



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0177/16</b>
<b>2</b>	<b>Advertiser</b>	<b>Unilever Australasia</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
<b>5</b>	<b>Date of Determination</b>	<b>27/04/2016</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.3 - Violence Violence
- 2.4 - Sex/sexuality/nudity S/S/N - general

## DESCRIPTION OF THE ADVERTISEMENT

The thirty seconds Advertisement begins with a group of campers huddled in the dark around a campfire next to their tents in a beach setting. It then moves to a close-up of some young women holding hot take away cups on the beach. The scene closes with three young women sitting on the bonnet of a car drinking tea out of take away cups.

Voice Over: Bushells tea is a taste of home. Doesn't need to be fancy.

The Advertisements cuts to a family setting on a veranda. Dad is holding his tea in a quirky mug, mum is reading a magazine and the daughter is sitting at a low table. Their young son approaches the mum with another quirky mug of tea. The son smiles proudly as he hands his mother the tea. There are smiles all round at his accomplishment.

Voice Over: Fine China not required.

The next scene shows a couple that appear to be sitting next to their van, both sipping on Bushells tea. The man attempts to stir his tea with his finger.

Voice Over: Spoons . . . merely a suggestion

The Advertisement cuts to two sets of feet up in the air in a girls bedroom. Two girls are shown laying on a bed dunking biscuits into their tea with a plate of biscuits in front of them.

The girls are having a giggle whilst holding their tea.

Voice Over: Here best friends are more important than best manners

The next scene is of a stream of boiling water hitting a mug with a tea bag inside.

Voice Over: Yep, full flavoured and blended for Australian tastes.

The Advertisement then shows a couple in their kitchen. He is approaching as she has finished preparing tea for both of them. She looks fondly at him as he takes his tea. He gives her a light hearted pinch on the bottom as a playful gesture of his love and appreciation.

Voice Over: And a little thank you never goes astray.

He takes a sip from his tea mug.

Voice Over: Bushells Tea. A taste of home

Super: A taste of home.

Pack shots of Bushells Australian Breakfast, Bushells Blue label and Bushells Evening Decaffeinated

Voice Over: Try our Australian breakfast and evening decaffeinated now

## **THE COMPLAINT**

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

*Male pinching female on bottom - cause she made him a cup of tea!! Are you for real!! What a great sign of appreciation. Not impressed.*

*The male in the advertisement pinches/touches the female's buttocks as a voiceover mentions something along the lines of "a little thank you goes a long way". I think this is an inappropriate way to show gratitude.*

*The narrator says "And a little thank you never goes astray" as a man pinches the bottom of the woman preparing his tea. There is no further context as to the relationship between the pair.*

*The gesture shown is not an appropriate way to say 'thank you' and is in fact sexual harassment.*

*Anti-discrimination legislation includes sexual harassment as a type of sex discrimination when it refers to unwelcome conduct of a sexual nature which targets a specific individual who feels offended, humiliated or intimidated (and a reasonable person in their shoes would feel the same).*

*Except in the case of very close relationships the behaviour shown is an example of sexual harassment and therefore the inference in this ad that a pinch on the bottom is a way of saying thanks is sexual discrimination.*

## **THE ADVERTISER'S RESPONSE**

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

*Re: Complaint reference 0177/16 (Free to Air TV), 0178/16 (PayTV) and 0197/16 (Facebook)*

### *BUSHELLS TEA "A GREAT TASTE OF HOME" TV COMMERCIAL*

*We refer to your letter in relation to complaints about a TV commercial for Bushells tea (the "Advertisement"). Copies of the Advertisement are enclosed.*

*Unilever is a responsible advertiser and has numerous internal review processes, including review by Unilever's Legal and Corporate Relations Departments, to critique all advertisements to ensure compliance with legal and ethical considerations. Unilever takes the AANA Code of Ethics extremely seriously and we have taken great care to ensure that the Advertisement complies with the Code of Ethics.*

#### *1.1 CAD Approval*

*Identical Advertisements (15 second and 30 second versions) are shown on Free to Air and Pay TV.*

