



## CASE REPORT

1. Complaint reference number	599/09
2. Advertiser	Nestle (Uncle Toby's)
3. Product	Food & Beverges
4. Type of advertisement	TV
5. Nature of complaint	Discrimination or vilification Race – section 2.1
6. Date of determination	Wednesday, 20 January 2010
7. DETERMINATION	Dismissed

## DESCRIPTION OF THE ADVERTISEMENT

This television commercial commences with a scene in a house with limited light and gloomy music. A man appears, dressed in a dressing-gown approaching the kitchen table where a kipper appears on a plate. The voice over says: "There are many sources of omega 3". The man is depicted sitting at the table by himself. The advertisement cuts to a woman in her apartment cooking spinach and dropping it onto her toast (unenthusiastically) with a snarl. The next scene depicts a mature woman of Japanese origin eating tofu from a bowl. The voice over says, "Then there is another kind of omega 3". A young man is depicted sitting outside at breakfast with the beach in the background. The voice over says: "with Uncle Toby's Omega 3 Lift ... ". The scene cuts to a bowl of cereal and milk. The voice over says: "flaxseeds inside toasted nutty clusters so you can wake up to an omega 3 smile, Uncle Toby's Plus a nutritional plus in every pack."

## THE COMPLAINT

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

*I find it racially offensive, as Japanese and other Asian races eat tofu and fish for breakfast on a regular basis. While it may be unsatisfactory for someone of another culture to eat tofu for breakfast, the fact they have specifically used an Asian lady in this example seems particularly backward, and appears to target and make fun of this cultural difference. Not only that but its just generally offensive toward peoples preferences to breakfast foods. A lot of people have spinach as part of their breakfast.*

## THE ADVERTISER'S RESPONSE

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

*The complaint alleges that the Advertisement breaches section 2.1 of the AANA Advertiser Code of Ethics ( **Ethics Code** ), specifically: discrimination or vilification of race.*

*The complainant alleges that the Advertisement is racially offensive as the Advertisement shows a number of people, one of which is of Asian background, eating foods such as tofu, fish and spinach for breakfast with those people not enjoying those foods for breakfast. The complainant alleges that Japanese and other Asian races eat tofu and fish for breakfast on a regular basis and the fact that the Advertisement contains a person of Asian race is backward and targets and makes fun of this cultural difference.*

*CPA is firmly of the view that the Advertisement is not in breach of the Ethics Code and that it does not discriminate against or vilify a person or section of the community in any way.*

*The Macquarie Dictionary defines discriminates as to make distinction, as in favour of or against*

*a person or thing and vilify as to speak evil of; defame. This Advertisement doesn't do either of these things.*

*What the Advertisement does do is highlight different sources of Omega 3 consumed by people in other countries (namely the United Kingdom, North America and China). It then goes on to highlight our cereal product, emphasising a view that our product tastes better than the other breakfast choices, and enticing consumers to try the product.*

*Taste is one of the most important needs at breakfast time for Australian consumers. Australians understand that Omega 3 is important in their diets but perceptions of Omega 3 are that most foods associated with Omega 3, such as fish and tofu, do not taste great as a breakfast choice.*

*A degree of humour and exaggeration, consistent with other Plus advertising campaigns, is used to convey the taste reaction that is very obvious from the Advertisement. Consumers know that taste is a very subjective matter in any event.*

*None of this defames or draws favourable or unfavourable distinctions about a person or section of the community. In fact, various different breakfast choices are illustrated in the same manner to support the marketing message of the Advertisement.*

*CPA has also considered the AANA Code for Advertising and Marketing Communications to Children and the AANA Food and Beverages Marketing and Communications Code and is confident that the Advertisement raises no issues under these codes.*

## **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 concerns of the complainants and reviewed the advertisement under Section 2.1 of the Code which deals with discrimination and gender.

The Board viewed the television advertisement which features an older man sitting down to eat a kipper and a mature woman of Asian descent eating tofu.

The Board considered that although the advertisement was implying that some of the traditional foods, (kippers, spinach and tofu) which are rich in Omega 3 are not appealing to everyone, that the advertisement was not portraying the characters in a negative manner.

The Board considered that most members of the community would appreciate the humour within the advertisement and they would consider the light and humorous depictions to not constitute vilification or be demeaning to the characters ethnicity or choice of cuisine.

The Board further considered that images contained in the commercial were not contrary to current social values and therefore the advertisement did not breach Section 2.1 of the Code.

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