



CASE REPORT

1. Complaint reference number	354/08
2. Advertiser	Tell The Truth Coalition
3. Product	Community Awareness
4. Type of advertisement	Mail
5. Nature of complaint	Other - Causes alarm and distress
6. Date of determination	Wednesday, 10 September 2008
7. DETERMINATION	Upheld – not discontinued or modified

DESCRIPTION OF THE ADVERTISEMENT

This two-page pamphlet delivered via letterboxes features graphic photographs of abortions described as "forced delivery", "skull punctured" and "brain suctioned."

THE COMPLAINT

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

This is completely inappropriate for children (I have 3 that check the mail), and for women who have had abortions for medical reasons. It is not in an envelope warning of offensive contents.

It is upsetting and damaging to women who have had an abortion, who are currently faced with the decision to have an abortion, who know someone who has had an abortion. It is potentially upsetting and damaging to the anyone in the broader community to have opinions on the matter and to children who viewed this ad because it was not in an envelope. By eluding to a woman and her doctor as violent offenders it completely denigrates a woman's right to make choices about her own body, a woman's right to be self determining and a couples right to make choices about their own future.

The images were graphic and shocking and not something I wanted to see when collecting the mail. I work in a pathology lab and am exposed to miscarried fetuses which is distressing enough, I do not need to see such images when I return from work. I have also had a miscarriage (like so many women have).

The materials have extremely graphic pictorial demonstration of the three steps of abortion. I feel these are far too graphic for general public distribution. The wording following the pictures is also far too detailed for general public distribution given the subject matter. These materials were left in our mail box unsealed and uncovered. Any one of our 4 children could have found these materials, bringing them much undue distress. This is absolutely unacceptable!

I believe this advertisement has the potential to cause significant distress to children who inadvertently pick it up and look at it. In particular, the sketches of fetuses having their skulls punctured and brains suctioned out. The advertisement also uses phrases such as "gruesome procedure" and "killing the infant". It also has the statement that the law will "Allow violent offenders to end the life of an unborn child without murder or manslaughter charges". This is language that, irrespective of the accuracy, can generate fear and distress in children. I do not believe it's appropriate for this material to be easily picked up and read by children, in my case a 10 and a 12 year old.

I find the graphic flyer very disturbing. The pictures and wording used about the abortion process is distressing. I am due to have a baby any day now and found it quite distressing seeing this flyer.

These images are graphic and horrific. I found them very upsetting and am concerned that children in particular, (whom often collect the mail) could be exposed to such images unwillingly.

I find this advertisement highly offensive. It was in my mailbox, and would have been easily accessible to a small child if they were to check the mail. I can only assume that it was delivered to other houses in the area. The pictures are very graphic, portraying detailed diagrams of what they claim to be a 'partial birth abortion.' Polls show that the vast majority of Victorians (over 80% I believe) are in support of women's reproductive rights. In this context, I find something like this advertisement to be outrageous. The language used in the text of the flyer is misleading and highly emotive. It was very distressing to receive this type of advertisement. I had difficulty sleeping that night. I can only imagine the impact it would have on a pregnant woman, or someone who has recently lost a child, or has chosen to have an abortion. Not to mention if a young child were to pick it up from their letterbox.

THE ADVERTISER'S RESPONSE

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

A Bill has been tabled in the Victorian Parliament to decriminalise abortion, following a report by the Victorian Law Reform Commission (VLRC). This Bill will make abortion on demand available up to 24 weeks of pregnancy; after 24 weeks, an abortion can take place if two doctors agree that it is "appropriate" with regard to "the woman's current and future physical, psychological and social circumstances." The Bill therefore legalises abortion up to birth.

The Bill makes no mention of any type of abortion; it does not seek to prohibit any particular abortion technique. The only illegal abortion is one performed by someone who is not a registered medical practitioner.

The Bill is explicit about limiting the rights of doctors to conscientiously object to abortion. Under S. 8 a doctor who has a conscientious objection must refer the woman to another doctor who does not conscientiously object to abortion. Following the VLRC recommendations, the conscientious objection clause does not include administrative staff; its provisions are narrow and only apply to doctors and nurses.

While doctors have only a very narrow legal right to refuse to co-operate in abortions, the same cannot be said for those who would coerce a woman into having an abortion. The VLRC report explicitly stated that there should be no anti-coercion legislation, and the Bill does not contain any. This type of legislation exists in some American states; we can supply ample evidence of coercion if the Board would like to hear it.

The Bill proposes to remove the crime of "child destruction" from the Crimes Act. S.10 of the Bill amends S. 15 of the Crimes Act to include "the destruction [other than by abortion] of the fetus of a pregnant woman" as a "serious assault" against the woman. This means that attacking a pregnant woman and killing her unborn baby would no longer be treated as manslaughter of the infant. The unborn child is treated as part of the woman's body – a legislative triumph for radical feminists. There would then be no legal protection for the unborn child in Victoria. Attacks on pregnant women are reaching serious levels in America; we can supply further data on this topic on request.

