



Case Report

1	Case Number	0356/15
2	Advertiser	Intrustsuper
3	Product	Insurance
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	23/09/2015
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.1 - Discrimination or Vilification Disability
- 2.3 - Violence Bullying
- 2.6 - Health and Safety Bullying (non violent)

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement commences centred on Dave, wearing a neck brace with both arms in plaster casts, seated at a table. He is struggling to eat and drink. A man (Brent Tate) discusses the services offered by Intrust Super and the injured man's partner refers to him as a dill and throws a tea towel at his face.

THE COMPLAINT

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

The portrayal of a disabled person as an idiot or "dill" as the advert stated for not having income protection and for the uncaring treatment that the advert portrayed that this person received as a result and the implication was that the disdain that this person was received was deserved .

THE ADVERTISER'S RESPONSE

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

Reference is made to your notification of a complaint received by the Advertising Standards Bureau (ASB) in relation to Intrust Super's PayGuard insurance product television advertisement (Advertisement).

While Intrust Super regrets any offence felt by the complainant, we do not believe the Advertisement is in breach of the AANA Advertiser Code of Ethics (Code). We have made detailed submissions below as to why the complaint should be dismissed.

The advertisement has been broadcast on Nine Network and its affiliates, primarily in the Brisbane market, across sports, drama and comedy programming in peak and off-peak times.

It is viewable by the public at the following website address:

https://www.youtube.com/watch?v=_J1yYcjQOPk.

Intrust Super is a profit for members superannuation fund regulated by a number of laws including the Superannuation Industry (Supervision) Act 1993 and Chapter 7 of the Corporations Act 2001.

Intrust Super provide benefits to its members in the event of their retirement, death and disablement.

The Advertisement is intended to promote the PayGuard salary continuance insurance product which pays up to 90% of a member's income for up to two years if the member is unable to work due to injury or illness (PayGuard). The benefit is not dependent on the injury or illness being work related and injuries resulting from recreational amateur sports are covered.

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The Advertisement's protagonist is Brent Tate, a former Australian professional rugby league footballer. Mr Tate is widely known to have suffered, and recovered from, many serious injuries during his career as a professional footballer. Mr Tate is a prominent and well-known Queenslander, who has a significant public profile having played for the Brisbane Broncos and North Queensland Cowboys rugby league teams and also represented the State of Queensland in many series-winning State of Origin games.

The Advertisement commences centred on Dave, wearing a neck brace with both arms in plaster casts, seated at a table. He is struggling to eat. His injuries appear serious and he has a sour demeanour. Ironically, Dave has suffered these injuries playing touch football – a sport with very limited physical contact and chance of injury.

2. Submissions

For the reasons below the complaint should be dismissed.

2.1 Discrimination or Vilification

Although the Advertisement casts Dave with an injury, it does not discriminate or vilify on the basis of disability.

The complainant asserts there are two grounds of discrimination or vilification shown in the Advertisement:

1 persons with a disability are idiots (dills); and

*2 persons with a disability deserve to be treated with disdain.
(the Assertions).*

We reject the Assertions.

We note that the ASB has provided the following guidance as to the definitions of discrimination and vilification:

Discrimination Acts with inequity, bigotry or intolerance or gives unfair, unfavourable or less favourable treatment to one person or a group because of their race, ethnicity, nationality, sex, age, sexual preference, religion, disability and/or political belief.

Vilification Humiliates, intimidates, incites hatred towards, contempt for, or ridicule of one person or a group of people because of their race, ethnicity, nationality, sex, age, sexual preference, religion, disability and/or political belief.

We submit that the Advertisement does not satisfy either definition. The language and imagery of the Advertisement falls significantly short of the egregious conduct required to satisfy the above definitions. No suggestion of discrimination or vilification on the basis of disability arises as:

- Dave is not referred to as “a dill” because of his injuries. He is referred to as “a dill” because of his failure to take up the PayGuard income protection cover.*
- Similarly, Dave’s treatment in the Advertisement is as a result of his failure to obtain PayGuard income protection cover and not because of his injuries.*
- “Dill” is not a term of discrimination or vilification. Dill, meaning silly or stupid, is widely used in the community. It has no special meaning in relation to persons with a disability.*
- The Advertisement depicts the difficulties of managing a disability and its impact on others, such as carers like Dave’s partner. In this regard, we note that the Practice Note accompanying the Code (Practice Note) observes, in relation section 2.1 of the Code, that “a realistic depiction of people with a disability can be acceptable, even if the advertisement is upsetting to some members of the community, where there is an important message being delivered”.*
- The depiction of Dave with a disability is highly relevant to demonstrating why a member should consider the advantages of income protection cover.*

Intrust Super believes the complainant has grossly misinterpreted the message of the Advertisement and submits that their interpretation does not accord with community standards.

In support of this proposition, we refer the ASB to its many decisions dismissing complaints on this ground:

- 0538/14 Coca Cola;*
- 0157/14 Queensland Health;*
- 0443/13 Sportsbet;*
- 0386/13 Hotels combined;*
- 0031/13 Enfield Furniture;*
- 0456/12 Bayer;*
- 0216/12 Parmalat;*
- 0157/12 Golden Chain Motor Inns;*
- 0145/12 iinet; and*
- 0071/12 Aircon and Heating Solutions.*

No other grounds of section 2.1 of the Code are relevant to the Advertisement. Accordingly, we submit that the Advertisement does not breach any part of section 2.1 of the Code.