*CAD number 15BUSHELLSB (15 seconds): W2RIFNAA*

*CAD number 30BUSHELLSB (30 seconds): W2RIGNAA*

*Under the FreeTV rating "W" (General/Warning) "the following applies:*

*Definition: General/Care in placement*

*May be broadcast at any time except during P and C programs or adjacent to P or C periods.*

*Exercise care when placing in programs principally directed to children.*

*Product Description: Commercials which comply with the G classification criteria in Appendix 1 of the Code of Practice but require special care in placement in programs principally directed to children.*

*Unilever has complied with these placement rules. I attach a copy of the spot list.*

#### *1.2 Script*

*The Advertisement promotes Bushells Blue Label tea, Bushells Evening Decaffeinated tea and Bushells Australian Breakfast tea.*

*The thirty seconds Advertisement begins with a group of campers huddled in the dark around a campfire next to their tents in a beach setting. It then moves to a close-up of some young women holding hot take away cups on the beach. The scene closes with three young women sitting on the bonnet of a car drinking tea out of take away cups.*

*Voice Over: Bushells tea is a taste of home. Doesn't need to be fancy.*

*The Advertisement cuts to a family setting on a veranda. Dad is holding his tea in a quirky mug, mum is reading a magazine and the daughter is sitting at a low table. Their young son approaches the mum with another quirky mug of tea. The son smiles proudly as he hands his mother the tea. There are smiles all round at his accomplishment.*

*Voice Over: Fine China not required.*

*The next scene shows a couple that appear to be sitting next to their van, both sipping on Bushells tea. The man attempts to stir his tea with his finger.*

*Voice Over: Spoons . . . merely a suggestion*

*The Advertisement cuts to two sets of feet up in the air in a girls bedroom. Two girls are shown laying on a bed dunking biscuits into their tea with a plate of biscuits in front of them. The girls are having a giggle whilst holding their tea.*

*Voice Over: Here best friends are more important than best manners*

*The next scene is of a stream of boiling water hitting a mug with a tea bag inside.*

*Voice Over: Yep, full flavoured and blended for Australian tastes.*

*The Advertisement then shows a couple in their kitchen. He is approaching as she has finished preparing tea for both of them. She looks fondly at him as he takes his tea. He gives her a light hearted pinch on the bottom as a playful gesture of his love and appreciation.*

*Voice Over: And a little thank you never goes astray.*

*He takes a sip from his tea mug.*

*Voice Over: Bushells Tea. A taste of home*

*Super: A taste of home.*

*Pack shots of Bushells Australian Breakfast, Bushells Blue label and Bushells Evening Decaffeinated*

*Voice Over: Try our Australian breakfast and evening decaffeinated now*

## *2. The complaints*

*The complaints relate to the scene where the man touches the bottom of his partner as a*

*playful gesture of his love and appreciation. The complaints relate to section 2.3 (violence) and section 2.4 (sex/sexuality/nudity) of the Code of Ethics. One complainant describes this scene as 'sexual harassment'.*

### *3. Compliance with the AANA Code of Ethics (the "Code")*

*3.1 Section 2.1 – Advertising or Marketing Communications shall not portray people or depict material which discriminates against or vilifies a person or section of the community on account of [...] gender.*

*All scenes that form part of the Advertisement show people in a comfortable and homely environment (campers around a camp fire, family on a veranda, a couple in the back of their van, two girls in a bedroom and at the end a couple in their kitchen. All scenes show people who are very comfortable with each other and seem to know each other very well. Throughout the Advertisement the voice over refers to the homely setting of the scenes, for example "Bushells tea is a taste of home. Doesn't need to be fancy", "Here best friends are more important than best manners" and "A taste of home for every occasion".*

*It is obvious for viewers of the Advertisement that the woman and man in the kitchen are a couple in a relationship as the woman is shown having just finished preparing tea for both of them. She looks fondly at him as he takes his tea and gives her a friendly pinch on her bottom. This scene takes place in a home setting between two people who are enjoying each other's company. We submit that viewers will not perceive that the Advertisement, including the scene where the man touches the bottom of his partner, as discriminating on the grounds of gender, particularly as it is obviously a playful gesture as part of a loving moment between two people in a close relationship.*

