



## CASE REPORT

- |                               |   |
|-------------------------------|---|
| 1. Complaint reference number | 392/07  |
| 2. Advertiser                 | Nando's Australia Pty Ltd                       |
| 3. Product                    | Restaurants                                     |
| 4. Type of advertisement      | TV  |
| 5. Nature of complaint        | Portrayal of sex/sexuality/nudity – section 2.3 |
| 6. Date of determination      | Tuesday, 11 December 2007                       |
| 7. DETERMINATION              | Dismissed                                       |

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on film shot by an amateur video cameraman, showing a man in a suit lying unconscious on grass, seemingly overcome by alcohol, with the background noise suggesting he is at a racecourse. A male voiceover announces "Nah, he's gone" as text appears onscreen "Race 8 nap: each-way bet". A man is then seen urinating on a bush immediately outside the gents' toilet block and text reads "Inappropriate behaviour: Good chance." Two couples are then seen in an embrace as a male voice comments "Have a look at that! There you go. Oh yeah" and text reads "Pashing a stranger: outside chance." Text concludes with "Nando's Catering. The favourite. Order now for Spring Racing."

## THE COMPLAINT

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

*When watching this ad I thought it was going to be an ad against drinking at the races because of the bad behaviour that might ensue. But no, it seemed to be celebrating drunken urination in public as acceptable behaviour at the races, drunkenness to the point where you lose control, and sexual intercourse in public at the races while drunk, possibly even rape-followed by a chicken dinner to top off a good day at the races getting drunk, threatening public hygiene by urinating outside the toilets provided, and having sex drunkernly in public, possible against the drunken woman's will. The implication is that this is the way to have a good time. To me it seems to encourage excessive drinking, dependance on alcohol to have a good time, unhygienic practices and an uncaring, brutish attitude to relations between the sexes. Both men and women are shown as drunken, unthinking idiots. It makes the horse races look like a day of drunken debauchery fit for the declining days of the Roman empire. I'm not religious or puritanical but this ad disgusted me, especially in these days when alcohol does so much damage in our society, so many people are addicted to alcohol and there is a rising and damaging rate of binge drinking among teenagers.*

## THE ADVERTISER'S RESPONSE

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

*The advertisement is a tongue-in-check observation of some of the behaviour racegoers have been known to get up to after spending a day at the track. The ad does not suggest that this is acceptable behaviour. The basic premise of the execution is that these actions are a less than ideal way to behave. This is evidenced by the fact that directly after the scene where the man appears to be urinating, a super with the words "inappropriate behaviour" appears.*

*The commercial communicates that no matter what people get up to during Spring Racing*

*festivities, it is Nando's catering that will make the person the "favourite". The message is that one will be a "winner" by ordering a Nando's catering pack, not by behaving like the actors in the ad.*

*In making this suggestion, the advertisement acknowledges that the depicted behaviour is perhaps not the best way to endear oneself to the people you are celebrating with. The message is that bringing Nando's catering to the races is a far better option than indulging in such behaviour.*

*While some of the behaviour displayed is exaggerated, the commercial does not condone it. The scene of the couples 'pashing' is a parody. Their behaviour has been exaggerated, however is clearly consensual among all parties. There is no suggestion whatsoever that either couple is having sex. All parties are fully clothed, and any movement or touch associated with sexual intercourse is absolutely absent. The couples are kissing and passionately embracing – that is all.*

*With regard to encouraging or celebrating excessive alcohol consumption, we deliberately excluded alcohol containers or any other visual reference of alcohol from each scene. None of the actors in the commercial have been directed to perform as though they were drunk. Additionally, excessive alcohol consumption is not a prerequisite to any of the behaviour depicted.*

*The scene of the man urinating near a men's toilet was shot as a simulation only. There was no threat to public hygiene. While the behaviour being mimicked in the urination scene may not be consistent with community standards, the visuals and dialogue associated with this scene clearly communicate that the man's actions are inappropriate. The message in these ads is that this behaviour unacceptable. Similarly, the clear context and message of the public urination simulated in the Nando's commercial is that it is wrong to act this way and the more "favoured" behaviour is to bring Nando's catering to the races.*

*With these ads, we are recognising that the behaviour of some racegoers during the Spring Racing Carnival is less than perfect. The ads exaggerate this behaviour for humorous effect. They certainly are not designed to encourage the behaviour. By showing racegoers looking patently ridiculous, the ads may make people think twice about how they conduct themselves at the races.*

*Nando's adopts a personality in our marketing that positions us as fun, irreverent and cheeky. This helps define our brand in a competitive market. "The Favourite" execution is in keeping with this positioning.*

*Nando's certainly does not wish to encourage excessive drinking, inappropriate actions or threats to public hygiene and general decency. While we are proud of our brand's bold and irreverent personality, we take complaints seriously and we sincerely regret having caused offence.*

## **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 encouraged or condoned excessive alcohol consumption, was inappropriately sexual, possibly suggestive of rape and depicted unhygienic behaviour.

The Board viewed the advertisement and considered that it was an over-the-top and exaggerated parody of a day at the races, depicting extreme behaviour. The Board considered that there was no suggestion of rape or of violence in the advertisement and that there was no breach of section 2.2 of the Code.

The Board noted the depiction of the couple kissing and embracing and considered that this depiction was a stereotypical depiction of a couple 'making out' at the races. As the depiction was exaggerated and there was no direct images of sexual activity other than embracing and kissing, the Board considered that the advertisement did treat sexuality in an appropriate manner and that this did not amount to a breach of section 2.3 of the Code.

The Board noted that there were no depictions of alcohol or direct references to drinking alcohol. The Board considered that the advertisement could be considered suggestive of behaviour that occurs in conjunction with excessive alcohol consumption but that the advertisement did not glamorise that behaviour. The Board also considered that the suggestion of a man urinating was not a depiction of

unhygienic behaviour. The Board considered that the advertisement did not depict material that is contrary to prevailing community standards on health and safety and that it did not contravene section 2.6 of the Code.

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