



## **CASE REPORT**

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|-------------------------------|---|
| 1. Complaint reference number | 463/09  |
| 2. Advertiser                 | Sara Lee Australia (Moccona)                    |
| 3. Product                    | Food & Beverages                                |
| 4. Type of advertisement      | Outdoor   |
| 5. Nature of complaint        | Portrayal of sex/sexuality/nudity – section 2.3 |
| 6. Date of determination      | Wednesday, 14 October 2009                      |
| 7. DETERMINATION              | Dismissed                                       |

## **DESCRIPTION OF THE ADVERTISEMENT**

Silhouette of a woman's back and buttocks adjoining a mountain range.

## **THE COMPLAINT**

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

*Object to using naked women to sell unrelated products. The nudity is subtle, but objectifies the woman. Bus stop is used by schoolchildren.*

*Whilst I am not particularly offended by the ad, it should be placed so blatantly in the open; I'm sure standards require this type of ad to be in select media such as magazines, late night television, etc. The problem with a billboard style of ad like this is that it is presented to a general audience of which many will be children - that is what offends me. The ad is not more than 500 meters from the Children's Hospital at Westmead*

## **THE ADVERTISER'S RESPONSE**

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

*Thank you for the opportunity to provide comment to the Board in this matter.*

*We respectfully submit our firm view that the advertisements comply unequivocally with all provisions of the AANA Code of Ethics ("Code of Ethics") and the AANA Food & Beverages Advertising & Marketing Communications Code ("Food and Beverages Code"). Please see below our further comments in this regard.*

*In respect of the AANA Code of Advertising & Marketing Communications to Children ("Children's Code") we respectfully submit that the advertisements clearly do not fall within the definition of "Advertising or Marketing Communications to Children" nor are the advertisements for "Product" within the meaning of the Children's Code. Neither the 'theme', 'visuals' nor 'language' of the advertisements are directed toward children in any way. Further, the product being advertised is one of adult appeal and clearly not one which is targeted toward and having principal appeal for children.*

*AANA Code of Ethics*

### **Section 2.1**

*In respect of section 2.1 of the Code of Ethics we respectfully submit our firm view that the advertisements in no way discriminate against or vilify women. The advertisements portray a natural silhouette of a female figure against the backdrop*

*of a mountain range. The woman is laying on her side and is not portrayed in any way in a sexual or provocative manner. Special care, including the use of heavy shading, has been taken to ensure the image is sensitive and respectful to both the woman in the advertisements and to the female form in general and to the viewing audience. The advertisements are not a negative portrayal of the woman nor of women generally and neither are they denigrating in any way. We cannot see how it can be said that the representation of the natural female form in this way is discriminatory or vilifying.*

*For the reasons we have set out above we respectfully submit that the community at large would not consider the advertisements discriminatory or vilifying of women and would view the advertisements in the manner we have submitted above. In this regard we further note that the advertisements have been distributed very broadly since 12 April this year in the cities of Sydney, Brisbane, Melbourne, Adelaide and Perth appearing at over 2000 outdoor sites and only 2 complaints have been received by the Board (only 1 in respect of discrimination/vilification of women). Sara Lee's experience with these advertisements has been extremely positive and it has received no complaints about them.*

### **Section 2.3**

*In respect of section 2.3 of the Code of Ethics we respectfully submit our firm view that the advertisements do not depict sex or sexuality. In respect of nudity, if the advertisements were viewed to contain nudity we respectfully submit that they certainly contain the requisite level of 'sensitivity to the relevant audience' that is required by section 2.3 of the Code of Ethics. In this regard we note that special care, including the use of heavy shading, has been taken to ensure that the vast majority of the woman's silhouette is obscured and that the image is portrayed in a sensitive and respectful way. The woman's silhouette is not portrayed in any way in a sexual or provocative manner.*

*For the reasons we have set out above we respectfully submit our firm view that the advertisements comply unequivocally with section 2.3 of the Code of Ethics and the community in general would view the advertisements as containing the requisite and appropriate level of sensitivity to the viewing audience. We respectfully submit it is relevant again here to have regard to the information of distribution, number of complaints and Sara Lee's experience with the advertisements referred to above.*

*Further, we ask the question whether the advertisements, in fact, contain nudity. As a result of the heavy shading that has been used in the advertisements and the care that has been taken with the portrayal of the silhouette it is not possible to see whether or not the relevant parts of the silhouette are covered that if uncovered would constitute nudity. On this basis we would submit that the advertisements do not in fact contain nudity.*

*Finally, we submit that it would be consistent with the Board's previous decisions in respect of sections 2.1 and 2.3 of the Code of Ethics to find that the advertisements comply with these sections.*

### **Remaining Sections of Code of Ethics**

*We respectfully submit that the advertisements comply unequivocally with all remaining sections of the Code of Ethics. In particular:*

- the advertisements do not contain violence;*
- the advertisements do not contain any inappropriate language;*
- the advertisements do not depict material that is contrary to Prevailing Community Standards on health and safety;*
- the advertisements are not for motor vehicles;*
- the advertisements comply with the Food and Beverages Code.*

*We appreciate the opportunity to provide comments to the Board in this matter.*

### **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 objectified women and was

placed within 500 metres of the Children's hospital.

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

The Board considered whether the advertisement was in breach of section 2.3 of the Code. Section 2.3 of the Code states:

*"Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone."*

The Board agreed that the advertisement was discreet and that in fact some people would not realise that it is an image of a woman in first glance. The Board considered that the advertisement was not overly sexualised and therefore, although the advertisement did display some nudity, would likely to not offend most members of the community. The Board determined that the advertisement did not breach section 2.3 of the Code. Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.