



CASE REPORT

1. Complaint reference number	474/09
2. Advertiser	Telstra (cyber bullying)
3. Product	Telecommunications
4. Type of advertisement	TV
5. Nature of complaint	Health and safety – section 2.6
6. Date of determination	Wednesday, 14 October 2009
7. DETERMINATION	Upheld – discontinued or modified

DESCRIPTION OF THE ADVERTISEMENT

This television commercial depicts a young woman playing a practical joke on her boyfriend. Her boyfriend Brad, has applied a facemask, his face covered in green and his hair pulled back in a clip. His girlfriend Emma takes a photo of him and threatens to send the photo to his friends via her mobile phone. The man says not to send the photo but she does so any way. He attempts to 'untag' the photo with his own mobile phone but the mobile service he has does not permit his to do this quickly. He then receives a telephone call from one of his friends (who has just received the picture).

THE COMPLAINT

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

This ad says it's okay to use your phone with the express intention of humiliating and embarrassing someone. From the dialogue, she persuades him to use the facepack with this intention; she ignores his requests to stop. She enjoys his embarrassment when a friend calls, having seen the pictures. This is cyber-bullying, pure and simple, and a massive, insidious cause of distress to many kids. I am appalled that no-one at the ad agency or at Telstra can see that and that they are thus endorsing this behaviour.

This ad is a clear depiction of Cyber bullying. My 9 year old daughter turned to me during the ad, and without hesitation or thought stated "that's Cyber bullying Mum". She does not own a mobile and only uses Hotmail occasionally and was very aware of what was happening. With all the stresses of today's life, people now must be conscious of their actions even in there own home, to ensue that their life is not posted online within seconds against there wishes. The ad is irresponsible and glorifies the speed with which the bullying takes place, before even the bully has time to rethink there actions. Cyber bullying is a real problem for children in this day and age and I believe breaches the Advertising Code for Advertising and Marketing Communications to Children: social values.

It trivializes and uses cyber bullying as a means to sell mobile phones.

We spend hours and hours of time in schools trying to convince students of the damage done by cyber bullying. We have visiting theatre groups come in, we run have discussions, have talks by visiting psychologists etc. This add totally belittle the serious damage caused to teenagers by cyber bullying and is socially unacceptable.

Society is struggling with the increase of cyber bullying and I believe this is exactly what is happening in the ad. I believe this message is indicting that this behaviour is acceptable.

THE ADVERTISER'S RESPONSE

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

included the following:

We regret that the complainant has taken issue with this advertisement. Telstra has taken a strong position against cyber-bullying and is committed to minimizing the risks that our customers face online.

Our commitment includes the appointment of an Officer for Internet Trust and Safety to chair a cross company group with responsibility for delivering a coordinated focus on cyber safety issues including Internet filtering, online child exploitation, cyber bullying, online scams and identity theft.

In June this year we also announced that Telstra's philanthropic fund, the Telstra Foundation, doubled its funding used to keep young people safe from online threats like cyber-bullying when they use the Internet and mobile phones. The Foundation will donate a further \$3 million towards its Spotlight on Cyber Safety program in 2009, bringing to \$6 million the value of Telstra's investment in youth cyber safety over six years.

The advertisement in question plays on the good natured bickering that characterises the onscreen relationship of this particular couple. In no way is it intended to give the impression that posting unwanted pictures on social network sites is acceptable. We depict Brad's discomfort, and the point is made in the ad the quickest way for Emma to do the right thing, to erase the image, is to use Telstra's Next G™ network.

We always welcome feedback on Telstra's advertisements. Overall, we've had a positive reaction to the campaign which uses subtle humor in "slice of life" scenarios that most people can relate to. For these reasons we maintain that the advertisement neither condones nor encourages cyber-bullying, and does not breach the AANA Advertiser Code of Ethics.

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 regarding the display of adults participating in the activity of cyber-bullying and the current concerns regarding problematic social trends which demonstrate abuses of social trust and the posting of unwanted photos and videos on You-tube and other new media.

The Board considered the advertisement within the context of section 2.6 of the Code which requires that advertising or marketing communications shall not depict material contrary to prevailing community standards on health and safety.

The Board noted a range of definitions of cyberbullying and noted as an example (from *Reachout*, at Reachout.com) that:

'Cyberbullying is a form of bullying which is carried out through an internet service such as email, chat room, discussion group, online social networking, instant messaging or web pages. It can also include bullying through mobile phone technologies such as SMS.