Community Standards

We have distributed 130,000 of these pamphlets throughout Victoria. It is likely that they have been seen by about a quarter of a million people, or roughly 6% of the population. There have been just 7 complaints; so the number of households that have complained is less than 0.01% of those that received them. This in itself indicates that the majority of people are generally not concerned about receiving these pamphlets.

We had no trouble finding volunteers to deliver these pamphlets. While some people may express offence at receiving them, there were plenty of people willing to distribute them. This is a polarising issue and people tend to be vehemently opposed to or vehemently in favour of abortion. This makes it difficult to draw conclusions about what is acceptable to the community.

Health and Safety

Children

Six of the seven complainants express the concern that the pamphlet will effect children. In only one of those complaints has a child actually seen the pamphlet. There is no evidence that a large number of children have seen the pamphlet.

There is no scientific study anywhere in the world on the effects of the exposure of aborted baby images to children. Images of aborted babies are widely displayed in the United States by the Center for Bioethical Reform, using a fleet of trucks. There is no information to indicate that this

has had any negative impact on the mental health of children.

Very young children are unable to conceptualise abortion and appear to be unaffected by images of aborted babies. Older children can identify a baby and sense that something is wrong with it. It is up to their parents to guide them using terms that the child will understand. Children may initially feel insecure, knowing that a small baby may be harmed in some way. Parents can allay the fears of their children by telling them that it is unfortunate that the baby died, but that would never happen to one of their own children.

Children can be upset by graphic and horrific images (the images in this pamphlet are not horrific in this sense) in an “R” rated movie. This is because the child feels a natural revulsion to the image, but he is confused because an adult is presenting the image as entertainment. Images of aborted babies, on the other hand, are always presented by adults as representing wrongful behaviour. Children can see for themselves and understand that something is wrong. It is only when a child receives a mixed message – that a horror film is entertaining or that abortion is a human right – that he may become confused.

Images

The back of the pamphlet shows a sequence of medical drawings that depict an abortion by the method known as “partial-birth abortion.” These are simply an artist’s sketch and do not show any blood. There is nothing horrific or gruesome about the pictures themselves.

The images in this particular pamphlet are not horrific or gruesome; they are similar to medical illustrations and they do not show any blood or gore. Medical illustrations are not emotive or sensational; they are clinical and factual.

(See the website of Nucleus Medical Art, and the diagram named “Dilation and Evacuation Abortion (D&E) of a 23 Week Old Fetus - Medical Illustration, Human Anatomy Drawing”; URL: <http://catalog.nucleusinc.com/generateexhibit.php?ID=9663&ExhibitKeywordsRaw=&TL=&A=2>)

The images could be described as graphic, but only in the sense that they are accurate. Graphic means “life-like” or “vivid”. When people object to a “graphic” depiction of abortion, they are really saying that it is too “real”; it is telling them more than they would like to know. Some people may not wish to know what abortion is really like or what it is really about, but this is no reason to censor the message.

On delivering these pamphlets, one of our deliverers overheard a child exclaim, “It’s a baby being born!” This is in fact an accurate statement. In this type of abortion the baby is indeed born – for the purposes of killing it during the birth process. Because the drawings do not show any blood, it is not obvious that the baby is being killed. The medical instruments shown in the diagrams could be interpreted – by someone who does not look closely at the pamphlet – as instruments used in delivery.

Text

No one can say that partial-birth abortion is not a gruesome procedure. In fact, there are only two abortionists in Australia (David Grundmann and Mark Schulberg) who are prepared to do it. The illustrations alone do not convey exactly what happens in this type of abortion – the text is necessary.

The aim of the pamphlet is to educate people about the consequences of the Abortion Bill that is currently before parliament. It is not our intention to upset people, although we realise that some people will be upset. Some people are so sensitive to this issue that they are upset by any discussion of abortion. This is not the reaction from people in general.

Being upset is not the same as suffering from mental health problems.

These complaints are coming from people who are upset themselves; they are then transferring their own feelings onto the general population, claiming that it would effect children, the elderly or families, or pregnant women, etc. There is no scientific basis for assuming that one’s own feelings are shared by everybody else.

Some people become angry when we discuss abortion. This may be because they see abortion in terms of “reproductive health” or “choice” – forgetting about the unborn child. When they are confronted by proof of what abortion does to the unborn, they come face to face with the shortcomings of their own reasoning. They then have two alternatives: factor this new information into their belief system, thereby weakening their support for abortion; or shoot the messenger, thereby retaining their existing beliefs. Many of the complaints against the pamphlet come from people who take the latter course.

