



Case Report

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| 1 | Case Number | 0412/17 |
| 2 | Advertiser | Meat & Livestock Australia Ltd |
| 3 | Product | Food and Beverages |
| 4 | Type of Advertisement / media | Internet |
| 5 | Date of Determination | 13/09/2017 |
| 6 | DETERMINATION | Dismissed |
| 7 | Date of reviewed determination | 08/11/2017 |
| 8 | Determination on review | Upheld - Modified or Discontinued |

ISSUES RAISED

2.1 - Discrimination or Vilification Religion

DESCRIPTION OF THE ADVERTISEMENT

This internet advertisement depicts various religious/mythical leaders/Gods/characters seated around a table enjoying a meal together. The figures include Thor, Aphrodite, Jesus, Moses, Buddha and Ganesha. Jesus is shown doing a 'reverse miracle' by turning Aphrodite's wine in to water because she is the designated driver. Moses is shown parting the peas on his plate. The hostess declares herself as having no religion and says that lamb is the meat we all can eat.

THE COMPLAINT

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

Hindu philosophy has always promoted vegetarianism as a way of life and we always offer fresh fruits or other vegetarian food only.

Seeing someone like our Lord Ganesha being offered meat is highly offensive as it is considered a sin to offer meat to God. The tradition has been developed several thousand years ago and has been going on generations after generations. over a billion Hindus offer only vegetarian food to its God.

Also to use our deity in selling a product is offensive let alone meat.

We not only condemn the advertisement but also demand it be removed with immediate effect Not only that we strongly suggest ASB to set up guidelines on using religious figures in advertisement after extensive consultation with Hindu community.

This a crude and offensive ad in a great multicultural society like Australia which will strong implications in future ranging from kids to people of all age who are Hindus as they may be bullied and mocked by this ad.

It is hurting our religious sentiments by showing the Hindu god Ganesha as a Meat eater and also making fun of the Hindu god. It is very offending.

We can not offer meat to ganesha. Vegetarian. They Are totally irresponsible . Should not work in that position.

Hindu God eating Lamb and having wine. While it is widely known that Hindu God are Vegetarian and non-dirinking.

This advertisement was utterly unacceptable to the Hindu community; it was offensive & insensitive. Meat & Livestock Australia must issue an apology to the Hindu community for insulting our sentiments

1) There is a lack of research to either support or disprove the concept that the consumption of Lamb by various characters". How the advertisement research team know the taste of each character & what is the basis of the claim.

2)The advertisement is trying to convince that one of the characters "Ganesha" is enjoying the lamb taste & requesting for more marketing for the taste. This is conflicting evidence with regards to "Ganesha" as per the Hinduism.

1> The advertisment is full of dubious and unsubstantiated "facts"about various God related characters represented.

2. There is a lack of research as this is offensive to certian relegions especially Lord Ganesha, who is depicted as elephant God, is a Vegan and showing his at a table eating meat and drinking wine is totally insulting the HIndu relegion.

3. The intention of releasing the advertisment close to Ganesh Festival season provides enough evidence that the intention was to hurt relegious sentiments.

4. The advertisement foes "too far" to acheive commercial gains over relegious sentiments

Lord ganesha is symbol of prosperity and purity for Hindu community. Showing him eating lamb or having communication is offensive.

1. The advertisement is full of dubious and unsubstantiated "facts" about various God related characters represented

2. The advertisement breached section 2.1 of the Food code. The product advertised is food and that therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) should apply. In particular the section 2.1 of the Food Code which provides: 'Advertising or marketing communications for food shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene prevailing community standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.'

3. *There is a lack of research to either support or disprove the concept that the consumption of Lamb by various characters". How the advertisement research team know the taste of each character & what is the basis of the claim.*
4. *The advertisement is trying to convince that one of the characters "Ganesha" is enjoying the lamb taste & requesting for more marketing for the taste. This is conflicting evidence with regards to "Ganesha" as per the Hinduism.*
5. *The intention of releasing advertisement close to Ganesha & EID festival season provides enough evidence that the intention was to hurt religious sentiments.*
6. *The advertisement goes "too far" to achieve commercial gains over religious sentiments*

This advertisement is very disrespectful towards the values of Hindu religion and shows the Hindu God (Lord Ganesha) having lamb meat. This is a blatant advertisement without any basis, facts and hurts the sentiments of Hindus all over the world as Lord Ganesha does not eat meat. Please have this advertisement removed/banned immediately and take action against the culprits (Meat and Livestock Australia) accordingly.

*We are offended why Ganesha is depicted here. Hindu God's never enjoy meat and if this research was not done by advertising agency than it is illegal to show something that is not researched well and if this was researched and still displayed that just means it was deliberately used to ridicule the religion. This is a disrespect to Hindu religion, hurting our sentiments and a senseless campaign. Your team has got it totally wrong by implying Lord Ganesha is having lamb at dinner table with other Gods. For your information, Hindu Gods and meat do not go together
Remove the AD as soon as possible.*

Trying to say Lord Ganesh is enjoying the meat . Which is against the Hindu religion.

Lord Ganesha whom billions of people worship all over the world was shown in a bad taste with meat and along with meat eating people. The deities worshipped by Hindus are vegetarians to show him with meat eating and for promoting meat gives me a lot of pain. Living in multicultural country other people faith and interests has to be considered.

Showing Hindu God Lord Ganesha eating Lamb which is not only inaccurate but deeply hurts religious sentiments of millions of people following Hindu faith in Australia & around globe.

Hindus & their faith is that Hindu Gods are Vegetarian and all Holy scriptures and everyday prayers promote well being of all humans including Animals.

This & any future advertisement should immediately stop showing images &/or references to Lord Ganesha eating any thing other than Vegetarian food. This advt should immediately be removed from Meat & Livestock Australia website and an official apology should be provided for hurting religious sentiments & causing immense mental trauma on followers of Hindu faith & religion.

Please update me on the progress of this complaint.

It is depicted to show that Lord Ganesha is eating lamb!

The advertisement of Meat and Live Stock Australia (<https://youtu.be/Gfhf2Tw00pA>) is disgraceful and offensive to Hindu sentiments with Lord Ganesh in it. Religions should not be used as point of joke. Please see that this ad is banned and the product owner apologises to all religions concerned.

This advertisement is offensive and insensitive in so many ways to many religions but in particular the advertisement is highly blasphemous to the Hindu community in that it depicts Lord Ganesh , a very sacred and divine personality in the Hindu faith as being a meat eater The Hindu religion(Sanatana Dharma) teaches Ahimsa or non violence and peaceful coexistence with all creation, as such the greater majority of practising Hindus are strict Vegetarians and would be offended that one of their sacred deities is depicted consuming meat.

It is against the Australian policy as a multicultural society where we respect each other's beliefs and celebrate them. Making light of reverence of millions of Hindus worldwide is hurtful to the feelings and sentiments of the large Hindu population of Australia. It is disrespectful to Hindu Faith.

This need to be banned immediately as they demoralising Hindu(Sanatana Dharma) values and culture.

In the advert, the company, in order to gain commercially has trivialized and denigrated Lord Ganesh. A deity in Hinduism . This has hurt my sentiments immensely due to the amount of disrespect and lack of sensitiveness exhibited towards others faith.

Hindu religion is vegetarian and consumption of alcohol is not permitted. The advertisement is ignorant and hurts the religious and cultural sentiments of millions of Hindus. I am not a Hindu but a Sikh but I personally and our organisation as a whole is also offended. Such adds make migrants feel as if they are second grade citizens and their sentiments do not matter at all. Under freedom of speech arguments you can do anything and everything. This is shocking to hear that the company is adamant. The ad makers show sensitivity towards Muslim sentiments by NOT SHOWING Muhammad, how can then they fail to acknowledge the offense they caused by linking Hindu and Buddhist gods to meat.

This advertisement campaign shows disrespect of our god lord Ganesha showing him eating meat. Meat is not allowed in Hinduism and by showing our lord eating meat is not acceptable. this is an assault on the diverse cultures in Australia.

Let us respect each others faith and that's the Real Australian Way!

This is totally unacceptable and religious sentiments of others must not be subjected to this sort of attention.

