



Case Report

1	Case Number	0449/15
2	Advertiser	Sportsbet
3	Product	Gaming
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	11/11/2015
6	DETERMINATION	Upheld - Modified or Discontinued
7	IR Recommendation	Reconfirm original decision

ISSUES RAISED

2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

The ad begins with a man is at the races with a sunburnt face. An image of a race track then comes on introducing the Sportset Cox Plate Day special on races 1 - 4, further race track images then appearing with text and voiceover detailing the offer before cutting back to the end screen with is a visual of the man from earlier, still at the race track but without sunburn.

THE COMPLAINT

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

I'm a Melanoma survivor and I find it offensive that this ad make's fun at such at such a severe sunburn.

THE ADVERTISER'S RESPONSE

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

Sportsbet has considered the Complaint and rejects that the Advertisement in any way breaches section 2.6, or any other section of the Code.

The Advertisement is clearly intended to be treated in a light-hearted manner, suggesting that

the main character does not realise that he has been sunburnt, despite this being incredibly obvious to everyone else, including by the accentuated outline of the shape of sunglasses on the main character's face.

The Complaint states that it is offensive that the Advertisement makes fun at such a severe sunburn. The Advertisement does not in any way suggest that this scenario should be transferred into real life or that people should not take sunburn seriously.

Sportsbet believes that the Complaint lacks foundation and 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 complainant’s concern that the advertisement depicts a man with severe sunburn at the horse races and this depiction is offensive and a poor message to be giving regarding sun safety.

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

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 advertisement features a man is at the races with a sunburnt face apart from where his sunglasses have been. The voiceover says: “don’t worry that’s only second degree, spring it on!” The Sportsbet Cox Plate Day specials are shown on screen. The final scene shows the man without sunburn.

The Board noted that it had previously considered a poster advertisement for Airtrain Brisbane (0307/15) that did not include imagery but used the words “Worry about getting a sweet tan, not about getting to the Gold Coast.” The Board noted in this case that:

“...that there is genuine community concern regarding sun exposure and sun smart behaviour and noted that the use of the term “sweet” in this way was suggesting that a tan is a good thing. The Board noted that there is extensive information and reports from the Skin Cancer Foundation available to the community regarding the practice of tanning and the possible outcomes of excessive, unprotected sun exposure particularly for the purpose of tanning.

The Board considered that the advertisement was reinforcing the wrong message in relation to sun safety and tanning and considered that an encouragement to tan and promoting tanning in a positive way “sweet tan” is contrary to prevailing community standards on health and safety.”

The Board noted in the current advertisement the message of the advertisement is not clear and though the promotion of the betting app is evident, the reason behind the use of the

imagery of the sunburnt man is not clear. The Board discussed the possible analogies and concluded that irrespective of the intended humour the depiction of a man with a severely sun burnt face was evidence that he had not taken appropriate action to avoid sunburn.

The Board noted the use of the words “don’t worry that’s only second degree, spring it on!” spoken at the same time the man is seen with his burnt face and agreed that this increases the suggestion that sun protection is not important and overall trivialises the issue of sun safety.

The Board noted that the advertisement then shows the features of the betting app and the particular offer, and lastly shows the man no longer with sun burn. The Board considered that this series of events, did amount to a suggestion that people don’t need to take skin protection seriously and that they should just continue to bet and have fun.

Consistent with the advertisement mentioned above, the Board considered that the current advertisement was reinforcing the wrong message in relation to sun safety and did depict material contrary to Prevailing Community Standards on health and safety, undermining safe sun behaviour and trivialising sunburn.

The Board considered the advertisement did breach Section 2.6 of the Code.

Finding that the advertisement did breach section 2.6 of the Code, the Board upheld the complaint.

INDEPENDENT REVIEWER'S RECOMMENDATION

This is an application by Sportsbet (the advertiser) for review of the decision of the Advertising Standards Board (the Board) dated 11/11/2015, Case Number 0449/15 finding that a TV advertisement was in breach of Section 2.6 of the Advertiser Code of Ethics (the Code).

