



## Case Report

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|---|-------------------------------|--------------------|
| 1 | Case Number                   | 0267/15            |
| 2 | Advertiser                    | Mars Confectionery |
| 3 | Product                       | Food and Beverages |
| 4 | Type of Advertisement / media | TV - Free to air   |
| 5 | Date of Determination         | 08/07/2015         |
| 6 | DETERMINATION                 | Dismissed          |

### ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.6 - Health and Safety Within prevailing Community Standards

### DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on two women in an office environment. One of the women says, "naughty, naughty!" when she sees her colleague eating chocolate. Her colleague replies that they are "Maltesers, actually" so she eats one then says that now she doesn't feel very naughty at all. She then stands up and lifts her top so that her bra is visible to a passing male colleague. A female voiceover says, "Maltesers. The lighter way to enjoy chocolate".

### THE COMPLAINT

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

*Absolutely disgusted by the woman flashing her breasts!! What does this have remotely to do with chocolate???*

*I find this ridiculously offensive, both from degrading women to mindless bimbos, to the far more serious message it is sending to young girls (children and young women) that to draw attention to themselves they need to remove clothing and expose flesh, even in the work place.*

*The actions taken by the woman would have her subject to sexual harassment complaints in*

*an Australian workplace. I found it demeaning and embarrassing that such humour could still be considered amusing. It is out of step with contemporary standards. Furthermore, it was shown during a time when children are watching TV.*

*The ad is inappropriate. We were watching the football at 7pm at night with our kids and do not think it is appropriate for them to see someone eating a chocolate and then flashing private parts. It is also degrading to women and not something I want my daughter to watch.*

## **THE ADVERTISER'S RESPONSE**

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

*Thank you for providing us with a copy of a complaint received by the Advertising Standards Bureau (ASB) regarding a Mars Chocolate Australia advertisement, MALTESERS 'Naughty TVC'.*

*We write on behalf of our client, MALTESERS (Mars Chocolate Australia) in response to complaints against the 'Naughty' TVC. Mars Chocolate Australia respects and acknowledges the right of the public to provide opinions regarding advertising content and also values the work of the ASB. Mars Chocolate Australia therefore appreciates the opportunity to respond to this complaint as follows.*

*We contend that the advertisement referenced in the complaint 0267/15 does not breach any section (including Section 2) of the AANA Advertiser Code of Ethics (the Code) which also covers the AANA Code for Advertising and Marketing Communications to Children.*

*The focus of this response will address 2.4 of the Code which appears to be the only concern of the complainant:*

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

*The complainant is primarily concerned 'as a parent of young children' and believes this TVC features behaviour that is not suitable for children to view. In response to this, we would draw the ASB's attention to the following:*

- the advertisement promotes the MALTESERS brand, which has a target market of adult women aged 18-35;*
- the characters featured in the advertisement are adult women, not characters that young children would relate to;*
- the advertisement has a PG rating and does not screen during children's programs;  
and*
- there is no nudity, sexual content or sexual innuendo, and the lead actress has her back turned to camera during the scene in question.*

*The general premise for the campaign is that MALTESERS are the lighter way to enjoy chocolate. The broader campaign has depicted a range of people, of both genders, acting in a playful, innocent manner as they consume MALTESERS. Put simply, it is about enjoying chocolate and enjoying the moment.*

*This commercial does not encourage or support inappropriate sexual behaviour, and it is not intended to be sexually suggestive. The advertisement is intended for adults and focuses on MALTESERS as a way of enjoying light-hearted and unexpected fun together.*

*Mars Chocolate Australia is committed to complying with the Code and all relevant advertising laws and codes at all times. We maintain the advertisement*

## **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 features a woman flashing her bra at a male colleague which is sexist, inappropriate and could be considered 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 noted the complainants’ concerns that it is sexist and degrading to show a woman flashing her breasts at a male colleague.

The Board noted that advertisers are free to depict whichever gender they wish in an advertisement and considered that showing a woman behaving in a particular manner does not mean that all women would behave in the same manner. The Board considered in this instance what whilst it is a woman flashing at a man there is no suggestion that all women would or should do this, or that men would not do this, but rather that in the situation depicted a woman has decided to flash at the next person who walks past her window.

The Board noted the complainant’s concern that the advertisement suggests woman should behave in this manner to draw attention to themselves in the office but considered that this interpretation is unlikely to be shared by the broader community and the most likely interpretation is the woman wants to do something naughty so she flashes the next person who walks past her office and he just happens to be male.

Overall 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 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 this advertisement features a woman in an office eating a Malteser and then lifting her top to flash her bra at a male colleague.

The Board noted that when the woman lifts her top she has her back to the camera and

considered that the level of nudity was mild.

The Board noted the man's reaction to being flashed at and considered that whilst the action of exposing your bra-covered breasts in an office environment is not appropriate behaviour in the real world the Board considered that the startled reaction of the man adds to the humorous theme of the advertisement. The Board noted that prior to lifting her top the woman states that she doesn't feel 'naughty' and considered that this acknowledgement that her following behaviour will be naughty adds to the overall light tone of the advertisement.

Overall the Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and did not breach Section 2.4 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 the complainants' concerns that the woman's behaviour in the advertisement amounts to sexual harassment in the office.

The Board noted that there is no suggestion that the woman has acted in this manner before.

The Board noted that the woman appears to flash randomly at whoever happens to be walking past her office at that moment and considered that she does not appear to target the man. The Board noted that we do not see the male colleague's reaction to being flashed at after his initial shock and considered that his startled reaction highlights his surprise in a comedic manner and overall there is no suggestion that the man feels harassed or upset by the woman's actions.

The Board noted that the issue of workplace harassment and bullying is a serious community concern but considered that in this instance the advertisement does not depict, encourage or condone bullying or sexual harassment in the workplace or anywhere else.

The Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

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