This ad is very insensitive and offensive for Hindus including myself.

I request you to please look into this matter and ask MLA to remove it immediately.

Thanks for looking into this matter.

The Commercial lamb promotion add by Meat and Livestock Australia (MLA) is offence. It does not promote the unity of Australia but commercialised inappropriate disrespect to religions. It's highly ignorant it the MLA to post this offensive add.

Ad has discrimination on Hindus religious belief and hurting Hindu feelings on auspicious day . Vegetarian god eating lamb is not acceptable... and they really scared of other religion and not mentioned or used the other religious god in the ad ... australia is secular and they should know the basic citizenship responsibility. Does government has any standard metrics to measure their oath to Australia?

This is an insult to large population of Hindus like me. It is hurting all Hindus not only in Australia, but globally. If MLA wants to show unity, there are so many other ways to make an AD. I hope the A.S.bureau will take some action soon to get it removed.

Respecting others faith & culture is often ignored to create controversy and get their few minutes of fame.

I am an atheist. I found the 'lamb dinner' ad offensive. I believe that Meat and Livestock Australia, and the advertising agency that made the ad, knew that Hindus are vegetarian. I think they used this deliberately to attract controversy and attention. The lack of respect for the sense of the sacred of all religious believers is also disgraceful. I resent that Australia is being portrayed in this way to people from other countries. Mocking people's religious beliefs will be harmful to Australia's reputation.

These portrayals of deities are lazy, offensive and exploitative. Adherence to any form of Christianity, Judaism, Hinduism, Buddhism or other religion is personal and very important to most Australians. Seeing the MLA using this content to attempt to sell lamb is extremely distasteful. Add to this the vegetarianism of many Hindus and Buddhists (and many Christians if Australia Day falls on a Wednesday or Friday – in addition I am sure there are other groups whose dietary requirements I do not know), and in particular, the vegetarianism of Ganesh, and the ad insults every Australia. Particularly the bland, self-assured atheist. This "Diversity" is insulting.

God Ganesh is vegetarian and does not drink alcohol. He is depicted in this advert, along with Buddha in a very rude insensitive way that is most offensive to Hindu's around the world and Australia.

God Ganesh is shown promoting the eating of meat (lamb) and that is really very insensitive to the community.

The Hindu religion doesn't take intake of meat products.

This ad describes Hindu god lord Ganesha supporting Lamb eating.

This is utterly disrespectful to a peaceful religion and the followers of this 3rd largest religion on the planet.

I strongly condemn this advertisement and ask you to banned this pathetic advertisement from all sources.

It features Sri Ganesh, a much beloved and respected diety of the minority Hindu community

in Australia. He is considered as Vegetarian and to imply/suggest that somehow meat is consumed by him is not taking into consideration - despite claiming to have "widely" researched. It is unfortunate that the ad is also it shows Buddha has Asian despite being born an Indian in India. MLA may suggest that ad is humorous but Australian ad agencies seem to be in a knack of picking on Hindu sentiments more often these days. Funnily Islam does not make an appearance in the ad - one can suggest MLA was mindful of not mocking Islam as consumption of Lamb/Goat/Beef is a major part of that society and MLA did not want to affect that perhaps.

Basically, I think MLA is trying to get away with ridiculing a smaller section of the society while being partial towards Abrahamic faiths.

*Disrespecting religion, individual faith or an identity people follow from centuries. This is the advertisement hurting sentiments of billion of people for no reason
No facts, making fun of lord Ganesha, Jesus, Allaha and others and showing lord Ganesha consuming MEAT And WINE is way above the line*

Please take this advertisement off air

They do not hesitate to mock and malign my Hindu faith. I am a vegetarian due to my faith and take offence that Lord Ganesha is depicted as eating meat.

Using hindu God to promote meat and depiction of consuming lamb, when in worship meat is not allowed. Some Hindus eat meat but when worship is done they have to be vegetarian that time.

Using Lord Ganesa, Buddha, and other faiths having alcohol is very offensive and inappropriate to all our community members here in Australia. Such initiatives of destroy the community spirit. This is very cheap way of promoting MLA and creates frustration among Indians.

As a community we take this matter very seriously and condemn to the team whoever responsible for this advertisement and urging them to stop playing this advertisement and remove immediately from all published channels. As a community we want public apology to all Indians especially Hindus.

If there is no further step to remove permanently community will go for further steps to address this matter. We are waiting to hear your reply as a matter of priority to resolve this issue to bring peace within our community.

Lord Ganesha [depicted as "Elephant in room" is Hindu Daity and does not eat meat...Lord Ganesha been served meat and that's deeply offensive to us as family.

We request this advert to be banned immediately and also a public apology to be served hurting sentiments of billions globally.

We accept right of freedom of speech but not at the cost of demoting religion, culture and traditions of Hindu's and spreading misinformation.

THE ADVERTISER'S RESPONSE

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

We refer to your letter dated regarding complaints the Advertising Standards Bureau (ASB) has received in relation to the Meat & Livestock Australia's (MLA) Spring Lamb campaign (television and online).

We have carefully considered the allegations and for the reasons set out below, submit that the complaints should be dismissed.

The Advertisement forms part of MLA's annual "Spring Lamb" campaign. The Advertisement is premised on the tagline "You Never Lamb Alone" and is designed to celebrate Australia's religious and cultural diversity. The Advertisement is an extension of a similar campaign launched by MLA in Spring 2016 in which MLA called on Australians to celebrate lamb by "getting together over the ultimate cross cultural protein" and "the meat that doesn't discriminate".

This year, the Spring Lamb campaign celebrates Australia's religious diversity by depicting a range of divinities, prophets and icons at an Aussie outdoor dinner party. The scene is clearly fictional and comedic and during the Advertisement, the guests are shown poking fun at each other in a light hearted manner at the dinner table.

The dinner is hosted by a young female who, when asked what religion she is, replies that she is "no religion". There is no express or implied connotation during the Advertisement that religion is not accepted or acceptable, or that the dietary requirements or preferences of any particular religion should not be respected - to the contrary, the overriding message of the Advertisement is religious tolerance and inclusiveness.

The CAD reference number for the Advertisement is G57E3FDA. The CAD rating is G.

We note the 30 second TVC was featured on air for one week from Monday 4 September to Sunday 10 September. The content featured in digital channels with the majority of spend in the same week as the TVC.

The complaints

The complaints allege that the Advertisement is offensive to Hindus and Christians, and incorrectly depicts the Hindu religion by suggesting that the Hindu deity, Ganesh, eats meat.

The ASB has identified Section 2.1 as a potentially relevant provision of the AANA Code of Ethics (the Code), which incorporates the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) and the AANA Code for Advertising and Marketing Communications to Children.

The Code

Section 2.1 of the Code states that "Advertising or Marketing Communications shall not portray people 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 or political belief.

Submissions

The complainants appear to allege that the Advertisement discriminates or vilifies people on account of their religious beliefs, in particular those who follow the Hindu faith.

MLA submits that this interpretation is unfounded. In fact, the Advertisement celebrates religious diversity and does not promote any act of discrimination, prejudice or vilification. The Advertisement depicts a clearly fictional and humorous scene which unites various divinities, prophets and icons at a dinner table. The guests at the dinner table are clearly intended to be symbolic of modern day people who follow different faiths such as Christianity, Hinduism, Scientology and "no religion" in the case of the dinner party host.

The Advertisement portrays that, while there are many topics upon which different religions diverge, maybe lamb can bring everyone together.

In creating the Advertisement, MLA undertook appropriate research and consulted with two external experts in the field of multi-faith religious studies from Australian Universities. Feedback from those experts was taken into account at various stages during the creative process and in finalising the Advertisement.

We note some complainants have suggested that the Advertisement is offensive to Hindus because it associates Ganesh (and therefore the Hindu faith) with eating lamb or drinking alcohol.

