front teeth removed, therefore their bias is evident....For the advertiser to selectively respond to the image of the single woman, when my complaint is clearly addressed to the their use of all the images, is less than honest".

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he Reviewer has noted above in this review, the chain of events and misunderstandings which attended the raising of the present case on the basis of the image of the single woman alone, and not on the basis of the two images which the Appellant originally complained of. It is not necessary to restate the narrative of events again here. However, it seems clear from the terms of the review application that even at that stage, the Appellant had not realised what had occurred during the raising of the case; specifically, that the ASB staff had made a decision to raise the case solely on the basis of the image of the single woman that had appeared on the Facebook page, after they had been advised by the Appellant (then the complainant) that the other image had been removed from Travel Daily. His subsequent advice to them eight days later that the image had reappeared on Travel Daily did not alter the basis on which the case was raised.

It may well be that the Appellant has still not realised what occurred in the raising of the case. This fact is critical to the view of the Appellant that the Advertiser had not properly responded to his complaint and that accordingly, the Board had made its determination, in part at least, based on information which was not correct. The Appellant clearly did not realise that the Advertiser had been sent a complaint relating solely to the image of the single woman and the Advertiser responded appropriately to that image.

The series of misunderstandings and accidental chain of events regarding the raising of the case centres on the number of images on which the case was based and therefore the number of images which went before the Board to be considered, which was one image of a single woman. What is clear is that the question of whether the image of the single woman was used or the images of both the single woman and the two women were used had more than logistical significance for the Appellant. It was his contention, as noted above, that while the use of one image might be assumed to be a 'random accident', the use of images of more than

one woman with front teeth missing was, in his view, evidence of bias. He was expecting this contention to be addressed by the Advertiser and ultimately to be considered by the Board. When the Advertiser in its response addressed itself to the image of the single woman, as identified by ASB as the subject of the complaint, the Appellant believed the Advertiser was deliberately responding selectively to his complaint. When the Board made its determination based also on the image of the single woman, the Appellant believed the Board's determination had been made in the context of incorrect information. In fact, but unknown to the Appellant, neither was the case. Had the Appellant been aware that the case had been raised in respect of the sole image of the single woman he would have immediately understood the nature of the Advertiser's response and would not have regarded it as untruthful on that ground. Accordingly, he would not have taken the view that the Board made its determination in the context of incorrect or incomplete information on that ground. Case 0148/15 was raised by ASB staff based solely on the image of the single woman, although the Appellant was not aware of this fact. The complaint sent to the Advertiser for comment was presented as a case based on the image of the single woman and the Advertiser responded appropriately to the ASB. The Board appropriately considered Case 0148/15 as a case based on the image of the single woman and was oblivious to the misunderstandings and chain of events which preceded the raising of the case. There was therefore no substantial flaw in the process by which the Board made its determination and Ground 3 is not satisfied on that basis.

The Appellant also raised in his review application a number of what he viewed as 'blatant untruths' in the Advertiser's response which go to such matters as cultural expression, studies on the Cape Flats Smile phenomenon, the legality of dental extractions, issues related to the use and consent of the 'women' in the campaign and prior knowledge of the Advertiser about the women's personal choices regarding their appearance. The Appellant appears to be saying that the Advertiser's response in respect of these issues was not truthful and that therefore the Board made its determination in the context of incorrect information.

As noted earlier, the Advertiser's response to the review application addressed the issue of the images used and their locations, and also addressed sections 2.1 and 2.6 of the Code as well as claims by the Appellant that he had requested them to remove the images in question.

When making its determination that the advertisement did not breach section 2.1 the Board did not rely on any of the comments by the Advertiser in its response to the original complaint, which the Appellant claims were untruthful. The Board states:

"... there are a number of reasons related to the extraction of teeth including dental hygiene and aesthetic reasons and most members of the community would view the image without knowledge of any possible cultural practices associated with this. The Board agreed that they were unable to know from the image the reason for the woman's missing teeth and whether this was in fact a personal choice, a dental requirement or some other reason".

The Board was entitled to take this view of the advertisement and although it is required to consider the submissions of the Complainant and the Advertiser, it is not required to adopt any of the views expressed in those submissions in making its determination. Therefore there was no substantial flaw in the process by which the determination was made and Ground 3 is not satisfied on that basis.

On the subject of section 2.6 of the Code, the Board's determination states: "Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint".

In the original complaint, the complainant does not specifically refer to section 2.6 at all. It is only in his review application, following the determination of the Board, that the Appellant makes a series of points relating to section 2.6. The Advertiser's response to the complaint does list all of the section 2 sub sections and on this sub section submits simply that the imagery does not breach 2.6.

Had the original complaint raised specific issues under section 2.6 the Board may well have elaborated on its view that the advertisement did not breach the Code on any grounds. The Board is required to consider complaints under all relevant sections of the Code, a requirement which it states it fulfilled. It is not required to elaborate its consideration of each section of the Code, although it would be expected to do so when specific sections of the Code are cited in a complaint. Thus, there was no substantial flaw in the process by which the determination was made on this basis and Ground 3 is not satisfied.

Ground 1 - Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided.

This review has noted earlier that the Appellant, though he did not articulate it, may also have been relying on Ground 1 of the appeal grounds regarding new or additional evidence which could have a significant bearing on the determination. The review application contains additional information regarding whether the Cape Flats Smile is a cultural expression, studies about the phenomenon, whether the women ( he refers to both images) were targeted for the campaign and the nature of their consent and whether the Advertiser had previous knowledge of the choice of the women to change their appearance. The information is presented by way of correcting what the Appellant sees as an untruthful response by the Advertiser to the original complaint on a number of points. Although there is no explanation of why this additional information was not provided previously, it seems that it has been provided in the review application as a response to the Advertiser's response to the complaint. However, Ground 1 requires new or additional relevant evidence to be such that it could have "a significant bearing on the determination". The Board did not base its determination on the Advertiser's response to the complaint but rather focussed on the actual image and their view that the image would be viewed by most members of the community without knowledge of any possible associated cultural practices. The Board concluded that they themselves "were unable to know from the image the reason for the woman's missing teeth and whether this was in fact a personal choice, a dental requirement or some other reason".

Given this entirely appropriate choice by the Board to concentrate on the image itself and its effect on those who viewed it, the Reviewer does not accept that the additional evidence could have a significant bearing on the determination. Ground 1 is therefore not satisfied. Despite the grounds for review not being satisfied, it is clear that the circumstances leading to this review have been less than satisfactory from the point of view of the Appellant, who had believed that both images would be included in his original complaint and that the use of both images was significant in terms of bias. ASB staff have confirmed to the Reviewer that for a complaint regarding the second image of the two women to be considered, a separate case would have to be raised as the image would be "a different advertisement on a different medium". The Appellant may wish to avail himself of this opportunity and that is a matter for him. It is hoped that the description of the chain of events given in this Review will assist

the Appellant to understand the background to the Board's determination regarding the sole image of the single woman.

As the grounds for Review have not been satisfied, I recommend that the determination of the Board in case 0148/15 be confirmed.