*3.2 Section 2.2 – 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 woman in the kitchen scene is not shown in a sexualised way. Showing a man playfully touching the bottom of his partner has no sexual or degrading connotations. It is very unlikely that viewers of the Advertisement will perceive the light hearted touch between two people who love each other as exploitative or degrading, in particular if it happens in a home setting where the woman is shown having full control of the relationship with her partner.*

*3.3 Section 2.3 – Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.*

*The scene in question shows a couple in a harmonic home setting. We submit that a light hearted touch of the woman's bottom in appreciation for her having prepared tea for both of them cannot be interpreted as an act of violence.*

*3.4 Section 2.4 – Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience*

*The scene in question does not show or refer to sex, sexuality or nudity. Viewers understand that the man pinches the bottom of his partner as playful gesture of his love and appreciation rather than making a sexual gesture.*

### 3.5 *Precedents*

*Case 92/04 dealt with a TV commercial depicting a cartoon figure talking to a female bar patron and advising her on the recommended behaviour when drinking alcohol. When the cartoon figure discusses the importance of having manners, he lightly pinches the female bar patron's bottom. The complaint was made on the basis of vilification or discrimination (gender). The Board found that in the context of prevailing community standards, the majority of people would not find this advertisement offensive and that the depiction did not contravene the provisions of the Code relating to discrimination (sex)/vilification. It also noted that the advertisement did not breach the Code on any other grounds.*

*Case 171/07 dealt with an advertisement for blue jeans in which a woman places her hand on the bottom of a rodeo rider. In the next scene they are shown together in a bedroom. The complaint was made on the basis of vilification or discrimination (gender). The Board dismissed the complaint and determined that the advertisement did not contain any sex or nudity and only mild sexual references. The Board noted that "the woman in the advertisement was seen to be admiring the man and then by patting him on the bottom invites him to go off with her - presumably to bed". The Board considered that "the depiction of the woman in the advertisement was not offensive or derogatory - rather that the woman was in control of the relationship."*

### 4 *Conclusion*

*We submit that the context of the Advertisement and the language used are well within prevailing community standards and that the Advertisement complies with the Code of Ethics.*

## **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 features a man pinching a woman's bottom to say 'thanks' and this is demeaning to women and sexual harassment.

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 considered the advertisement, in particular the scene where the man pinches the woman. In the 15 second version of the advertisement when this occurs there is a voiceover that says "affection bringing" and in the 30 second version, "a small thank you never goes astray". The Board considered that the 30 second version of the advertisement provides greater context as the couple are seen together before the man pinches the woman and the woman is seen to respond to the act initially looking shocked and then laughing. The 15 second version shows a fleeting image of the man pinching the woman and the woman

looking shocked, however the Board considered the language ‘affection bringing’ serves to indicate the nature of the relationship as familiar.

The Board noted that a pinch on the bottom in the workplace is sexual harassment and acknowledged that this is a serious social issue. However the Board considered that this advertisement is not condoning inappropriate behaviour in the workplace. The Board considered that the couple depicted are not strangers and are presented in a very obvious domestic situation. The Board considered the familiar interaction between the couple, the gesture of the pinching, and the woman’s response. Based on all of these factors, the Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender.

The Board determined that the advertisement did not breach Section 2.1 of the Code.

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 noted the woman’s response to the pinch. The Board considered that the entire scene showed a familiarity and ease in the relationship – acknowledging the 30 second version of the advertisement provides this greater context – and there was nothing to suggest the woman perceives the act as violent or abusive.

The Board considered that the couple depicted are not strangers and there is an intimacy that identifies them as partners. The Board further noted that it is clearly a domestic situation - not a workplace - and this context is significant as the behaviour is seen as one-off, given the response of the woman. The Board noted that sexual harassment is a serious social issue, however considered that this advertisement is not condoning inappropriate or systematic unwanted continuous behaviour. Consistent with a previous Board determination in Case 0203/10:

“The Board noted complainant concerns that the advertisement depicts unacceptable behaviour. The Board considered that the context of the parody presented the behaviour as a one off and does not suggest that this type of behaviour is appropriate for all situations.

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

The Board then 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 couple in the advertisement are shown in a domestic scene and whilst there may be intimacy suggested by the act of pinching, this was not sexual in nature.

The Board noted that is a W rated advertisement that may be broadcast at any time except during P and C programs or adjacent to P or C periods.

The Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Board determined that the advertisement 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.