In this regard:

- our understanding is that the Hindu faith does not forbid meat eating and that, while many Hindus abstain from eating beef (given the sacred nature of the cow to the faith), lamb is not similarly characterised.*
- we acknowledge that many Hindus may nevertheless choose to abstain from eating any form of meat, however our understanding is that it is not a central tenet of the faith (contrasted with, for example, the Muslim faith and alcohol).*
- we note that Ganesh is not shown eating lamb or drinking alcohol at any point in the advertisement.*
- we were informed that the actor who played the role of Ganesh was a practising Hindu man.*

Whilst some members of the Hindu community may have taken offence to the depiction of Ganesh at a table with other gods (including those that are eating meat and drinking alcohol), the underlying message of the Advertisement is that lamb (unlike other meats) is something that can be enjoyed as a matter of choice by people of various religions. We respectfully submit that any offence which has been taken is not the result of any contravention of the Code.

In addition, we note that:

- *some complainants have suggested that the Advertisement is offensive to Christians because it depicts Jesus in a "low/careless manner" and it mocks one of his miracles by portraying Jesus as converting wine into water (referred in the Advertisement as the "reverse miracle"). MLA submits that this is clearly intended to be a humorous tongue in cheek reference to the first miracle attributed to Jesus whereby he turns water into wine. Importantly, the scene does not portray Jesus in a negative light or suggest that any of his "miracles" are trivial.*

- *some complainants have suggested that the statement "shall we address the elephant in the room?" (referring to the elephant headed god, Ganesh) is offensive to Hindus. Again, MLA respectively submits that this is clearly intended to be a humorous reference to Ganesh as well as a tongue in cheek reference to the fact that some topics (including, potentially, religion) are not discussed at dinner parties.*

Importantly, the Code does not prohibit the use of religious concepts in advertising. Rather, it proscribes rules regarding the portrayal of people or material that discriminates or vilifies a person or section of the community on account of religion. This is discussed in further detail below.

Discrimination

MLA submits that the Advertisement clearly does not discriminate against any particular religious group.

There is nothing in the Advertisement that reveals inequity, bigotry, intolerance towards or unfair treatment of any religious group. All of the guests at the table are depicted poking fun at each other in a manner consistent with what a group of friends might do at a social gathering, with no particular person being treated more or less favourably than a person with another religious belief.

In MLA's view, the Advertisement does quite the opposite to discrimination and conveys a message of inclusiveness and acceptance of all religions.

Vilification

In MLA's opinion, the advert does not humiliate, intimidate, incite hatred towards, contempt for or ridicule any particular religious group and therefore does not reach the threshold required for vilification under section 2.1 of the Code.

The friendly, tongue in cheek comment made by the BBQ host that "it's a nightmare catering for you lot with all your dietary requirements" openly acknowledges that different religious groups have different beliefs when it comes to diet.

The Advertisement by no means treats Hindus or any other religious group unfavourably or seeks to ridicule such members of society or any aspect of their faith. We submit that the reasonable viewer (whether religious or not) will not perceive the Advertisement as humiliating or ridiculing any particular religious group, and will appreciate both the contextual humour and the fact that the various gods are symbolic representations of particular religious faiths.

Further, the depiction of both Buddha and Ganesh at the dinner table enjoying a meal with

other "gods" does not, in our view, amount to vilification of people who belong to the Buddhist or Hindu faiths. While some members of those religions choose to follow a vegetarian diet, meat eating is not expressly prohibited by those faiths and many adherents to these faiths may eat meat (including lamb). Most importantly, a scene depicting them sitting together with meat eaters does not, in our view, vilify members of those faiths on account of their religion.

Historically, the ASB has considered advertisements that make light of religious concepts. In those cases, the ASB has considered that "irreverent, light-hearted use of religious concepts is generally not in breach of the Code, even though the Board accepts that some members of the public are likely to be offended by such use".

Unlike other cases in which the ASB has upheld complaints on the basis of religious vilification (e.g. 0126/17, 0359/12), MLA subjects that this Advertisement does not demean or trivialise any important religious events or aspects of the Hindu, Christian or Jewish faiths (or any other faith for that matter).

The Advertisement is clearly fictional and symbolic, with each of the depicted characters representing a specific religion. It depicts the bringing together of various gods and religious icons in an inclusive way with no particular disparagement against (or favour to) one God or icon. In this regard, the Advertisement is analogous to the advertisement considered by the ASB in case 0140/10 which involved a TVC depicting Gods from Mount Olympus celebrating Easter with Ferrero chocolates. While some consumers took offence to the association of Easter with pagan gods, the ASB noted that the advertisement depicted the bringing together of a number of concepts "in such a way that there was no particular disparagement of [any concept]" and that while some people might find the advert offensive, "most people would not consider it inappropriate" in Australia's multicultural and pluralist society.

Having reviewed the ASB's previous determinations and the ASB's March 2009 research report on discrimination and vilification in advertising, it is MLA's view that:

- while some consumers may take offence to the association of their faith with lamb because of their personal interpretation of that faith, there is nothing in the Advertisement that is disparaging or demeaning of any religious group.*
- the threshold for a finding of vilification under section 2.1 of the Code is relatively high. It is not enough that some members of the community may consider aspects of the Advertisement to be contrary to their personal beliefs, offensive or in poor taste.*
- any reasonable viewer would recognise that the Advertisement uses humour to promote a social message of inclusion and does not vilify anyone, including members of the Hindu community.*

For these reasons, the Advertisements should not be considered to portray discrimination or vilification on account of religion or any other social value. We therefore submit that Section 2.1 of the Code has not been breached.

For completeness, we further submit that the Advertisement complies with Section 2 of the Code in its entirety. Below is a short summary of our submissions regarding the remaining provisions of Section 2 of the Code.

Section reference Section extract Why relevant / not relevant to the Spring Lamb campaign

2.2 Advertising or Marketing Communications shall not employ sexual appeal:

(a) where images of Minors, or people who appear to be Minors, are used; or

(b) in a manner which is exploitative and degrading of any individual or group of people. The Advertisement does not employ sexual appeal. There is a subtle implied use of an online dating application by the pagan God Zeus which is not exploitative or degrading of any individual or group of people.

2.3 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised. The Advertisement does not present or portray violence in any way whatsoever.

2.4 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience. The Advertisement does not make any reference to sex, sexuality or nudity. There are very subtle references to online dating applications with appropriate sensitivity.

2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided. The Advertisement does not feature any strong or obscene language, or any other language that is problematic for the purposes of section 2.5.

2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety. The Advertisement does not depict any material that is problematic for the purposes of section 2.6.

2.7 Advertising or Marketing Communications shall be clearly distinguishable as such to the relevant audience. Any reasonable viewer will have no doubt as to the advertising nature of this content (in respect of lamb).

Conclusion

In view of the above, we consider the complaints should not be upheld. MLA continues to take its responsibilities as an advertiser, and compliance with the Code, very seriously.

Thank you for taking the time to consider our response. We look forward to receiving the ASB's determination in this matter.

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 is offensive to all religions, but specifically in its depiction of the Hindu God, Lord Ganesha, at a meal where

lamb is served, and by linking Buddhist gods to the consumption of meat.

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 this two minute internet advertisement features a group of various divinities, prophets and icons seated around a table enjoying a meal together.

The Board noted the AANA Code of Ethics Practice Note which, in relation to Section 2.1, defines:

'Discrimination - 'unfair or less favourable treatment;

Vilification - humiliates, intimidates, incites hatred, contempt or ridicule.'

The Board noted that in order to find a breach of section 2.1 it would need to determine that the advertisement depicted material in a manner that was unfair or less favourable or humiliating or inciting ridicule, because of, in this case, religion.

The Board also noted the Community Perceptions Research (2007 and 2012) which was commissioned to test the Board's alignment with community standards with regards to its determinations against the Code of Ethics (https://adstandards.com.au/sites/default/files/community_perceptions_report_2012.pdf). The Board noted the findings of this research indicated that the community is less conservative than the Board regarding issues relating to Discrimination and this appears to be the case particularly with regards to the use of racial or religious references in a humorous context.

The Board noted the complainants' concerns that the advertisement is offensive to people of all faiths by depicting religious figures in an advertisement.

The Board noted that religious figures, references and music have been used in advertisements previously and that in the Board's view the use of such a figure or reference in conjunction with the sale or promotion of a product is not of itself a breach of Section 2.1 as, in the Board's view, such use is not of itself unfair or inciting ridicule of people of that religion, even though such use may offend some members of the community (0178/14).