The advertisement is described in the Case Report as follows:

“The ad begins with a man at the races with a sunburnt face. An image of a race track then comes on introducing the Sportsbet Cox Plate Day special on races 1-4, further race track images then appearing with text and voiceover detailing the offer before cutting back to the end screen with is[sic] a visual of the man from earlier, still at the racetrack but without sunburn.”

The grounds for seeking a review of the decision of the Board are as follows:

1. Where there was a substantial flaw in the Board’s determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence)
2. Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided.

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

The original complaint is summarised in the Case Report as follows:

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

I'm a Melanoma survivor and I find it offensive that this ad makes fun at such at such [sic] a severe sunburn.

The Advertiser's Response

Sportsbet has considered the Complaint and rejects that the Advertisement in any way breaches section 2.6 or any other section of the Code. The Advertisement is clearly intended to be treated in a light-hearted manner, suggesting that the main character does not realise that he has been sunburnt, despite this being incredibly obvious to everyone else, including by the accentuated outline of the shape of sunglasses on the main character's face. The Complaint states that it is offensive that the Advertisement makes fun at such a severe sunburn. The Advertisement does not in any way suggest that this scenario should be transferred into real life or that people should not take sunburn seriously. Sportsbet believes that the Complaint lacks foundation and 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 complainant's concern that the advertisement depicts a man with severe sunburn at the horse races and this depiction is offensive and a poor message to be giving regarding sun safety. The Board viewed the advertisement and noted the advertiser's response.

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 that the advertisement features a man at the races with a sunburnt face apart from the area where his sunglasses have been. The voiceover says: "don't worry that's only second degree, spring it on!" The Sportsbet Cox Plate Day specials are shown on screen. The final scene shows the man without sunburn.

The Board noted that it had previously considered a poster advertisement for Airtrain Brisbane (0307/15) that did not include imagery but used the words "Worry about getting a sweet tan, not about getting to the Gold Coast." The Board noted in this case that: "...that there is genuine community concern regarding sun exposure and sun smart behaviour and noted that the use of the term "sweet" in this way was suggesting that a tan is a good thing. The Board noted that there is extensive information and reports from the Skin Cancer Foundation available to the community regarding the practice of tanning and the possible outcomes of excessive, unprotected sun exposure particularly for the purpose of tanning. The Board considered that the advertisement was reinforcing the wrong message in relation to sun safety and tanning and considered that an encouragement to tan and promoting tanning in a positive way "sweet tan" is contrary to prevailing community standards on health and safety."

The Board noted in the current advertisement the message of the advertisement is not clear and though the promotion of the betting app is evident, the reason behind the use of the imagery of the sunburnt man is not clear. The Board discussed the possible analogies and concluded that irrespective of the intended humour the depiction of a man with a severely sunburnt face was evidence that he had not taken appropriate action to avoid sunburn. The Board noted the use of the words “don’t worry that’s only second degree, spring it on!” spoken at the same time the man is seen with his burnt face and agreed that this increases the suggestion that sun protection is not important and that overall the words trivialise the issue of sun safety. The Board noted that the advertisement then shows the features of the betting app and the particular offer, and lastly shows the man no longer with sun burn.

The Board considered that this series of events, did amount to a suggestion that people don’t need to take skin protection seriously and that they should just continue to bet and have fun. Consistent with the advertisement mentioned above (0307/15), the Board considered that the current advertisement was reinforcing the wrong message in relation to sun safety and did depict material contrary to Prevailing Community Standards on health and safety, undermining safe sun behaviour and trivialising sunburn. The Board considered the advertisement did breach Section 2.6 of the Code. Finding that the advertisement did breach section 2.6 of the Code, the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Subsequent to the Determination the Advertiser advised that the commercial was no longer running and that it would ensure that the advertisement does not appear again.

