



CASE REPORT

1. Complaint reference number	310/08
2. Advertiser	Jim Beam Brands Aust Pty Ltd
3. Product	Alcohol
4. Type of advertisement	TV
5. Nature of complaint	Discrimination or vilification Gender - section 2.1 Violence Other – section 2.2 Other - Social values Discrimination or vilification Disability – section 2.1
6. Date of determination	Wednesday, 10 September 2008
7. DETERMINATION	Upheld – discontinued or modified

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on a young woman at a bar telling the camera "Yeah, I'm single. I just broke up...well, two years ago... You see, the thing about restraining orders...It's just a piece of paper. Oh, I still see him though, but he doesn't see me" and giggling, adds "I wear disguises when I follow him..."

THE COMPLAINT

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

The Jim Beam Bourbon advert seems to legitimise stalking another person and is a disgrace. I work in the mental health field and from time to time have need to counsel people who are victims of stalking. They are sometimes confused, demoralised and can suffer depression and anxiety symptoms. Naturally, there are many people who also are victims of this crime that do not need mental health help. The perpetrators of stalking may have pervasive psychiatric issues themselves (like a personality disorder perhaps) and the advert seems to be giving them license, rather than what would be proper - an indication that they need help and can be helped. That Prime television accepted this advert suggests an insensitivity on their part to the crime of stalking and to the victims of this crime. I think that on both counts - regarding the perpetrator and the victim, this advert does potential harm.

It demeans and makes a joke of an appallingly serious crime which leads to the misery - with luck - or death of many women, not to mention some men too. Apparently we are supposed to think it is attractive and desirable to be stalked. I am really quite upset by this ad, much as I largely put up with offensive TV advertising, I believe this one is beyond the pale.

I chair the Board of Women's Legal Service Victoria, the only gendered community legal service serving the women of Victoria. We run court duty lawyer services, telephone advice line services, case management, victim response and formulate policy in the areas of relationship breakdown and domestic violence. The great majority of our clients have suffered domestic violence, the largest area of our service provides assistance for women in the Intervention Order Courts and the highest priority in our research and policy areas is in the area of domestic violence. I was offended by the tenor of the advertisement which inferred or directly stated that (a) stalking (as a corollary of domestic violence and an area in which intervention orders and aggravated violence orders are made) was fine as long as it was by a woman (b) that stalking and by inference, domestic violence, was justifiable in certain circumstances (c) that the court's orders in these areas could be ignored and (d) that the whole area of behaviour was a bit of a joke anyway. The Crimes (Family Violence) Act (Vic) determines quite strictly that stalking and domestic violence,

aggression, assault and putting in fear of stalking or domestic violence are crimes. There is really no grey area, this is not funny or something which should be tacitly encouraged or dismissed. When considered in the ongoing line of advertising from Jim Beam (ie the girlfriend, the (disappointing) lesbian etc) it is probably not surprising, but I think with this one they have stepped over the mark and this ad should be withdrawn. There is nothing funny about domestic violence or stalking and enormous amounts of the community budget go into ensuring that men know that this behaviour must stop, that it is a crime and a tragedy and they need help to stop that behaviour. It is unconscionable that we should allow an advertisement that intimates that we are being "PC" in attempting to wipe the behaviour out, but in any event it is OK when committed by a woman.

Domestic violence or violence involving individuals who are/or have been involved in intimate relationships is responsible for the large number of female murders in Australia, sometimes also involving child victims. Stalking has been identified as the precursor to these tragic deaths and as a strategy of domestic violence, is identified as crime. This ad makes light of this dangerous and criminal activity. It dismisses the effects of this crime and devalues the work conducted in our communities to prevent deaths and improve the lives of individuals involved in abusive families.

Anything that trivialises violence (stalking is a criminal act) is not acceptable.

Stalking is a crime in this country. It is a source of terror and distress for those people subjected to such harassment. The advertisement attempts to elicit humour from such aberrant behaviour, it undermines the laws relating to this serious crime and it uses a character who is amused at flouting the law. I am at a loss to understand why Jim Beam would associate its product with criminal behaviour. Are they suggesting that their whiskey turns people into stalkers? Do they think because the victim is a male and the perpetrator is a ditzy woman, the notion of stalking is less threatening?