The Board noted complainant concerns about the depiction of characters representing gods, religious figures and other well know figures taking part in a communal meal with other Gods, deities, and leaders. The Board noted the advertiser's response that the advertisement celebrates religious diversity and that the dinner guests depicted in the advertisement are intended to be symbolic of modern day people who follow different, or no, faiths.

The Board noted the communal meal setting and agreed that it is an unusual depiction of a range of characters intended to represent deities. In the Board's view this depiction is one that is inclusive and does not, in its depiction, provide any one character with less favourable or

unfair treatment by virtue of being in the group, nor is the depiction of the group done in a manner that subjects any one character to humiliation, intimidation hatred or ridicule by virtue only of being part of the group meal. The Board therefore determined that a depiction of a group of characters representing god and other religious, spiritual and iconic figures eating a meal together is not a breach of Section 2.1 on account of religion.

The Board then considered the way in which the advertisement depicts particular characters.

The Board noted the complainants' concerns that the depiction of the Hindu God, Lord Ganesha, is highly offensive to Hindus because this God would not take part in such a social gathering and as a vegetarian it is inappropriate to suggest that Ganesha would eat lamb.

The Board noted that according to Hindu religion Lord Ganesha is vegetarian (<https://www.boldsky.com/yoga-spirituality/faith-mysticism/2012/lord-ganesha-loves-030888.html>) but considered that in the advertisement we do not see him consume lamb or any other meat. The Board noted the complainants' concerns that by depicting Lord Ganesha at a meal which is celebrating lamb and where the toast is, "the meat we can all eat" the advertisement is disrespectful to Hindus as it trivialises their God's dietary requirements and beliefs.

The Board noted the advertiser's submission that the advertisement depicts a clearly fictional and humorous scene and that the guests at the dinner table are intended to be symbolic of people who follow different faiths or no religion.

A minority of the Board considered that the current advertisement makes a very strong association between a characteristic of an important religious figure and a product, lamb, that is contrary to those beliefs. The minority of the Board noted that it had previously upheld a complaint about a radio advertisement which used music similar to the Muslim call to prayer to promote alcohol (0359/13) where:

"The Board considered that a strong association between a fundamental religious belief and a product that is contrary to that belief is disrespectful and offensive to the Muslim community. The Board agreed that to promote alcohol in connection with a prayer tradition was a depiction of material that vilified a section of the community, on the basis of their religion and that the advertisement did breach Section 2.1 of the Code."

The minority of the Board noted that the hostess acknowledges that catering to the varying dietary requirements of her guests is difficult and considered that her subsequent toast suggesting that lamb is the meat they can all eat suggests that she is either ignoring the dietary requirements of Lord Ganesha, and the Buddhist monk who would also be vegetarian, or that she is dismissing their requirements as of no importance. The minority of the Board considered that the advertisement presents Lord Ganesha as a lamb eater and that this undermines an important characteristic of this God, and that this is therefore less favourable treatment given to the Hindu deity. The minority of the Board considered that this treatment of Lord Ganesh is therefore a depiction of a person in a manner that discriminates against or vilifies him, because of his characteristic of not eating meat and therefore is discriminatory to the Hindu section of the community, on the basis of religion. The minority of the Board considered that the advertisement breaches Section 2.1 of the Code.

Following considerable discussion the majority of the Board considered that the overall tone

of the advertisement is light-hearted and humorous and in their view the intent is to be inclusive in a manner which promotes a harmonious and multi-faith environment.

The Board noted that the 2016 Census reports that Hindu is the tenth most prevalent religion in Australia and that people of Indian descent are also the fifth largest group in Australia. The Board considered that the Indian population and those of Hindu religion are not a disadvantaged or minority population for the consideration of whether or not material is vilifying.

The Board noted that while many Hindus are vegetarian, vegetarianism is not a requirement of this faith. The majority of the Board considered that the depiction of Lord Ganesha is, as the advertiser suggests, simply symbolic of the Hindu faith and his inclusion is part of the message of an inclusive multi-faith meal.

The majority noted that Lord Ganesha is not shown to consume any meat during the advertisement. The majority of the Board also noted that Lord Ganesha does not drink alcohol and considered that the advertiser had taken care to show him toasting with a glass of water. The majority of the Board noted that at the end of the advertisement Lord Ganesha states that they should get together more often and considered that he is depicted as happy and in control of the situation and that whilst he may not be consuming the lamb he is part of the gathering and enjoying the company of those with different beliefs who do eat lamb. The Board noted that Buddha asks if they should “address the elephant in the room” and considered that the manner in which this statement is made is clearly in the context of a joke and in the Board’s view Lord Ganesha answers in an assertive manner suggestive of his complicity in the light-hearted nature of this comment.

The majority of the Board considered that the depiction of Lord Ganesha was overall a positive and depiction and that his inclusion in a scene that might suggest he can eat meat is not less favourable than the manner in which the other religions are also depicted. For example the Board noted that the overall tone is humorous in relation to the depiction of many of the other figures– particularly Jesus, Zeus and L Ron Hubbard. The majority of the Board also considered that the depiction of Lord Ganesha in a meat eating context, when there is no depiction of him eating meat, is not of itself treatment that is likely to incite ridicule or to people of the Hindu faith. In the Board’s view the depiction of Lord Ganesha in the context of this advertisement is not unfair or less favourable due to his religion and is not vilifying of the Hindu faith.

The majority of the Board considered that the depiction of Lord Ganesha was not a depiction that is unfair or less favourable, or that would be humiliating or inciting contempt or ridicule. The majority of the Board considered that the overall context is light hearted.

The majority of the Board acknowledged that some members of the community would find the advertisement to be offensive to Hindus, Buddhists, and those who do not eat lamb for religious or other reasons but considered that the actual content does not discriminate against or vilify a person or section of the community on account of their religion.

The Board also noted complainants’ concerns that the advertisement is offensive other religions in its depiction of the various deities.

The Board considered that the use of Jesus in an advertisement is not of itself a breach of

Section 2.1 (0448/07, 0079/12, 0178/14) and that it has previously considered advertisements which make light of religious concepts. In those other cases the Board has considered that irreverent, light-hearted use of religious concepts is generally not in breach of the Code - even though the Board accepts that some members of the public are likely to be offended by such use – rather the Board has generally found humorous representations of Christian beliefs not to breach Section 2.1 (for example a depiction of a Christ-like figure surfing, 0159/11) unless such depictions are undermining of central tenets of a particular faith.

The Board noted it had previously dismissed an advertisement which featured a character of Jesus apparently performing a miracle by appearing to walk on water (0079/12). In that instance:

“...the Board noted that the Christian faith is well established and accepted in Australian society and that many well-known elements are now used as general references, for example, “walking on water?” to describe the achievements and success of particular people.”

The Board considered that in the current advertisement the depiction of Jesus turning wine in to water and referring to a ‘reverse miracle’ is supportive of the Christian belief that Jesus did perform miracles and in the Board’s view this depiction of a miracle is positive especially in the light of supporting someone who is not drinking alcohol as they are the designated driver. The Board noted that Jesus does appear proud of what he has done and considered that while some people could interpret his behaviour as being a show-off, in the Board’s view Jesus is not depicted in a negative light or in a manner designed to make a person think less of Jesus.

Overall the Board considered that the imagery depicted in the advertisement, including images of Jesus making a joke about God, performing a ‘reverse miracle’ and generally being depicted as the slightly annoying most popular ‘god’, and the association of lamb consumption with Christianity does not denigrate Christianity or Christians and would be seen by most people as a humorous depiction and reference to key Christian figures and a humorous play on well-known biblical stories with no reflection on the beliefs underpinning any of the scenes (0079/12).

The Board noted the reference to Mohammed being unable to attend. The Board considered that whilst the prophet Mohammed is not depicted because it is forbidden in Islam, the advertisement still tries to include Mohammed by making a verbal reference to him. The Board considered that the suggestion that Mohammed is collecting a child/children from day care is not offensive to Muslims and does not discriminate against or vilify followers of Islam.