Review Application

The appellant has requested a review of the Board’s determination, citing as the ground for the review request that there was “a substantial flaw in the Board’s determination insofar as there was a manifest error regarding the interpretation and application of section 2.6 of the Code to the Advertisement. Sportsbet submits that the Advertisement does not ‘depict material contrary to Prevailing Community Standards on health and safety for the following reasons:

1. The Advertisement does not encourage viewers to get sunburnt or to act in a manner that is counter to sun-smart behaviour
 - a. In the Case Report, it states that ‘The Board discussed the possible analogies and concluded that irrespective of the intended humour the depiction of a man with a severely sunburnt face was evidence that he had not taken appropriate action to avoid sunburn’.
 - b. Sportsbet agrees with the Board’s observations, which is in fact, and fundamentally, the message that the Advertisement sends – i.e., the race-goer appears to be oblivious to the fact that he has not taken appropriate action to avoid sunburn and therefore has a severely sunburnt face which looks painful and ridiculous for everyone else to clearly see.
 - c. The reaction that this invokes in a reasonable viewer is that the race-goer will regret his ‘faux pas’ for not being sun-smart, which is emphasised by the comical and embarrassing outline of the sunglasses on the race-goers face.

d. The voiceover further mocks the race-goer by joking that the sunburn is only second degree. A reasonable viewer has an understanding that second degree is obviously a significant health risk, and the statement ‘only second degree’ further resonates with the viewer that the sunburn in this instance is serious, and further portrays the sunburnt race-goer in a negative light.

e. The race-goer is portrayed in a light-hearted manner, in keeping with Sportsbet’s tone for many of its campaigns, including a series of advertisements that demonstrate obvious and comically inappropriate behaviour in a gymnasium. As such, the characters in Sportsbet advertisements are ones that viewers laugh at (and at times empathise with) for their various faux pas, whether it be careless ‘spotting’ in the gym, sniffing a used gym towel or, in this instance, failing to act in a sun-smart manner.

2. The Board placed an improper and over-reliance on the Airtrain advertisement in reaching its determination.

a. The Board cited its previous determination in relation to an Airtrain Brisbane advertisement that promotes the convenience of their transport service from Brisbane Airport to the Gold Coast (the Airtrain advertisement) by using the following words:

‘Worry about getting a sweet tan, not about getting to the Gold Coast’.

b. The Advertisement is in no way similar to the Airtrain Brisbane advertisement. Whereas the Airtrain advertisement promotes the concept of getting a tan, or indeed a ‘sweet tan’, in a positive context which arguably brings into question whether the Airtrain advertisement sends the wrong message in relation to sun-smart behaviour, the Advertisement does the opposite.

c. The Advertisement clearly sends a message to the viewer that the race-goer has not acted in a sun-smart manner and as a result, the race-goer looks plainly ridiculous, which is accentuated by the outline of sunglasses. This is distinct from the look of someone with a ‘sweet tan’, which the Airtrain advertisement is promoting, which is viewed by some in the community as an enviable physical characteristic despite the attendant risks with over-exposure to the sun.

d. The effect of the Advertisement is to send a message to viewers that the race-goer’s sunburn is not in keeping with sun-smart behaviour, and whereas the Airtrain advertisement arguably promotes time in the sun, the Advertisement cannot reasonably be seen as encouraging people to act the same.

In summary, Sportsbet submits that the Advertisement does not in any way encourage viewers to get sunburnt or, as distinct from the Airtrain advertisement, spend time in the sun. In fact, it does the exact opposite by ‘poking fun’ at someone who has clearly not acted in a sun-smart manner, in keeping with Sportsbet’s familiar and irreverent tone.

As such, the Advertisement cannot reasonably be viewed as depicting material contrary to Prevailing Community Standards on health and safety.

Sportsbet requests a review of the Board’s decision on the basis that there was a substantial

flaw in the Board's determination, for one or more of the grounds outlined above.

The original complainant was invited to comment on the review application but no comment was received.