A woman who has had an abortion

One of the complainants reveals that she recently had an abortion and that our pamphlet will cause her to have nightmares for a “very, very, very long time.” This is a self assessment and is not supported by any professional opinion. She reveals that she aborted her baby for genetic reasons; the baby had a disability. These disabilities are generally detected at around 18 – 20 weeks. By this time the woman may have felt the baby move inside her, increasing her sense of bonding with it. The fact that she did not abort the baby at an earlier stage indicates that she

wanted this baby. In this case, the woman twice refers to “my baby” indicating that she does not regard it as a lump of tissue or a part of her body. Given these circumstances, it is likely that she will suffer from guilt or regret following the abortion. She even admits that she “had no choice.” Even pro-choice activists admit that a woman who feels deprived of a choice is likely to suffer psychologically after an abortion.

All the indications are that this woman is indeed suffering some degree of mental anguish after her abortion. Any discussion of abortion may exacerbate this. She may be upset by any number of things that remind her of her own unborn child, such as the sight of a pregnant woman, the cry of a newborn baby, or even the sight of small children. It is not our pamphlet that is causing her any mental health problems; it is the abortion itself. The fact that such women exist is all the more reason to do all we can to prevent abortion.

A woman who has lost a newborn child or an infant may be upset by depictions of children like hers in an advertisement. That is no reason to ban the advertisement. Rather, it shows the need for the woman to go through a grieving process, with professional counselling if necessary, to come to terms with her loss.

Truth and Accuracy

While the ASB is not directly concerned with the truth or accuracy of an advertisement, we would like to address this issue, as it has been mentioned by some complainants.

One of the complainants claims, “The language used in the text of the flyer is misleading and highly emotive.” The complainant fails to give a single example. Given the nature of partial-birth abortion, the language is in fact succinct and restrained.

American abortionist Marvin Haskell developed the partial-birth abortion technique (also known as dilation and extraction or D&X). He described the method in the following way:

At this point [after the baby has been entirely delivered except for the head], the right-handed surgeon slides the fingers of the left hand along the back of the fetus and “hooks” the shoulders of the fetus with the index and ring fingers (palm down). Next he slides the tip of the middle finger along the spine towards the skull while applying traction to the shoulders and lower extremities. The middle finger lifts and pushes the anterior cervical lip out of the way.

While maintaining this tension, lifting the cervix and applying traction to the shoulders with the fingers of the left hand, the surgeon takes a pair of blunt curved Metzenbaum scissors in the right hand. He carefully advances the tip, curved down, along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.

Reassessing proper placement of the closed scissors tip and safe elevation of the cervix, the surgeon then forces the scissors into the base of the skull or into the foramen magnum [the large opening in the occipital bone between the cranial cavity and the spinal canal]. Having safely entered the skull, he spreads the scissors to enlarge the opening.

The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents. With the catheter still in place, he applies traction to the fetus, removing it completely from the patient.”

If the Board compares our pamphlet to Haskell’s description, it will see that we have accurately described in layman’s terms the procedure described by the abortionist who invented it.

The Bill before the Victorian parliament does not ban any type of abortion. It is possible to ban this abortion technique; it was banned last year in the United States. The banning of this procedure is a legitimate legislative goal.

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 relation to the portrayal of violence and health and safety.

The Board noted the complainants' concerns that the images and accompanying text in this print advertisement were graphic, horrific and distressing.

The Board firstly considered whether the advertisement presented or portrayed violence under Section 2.2. The Board viewed the advertisement and considered that the images were graphic, although it noted they were in a medical style. The Board considered that, when the images were connected with the words shown, this gave the advertisement a sense of violence that could create an uncomfortable association for readers and had the potential to cause alarm and distress. While the Board considered the images were no more graphic than images used in various public education campaigns on issues such as road safety and drug use, the Board considered that the message in those advertisements was one which most in the community would consider justified the use of highly

graphic material. However, in this case, recognising the diversity of views in the community on the issue presented, the Board considered there would not be a prevailing community view that such graphic material is justifiable in the context of the message presented.

The Board then considered whether the images depicted were in line with prevailing community standards on health and safety under Section 2.6. The Board considered that the content of the advertisement had the potential to affect the mental health of women who have had an abortion or women who are pregnant and not happy with their situation. The images could also impact negatively on the health of women who have experienced a miscarriage. The Board also noted that the advertisement could have the effect of deterring women who may require an abortion service for health reasons, so putting their health at risk. The Board further noted the possibility that the advertisement could be viewed by young people or children capable of putting the images and words together and that this could cause alarm and distress to these viewers.

The Board considered the advertiser's right to free speech and their right to share their views on this issue. However, the Board considered on balance that the images accompanied by the text in this advertisement were contrary to prevailing community standards on health and safety.

Finding that the advertisement breached Sections 2.2 and 2.6 of the Code, the Board upheld the complaint by a clear majority.

ADVERTISER'S RESPONSE TO DETERMINATION

At the time that this case report was published no response had been received from the Advertiser.