The Board noted that the hostess of the meal declares herself as having no religion. The Board noted that the hostess does not make any comment about religion or religious beliefs other than stating a statistic that ‘no religion’ is a growing percentage of people in Australia based on census data. The Board considered that having an atheist hosting a party of religious guests is suggestive of inclusion and tolerance rather than having no religion being better or preferable to having religious beliefs. The Board considered that the inclusion of a person of no religion was incorporated in a manner that made no suggestion that this is preferred over religion and in the Board’s view was not disparaging of religion.

The Board noted the toast given in the advertisement, ‘the meat we can all eat’. The Board noted that the hostess says lamb can be eaten, not that it shall or should be eaten and considered that there is no suggestion that everyone should eat lamb or that those who do not

or cannot eat lamb, for whatever reason, should be thought less of. The Board considered that in the context of an advertisement promoting the consumption of lamb, the phrase ‘the meat we can all eat’ is not inappropriate or discriminatory to those who don’t or can’t eat lamb.

The Board determined that the advertisement did not breach Section 2.1 of the Code.

The Board 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 that Aphrodite is the Greek goddess of love and considered that the depiction of her phone receiving numerous messages, and subsequently Zeus asking how to sign up to whatever site she uses, is a playful reference to her status. The Board noted that after being connect to a dating app on his mobile phone by Aphrodite, Zeus receives an image of an eggplant and asks his fellow guests what it means. The Board noted that the eggplant emoji can be used in reference to male genitalia (<http://www.urbandictionary.com/define.php?term=eggplant%20emoji>) and considered that whilst we see some of the guests laugh when Zeus asks what it means, in the Board’s view the lack of context means that this reference is mild and overall there is no undue focus on this particular scene.

The Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience of a G rated advertisement.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

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

INDEPENDENT REVIEWER'S RECOMMENDATION

Ground 2 – Substantial flaw in the Board’s decision

The applicants contend that the following conclusions of the Board demonstrate one or more substantial flaws in the decision that the advertisement is not discriminatory or vilifying of people of the Hindu faith or the Hindu religion:

1. The Board’s finding that vegetarianism is not a central tenet of the Hindu faith was against the weight of the evidence.
2. The majority of the Board found that Lord Ganesha is not shown to consume any meat during the advertisement but that the depiction of him in a meat eating context and toasting, even with water, was an inappropriate association and was vilification.
3. That the Board was clearly in error in its finding that the [use of ‘religious figures’] in conjunction with the ... promotion of a product’ was not of itself unfair or inciting ridicule, that is, vilifying of people of that religion, even though such use may offend some members of the community and the Board was clearly in error in its finding that [t]he advertisement does not, in its depiction, provide any one character with less favourable or unfair treatment

by virtue of being in the group', that is, it is not discriminatory.

4. That the Board was clearly in error in its conclusion that the advertisement is light-hearted and humorous and that the reference to the need for better marketing was not derogatory or vilifying.

5. That the Board was clearly in error in considered that the 'Elephant in the Room' comment was clearly in the context of a joke which Lord Ganesha answers in an assertive manner, suggestive of his complicity in the light-hearted nature of this comment, and that this was not discriminatory or vilifying.

6. That the Board was clearly in error in considering that the depiction of Lord Ganesha with a heavy mocking accent, when the other gods have Australian accents, was not discriminatory.

7. That the Board was clearly in error in its finding that the toast to 'Lamb, the meat we can all eat' was an assertion that was 'light-hearted and humorous and was intended to be inclusive in a harmonious and multi-faith environment was not vilification.

Ground 3 – There is a substantial flaw in the process by which the decision is made
The applicants for review also submit that there is a substantial flaw in the process by which the decision was made in that:

1. The Board's reliance on an internet search on Hinduism and its consideration of reports from two external experts for MLA, is insufficient research.

2. The Board is not qualified to make a decision about the Hindu faith as there is no one of Hindu faith on the Board.

3. That the Board failed to pay due attention to precedent in its consideration of Case 0359/13.

INDEPENDENT REVIEWER'S RECOMMENDATION

I confirm that I have accepted the request for review of the decision of the Advertising Standards Board (ASB), received from the complainants, on 10 October 2017, and 12 October 2017 and 16 October 2017 respectively.

I have now viewed and reviewed the relevant material considered by the Board, together with the additional submissions and information provided to me by the complainant and by the advertiser.

On all the information available I am satisfied that the Board has made a substantial flaw in its determination.

The grounds of review relevant to this request are:

1. Where there was a substantial flaw in the Board's determination (determination clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence).

2. Where there was a substantial flaw in the process by which the determination was made.

A 'substantial flaw' means that the determination was either clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence.

The complainants have cited both grounds in their review applications as resulting in a substantial flaw in the Board's determination.

A 'substantial' flaw is one which is a flaw which is '2. Of ample or considerable amount, quantity, size, etc' (Macquarie Australian Concise Dictionary (5th edn, 2005) 1258), that is, the flaw must be significant.

The relevant term in the AANA Code of Ethics most commonly raised in the complaints is clause 2.1 which provides:

Advertising or Marketing Communications shall not portray people 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 provisions of Section 2 of the Code are subject to Prevailing Community Standards. Prevailing Community Standards are determined primarily by the Board, whose members are representative of the community, on a case by case basis, as part of the complaints process. 'Discrimination' - 'unfair or less favourable treatment'; and 'vilification' - 'humiliates, intimidates, incites hatred, contempt or ridicule'.

The advertisement has two messages:

- the importance of social occasions to foster inclusiveness in Australia, a multi-national, multi-faith country;
- to encourage the consumption of lamb as 'a meat we can all eat'.

A. Substantial flaw in the Board's Determination

1. The Board's finding that vegetarianism is not a central tenet of the Hindu faith was against the weight of the evidence

The Board's finding was that 'while many Hindus are vegetarian, vegetarianism is not a requirement of this faith'.

Submissions variously state that 'not killing for food' is a 'cornerstone of Hinduism'; respect for other forms of life is 'regarded as one of the moral laws of Hinduism'; a 'widely accepted central tenet of Hinduism', 'an ethic for ecology and physical and mental health'; 'definitely promoted throughout Hindu Holy books'; 'is a core requirement of one's religious duties'; that 'vegetarianism [is important] to] Hindu faith'; 'vegetarianism may not be implicit requirement but it is a Karma for which you will bear fruits'.

This evidence indicates no definitive pronouncements can be made about the role of vegetarianism in the Hindu faith. A moral or ethical requirement, or one that is promoted or is important, does not make the requirement imperative; some submissions suggested that non meat-eating was a core belief; others that meat-eating was simply an aspect of 'Karma for which you will bear fruits'; and others frankly acknowledged that some Hindus do eat meat.

Hinduism is a polytheistic religion with several branches. The complexity and variety of its beliefs and practices indicate that prohibition of all meat eating by Hindus is not a requirement of all those who follow the Hindu faith, or that the practice should be followed universally and on all occasions. For some Hindus, vegetarianism is a practice to be attained in accordance with Hindu teaching, but it is not a universal tenet or practice.

As there is no single view about the practice of vegetarianism the Board's finding that vegetarianism was not a central tenet of the Hindu faith was not against the weight of the evidence and contained no substantial flaw.

2. The finding of the majority of the Board that Lord Ganesha was not shown to consume any meat during the advertisement and that the depiction of him in a meat-eating context and toasting even with water was not an inappropriate association, and was not vilification.

The view of many of the complainants was that the inclusion of Lord Ganesha in an occasion involving the eating of meat, possibly including by him, was a depiction which brought ridicule and contempt to him and to Hindus generally.

