



Case Report

1	Case Number	0183/10
2	Advertiser	Pepsico Australia Holdings Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	12/05/2010
6	DETERMINATION	Dismissed

ISSUES RAISED

2.3 - Sex/sexuality/nudity Treat with sensitivity to relevant audience

DESCRIPTION OF THE ADVERTISEMENT

This "Octopus" advertisement opens on a beach with a man trying or arrange a date with the female behind the bar when calls for help a heard in the background. The man runs into the water to save a swimmer being attacked by an octopus. The man stabs the octopus with a beach umbrella and then escorts the victim from the water. The female behind the bar is very impressed by this heroism and accepts an invitation for a date that night. The young man is then seen thanking his friends, including the fake octopus, because 'she took the bait' and they continue to celebrate by drinking Pepsi Max opened by the fake octopus tentacle. End image shows the friends travelling in an open vehicle with octopus costume and caption: Max It! With can of Max It.

THE COMPLAINT

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

Having men in group forum ganging up together to pack hunt females under false pretenses to use them for their own sexual or egotistical gratification is disgusting! This ad is clearly targeted at young men and making it "cool" to lie and decieve women for sexual purposes. I have a young daughter and the blatant attempts to create a culture where women are used by men by such a high profile and influencial brand as pepsi is a national disgrace. As if alcohol doesn't cause enough problems now softdrink is raping societies values. Shame on them!!!

THE ADVERTISER'S RESPONSE

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

As we have discussed since receiving this complaint, the complaint itself had been very unexpected for PepsiCo Beverages Australia as the commercial to which it refers for Pepsi Max, called Octopus (Key Number PEP0188/OCT), has not been scheduled to be on air since October 2009.

The complaint refers to the ad being screened on TV and did not refer to a network, program, time or date. As the ad was not scheduled to air, we made contact with you via phone as the situation was not easily solved.

We were advised, after you followed up with the complainant, that the complainant indicated the commercial ran on Network Ten during Burn Notice.

Through its buyer, EightyK's/Carat, PepsiCo had a burst of commercials in February – April 2010, but these scheduled ads were:

- Asteroid - Key Number: PEP0224/30
- Interview – Key Number: PEP0233/30

I have attached the Ad Stream Key Numbers for PepsiCo TV commercials showing the records of the key numbers for all TV ads.

The attached Post Time report for 1/3 to 30/4 for Pepsi Max shows there was one episode of Burn Notice on Wednesday 31/3/10 and a Pepsi Max commercial aired during this program.

The Report shows that in Adelaide and Melbourne the TVC broadcast was "Interview" – Key Number: PEP023330. In Sydney, Brisbane and Perth the broadcast TVC was "Asteroid" - Key Number: PEP0224/30.

This evening, Network Ten has provided me with an air check of Burn Notice from 31/3 in Sydney. I have watched this program and noted the commercial that aired was "Asteroid". You will note that during the said period of bookings, the report shows the key number for "Octopus" (Key Number PEP0188/OCT) did not appear. This is in line with the copy instructions, which do not include this TV commercial, which has not aired since October 2009.

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 depicts and condones tricking a woman into liking a man.

The Board noted the advertiser's response and viewed the advertisement. The Board considered whether the advertisement was in breach of section 2.3 of the Code. Section 2.3 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone".

The Board considered that the advertisement is clearly positioned as a humorous way of a group of young men to 'trick' a woman into liking one of them. The Board noted that the woman is depicted in the advertisement as not appearing interested in the man until after his heroic act of saving the swimmer from the octopus. The Board noted that the woman is being 'tricked' into thinking that a traumatic event had occurred but was of the view that she is still clearly in the position of choosing what to do.

The Board considered that the advertisement is a lighthearted and comical representation of an unlikely and exaggerated situation. The Board considered that the advertisement is not trivialising or condoning tricking a woman into liking a man to lead to sexual relations.

The Board agreed that the advertisement's exaggerated story did not suggest that men generally are conniving and considered most members of the community would find the advertisement humorous. The Board determined that the advertisement did not depict overtly sexualised or offensive behaviour and did not breach section 2.3 of the Code.

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