2.2 Objectification

Section 2.2 prohibits employing sexual appeal in a manner which is exploitative and degrading of any individual or group of people. The Advertisement contains no sexual imagery. We submit this section of the code is not relevant to the Advertisement.

2.3 Unjustifiable violence

Section 2.3 prohibits presenting or portraying violence unless it is justifiable in the context of the product or service. Although Dave has injuries, these were as a result of playing touch football and not of a consequence of violence. The Advertisement does not contain any violence. We submit this section of the code is not relevant to the Advertisement.

To the extent that the complaint is about bullying, which we understand the ASB considers is a type of violence, we repeat and rely upon our submissions about bullying in section 2.6, below, and say that in the context of the product being advertised (the PayGuard insurance product) the gentle banter in the Advertisement about Dave being a dill for not having PayGuard insurance is justifiable in the context. Accordingly, no breach of section 2.3 can be found.

2.4 Sex, sexuality and nudity

Section 2.4 requires the treatment of sex, sexuality and nudity with sensitivity to the relevant audience. The Advertisement does not contain any sexual imagery. We submit this section of the code is not relevant to the Advertisement.

2.5 Inappropriate language

The Advertisement uses the word “dill” four times. It is not strong or obscene and is a common word in everyday usage. We submit that “dill” is not inappropriate. The frequency of its usage is appropriate in the circumstances.

No other question of inappropriate language arises.

2.6 Health and Safety

The complainant believes the Assertions constitute bullying, breaching section 2.6 of the Code.

Intrust Super submits that the language and actions of Mr Tate and Dave’s partner in the Advertisement is not bullying and does not breach section 2.6 of the Code.

Relevantly:

- the Advertisement is set in a home and not a location commonly associated with bullying such as a school, a workplace or online; and*
- the cast of the Advertisement are all adults and, by setting the Advertisement during a meal, are suggested to be close friends.*

In these circumstances, it is clear that none of the indicia of bullying are present, being an exploitation of an imbalance of power, an intention to harm and a repetition of the behaviour. At its highest the conduct could be described as gentle banter amongst friends, rather than bullying.

In addition, Intrust Super notes:

- the Advertisement is not targeted at children;*
- the Advertisement does not condone or glamorise bullying behaviour; and*
- the Advertisement is in accordance with prevailing community standards and likely behaviour amongst friends.*

Accordingly, no breach of section 2.6 of the Code arises as the Advertisement does not constitute bullying and is not contrary to prevailing community standards on health and safety.

2.7 Other Submissions

The Advertisement is about salary continuance insurance and is therefore not targeted to children or about food or beverages. Accordingly, none of the provisions AANA Code for Advertising and Marketing Communications to Children or the AANA Food and Beverages Marketing and Communications Code apply.

3 Additional Materials

Intrust Super has no further additional materials to add.

4 Closing

Intrust Super thanks the ASB for the opportunity to provide these submissions in relation to the complaint and respectfully asks the ASB to dismiss the complaint.

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 portrays a disabled person being treated as and referred to as a “dill” which is unfair and demeaning.

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 that this television advertisement features a man (Dave), wearing a neck brace with both arms in plaster casts, seated at a table. He is struggling to eat and drink. A presenter (Brent Tate) discusses the services offered by Intrust Super and the injured man's partner refers to him as a dill and throws a tea towel at his face.

The Board noted that the man’s injuries are due to a sporting activity, however although this may not be considered a long term state, in the Board’s view, the man is temporarily impaired or unable to function as he normally would and is therefore considered to be disabled.

The Board noted that the advertisement is for an income protection product and seeks to highlight a particular situation where a person may be unable to work for a period of time and therefore could need cover to supplement income loss. The Board considered that the link between the man being incapacitated the promotion of the product is not clear. The Board noted that the presenter does state that because Dave doesn’t have ‘Payguard’ that is why he is a dill.

The Board considered that the visuals of the advertisement are very clear and strong and that the portrayal of Dave at the table unable to feed himself outweigh the spoken references to the poor choice he has made about not having income protection.

The Board considered that the overall tone of the advertisement, and of the actions of the woman are one of disdain toward her partner. The Board noted that the woman shows frustration toward the man’s inability to feed himself and she refers to him as a dill.

The Board noted that the use of the term dill in this context would be generally understood to mean that the woman is not impressed with the man and that he is has done something (in this case does not have income protection) that she considers foolish or a poor decision.

The Board agreed that the link between the actions toward the man and the product being advertised are not clear and that the disdain the woman shows toward the man is linked heavily to the visual portrayal of him being disabled and depicted in a negative light in the advertisement.

The Board noted the advertiser’s reference to previously dismissed cases 0538/14, 0157/14, 0443/13, 0031/13, 0456/12, 0216/12, 0157/12, 0145/12 and 0071/12. The Board noted that in these cases the use of people with disabilities was often reflected with a positive tone.