Comments were:

- ‘Hinduism] doesn’t promote ... consumption of Meat or any other living thing. [I]t’s even worse that Lord Ganesha is passing the Lamb to the other Deities ... for consumption and also a plate of chewed lamb bones is visibly present right in front of him suggesting this is his plate to the viewers. This not only insults the most revered God in Hinduism Lord Ganesha but also shows him promoting consumption of Meat’;
- the depiction of Lord Ganesha ‘promoting lamb eating and alcohol drinking’ and showing ‘a God which doesn’t consume meat or [is] against killing a living thing ... passing a plate full of meat to another person to consume and having a plate full of chewed bones in front of him creating an assumption to viewers that he has consumed meat’;
- the advertisement suggests ‘that Hindu God Lord Ganesh is OK with advocating eating of Lamb & Alcohol ... and this message is used by MLA’s advert to give a ‘soft push to Australian Hindus to eat Lamb ... tantamount to ‘soft religious persecution’;
- ‘this advertisement vilifies Hindus and Hindu faith in its depiction of Ganesha promoting lamb eating and alcohol drinking’; ‘the ... advertisement makes a strong association between Lord Ganesh of Hindu faith and a product – a lamb which is not to be associated as it is contrary to the core beliefs of Hinduism’;
- ‘[The advertisement clearly shows that Lord Ganesha is promoting consumption of lamb and that is what is offensive to us’.

It is unclear from the video whether there is meat on Lord Ganesha’s plate. If there is, whether he has eaten the meat or simply put it aside untouched is also unclear. So although some complainants suggest that there is an implication from the apparent appearance of lamb on a plate in front of him that Lord Ganesha had eaten meat, the evidence for the inference is unclear. The uncertainty means that the Board’s finding cannot be found to be against the weight of the evidence. There is no substantial or significant flaw in the Board’s finding that Lord Ganesha was not shown to consume any meat.

Some complainants also referred to the disrespect in the depiction of Lord Ganesha associated with the consumption of alcohol. Again, the advertisement clearly shows Ganesh’s wine glass is clear suggesting it contains water. Although others are drinking wine, the mere presence of alcohol on a social occasion of a multi-faith group when the representative of that faith is not drinking alcohol is not bringing ridicule or contempt to either Lord Ganesha or the Hindu faith and does not indicate any substantial flaw in the Board’s finding.

Submissions also claimed the advertisement vilified Lord Ganesha and the Hindu faith because of the strong association between eating meat and a characteristic of Lord Ganesha, namely, that he is a vegetarian, a fact the Board acknowledged.

Typical arguments were: ‘Hindus do not consume meat ... during the worship of Ganesh’, nor do they ‘practise associating meat ... to Ganesh as an offering’; in ‘no Hindu temples in Australia [is] Lord Ganesh ... offered meat/lamb as an offering to Lord Ganesh and to the devotees that attend consecration’; ‘no Hindu will offer lamb or meat to Ganesh ... when Ganesh is in the same Temple’; ‘you will not find one place of Hindu worship where you can take meat or alcohol into’; and ‘Hindus do not eat meat on auspicious days (even if they eat it on other days); ‘Hinduism thrives on unity in diversity’ although ‘not at the cost of incorrect associations with sacred religious figures’.

The submissions indicate that not offering meat to Lord Ganesha is a practice associated with religious events, such as worship or offerings to Lord Ganesha, often in a temple. They also suggest that the practice may be confined to days of particular religious significance, rather than throughout the year. In my view there is no suggestion that a similar practice should be observed on a social occasion much less one promoting inclusivity when different dietary

requirements can be expected and a degree of tolerance of those present to the eating practices of others is to be expected.

Consequently there was no substantial flaw in the Board's finding that to include Lord Ganesha in an occasion that was clearly social and involves people of disparate faiths did not bring Lord Ganesha or the Hindu religion into ridicule or contempt or vilify him.

3. That the Board was clearly in error in its findings that 'depicting religious figures in an advertisement' is 'not of itself unfair or inciting ridicule of people of that religion, even though such may offend some members of the community', citing matter 0178/14, and that [t]he advertisement does not, in its depiction, provide any one character with less favourable or unfair treatment by virtue of being in the group', that is, it is neither vilification, nor discriminatory.

Depiction of religious figures

An example of the submissions is: 'if the advertisement symbolizes my faith/religion, then it should be done properly not in a derogatory manner. Humorous scenes could be the intention ... but for me and many others it is not humorous to depict my religion and God in a derogatory manner'.

The submissions do not indicate how the depiction of itself is derogatory (see 1. above), or singles out Lord Ganesha, when a similar complaint could be raised in relation to the depiction of Buddha. This is a social occasion promoting inclusivity when it can be expected that there will be a range of persons or organisations present. The inclusion of representatives of various religious groups evinces an intention to be inclusive, not discriminatory. Nor when the group includes representatives from various religions can this, of itself, bring the religious figures into ridicule or contempt as the reference to precedent indicates. The comedic element diffuses any negative impact. More is needed to show that the mere inclusion of representatives of religion 'humiliates, intimidates, incites hatred, contempt or ridicule' of them. There is no substantial flaw in the Board's reasons on grounds of vilification of Lord Ganesha or the Hindu faith, or of discrimination in relation to this submission.

Discrimination

There were several complaints of discrimination concerning differential treatment of the representative of the Hindu religion as compared with the Muslim representative. Typical comments were: 'When you leave out God or even a Prophet from Muslim faith for reasons it's not permissible in their faith and it will offend people of Islamic faith ... it [is] clearly shown the intent is not inclusive and multi-faith environment. It is more of respecting one faith ... and disrespecting another faith because the advertiser thought it is humorous to depict Hindu God in derogatory way'; 'If it is taken into consideration that Islam forbids depiction of their Prophet, why is it not taken into consideration it is forbidden to depict Hindu God Ganesha (Not Prophet, The God Himself) consuming Meat or Promoting Consumption of Meat'?

The majority of the Board considered that the overall tone of the advertisement was humorous, and the intent was to be inclusive. The Board's finding that the 'depiction [does not] provide any one character with less favourable or unfair treatment by virtue of being in the group'.

Although the tone may have been humorous, as a complainant noted: 'it is not humorous to

depict my religion and God in a derogatory manner. Humour is when everyone enjoys and laughs at any depiction. It is not when some laugh and enjoy at other's expense'. Nonetheless, given that humorous comments were made about several members of the group during the meal, and Mohammed was not a member of the group, the depiction of Lord Ganesha was not less favourable or unfair to him by virtue of being in the group. So there was no substantial flaw in the Board's reasoning on this issue.

Most submissions focused on the Board's finding that depicting Lord Ganesha eating meat was as unacceptable as the circumstances in 0359/13. In 0359/13, the Board upheld a complaint about a radio advertisement using music similar to the Muslim call to prayer to promote alcohol. The two cases are not comparable. The status of the prohibition of alcohol consumption for Muslims is much stronger than that of any precept regarding vegetarianism and non-consumption of meat by Hindus. For Muslims, the Koran forbids the consumption of alcohol. As the submissions indicated there is no equivalent single text for Hinduism, nor does the practice of vegetarianism (see 1. earlier) have the same prohibitive force. Nor is there any indication that the occasion was not generally light-hearted or that the depiction shows some laughing and others not.

In these circumstances, there is no substantial flaw in the findings of the Board that there was neither vilification, nor discrimination in its depiction of a group of religious figures, nor any unfair treatment, humiliation, intimidation, hatred or ridicule of any one character.

4. That the Board was clearly in error in its conclusion that the advertisement is light-hearted and humorous and that the reference to the need for better marketing was not derogatory or vilifying, nor was it discriminatory

Typical comments in submissions were: 'Faith' & 'Religious Beliefs' for Hindus is a 'Serious' matter and the fact that majority of the Board considered the tone of this advertisement to be 'humorous' clearly is an evidence ... that the sensitivities of 'Hindu religious faith & beliefs' has not been understood by majority of the Board'; 'the ad is ridiculing Hindus when the character that plays Ganesha mentions that we required better marketing team as it means people are losing faith in Hinduism. This is offensive beyond any doubt'; 'the fact that no comedic comment was made regarding Mohammed or Islam ... is worthy of highlight and represents less favourable treatment of Hindu deity over Islamic religious figures'.

As to the 'better marketing' comment, factually, the comment did not necessarily imply that Hinduism was losing members. The increase in the number of atheists may be due to a decrease in the percentage of faiths other than Hinduism. As the Board found, there is no necessary ridicule or contempt of Hinduism in that comment, nor was it against the weight of the evidence.