Independent Reviewer's Recommendation

As indicated above, the Applicant has cited ground one, that there was a substantial flaw in the Board's determination, as the ground of its review application. Ground one specifies that 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 Applicant contends that 'there was a manifest error regarding the interpretation and application of section 2.6 of the Code to the Advertisement'. The Applicant then goes on to give its reasons, as set out in detail above in this recommendation, as to why the advertisement does not breach section 2.6 of the Code.

Firstly, the Applicant contends that 'The Advertisement does not encourage viewers to get sunburnt or to act in a manner that is counter to sun-smart behaviour'. It goes on to state that it agrees with the observations of the Board that 'irrespective of intended humour the depiction of a man with a severely sun-burned face was evidence that he had not taken appropriate action to avoid sunburn', stating that the Board's conclusion 'is in fact, and fundamentally, the message that the Advertisement sends – i.e. the race-goer appears to be oblivious to the fact that he has not taken appropriate action to avoid sunburn and therefore has a severely sun-burned face which looks painful and ridiculous for everyone else to clearly see'. The Applicant further comments that the reaction the condition of the race-goer invokes in a reasonable viewer is that he "will regret his 'faux pas' for not being sun-smart, which is emphasised by the comical and embarrassing outline of the sunglasses on the race-goer's face".

Thus far, in its reasons, the Applicant has not adduced any evidence that the Board's determination was substantially flawed, in that the determination was clearly in error having regard to the Code or clearly made against the weight of evidence. The Board was entitled to take the view that irrespective of intended humour the depiction of the severely burned race-goer was evidence that he had not taken appropriate action to avoid sunburn. The use of humour does not preclude an advertisement from being found in breach of the Code. Moreover, the Applicant itself has stated that it agrees with the Board's observations on this point. The contention by the Applicant that a "reasonable viewer's reaction will be that the race-goer will regret his 'faux pas'" is supposition by the Applicant and does not provide any evidence to support the Applicant's claim that the advertisement is not in breach of section 2.6 of the Code.

The Applicant comments further on the voice-over of the advertisement stating that it 'further mocks the race-goer by joking that the sunburn is only second degree'. The applicant states that a reasonable viewer has an understanding that second degree is obviously a serious health risk, and the statement 'only second degree' further resonates with the viewer that the sunburn in this instance is serious, and further portrays the sun-burnt race-goer in a negative light. The Board had noted that the use of the words "don't worry that's only second degree, spring it on" spoken at the same time the man is seen with his burnt face 'increases the suggestion that sun protection is not important and that overall the words trivialise the issue

of sun safety”. The claim by the Applicant that the voice over further mocks the race-goer by joking that the sunburn is only second degree and that this voice over serves to further portray the race-goer in a negative light, does not provide any evidence of a substantial flaw in the Board’s determination on this point. The Board was entitled to take the view that the voice over words in conjunction with the simultaneous vision, ‘increases the suggestion that sun protection is not important and that overall the words trivialise the issue of sun safety’. As noted above, the use of humour or attempted use of humour does not preclude an advertisement from being in breach of the Code.

On the issue of the use of humour, the Applicant further contends that consistent with the tone of many of Sportsbet’s campaigns, the race-goer is portrayed in a light-hearted manner, and refers to a series of advertisements demonstrating obvious and comically inappropriate behaviour in a gymnasium. It contends that as a result of many of its campaigns, ‘the characters in Sportsbet advertisements are ones that viewers laugh at (and at times sympathise with) for their various faux pas, whether it be careless ‘spotting’ in the gym, sniffing a used gym towel or, in this instance, failing to act in a sun-smart manner’. It is not clear what this adds to the Applicant’s claim that the Board’s determination was substantially flawed. The Applicant, in these comments, again agrees with the Board that the race goer has failed ‘to act in a sun-smart manner’. The Board was clearly aware of the attempt to use humour in the advertisement in question and stated this in its determination. Its determination was made irrespective of that element. The fact that Sportsbet may take a certain approach to characters in various campaigns is irrelevant to the determination made by the Board. It must make its determination, as it did, based solely on the advertisement before it.

