



Case Report

1	Case Number	0304/12
2	Advertiser	Pepsico Australia Holdings Pty Ltd
3	Product	Toiletries
4	Type of Advertisement / media	TV
5	Date of Determination	08/08/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.6 - Health and Safety Unsafe behavior
2.6 - Health and Safety within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

The advertisement shows divers swimming amongst sharks in the ocean and a voiceover says, "In these shark infested waters a team of scientists and one brave volunteer are about to find the answer to an important question: Is new Mountain Dew as much of a thrill as the original Mountain Dew".

THE COMPLAINT

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

Yesterday the 14th of July a 24 year old man from Perth was killed by a 4 metre great white shark being bitten in half. The attack was at 9 am so not in these sharks' usual feeding times and while a witness attempted to save the man his jet ski was bumped repeatedly by the attacking shark.

I feel this advertisement is ill timed as it could offend and upset a lot of people at this time. It should be kept off the airways for at least a week to ensure no one will be offended.

With five shark attack deaths in WA in the last 7 months I think it is poor judgement - I'm no prude but think of the friends and family of the 24yr old who was killed over the weekend and they sit down for a night in front of the TV to see this rubbish.

In light of so many recent shark attacks it is amazingly poor/bad taste and so disrespectful to families who have lost loved ones.

THE ADVERTISER'S RESPONSE

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

The commercial referred to in complaints to the ASB has been developed to support the Australian launch of new Mountain Dew, which is now energized with caffeine. The Australian commercial is based on a successful campaign that ran in the US in 2006 for Diet Mountain Dew refer <http://www.youtube.com/watch?v=MQQnSEWSfgA> and depicts a clearly fictional scenario. The Australian campaign was decided on several months ago with a planned launch date of Sunday 15th July.

Tragically, as indicated by one of the complainants, the day prior to the planned Mountain Dew on air date, a young Perth man was killed by a shark. This was a coincidence in timing. As a sign of respect to those impacted by this tragic situation, we made the decision to delay the full launch of the campaign and instructed our media agency to communicate with the networks to temporarily take the commercial off air, though unfortunately some appearances of the commercial did occur on Sunday. For logistical reasons, we were unable to delay the launch of our campaign in cinema, where the commercial is running prior to movies such as Batman.

We assure the Bureau that it was never our intention to cause any upset or offence in any way, and that this commercial was not intended to be insensitive to those who may have suffered in shark attacks. We sincerely apologise to anyone who may have taken offence.

We assure the ASB that in developing this commercial it was the Company's intention to entertain viewers, not offend them. The start of the commercial is a clearly staged and controlled situation "In these shark infested waters a team of scientists and one brave volunteer are about to find the answer to an important question: Is new Mountain Dew as much of a thrill as the original Mountain Dew". The tone of the advertisement is humorous - the use of larger than life stereo - typical hero who wrestles with a shark and then rides it, is clearly 'over the top' and not intended to replicate in any way any real life experience.

*The use of sharks as a creative device is not uncommon and has been used on a multitude of occasions both here and overseas e.g. http://www.youtube.com/watch?v=pMp3C_NgWKU
<http://www.youtube.com/watch?v=I4xWgPIjhG0R>*

We also advise that an advertisement for Bing search engines currently on air features sharks. It includes photographer and filmmaker, Madison Stewart who talks about swimming with sharks and says swimming with sharks is natural for her. Please refer to the uploaded copy of advertisement.

That said, as a sign of respect to those impacted by this tragic situation, we have made the decision to cancel completely the screening of this commercial in WA, on TV and in cinema. Elsewhere, we delayed the Mountain Dew campaign television screenings in all metropolitan and regional markets, until 22nd July. In these markets, the commercial will be on TV for 5 weeks concluding on 25th August. Our cinema campaign will conclude on 1st September. At this point in time there are no plans to re-run the advertisement past the latter schedule.

We are familiar with the AANA Advertiser Code of Ethics and refer to the code in considering our advertising. In this instance we do not believe that the "Mountain Dew" commercial in question is in breach of the code. We believe that the Mountain Dew commercial, meets prevailing community standards. At any another time we would have been

surprised by such complaints from the public. We do however accept that at this point in time it would be insensitive to screen the commercial and hence why we have delayed the schedule as indicated and cancelled its screening on WA television. We believe this action in itself meets prevailing community standards.

With reference to children, the advertisement received CAD approval and was given a “W” rating. The target audience for the advertisement was people aged 18-39. In scheduling the “Mountain Dew” TVC we were mindful of the “W” rating guideline as well as our commitments under the AFGC’s Responsible Children’s Marketing Initiative and the advertisement was thus not placed in programs that were targeted at or likely to attract substantial numbers of children.

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 concern that the advertisement is disrespectful and in poor taste in relation to recent shark attacks.

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

The Board considered whether the advertisement was in breach of 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 features a young male swimming in the ocean drinking a Mountain Dew. There is a shark swimming close by, the scene is set up to look like a shark attack. A voice over states they are trying to prove that the new Mountain Dew is as thrilling as the original Dew. Then the young man grabs onto the dorsal fin of the shark and is holding on tightly as the shark swims around and jumps out of the water.

The Board noted the overall fanciful and unrealistic element of the advertisement. The Board considered that the scenario of asking a young man to test the effectiveness of the new beverage with added caffeine, by catching or riding a shark is completely unrealistic and that most of the community would see this as being fabricated for the purposes of selling the product.

In the Board’s view the advertisement is presenting the interaction with the shark in a fantasy manner and did not consider that the advertisement was promoting or encouraging swimming or playing with sharks.

The Board noted that in this instance the broadcast of an advertisement involving sharks is unfortunate in its timing as there had been recent deaths and injury associated with shark attacks. The Board agreed that this was unforeseeable and accepted the advertiser’s

comments that it was never their intention to offend or upset any persons by airing the advertisement at the time.

The Board noted the advertiser's actions in withdrawing the advertisement from broadcast on television and Cinema in Western Australia.

Based on the above, the Board determined that the advertisement did not depict material contrary to prevailing community standards on health and safety and 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 complaint.