The absence of general humorous comments concerning Mohammed and Muslims as compared with humour directed at Lord Ganesha and Hindus was not unfair or unfavourable. The light-hearted response to the better marketing comment, a typical riposte in a social occasion such as this one, had the effect of defusing any negative or discriminatory impact. Accordingly there is no new evidence, or failure by the Board to give sufficient weight to previous evidence. There was also no discrimination in the Board's treatment of Hindus as compared with Muslims so as to indicate a substantial flaw in the findings of the Board.

5. That the Board was clearly in error in considered that the 'Elephant in the Room' comment is in the context of a joke and Lord Ganesha answers in an assertive manner suggestive of his complicity in the light-hearted nature of this comment and that this is not

discriminatory or vilifying.

The specifics of the complaints were that the advertisement unfairly made fun of Lord Ganesha or the Hindu faith, while no jokes were made of other members of the group. This is an argument that the comment vilified and was discriminatory.

Comments of the complainants included: 'One of the widely accepted central tenets of Hinduism ... is ... propagating inclusiveness but not at the cost of incorrect associations with sacred religious figures'; 'in this case calling the only person who is with an elephant face as the elephant in the room is not a light hearted humour. It's highly offensive and particularly hurtful to the millions of followers of Lord Ganesha'; 'the advertisement has humiliated and ridiculed a sacred religious figure for a significant section of the community'; 'if the tone was NOT a 'derision', then why the Board's response ... that Hindu God Lord Ganesha 'took control of the situation'. There was NO need to take control of the situation if the tone was NOT that of 'mocking', 'derision' or 'ridicule'; 'when the Board thinks that 'elephant in the room' address is just a joke, it actually shows their insensitivity and ignorance towards world's oldest and surviving religion - Hinduism'; 'the character of Ganesha in the guise of light heartedness has ridiculed the Hindus and Hindu faith with dialogue such as "elephant in the room"'.

The Board noted there were humorous depictions of representatives of other faiths.

Examples were Jesus performing a reverse miracle, Moses dividing the peas on the plate, and Aphrodite receiving a host of emails, indicating by her half embarrassed response that these may have contained propositions. The events attached to Jesus, Moses and Aphrodite related to recognisable historical events, religious teaching, or acknowledged association (Aphrodite being the Goddess of Love), were factual and were tongue-in-cheek. They were not unflattering. The Board's view, for example, of Jesus performing a 'reverse miracle', which I accept, was that it would be seen by most people as a humorous depiction.

By contrast, the feature associated with Lord Ganesha was his appearance – the 'elephant' motif – a personal characteristic. The comment is poking fun at the depiction of Lord Ganesha, singling out his appearance. Although the figure representing Lord Ganesha takes control of the situation, as the Board commented, and does not appear to be concerned at the comment, it is clear from the submissions that many Hindus have been affronted.

In addition, as one complainant noted, the comment is taken to mean there is a problem or issue to be tackled. It is not clear why Lord Ganesha or his depiction is a problem or issue, but the imputation is negative and as the AANA Code of Ethics notes:

A negative depiction of a group or people in society [in this case an individual representative of the group] may be found to breach section 2.1 even if humour is used. The depiction will be regarded as negative if a negative impression is created by the imagery and language used in the advertisement.

The Board noted that the 'statement is made...clearly in the context of a joke'. However, even in the context of the remark being made in a social, good-humoured occasion when a degree of tolerance of others' views, appearances and beliefs can be expected, this crossed the line.

Many complainants however considered that the remark was gratuitous, and insensitive to those of the Hindu faith for whom Lord Ganesha is a specially revered god, and for whom his traditional depiction as an elephant, and even the placement of his trunk, has particular meaning and significance.

Complainants considered that for devout Hindus to see the image of a favourite God made the butt of a joke was offensive. As the complaints indicate it was disrespectful for Hindus and those espousing the Hindu faith. To ridicule a leading sacred religious figure was to vilify the deity and the faith he represented. In my view the Board failed to give adequate consideration to the views expressed by complainants and this amounts to a substantial flaw

in the Board's consideration – specifically a substantial flaw by failing to give adequate weight to the personal nature and effect of the comment which ridiculed a revered feature of a prominent deity of the Hindu faith for no apparent purpose.

6. That the Board was clearly in error in considering that the depiction of Lord Ganesha with a heavy mocking accent, when the other gods have Australian accents, is discriminatory.

Typical comments from the complainants were: 'Lord Ganesha was portrayed ... by an Indian Ethnic background person and with a Heavy Mocking Indian accent. This [ridiculed] Indian ethnic background people. ... Why is Lord Ganesha singled out for such portrayal?'; 'it is a clear case of vilification when the God representing [the] only Hindu speaks in[an] accent'; the character of Ganesha in the guise of light heartedness has ridiculed the Hindus and Hindu faith with ... stereotype Indian accent'.

Factually, Lord Ganesha's Indian accent was not the only recognisable accent. The Ron Hubbard character too was portrayed with an accent related to his country of origin, the United States. The remainder of the group appeared to have Australian accents.

The Board noted that the dinner guests are intended to be symbolic of people who follow different, or no, faiths. In those circumstances it is not surprising that someone representing Lord Ganesha was depicted with an Indian accent since the Hindu religion originated on the sub-continent.

The AANA Practice Note states that 'Advertisements can suggest stereotypical aspects of an ethnic group ... with humour provided the overall impression ... is not a negative impression of people of that ethnicity'. Indian accents are commonly encountered by the Australian community either through personal contact or on help-lines, so the use was unremarkable, particularly in the context of this light-hearted meal. Coupled with the dilution of the impact by the humour on the occasion, the findings of the Board that use of the accent was acceptable and not discriminatory contained no substantial flaw.

7. That the Board was clearly in error in its finding that the toast to 'Lamb, the meat we can all eat' was an assertion that was 'light-hearted and humorous and was intended to be inclusive in a harmonious and multi-faith environment' and was not vilification.

The complainants' submissions were that the toast, in which the Ganesh figure joined, was offensive to Hindus because it implied that meat/lamb eating was acceptable to those of the Hindu faith.

To many Hindus who practise vegetarianism the toast contains an incorrect statement. The word 'can' indicates an ability or permission. Hindus who are vegetarians do not accept the statement as correct for them. The Board accepted that Lord Ganesha was a vegetarian. However, in the light of finding at earlier point 1, about vegetarianism not necessarily being a tenet of all those who follow the Hindu faith, the doubts as to whether the Lord Ganesha figure had consumed meat, his taking part in the toast and willingness to meet again with the group, the Board's finding cannot be seen to contain a substantial flaw as being against the weight of the evidence either in relation to Lord Ganesha or Hindus more generally.

B. Substantial flaw in the process

The second reason offered by the Applicant in support of its contention that there was a substantial flaw in the processes of the Board in that:

1. The Board's reliance on an internet search on Hinduism and its consideration of reports from two external experts for MLA was insufficient research.

2. The Board was not qualified to make a decision about the Hindu faith as there was no

one of Hindu faith on the Board.

3. The Board failed to pay due attention to precedent in its consideration of 0359/13.

1. The Board's reliance on an internet search on Hinduism and its consideration of reports from two external experts for MLA is insufficient research

Complainants suggested that the sources consulted did not provide 'credible proof and support material' since researchers should have consulted, for example, 'an appropriate qualified practising Hindu, who is authorised by a representative body of the Australian Hindu community', or a 'Hindu priest or Hindu Temple Board'; or 'a temple or council representing Hindus'; or 'proper Hindu organisations' and that 'article on a website is not a research on Hinduism'.

The role of the Board is to reflect 'prevailing community standards' and the AANA Code of Ethics notes that the Board should take account of research by the Advertising Standards Bureau as well as the Practice Note relating to the Code of Ethics. There is no indication of the type or intensity of research which should be conducted.

Use of the web as a source of information is now ubiquitous and regular researchers are adept at filtering less valuable from more accurate and useful information. In addition, the Board's use of appropriate university researchers ensures that the research is both knowledgeable and independent.

