



Case Report

1	Case Number	0429/14
2	Advertiser	Subway Franchisee Advertising Fund
3	Product	Food / Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	22/10/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

- Other Social Values
- 2.6 - Health and Safety Bullying (non violent)

DESCRIPTION OF THE ADVERTISEMENT

The ad centres on a Fitness Instructor and a group of city workers. The fitness Instructor is positioned as a motivational character, and in line with this characteristic, he questions participants on their lunch choices.

The ad opens with the group of men and women standing in the middle of a city square. They are holding their lunches in front of them.

The fitness instructor walks up to a city worker, who is holding a paper box which is synonymous with hot takeaway food, in his hands. The fitness instructor asks him “is your lunch made with slow-cooked, premium shredded beef?” The city worker replies “Sir! No Sir”. The fitness instructor takes the box from the city worker, and throws it over his shoulder, acting as a symbolism for the fact that there are ‘better for you’ alternatives.

The fitness instructor walks up to a woman in gym/work out clothing, holding a plastic container containing pasta and sauce and says “is your sauce bursting with super Smokey BBQ flavour?” The woman replies “Sir, no sir”. The woman hands the plastic container to the fitness instructor, and he throws it over his shoulder.

The fitness instructor walks up to a Tradesman and looks at the lunch he is holding, he asks “Is that low in fat?” and the Tradesman replies “Sir! No Sir”. The Tradesman allows the Fitness Instructor to pick up his lunch and toss it.

The voice over then introduces the Smokey BBQ Shredded Beef sub from Subway® Restaurants. “The New Smokey BBQ Shredded beef sub, available for a short time only”. The Fitness Instructor then speaks direct to the audience “Get into Subway Now People!” while holding the sub up to the camera.

THE COMPLAINT

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

Because he is insulting serving and past members of the military by using it such a lax sense. This is an insult to the men and women who have die for their country. I find it offensive that this man who asks the other people what they are eating just throws their food any which way. It models that littering is ok, which it absolutely is not. To me this ad depicts bullying of the others for not having chosen Subway. The man takes away food that is not Subway. Society is trying to stamp out bullying this type of ad does not help as it shows bullying as acceptable

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 regarding complaints received from members of the public concerning the 'Smokey BBQ Shredded Beef Sub' TVC. The concerns raised by the complainants are that the advertisement:

- *“insults serving and past members of the military by using it such a lax sense”*
- *“...depicts bullying of others for not having chosen Subway...and shows bullying as acceptable”*
- *“...models that littering is OK”*

Thank you for the opportunity to comment. We have considered section 2 of the AANA Advertiser Code of Ethics (the “Code”).

We respectfully deny the complaints pursuant to provision 2.6 (health and safety – bullying (non-violent)) of the Code and assert that the advertisement is not in breach of this provision or any other provision of the Code.

We refer firstly to a complainant’s allegation that this advertisement “insults serving and past members of the military by using it in such a lax sense”.

In the above scenario, the Personal Instructor is positioned as a Fitness trainer. It was not SFAFA’s intention for the characters to resemble members of the Military or Army forces. In the establishing scene, orange cones are placed on the ground, outlining a ‘Bootcamp-like’ location. Instead, inspiration for the wardrobe of the Personal Instructor was taken from <http://commandosteve.com/>. Additionally, there are numerous “Bootcamp” style personal training locations such as <http://bootcamp.com.au/>, <http://www.perthfitnessbootcamps.com/>, and <http://roarfitnessaustralia.com.au/original-bootcamp/who-are-we/> that many non-military fitness enthusiasts enjoy. Personal training represents a healthier lifestyle option in line with the options that Subway® Restaurants encourage and makes available to customers. Our intent was to make this association in a humorous way.

We refer secondly to a complainant's specific allegation that this advertisement "depicts bullying of others for not having chosen Subway...and shows bullying as acceptable".

The advertisement is directed to adults and is not directed to children. The character of the Personal Instructor has been used to convey a motivational figure that the average person would look up to for support and advice to achieve their fitness/healthier eating goals. It can be seen from this spot that the Personal Instructor character is not your average Trainer. He is positioned in a way that pokes light-hearted fun at himself to be humorous. His actions are not intended to be viewed as malicious or intimidating.

In light of this, the interactions between the Personal Instructor and the participants in the line-up are intended as light-hearted humour. Careful consideration was given during production to ensure that the participants were not positioned as scared or intimidated by the dialogue or actions of the Personal Instructor. The Personal Instructor playfully throws conventional unhealthier lunch options away, to motivate the participants to swap these options for the Smokey BBQ Shredded Beef sub. We do not see indications of bullying or discriminatory behaviour being present in the scene.

We refer to the final complainant's allegation that this spot "...models that littering is OK". The scenes of the Personal Instructor disposing of the 'unhealthier' food choices and the reactions of the participants as he does so have been included to add to the element of light-hearted humour within the segment. This is indicated by the way that the food is 'tossed'. The vision has been carefully constructed to ensure that the viewer does not see the food touch the ground.

SFAFA goes to great lengths throughout the production process to ensure the advertisement is not misleading or contains deceptive information or perceptions for consumers. We certainly also do not intentionally set out to contravene prevailing community standards. SFAFA also works to ensure that all claims relating to material characteristics and representations of Subway® products are verified and accurate by working with our suppliers, in line with the Food and Beverage Advertising and Marketing Communications Code.

On the basis of the above, we respectfully submit that the complaints received to date should be dismissed.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainants' concern that the advertisement depicts a man bullying people over their food choices, is disrespectful to members of the military and that it condones littering.

The Board noted that the issue of littering falls outside of the Code and will therefore not be

considered by the Board in their determination.

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

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted the advertisement features a fitness instructor questioning the food choices of a group of people.

The Board noted the complainant's concern that the advertisement is insulting to serving and past members of the military. The Board noted that whilst the fitness instructor is behaving in the manner of a military drill sergeant he is wearing a t-shirt with the Subway logo on it. The Board noted the exaggerated manner of the fitness instructor as well as the reactions of the people he is talking to and considered that most members of the community would interpret his behaviour as a parody of a civilian boot camp trainer or a reference to comedy films which depict drill instructors rather than a serving member of the military. The Board considered that even if you were to interpret the man's behaviour as being suggestive of a member of the military in the Board's view the portrayal of drill sergeant character is clearly exaggerated and over the top and is not demeaning or insulting towards serving or past members of the Defence Force.

The Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of their profession.

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

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

The Board noted the complainants' concerns that the advertisement depicts a man bullying people because they have not chosen to eat at Subway.

The Board noted that bullying is a serious issue in the community and considered that advertisers should take care not to depict situations which could be considered to encourage or condone bullying behaviour. The Board considered in this instance however that the overall tone of the advertisement is farcical and that the main message is about the ingredients of the new smokey BBQ shredded beef sub. The Board noted the fitness instructor smiles at the participants as he questions their food choices and considered that the participants all appear to be willing to be questioned by him. The Board considered that most members of the community would agree that the advertisement does not depict, condone or encourage bullying behaviour.

The Board considered that the advertisement did not depict material contrary to prevailing community standards.

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

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