



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0389/12</b>
<b>2</b>	<b>Advertiser</b>	<b>MSD Australia</b>
<b>3</b>	<b>Product</b>	<b>Health Products</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Outdoor</b>
<b>5</b>	<b>Date of Determination</b>	<b>26/09/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

2.3 - Violence Causes alarm and distress

### DESCRIPTION OF THE ADVERTISEMENT

The advertisement features a woman slumped over a shopping trolley seemingly deflated and without a body with children looking at her and a passer by turning to look also. The text in the back ground reads “feeling let down by your hayfever treatment?”

### THE COMPLAINT

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

*I believe the image of the 'deflated' woman is offensive and gruesome. It came to my attention as my young daughter (5 years) has been complaining of a frightening picture for about a week and was showing signs of real distress and fear. I did not know what the picture was as she had only seen it while with her father (he collects her there for visitation time) in the shopping centre. When she was with me and she saw the picture she identified it as the picture that had been causing her the extreme distress and she was cowering, covering her face and nearly in tears. I believe the image of the woman is gruesome as she appears to be dead and her staring eyes are disturbing. Her limp body and feet dragging the wrong way are horrible. This is compounded and made more distressing by the proximity of the small and vulnerable child, who I assume is her son. The domestic and everyday context of the trolley full of fresh produce also makes the image more disturbing. It is like a scene from a*

*horror movie and I find it upsetting, and can perfectly understand that my poor daughter has been traumatised by the image. She is truly distressed.*

## **THE ADVERTISER'S RESPONSE**

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

*Section 2.3 of the Advertiser Code of Ethics ("the Code") states: "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised." MSD make the following comments and clarifications in relation to the advertisement in respect of section 2.3 of the AANA Code ("the Code"):*

*1. Importantly, the imagery is not directed towards children. The target audience for this advertisement are busy mothers (with kids) who suffer from allergic rhinitis (AR), yet despite OTC treatment are struggling to keep going with their day to day jobs. Insights from the market research were utilised to develop imagery that would grab the attention and reflect the feelings of the target audience.*

*2. While MSD regret the distress that the advertisement caused to the Complainant's child, the prevailing community standards (as referred to in the Code) must prevail over subjective criteria such as "good taste" and whether certain children were distressed by the advertisement. In support, MSD note the approach taken by the Advertising Standards Board ("Board") in Cases 0509/10, Case 0079/11 and Case 533/06. In Case 0509/10, the Board noted that some members of the community could find the image of a girl bent over backwards in an unnatural pose to be disturbing, but considered that most members of the community would not find this image to be inappropriate for the horror movie being advertised. In case 0509/10, the "coughing up blood" anti-smoking message was acceptable for the purpose of raising awareness of the dangers of smoking, despite the fact that the advertisement was disturbing to some children. In Case 533, the "King of Shaves" advertisement which contained a man with a graphic gash against his throat was considered acceptable since the target audience for the advertisement were males between 18 and 35. Accordingly, the advertisement was justified because the product offered was said to help prevent cutting and nicking by shaving. The Board also noted the artistic nature of that image.*

*3. MSD submit that similar considerations as outlined in the above Case Reports should apply here. MSD outline the following reasons:*

*a. the advertisement was focused on the target audience, not children (see 1 above);*

*b. The imagery does not present or portray violence or the consequences of violence in any way. To read violence into the image is to misconstrue the advertisement. The depiction of a person as 'deflated' (i.e. with the air/energy let out of them) was developed to reflect someone 'let down' and 'tired', not a gruesome portrayal of a mother who is dead;*

*c. The deflated image of the mother brings to the advertisement in an artistic way just how down a patient may be feeling inside as a result of their inadequate hay fever treatment. The image is artistic in nature, and artistic exaggeration is quite reasonably used in these circumstances to ensure the target audience are alerted to the advertisement and the chance to "get effective relief"; and*

*d. The clear intent and message of the advertisement is not to portray violence at all; rather its message is to raise awareness for hay fever sufferers, that prescription treatments are available for relief.*

*4. To elaborate further on the reasons outlined in paragraph 3, insights from market research showed actual patients as feeling 'drained of energy' and 'let down by their treatments', as a consequence of their uncontrolled allergic rhinitis (AR). The image is*

*intended to reflect a person as 'deflated' like a deflated balloon, representing the tiredness and let down feeling communicated by these patients. When the initial mocked up images of a lady 'slumped forward' were tested with consumer focus groups, the feedback provided indicated that the image of the lady 'slumped forward' had 'stopping power' whilst resonating with the audience.*

*5. The Advertisement is actually part of a two part series of ads to raise awareness on hay fever relief. In a related ad, a lady is let down like a balloon at a bus stop (the Related Ad). The Related Ad has at no stage been the subject of any complaint. MSD enclose a copy of the Related Ad for your reference.*

*6. An initial pilot for the 'Don't Let Me Down' consumer campaign, containing the advertisement in question and the Related Ad (below), was run in Cairns through March to April 2012 with positive response from both doctors and consumers. Prior to its release in August 2012, the advertisement was reviewed by MSD's medical and legal team, to ensure compliance with pharmaceutical industry codes and standards. MSD have received no other complaints in respect of this advertisement.*

*For the above reasons MSD submit that the Advertisement is not in breach of the Code. If you require any further assistance or information please do not hesitate to contact MSD with the contact details provided.*

## **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 frightening image of a woman who is 'deflated' and is not appropriate for viewing by children.

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

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 not present or portray violence unless it is justifiable in the context of the product or service advertised". The Board noted that depiction of graphic images within advertising and marketing communications was reasonably considered a portrayal of violence for the purposes of the Code.

The Board noted that the advertisement features a woman slumped over a shopping trolley seemingly deflated and without a body with children looking at her and a passer by turning to look also. Text in the back ground reads "feeling let down by your hayfever treatment?"

The Board noted that the target audience for this advertisement is busy mothers (with children) who suffer from hayfever and other related conditions. The Board considered that the image is a creative exaggeration of how people feel when they are suffering from hayfever.

The Board considered that the visuals of the woman slumped over the trolley may be confronting and alarming to viewers, including children, but considered that the message being delivered in the advertisement was relevant and intended to raise awareness of the product available to sufferers and that the target audience for this advertisement would relate to the advertisement.

In the Board's view the advertisement presents violence in a manner that is justifiable in the context of the product being advertised and that the advertisement did not breach Section 2.3 of the Code.

The Board then considered whether the advertisement was in breach of Section 2.6 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 considered in particular the potential impact on the physical or mental health of viewers of the advertisement on the grounds of "alarm and distress".

The Board considered that the showing of such images was confronting and could be distressing to some viewers, particularly children.

A minority of the Board were concerned that the image portrayed the woman in a corpse like manner and that this was cause for concern. However the majority of the Board considered that the images gave the advertisement greater impact, and that this was justifiable by the relationship to the product being advertised and the feeling of being deflated and drained of energy.

The Board considered that the advertisement does not depict imagery which would breach prevailing community standards on health and safety.

The Board noted that it had previously dismissed complaints about advertisements for the Department of Health and Ageing (0079/11) determining that the "coughing up of blood" and the anti-smoking message was acceptable for the purpose of raising awareness of the dangers of smoking, despite the fact that the advertisement was disturbing to some children. The Board considered that the current advertisement was of a lesser level of graphic content and was therefore justifiable in the context of the product or service advertised.

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.

## **THE INDEPENDENT REVIEWER'S RECOMMENDATION**