



CASE REPORT

1. Complaint reference number	117/07
2. Advertiser	SEA FM
3. Product	Media
4. Type of advertisement	TV
5. Nature of complaint	Discrimination or vilification Disability – section 2.1
6. Date of determination	Tuesday, 8 May 2007
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features footage from SEA FM studios of a "crazy call" (a joke call to a listener who is unaware of its source) being made by one of the male Morning Crew presenters who has disguised his voice so that the listener does not immediately recognise who is calling. The presenter disguises his voice by adopting a lisp and speaking somewhat slowly. The presenter pretends to be a person answering an ad for a flatmate. The joke is that the person calling still lives at home with his Mum and therefore expects that their new flatmate will cook for them. The listener is made aware that the caller is from SEA FM and responds by laughing.

THE COMPLAINT

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

This advertisement is offensive to my client as they present a male voice-over whom (sic) speaks slowly as if mimicking a person with an impairment. Given that my client suffers from an impairment herself, she feels this advertisement is discriminatory and in breach of section 2 of the AANA Code of Ethics.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

It is assumed that the complainant is alleging that the advertisement discriminates against her or (or people in a group of which she is a member) on "account of disability", although it is not clear what disability is referred to in the complainant's letter. However, no disability is featured or referred to in the advertisement, so it is difficult to identify the substance of the complaint in more detail.

We do not accept that the advertisement for SEA FM (advertisement) discriminated against any person or group on the basis of any of the grounds listed in section 2.1 of the AANA Code of Ethics (AANA Code), including disability. As section 2.1 also refers to vilification, for the record we also do not accept that the advertisement vilified any person or group on the basis of any of the grounds in section 2.1 of the AANA Code.

As the ASB will be aware, there are established legislative frameworks regulating disability discrimination. That legislation (at the Commonwealth, State and Territory level) contains provisions that are drafted in similar terms to the AANA Code. Our submission is that the ASB should apply the AANA Code in a manner that is consistent with those legislative frameworks, otherwise this could cause much confusion.

We cannot see how the advertisement amounts to discrimination. Quite simply, it does not treat

anyone unfairly or badly because of their disability, and does not deny anyone the opportunity to participate freely and fully in our community (in normal day to day activities).

As noted above, the advertisement does not refer to or feature anything about any particular disability. It is difficult to see how the advertisement could be alleged to be discriminatory, let alone be established to be discriminatory. For all these reasons, we reject the complainant's allegation that the advertisement is "discriminatory".

There is nothing in the advertisement that meets the high threshold tests that need to be met in order for speech to amount to vilification. Certainly, there is nothing in the advertisement that "incited hatred, serious contempt or severe ridicule of" disabled people (or people who have any of the other characteristics described in section 2 of the AANA Code of Ethics).

The contents of the advertisement were prepared and broadcast reasonably and in good faith, and were not directed to any person or group of people with any of the characteristics covered by section 2.1 of the AANA Code. There should be no suggestion that the advertisement contained speech that amounted to vilification on any of the grounds under section 2.1 of the AANA Code.

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 material that discriminated against people on account of a disability. The Board viewed the advertisement and considered that, although the male adopted a strange voice with a partial lisp, there was not any identifiable physical or mental disability or impairment being depicted.

The Board acknowledged that the advertisement would be found to be in bad taste by some members of the community but that the advertisement was clearly showing a practical joke being played on a listener. The Board considered that as there was no identifiable disability being depicted there was no identifiable person or group of people that could have been discriminated against. On this basis the Board determined that, although in poor taste, the advertisement depicted a practical joke being played on a listener and did not portray any person in a way that discriminated against a person or section of the community on account of disability.

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