The Board considered in contrast, the current advertisement portrayal is significantly more negative and depicts the man as being incapable and depicts the woman in a negative light regarding her attitude toward him.

The Board considered that on balance, the actions of the woman and the accompanying

references to the man being a dill to create a depiction that is vilifying of a person or section of the community on account of a disability and does breach section 2.1 of the Code.

The Board then 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 that matters related to the depiction of physical bullying fall within section 2.3 of the Code.

The Board noted the Macquarie Dictionary definition of violence as:

1. rough force in action, and
2. rough or injurious action or treatment

The Board noted the actions of the woman first in feeding her partner. The Board noted that her actions are impatient and she is rough in the removal of the fork from his mouth. The Board then noted the actions of the woman in throwing the tea-towel at the man after he has spilt his drink. The Board noted that the action of throwing something in the face of another person is an aggressive act and that in this particular case as the man is incapable of defending himself, the perceived level of violence of the act is increased.

The Board noted that the man is clearly in a vulnerable state and considered that the portrayal of the woman treating him with disdain and rough attention, depicts a level of violence that is not justifiable in the context of an advertisement for income protection.

The Board considered that the advertisement did breach section 2.3 of the Code.

The Board then considered whether the advertisement breaches Section 2.6 of the Code. Section 2.6 states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted that the issue of bullying, particularly non-physical bullying is suitably placed within considerations of section 2.6 of the Code regarding prevailing community standards.

The Board noted considerable community concern around issues of domestic violence and considered that any actions that could cause harm or distress to an individual would be contrary to prevailing community standards.

The Board noted that it had dismissed complaints regarding an advertisement where two women are heard to exchange words regarding the physical characteristics of the other (ref 0086/14). In this case the Board considered that "the depiction of two women exchanging comments in a begrudging way, was lighthearted and comical rather than an episode of bullying."

In contrast in the current advertisement, the Board noted that references in the advertisement made by both the presenter and the woman to Dave being a 'dill.' The Board noted the expression on Dave's face when he is called a dill is not a happy one and he responds by saying "go easy, you don't know what it's like to be injured."

The Board considered that overall the impact of the visuals in combination with the verbal references amount to a depiction that is demeaning and hurtful toward an individual who is incapacitated and vulnerable.

The Board considered that this amounts to a depiction that is contrary to prevailing community standards on health and safety related to bullying behaviour and did breach section 2.6 of the Code.

Finding that the advertisement did breach Sections 2.1, 2.3 and 2.6 of the Code the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

This is an advertisement about income protection. It depicts an elite former rugby league player, famous for sustaining injury in a high contact sport, sitting down for a meal with a couple. The male in the couple has injured himself at touch football and cannot work.

The former rugby league player declares that the injured character doesn't have income protection, and for that reason, he is a "dill".

The injured character's female partner shows clear frustration with the situation, but at the same time, assists her injured partner with his meal and runs to his aid to avoid him spilling water on himself.

When the injured character suggests that the former rugby league player doesn't "know anything about being injured", his female partner calls him a dill.

If the connection between the main character being referred to as a "dill", and his failure to have income protection isn't clear, Intrust Super regrets this. If the irony intended by having an injured touch-football player suggest that the elite rugby league player knows nothing about injury is not clear, Intrust Super regrets this.

Accordingly, Intrust Super regrets any offence caused to any individuals and will make the appropriate rectifications.

Intrust Super disagrees with the description of this advertisement as depicting violence, bullying, or vilifying on the basis of gender, race, disability etc. Furthermore, Intrust Super believes that connecting this advertisement with those descriptions trivialises the tragedies of violence, bullying and discriminatory vilification – and that this is potentially insulting to victims of violence, bullying and vilification.

Intrust Super also believes that a potentially inconsistent definition of terms is used in the ASB's assessment of this case – for instance, the applied definition of "violence".

Specifically, in its determination, the ASB applied to Macquarie Dictionary definition of violence as per:

The Board noted the Macquarie Dictionary definition of violence as:

1. rough force in action, and
2. rough or injurious action or treatment

We believe on the one hand that this is a low hurdle for "violence", and on the other hand, that this definition has not been consistently applied in ASB rulings.

For instance, the Pedigree dog food advertisements from Petcare Mars, in Intrust Super's view, shows a much clearer depiction of "rough force in action" than the Intrust Super advertisement. Moreover, the Pedigree advertisement is very clear in its depiction of one male overtly attempting to physically intimidate another – which is bullying.

https://www.youtube.com/watch?v=D9XwGtn_iAQ

In its determination in Case 0203/15 however, the ASB did not apply the Macquarie Dictionary definition of violence and instead, dismissed the aggression depicted as not being violent at all:

“... the majority of the Board considered that whilst the men are clearly engaging in a tussle in the Board’s view their actions are consistent with groups of young men asserting their dominance within a group and the actual level of contact between the men is aggressive rather than violent.”

However, despite the inconsistency and despite our categorical disagreement with the ASB’s determination, Intrust Super seeks to support the self-regulation process by refraining from screening the advertisement on free-to-air television in its current form.