There is no substantial flaw in the Board’s determination based on the first reason noted by the Applicant in its Review Application.

The second reason offered by the Applicant in support of its contention that there was a substantial flaw in the determination of the Board is that the Board ‘placed an improper and over-reliance on the Airtrain advertisement in reaching its determination’.

Having noted that the Board had cited the Airtrain decision in its present determination the Applicant states that their advertisement ‘is in no way similar to the Airtrain Brisbane advertisement’. The Applicant continues that ‘whereas the Airtrain advertisement promotes the concept of getting a tan, or indeed a ‘sweet tan’, in a positive context which arguably brings into question whether the Airtrain advertisement sends the wrong message in relation to sun-smart behaviour, the Advertisement does the opposite’.

Nowhere in the determination of the Board does it state that the Airtrain (0307/15) advertisement is similar to the Sportsbet advertisement. It is customary for the Board, when making determinations, to refer to prior determinations addressing the same section of the Code and to note the elements of such determinations. There is no need for advertisements to be similar in order for the Board to make such references to determinations relating to the relevant section(s) of the Code. The Board also took the opportunity in referring to the prior determination to note its prior comments regarding general community concern regarding sun exposure and sun smart behaviour. The Board also noted its prior comments regarding information and reports from the Skin Cancer Foundation. When it states in the final paragraph of its determination that “Consistent with the advertisement mentioned above (0307/15), the Board considered that the current advertisement was reinforcing the wrong message in relation to sun safety and did depict material contrary to Prevailing Community

Standards on health and safety, undermining safe sun behaviour and trivialising sunburn”, the consistency the Board is referring to is consistency in its finding that section 2.5 of the Code was breached in both cases by advertisements which reinforced ‘the wrong message in relation to sun safety’ and that both advertisements depicted material (different in each case) which was ‘contrary to prevailing community standards on health and safety’. No improper or over reliance by the Board on the Airtrain decision is evident and the Board was following usual practice in citing a prior case on the same section of the Code.

The Applicant further states that its own advertisement ‘clearly sends a message to the viewer that the race-goer has not acted in a sun-smart manner and as a result, the race-goer looks plainly ridiculous, which is accentuated by the outline of sunglasses’. The Applicant comments that their advertisement is to be distinguished from the Airtrain advertisement which the Applicant says is promoting the look of someone with a ‘sweet tan’, which is viewed in the community as an enviable physical characteristic despite the attendant risks of sun over exposure. As noted above, the Board in the present determination nowhere states that the advertisements are similar and clearly appreciates the differences in the advertisements. The comments by the Applicant on this aspect offer no support for the contention that the Board placed an improper or over-reliance on the Airtrain advertisement in reaching its present determination.

In the same vein, the Applicant comments that the effect of their advertisement is to ‘send a message to viewers that the race-goer’s sunburn is not in keeping with sun-smart behaviour, and [sic] whereas the Airtrain advertisement arguably promotes time in the sun, the Advertisement (Sportsbet) cannot reasonably be seen as encouraging people to act the same’. The Applicant’s interpretation of the message sent to viewers of its own advertisement and by the Airtrain advertisement does not offer any support for the claim that there was improper or over reliance by the Board on the Airtrain advertisement in the present determination. The Board was entitled to come to its own conclusion regarding the effect of the advertisement in question.

There is no substantial flaw in the Board’s determination based on the second reason noted by the Applicant in its Review Application.

As noted above, for ground 1 to be satisfied the determination must be either clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence.

There being no evidence that there was a substantial flaw in the Board’s determination, ground 1 is not satisfied. Moreover, there is no evidence which would suggest that grounds 2 or 3 could be satisfied.

As the grounds for Review have not been satisfied, I recommend that the determination of the Board in case 0449/15 be confirmed.

