



Case Report

1	Case Number	0538/17
2	Advertiser	Bethesda
3	Product	Entertainment
4	Type of Advertisement / media	Transport
5	Date of Determination	06/12/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.3 - Violence Causes alarm and distress
- 2.3 - Violence Causes alarm and distress to Children

DESCRIPTION OF THE ADVERTISEMENT

The image includes a man who is lying back and has his eyes closed. There are hands clutching at him and the text reads "The only way out is in - The Evil Within 2."

THE COMPLAINT

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

This advertisement contains horror-type images that I believe are disturbing and distressing to children and possibly vulnerable adults.

THE ADVERTISER'S RESPONSE

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

*ADVERTISING COMPLAINT REFERENCE 0538/17 – ADVERTISER'S RESPONSE
We refer to your correspondence dated 17 November 2017 in respect of the above complaint regarding the advertisement by Bethesda of the fantasy video game "The Evil Within 2" (Advertisement).*

We respond to the requests for information in your correspondence as follows:

- As requested, please find enclosed with this letter a digital copy of the Advertisement.*
- Our media buying agency is GameChanger Media Buying and Planning Pty Ltd.*
- As an outdoor Advertisement appearing on transport there is no separate script and no CAD reference.*

The complainant alleges that the Advertisement raises issues under section 2.3 of the Australian Association of National Advertisers Code of Ethics (Code), which provides that “Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised”.

For the reasons set out below, Bethesda denies that the Advertisement infringes section 2.3 or any other section of the Code.

The Advertisement

The Advertisement was created to promote the launch of the fantasy video game “The Evil Within 2” (Game).

The Game is a sequel to the 2014 game “The Evil Within”. The premise of the Game is that the man depicted in the Advertisement, “Sebastian”, must step into a parallel fantasy universe to save his daughter, “Lily”. Sebastian must use the substance depicted in the background of the Advertisement, “STEM”, in order to enter into that parallel fantasy universe.

The Game launched worldwide on Friday 13 October 2017.

Background to the media placement of the Advertisement

The Advertisement has been the subject of extensive internal and external approval processes prior to publication. For example, in other media the male depicted in the Advertisement was holding a gun. Following an internal review and discussions with APN Outdoor and the Outdoor Media Association (OMA), Bethesda decided to remove the gun entirely from the imagery in the Advertisement.

The revised version of the Advertisement was then approved by APN Outdoor and the OMA before going to print.

The Advertisement was booked for transport media from 2 October 2017 to 29 October 2017. However, Bethesda understands that the Advertisement currently remains in media on 13 bus panels as a run on ‘bonus’. Bethesda understands that the Advertisement will remain live until a new third party advertising campaign commences on those buses.

Summary of response

Bethesda takes compliance with the Code and the self-regulation of advertising in Australia very seriously. As set out above, we follow internal and external approval processes before any media placement.

We are aware of the sensitivities of depicting violence in advertising and we actively take this into account in an effort to ensure our advertised content is consistent with prevailing community standards. In this instance, the Advertisement contains highly stylised imagery which is in the context of gaming content and a fantasy situation.

We regret if any members of the public were offended by the Advertisement and take this opportunity to assure the Board and the public that this was never our intention. However, Bethesda considers that the Advertisement could not reasonably be considered to be presenting or portraying violence or to be in breach of any other provision of the Code.

Depiction or presentation of violence in the Advertisement

The content of the Advertisement does not depict or present violence. The definition of “violence” is not set out in the Code, meaning that the Advertising Standards Board (Board) will apply the ordinary English meaning of that word and will also consider concerns raised by the complainant as well as other relevant factors in its determinations. “Violence” is defined in the Oxford Dictionary as “behaviour involving physical force that is intended to hurt, damage, or kill someone or something”.

The complainant appears to consider that the Advertisement portrays or depicts violence on the basis that the male depicted in the Advertisement has a bare torso and that the “skin on his torso is lacerated as though it has been attacked with long claws or a scalpel.”

With respect, the complainant has misinterpreted the imagery. The imagery shows a man wearing a collared shirt with a number of human hands on it. Hands are grabbing the shirt and there is a small rip in the shirt. The parts of the hands which do contact the man’s skin (above the shirt collar) do not lacerate or otherwise claw or grip at the skin. In addition, we note that the man’s face does not depict any pain or suffering.

Applying the ordinary meaning of “violence” to this scene, the Advertisement does not present or depict violence as contemplated under section 2.3 of the Code. In particular, we do not think the gripping of the hands or the rip to the man’s shirt is significant enough to be considered “violence”.

In the alternative, if the Board does not agree with the above analysis and determines that the Advertisement does depict some violence, we note that the Practice Note for the Code specifies that “a depiction of violence to promote a violent game may be acceptable provided it is relevant to the product advertised”. While we respectfully do not agree that the Advertisement does depict violence, if the Board disagrees with our view on this, we submit that any depiction of violence is clearly relevant to the game being advertised. The imagery in the Advertisement is a direct reference to the content of the game. The imagery depicts the man, the main character in the Game, being pulled into the water in the background. That water is the fictional substance called “STEM” which features in the Game and which takes the character’s mind into a parallel fantasy world.