Examples of cyberbullying behaviour are:

- teasing and being made fun of
- spreading of rumours online
- sending unwanted messages
- defamation'

The Board considered that the advertisement was intended to be humorous and was one of a series of advertisements depicting the superiority of the woman's mobile phone provider over her partner's. The Board considered however that the experience of 'cyber-bullying' was a real and current concern in Australian society and that messages about bullying should not be diluted or undermined. The Board considered that the man in the advertisement did not appear to be happy about the photo being forwarded to friends and was embarrassed by the event.

The minority of the Board considered that this advertisement depicts an event in a humorous manner, that the man is shown to be no more than mildly annoyed by the behaviour and that it is not a serious depiction of cyber bullying.

However, while the advertisement attempts to make a joke of the situation, the majority of the Board

felt that that depiction of sending a photo of a person to a group of people contrary to that person's express wishes is contrary to prevailing community standards on health safety, particularly standards around bullying. While the depiction in the advertisement involves adults, the Board considered that the advertisement may well send the wrong message to viewers, particularly younger viewers. The Board considered that this advertisement did depict material contrary to prevailing community standards on health and safety and was in breach of section 2.6 of the Code.

Finding that the advertisement was in breach of the Code, the Board upheld the complaint.

ADVERTISERS RESPONSE TO THE DETERMINATION

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

We refer to the case report issued by the Advertising Standards Bureau ("ASB") in relation to a determination made by the Advertising Standard Board ("Board") on 14 October 2009 ("Report"). The Report relates to a particular television commercial advertisement run by Telstra to promote the Next G-TM network, featuring Brad and Emma. Particulars of that advertisement are set out in the Report. The Board determined that the advertisement depicted "cyberbullying" and breached section 2.6 of the Advertiser Code of Ethics ("Code").

As stated in our letter to the ASB on 29 September 2009, Telstra has taken a strong position against cyber bullying, and is and remains of the view that the relevant advertisement does not depict cyber bullying behaviour.

Accordingly, given the Board's decision Telstra intends to seek a review of the Board's decision by the Independent Reviewer. A full statement of Telstra's grounds for seeking the review will be provided to the Independent Reviewer by way of a submission.

We also note that section 2.6 of the Code provides that Advertising or Marketing Communications shall not depict material contrary to "Prevailing Community Standards" on health and safety. "Prevailing Community Standards" are defined in the Code as "the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to Advertising or Marketing Communications." It would also be very helpful if you could provide to us a copy of that research carried out on behalf of the Board. As that research is relevant to our review submission, we would appreciate if it could be provided to us as quickly as possible.

Pending the Independent Reviewer's decision, in the spirit of co-operation with the ASB, Telstra is prepared not to air the advertisement in issue.

INDEPENDENT REVIEWER'S RECOMMENDATION

Following the Board's decision the advertiser requested a review of the Board's determination. The Independent Reviewer accepted the request, considered all information submitted by the advertiser and four original complainants and made the following recommendation:

The ASB, on 14th October 2009, determined that an advertisement on behalf of TELSTRA, the advertiser, breached the provision of S2.6 of the Advertiser Code of Ethics (the Code). The ASB considered that "the depiction of sending a photo of a person to a group of persons contrary to that person's express wishes is contrary to prevailing community standards on health and safety particularly standards around bullying".

The advertiser, in response to this decision, submitted that the advertisement did not, as a matter of fact, depict "cyberbullying" and that the ASB, not having conducted research on the subject was not able to determine "prevailing community standards" in this area.

The request for review from the advertiser annexed substantial material in relation to the issue which had not been available to the ASB to assist them in establishing prevailing community standards. Under 7.2 of the [Procedures Manual] which sets out the grounds of review, if additional relevant evidence which could have a significant bearing on the decision becomes available, this could establish a ground of review. The advertiser explained that it did not make this material available to the ASB earlier because it did not appreciate that it was necessary. The advertiser thought and submitted that the ASB should conduct, in fact was obliged to conduct

research into the matter. This is not the case where there is enough material in the public domain to establish the meaning of community standards regarding "cyberbullying", or what amounts to cyberbullying.

I accepted the review because of the annexed information and not on the basis that the decision was substantially flawed or made against the weight of the evidence available to the ASB. In my view however the ASB should consider this new material and I recommend they review their decision after consideration of it. They should also consider the submissions of the complainants received in the course of the review. The issue of cyberbullying is a serious and current issue and the ASB will need to understand it and apply it in the future when assessing community standards.