The woman in the ad uses the term "afterall a DVO is just a piece of paper" "I can see him but he can't see me". This is exactly the type of behaviour that women in domestic violence situations are up against everyday so to make light of it in a market that is targeted towards men is not acceptable. As a previous victim of domestic violence and as someone who has worked as a legal secretary for many years, it is exactly this attitude that is the reason why so many women do not leave an abusive relationship because they are constantly told "its just a piece of paper, it wont stop me" .

THE ADVERTISER'S RESPONSE

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

As some complainants note, this TVC continues a three year old campaign which is familiar as a humorous take on cliché characters and situations. 'The Stalker' parodies the boyfriend / girlfriend scenario in which one or other is reluctant to accept a relationship is over. In this case it is the girlfriend, who talks to camera in the established interview style of the campaign series.

In the research we carried out prior to filming (women age 25 to 35 and men age 18 to 25) our audience quickly related to the boyfriend / girlfriend situation because it is an established cliché and specifically because the script begins with the words "Yes, I'm single" spoken by a young lady alone in a bar.

The TVC is a parody from beginning to end. To help viewers identify this early on, the next phrase is "I just broke up...well, two years ago", which is of course a nonsensical contradiction. As the girl continues she giggles uncomfortably in the style of a 'mad-hatter', reinforcing the silliness of the words. Finally, she whispers to explain how she wears a disguise when she follows him. We chose these words because they are as slapstick as we could find to deliver the punch-line. The audience with which we tested this film found the TVC entertaining because it is silly, and the girl character is clearly farcical.

Although each complaint is different, the objections state this TVC is insensitive to stalking victims, that it legitimises or encourages stalking and that it minimises the impact a restraining order can have.

As described, we took care to establish the scenario as a comedy from the very beginning which

our audience have found funny and inoffensive as a result. Had we found any viewers drawing a link between this TVC and domestic violence we would not have continued. We also consider our view is endorsed by the L rating provided by CAD and approval by pre-vetting against the ABAC code. Whether or not the response we have experienced reflects prevailing community standards is a matter for the ASB, we can only state that we have not encountered adverse response other than the complaints prompting this letter.

The notion that this commercial legitimises or encourages stalking is, we believe, not portrayed in this commercial because of the combination of the girl character's farcical performance and the comedic nature of the script. Similarly, the idea that a restraining order is any less effective in real-life because of the comments our girl makes is not something we expect the community would believe reasonable because, like any comedy sketch, this commercial does not pretend to reflect reality.

THE DETERMINATION

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

The Board considered the application of Sections 2.2 and 2.6 of the Code in regard to the issues of violence and mental health surrounding the theme of stalking used in the advertisement.

The Board noted the advertiser's response that the advertisement was intended to be a parody and farcical. However, the Board did not agree that this was how the issue of stalking was portrayed and considered the intended humour was not effective in this regard. In particular, the Board expressed concern about the trivialising of criminal issues, and considered the reference to disregarding an apprehended violence order ("AVO") potentially encouraged such behaviour. The Board was also concerned about the association drawn between alcohol and domestic violence issues.

The Board then discussed the references to the AVO and stalking in the context of violence under Section 2.2 of the Code. The Board expressed concern about such references to violence, whether they could be regarded as the threat of violence or merely implied violence.

Turning to Section 2.6 of the Code, the Board considered that the advertisement would be distressing to people who have ever been stalked and could impact on their mental health. The Board also considered the dismissive reference to breaking AVOs contravened prevailing community standards on safety.

Finding that the advertisement breached Section 2.6 of the Code, the Board upheld the complaints.

ADVERTISER'S RESPONSE TO DETERMINATION

Comments which the advertiser made in response to the determination regarding this advertisement included the following:

I can confirm that this commercial "The Stalker" was taken off air on 19/9/08.