It would also be unnecessarily onerous to require the Board to consult with practising members in areas being researched whenever a complaint is made about an advertisement in that area. Reliance on the web and University researchers was acceptable to inform the Board about the issues being aired in the complaints concerning this advertisement. There was no breach of process in the Board's reliance in this instance and there is no substantial flaw in the research processes adopted by the Board.

2. The Board is not qualified to make a decision about the Hindu faith as there is no one of Hindu faith on the Board.

There is no process breach in not having a member of the Board who practises the Hindu faith. The composition of the Board is broad based and is intended to be representative of the community at large, not just of those members who follow a particular faith. Further the number of members of the Board would become unwieldy if it was to include representatives of all faiths or even all faiths with a sufficient following to be considered a significant religion. There was no substantial error in process as a result of the Board not including a member of the Hindu faith.

2. That the Board failed to pay due attention to precedent in its consideration of 0359/13.

The Board, in its consideration, specifically referred to this precedent as well as others. Precedents cannot be binding since each case turns, to a degree, on its own facts. There needs to be a judgement based on those facts. An indication of principles may be obtained from related precedents but they cannot be determinative in relation to a different case with different facts and depictions. There was no substantial flaw in the Board's consideration that the outcome in matter 0359/13 would not be replicated in matter 0412/17. As mentioned

earlier, non-depiction of Mohammed is a precept in the Koran. There is no similarly authoritative view about vegetarianism and prohibiting meat-eating in the multiple texts concerning the several branches of Hinduism. The Board's view that this meant there was no similarly strong association between a fundamental religious belief and a product that is contrary to that belief in the circumstances relating to the depiction of Lord Ganesha and Hinduism. There was no substantial flaw in the Board's process by virtue of the Board's reference to but not following of the precedent in 0359/13.

THE DETERMINATION ON REVIEW

The Board noted the request for review of its decision and the findings of the Independent Reviewer.

In particular the Board noted the recommendation from the Independent Reviewer in relation to item 5 – the complainant's assertion that 'the Board was clearly in error in [considering] that the 'elephant in the room comment' is in the context of a joke and Lord Ganesha answers in an assertive manner suggestive of his complicity in the light-hearted nature of this comment and that this is not discriminatory or vilifying.'

In regard to Item 5, the Board noted that the Independent Reviewer considered that the Board 'failed to give adequate consideration to the views expressed by complainants and this amounts to a substantial flaw in the Board's consideration – specifically a substantial flaw by failing to give adequate weight to the personal nature and effect of the comment which ridiculed a revered feature of a prominent deity of the Hindu faith for no apparent purpose.'

The Board agreed to reconsider its decision, noting that the only issue under reconsideration is the issue of whether or not the 'Elephant in the room comment' (the Elephant comment) amounts to discrimination or vilification under the Code. The Board noted that the Board's decision in relation to the other issues of concern raised by complainants about the advertisements is not under reconsideration.

The Board considered section 2.1 of the Code:

'Advertising or marketing communications shall not portray people 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 also noted the Code of Ethics Practice Note which provides:

'Discrimination – unfair or less favourable treatment

Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.'

The Board noted the original complaints regarding the Elephant comment including 'the phrase 'elephant in the room' might sound cute and clever, but Lord Ganesha is not just an elephant to Hindus. He is the first deity in all Hindu services, and is considered the remover of obstacles. It is rather insulting for non-Hindus to refer to him as just an elephant in the room. 'The Board also noted comments from people who made submissions to the Independent Review including:

‘while it could look like a joke to those who do not believe in Ganesha, it is not at all a joke to those who believe in it. It needs an understanding developed over generations [sic] to understand the hurt.’

‘This is again a case of humour where one enjoys at the expense of the other. In particular where all the others “The Majority” in the table is enjoying at the hurt and bullying of “The Minority” in the table. This is an example which will be used to mock any Hindus possibly in future if we sit on a dinner table or workplace Christmas parties and will be possibly name called as “Elephant in the room”. As per the human right commission and Anti-Discrimination commission, this clearly is a case of bullying which is illegal in Australia.

‘Elephant in the room is an English-language metaphorical idiom for an obvious problem or risk no one wants to discuss, or a condition of groupthink no one wants to challenge... A person of any color origin calling a person of the same color origin person in the same name of color maybe not considered offensive and light hearted but technically & legally in front of others it is offensive ... but when a different colored person calls another different colored person by his color of skin it’s highly offensive. In this case calling the only person who is with an elephant face as the elephant in the room is not a light hearted humour it’s highly offensive and particularly hurtful to the millions of followers of Lord Ganesha.’

‘Moreover it is highly offensive and forbidden to show Lord Ganesha’s trunk moving around like that of an elephant in a playful way. The Trunk part of Lord Ganesha has a high significance and it is considered good/ bad/ positive / blessing/ bad omen/ etc. to see Lord Ganesha’s Trunk depicted in various positions. Every depiction has its own reverence and significance.’

‘Ever since the advertisement went on air, there was a lot of distress not only for me but for my whole community, there are incidents where Indians are called “Elephant in the Room” by the coworkers or colleagues as humour and it may seem as humour to others but it is definitely not humour for us.’

The Board considered the definition of the Elephant comment. Noting that the Cambridge English Dictionary describes the reference as meaning ‘if you say that there is an elephant in the room, you mean that there is an obvious problem or difficult situation that people do not want to talk about.’ (<https://dictionary.cambridge.org/dictionary/english/an-elephant-in-the-room>).

Similarly the Urban Dictionary defines the phrase as ‘elephant in the room n. A very large issue that everyone is acutely aware of, but nobody wants to talk about. Perhaps a sore spot, perhaps politically incorrect, or perhaps a political hot potato, it's something that no one wants to touch with a ten foot pole.’

(<https://www.urbandictionary.com/define.php?term=elephant%20in%20the%20room>)

The Board agreed that the reference is a tongue in cheek way of referring to an unpleasant or negative issue.

A minority of the Board considered that the Board’s initial decision was appropriate and that the reference in the context of the advertisement is intended as a light-hearted joke to Lord Ganesha and that his reaction – stating that it is not funny, but then clearly enjoying the get together and him being the deity to suggest that they should do it again, indicates that he has taken the reference without offence. The minority considered that in this context the deity is not offended and therefore that the advertisement does not give less favourable treatment to Hindus and does not meet any of the grounds for vilification of Hindus.

The majority of the Board noted that - while a number of the deities have the tenets of their beliefs depicted in a humorous way (Jesus performing the reverse miracle, Aphrodite having many lovers etc) - Lord Ganesha is the only deity singled out for his physical characteristics. The majority of the Board also considered that Lord Ganesha had his physical characteristic singled out in the context of a negative reference 'Elephant in the room'. The majority noted from submissions that Lord Ganesha is a deity that signifies perfection so to criticise his appearance would be likely to be seen as ridiculing the Hindu religion and by extension some followers of that faith. The majority of the Board therefore considered that the Elephant comment amount to a depiction or portrayal of material which discriminated against a person on account of their Hindu religion.

The Board also considered that the advertisement showed more respect to the Islam God Mohammed by not depicting him due, in the Board's view, to greater profile of that religion in Australian society – with more people likely to know that a depiction would be a breach of a fundamental tenet of that religion. The majority of the Board considered therefore that Lord Ganesha, and by extension people of the Hindu faith, were given less favourable treatment than the other deities and that this amounted therefore to a depiction of material that vilifies a section of the community on account of their Hindu religion.

The Board recognised that the advertiser is known for presenting laid back advertisements with edgy Australian humour. However, the Board considered that the advertiser had given inadequate consideration to how seriously some Australians take their religious views – and did not pay due attention to the level of offence about something important to those people.

After taking into account the Independent Reviewer's finding that the Board gave insufficient weight to the views of complainants in regards to the Elephant Comment, the Board determined that the advertisement breached section 2.1 of the Code and upheld complaints.

ADVERTISER'S RESPONSE TO IR DETERMINATION

We acknowledge the outcome of the Independent Review and further decision of the Board. MLA respectfully disagrees with the review and the Board's revised decision, and reiterates that the advertisement was conceived and intended to promote religious inclusiveness in a light hearted and humorous manner. Most critically, it was never the intention of MLA to discriminate against or vilify any religious group. We confirm that the advertisement is no longer being broadcast.