In addition, if the Board disagrees with our view and determines that the Advertisement does depict some violence, we take the view that any depiction of violence is highly stylised and mild or suggestive only and should be considered to be acceptable by the Board in the context of the product being advertised. The imagery does not feature any consequences of violence and directly refers to a fantastical scenario which is featured in the game.

Further, the text and associated imagery in the Advertisement makes clear that the Advertisement is for the Game and reinforces that the imagery was presented in the context of a game. For example, it includes a release date “Coming Friday the 13th October” and the words “I can’t wait”, in addition to images of the actual physical games packaging for PC/DVD, PS4 and XBOX One which show that the imagery on the physical games packaging is the same as the imagery in the Advertisement. The classification for the Game is also prominent.

Bethesda considers that the broad majority of people would, when considering the Advertisement as a whole, either not consider it violent at all or understand that the imagery is presented and justifiable in the context of the Game.

Previous determinations

As specified above, we respectfully do not agree that the imagery in the Advertisement depicts violence. However, if the Board was to disagree with that position then we submit that the imagery is acceptable as any violence depicted in the Advertisement is suggestive, highly stylised, very mild, recognised by the audience as relevant to the Game and not too

confronting for the audience. We take into account comments from the Board in previous Determinations for our new campaigns. We refer to some of those previous determinations below for the Board's reference and consideration.

The Board previously dismissed a complaint against an outdoor advertisement by Bethesda for the video game "Wolfenstein" (ref: 0188/14). In that determination the Board also referred to a previous Board determination in respect of Sussex Media (ref: 0483/12). In those determinations, the Board dismissed the complaints because: (i) it found that the majority of the community would not consider the imagery to be powerfully violent; (ii) the imagery was relevant to the game being advertised; and (iii) the text in those advertisements further enforced that the imagery was presented in the context of the game.

In a Board determination which dismissed a complaint in respect of the original Bethesda video game "The Evil Within" (ref: 0452/14), the Board found that an image of a skeletal hand dragging its nails was only suggestive of violence, was relevant to the advertised product, and was not too confronting for a broad audience which would include children. The imagery in the Advertisement is highly stylised and set in a fantasy world. In that regard, in previous Board determination ref:0096/13, the Board dismissed a complaint on similar grounds. The Board considered that the fantasy content and the stylised nature of the advertisement amounted to a depiction of violence which is justifiable in the context of a game.

In relation to the inclusion of the physical game packing in the imagery and the PC/DVD, PS4 and XBOX One branding, we note that in the previous Board determination ref:0248/16, the Board found that an image of a PS4 games console and the PS4 logo and associated graphics and voiceover made it clear to the audience that the material shown in that advertisement was reflective of playing a game.

We note that the Advertisement has been placed on transport and understand that it may be seen by a variety of age groups, including children. Our position is that, when reviewing the Advertisement as a whole, including the text and associated imagery identified above, the majority of the community (including children) would recognise that the Game is being advertised and that the imagery is presented in the context of the Game. In this regard, in addition to the previous Board determinations referred to above, we refer to previous Board determination ref: 0421/12

Other Considerations under the Code

Bethesda notes that in addition to considering specific issues raised by the individual complainant, the ASB will also review the Advertisement in its entirety against the Code. Bethesda is of the view that the Advertisement does not raise any further issues under the Code.

Based on the above, we respectfully submit that the Advertisement falls within acceptable community standards and complies with the Code.

We appreciate the opportunity to respond to the complaint. We sincerely hope that the Board reviews the advertisement positively having regard to the points raised above.

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 depicts material which is

disturbing and distressing to children and vulnerable adults.

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

The Board considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 states: "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The Board noted the advertisement appears on the side a City Council bus and features an image of a man's head and torso with his eyes closed, with other images behind the man of faces and hands that appear to be grabbing at the man's neck and shoulders. The title of the product being advertised is in large font at the top of the advertisement with images of packaged product in a centralized position under the main character.

The Board noted the complainant's concern that the main image of a man being "fondled and clawed at."

The Board noted that the focus of the advertisement and the depiction of the images behind the main character are showing the connection between the characters within the game and the target audience of the product would be familiar with. The Board also considered that the images behind the man are quite hidden on first glance and would be difficult for people not interested in the advertisement to discern.

The Board noted the product being advertised is a fantasy video game "The Evil within 2" and considered that the image being portrayed is clearly represented as being for that product. The Board also considered that the advertisement is very stylized and does not portray violence or in itself is violent.

The Board considered that most members of the community would be able to easily discern that the images displayed are being viewed in the capacity as characters from a video game and, given they are difficult to discern, are not inappropriately graphic or violent.

In the Board's view the advertisement did not present or portray violence that was unjustifiable in the context of the product advertised and did not breach Section 2.3 of the Code.

Finding that the advertisement did not breach the Code on any other grounds the Board dismissed the complaint.