DETERMINATION ON REVIEW

The Board accepted the recommendation of the Independent Reviewer and agreed to reconsider its earlier determination. In reconsidering the earlier determination the Board had regard to the additional information provided by Telstra and submissions from four of the original complainants.

The Board noted that the advertiser's additional information provided details of various definitions of cyber bullying. The Board noted that advertisers, when first informed of a complaint about an advertisement, are specifically advised to respond to the complaint and to whether or not the advertisement complies with the requirements of the AANA Code of Ethics. The Board commented that it is imperative that advertisers take this opportunity to provide information and a fulsome response as it is this information that the Board will take into consideration in determining whether or not an advertisement meets the requirements of the Code.

The Board noted that the majority of definitions of bullying in the advertiser's material required three elements to constitute bullying: an imbalance of power, an intention to harm and repetition of the behaviour or act.

The majority of the Board considered that the advertisement depicts the use of new technology to cause embarrassment to another person and that this advertisement normalises such behaviour. The Board noted that there is a power imbalance (made clear in the advertisement) between the technology being used so that one person is unable to prevent the offending behaviour taking place. In addition 'Emma' is depicted taking another photo of her partner towards the end of the advertisement with the inference being that she may make that photo also available to other people. The Board again noted that 'Brad' clearly says 'no' several times to Emma's intention of taking the photo and sending it. The Board considered that Brad does not appear to take the incident as a joke – he does appear somewhat annoyed and compromised.

The Board noted the advertiser's comments that the advertisement:

- depicts good natured bickering between a couple that is a feature of the advertisement series
- in no way intended to give the impression that posting unwanted photos on social network sites is acceptable
- the point is made in the advertisement that the fastest way to fix the problem is for Emma to remove the photograph.

However the Board considered that there is no depiction or suggestion that Emma will remove the photo and in fact the closing parts of the advertisement depict her taking another photo of Ben in the face mask, presumably again to make public. The Board considered that the advertisement could create an impression that it is not unacceptable or at least 'a bit of a joke' to post photos on social network sites without the permission of the subject.

Of consideration for the Board when viewing behaviour in advertisements that may be seen to be dangerous or against community standards on health and safety, is whether or not the advertisement depicts the behaviour in a manner that condones the behaviour or shows it to be 'quirky' but nevertheless unacceptable. The Board considered that in this case, while there is information on how to remedy the problem once the photo has been posted, there is no depiction of the person who posted the photo or anyone else removing the photo. In the Board's view it is possible that younger people would see the advertisement as condoning or at least giving some legitimacy to the behaviour of posting images without consent.

The Board noted that the behaviour depicted in the advertisement may or may not meet technical definitions of bullying or cyberbullying. The Board appreciated the significant work that Telstra had undertaken at the review stage in providing definitions about cyber bullying. The Board considered that the experience of 'cyber-bullying' was a real and current concern in Australian society and that messages about bullying should not be diluted or undermined.

The Board considered that this advertisement does create an impression that the behaviour is acceptable and in that sense it is inconsistent with important social messages directed to reducing bullying. In the Board's view the advertisement does have the potential to dilute or undermine current messages regarding appropriate behaviour about bullying. In the Board's view such scenarios are a depiction of material that is contrary to prevailing community standards on health and safety, specifically community standards around prevention of bullying.

The Board also noted the advertiser's comments that the Board and Bureau should have undertaken its own research into the definitions of cyberbullying. The Board noted that 'prevailing community standards' as used in section 2.6 of the Code means 'the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it see fit, in relation to Advertising or Marketing Communications.'

The Board noted that the function of the Board in relation to section 2.6 is to determine whether the advertisement depicts material that is contrary to prevailing community standards on health and safety. There are often no written 'community standards'. However, the Board is specifically selected to be broadly representative of community members and there is a broad range of experience and understanding on the Board, and in those Board members' networks, that reflects many views of the community. The Board will ask for additional research to be carried out if it considers that there is insufficient information or understanding on the Board and in the information provided by the advertiser, complainant and the Secretariat, for it to make a decision. The Board notes that the definition requires the Board to undertake or ask for research 'as it sees fit'.

After reviewing the original decision in light of the comments of the Independent Reviewer and the additional information provided by the advertiser and complainants, the Board reconfirmed its decision that the advertisement did breach section 2.6 of the Code and upheld complaints. The Board noted Telstra's strong support of internet safety but considered it necessary to uphold the complaints.