



CASE REPORT

- | | |
|-------------------------------|---|
| 1. Complaint reference number | 87/10 |
| 2. Advertiser | Pepsico Australia - Pepsico Max |
| 3. Product | Food & Beverages |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | Discrimination or vilification Gender - section 2.1
Portrayal of sex/sexuality/nudity – section 2.3
Other - Social values |
| 6. Date of determination | Wednesday, 10 March 2010 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

In “Asteroid”, the commercial opens in a crowded bar, where we see a young man asking the young lady sitting next to him whether he could buy her another drink. The young lady turns him down.

Meanwhile, a news report is airing on the TV screen in the bar featuring a story about an asteroid due to shortly hit earth. The bar tender yells out “We’re all going to die” and dozens of bar patrons run toward and out the door.

However, only two people have individually chosen to remain in the bar - the young man and the young lady, each remaining seated, watching the news report. It is at this time the young woman gives the young man a more interested look.

The news reporter says “show someone you love them, don’t be alone”. The young lady gets up from her seat and kisses the young man in the bar with such fervour the pair falls down. There is a cut to a kitchen, where we see the young man join the “news reporter” and another guy in a make shift studio, which we note must be fake. The young man thanks his friends and tells them he loves them. The three guys drink from cans of Pepsi Max and then do a little dance.

THE COMPLAINT

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

I think that tricking a person into sex IS NOT OK in any way and is definitely NOT FUNNY. I question if anyone would like to find out a group of people had built a whole lie to trick them into saying yes to sex when initially they had said no. I think celebrating this lie, whether it is with Pepsi Max or alcohol, is morally and ethically offensive. What if this was your daughter, sister, friend, niece, neighbour or mother? Is it Ok for Pepsi to tell everyone that creating a lie to cheat a sexual act out of another person is fun and cool? The Canadian law system is working through a case where a man's twin brother had sex with a woman, who thought is was not the twin but the man she was in a relationship with. She was so distraught after when she turned the light on and realised her mistake that she 'cried on a bench for hours' and went to police. I see some similarities in the ad and this potential case of rape. Surely Pepsi could use something other than a group of sleazy men to push their product (that I used to drink). I think this ad should be off the air now.

The ad says its OK for several men to trick a woman just met in a bar into having (presumably)sex then congratulating each other.

There is an underlying assumption in this ad that the couple left in the bar have sex because it is

their "last moment on earth". Later it is revealed that it is all a hoax. It is illegal in all States of Australia for a person to trick another person into having sex. This ad subtly condones tricking a woman into having sex. This would be considered a rape at Court as she would not have consented if she had not been tricked. The ad's message is not one that should be condoned in Australia.

This to myself and my wife who saw the ad immediately likened this to rape due to the lady having sex with a man simply because she thought she and 'the world' were about to die in a disaster. We think this goes against common sense for advertising and we are usually people who are not considered as 'PC - Politically Correct', yet this ad degrades the woman as a 'sucker' worth telling lies simply to get her into submitting her body to him because she thought she was dying. Also that his friends were 'patting him on the back' for doing this and actually being the ones to film the fake newsflash as a means to show the deception (of the fake newsflash)

It basically says rape is ok, because his friends were 'in on it' and making them all happy and cheery for it.

THE ADVERTISER'S RESPONSE

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

Thank you for your email of 23 February 2010 advising PepsiCo Australia Holdings of the complaint 87/10 received by the Advertising Standards Bureau with respect to the Pepsi Max commercial entitled "Asteroid".

Globally-created and launched in Australia on 14 February 2010 to support Pepsi Max, the PG rated 30-second and 45-second "Asteroid" commercial is part of the "Max It" campaign alongside the "Interview" commercial which been running since 8 February 2009 when the "Max It" campaign first launched. The campaign also includes outdoor creative. The "Max It" campaign is designed to appeal to the Pepsi Max target market of 20 to 30 year old males, and resonate with the product's almost 50% of consumers who are female. The outdoor executions are used to explicitly support the Pepsi Max no sugar premise, while the TV ads support the idea that the taste offering does not mean a consumer has to compromise (taste) for a no sugar product.

The two TV commercials in the 2010 campaign are vignettes featuring three mates who go out of their way to maximise their life and support each other using methods usually reserved for scenarios in movies or TV programs, but not realistic in day-to-day life.

Each of the vignettes demonstrates the "Max It" tag line by showing an every day occurrence and turning it into a movie or story-like heightened version of that experience, in support of the more than decade-long brand premise of living life to the max.

Both "Interview" and "Asteroid" use the cinematic technique of suspension of disbelief by playing out the "unrealistic" action before revealing it as a collaboration of the three mates. "Interview" is based around one of the three mates being selected for a job and "Asteroid" is based around one of the mates sparking the interest of a woman.

... At no time does the commercial suggest the young man and woman have had sex, or that the man has raped the young woman, who appears as an instigator in the kiss shown on screen.

The scene does not depict discrimination against or vilification of the young woman on account of her gender, nor does it portray or imply sex or nudity. The woman was in control of her actions, from turning down the initial drink offer, to remaining in the bar, to taking the initiative in kissing the guy. Neither the young woman nor the other bar patrons are ridiculed in any way for believing the fake news report.

The situation in the TV commercial where a group of friends of a single gender get together to spark the interest of a member of the opposite sex could equally be applied to both males and females and can be seen and read commonly within popular media without notions of vilification, discrimination or wrong-doing involved.

In the "Asteroid" commercial, the situation uses irreverent humour in the context of a decade-long history of Pepsi Max advertising featuring humorous, hyper real or fantasy situations, none of which consumers have ever meant to consider 'real'.

The “Asteroid” commercial has received positive feedback from consumers online on PepsiAustralia’s Facebook page uploaded to Facebook on 12 February 2010, 6,128 people have viewed the 30-second spot, with 240 saying they “like” the ad – with an even proportion of males and females. Comments made on the website indicate both males and females see and understand the humour portrayed. Effective 1 March 2010, there have not been any other complaints or negative responses to the commercial.

“Asteroid” and “Interview” run in a rotation during this burst of advertising and the core programming of the media buy reflects the desire to ensure the TVC is viewed by the target audience using Foxtel, Ten, Seven and Nine Network and Go including properties such as HeyHey, The Footy Show, Nip Tuck, Top Gear, Underbelly and South Park.

..The outdoor campaign includes Street Furniture, bus and tram, posters and retail scrolling posters.

Pepsi does not seek to promote concepts, imagery or behaviour that could offend or distress consumers or in any way be viewed to discriminate or vilify a person or section of the community. Pepsi seeks to ensure its marketing and business activities reflect prevailing community standards.

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 depicts and condones rape or tricking a woman into having sex.

The Board viewed the advertisement. The Board considered that, although there is a suggestion that there is sexual activity between the woman and the man, that this is not explicit and it is likely that many people would not take the advertisement to that extent. The Board considered that the advertisement is clearly positioned as a humorous way of a group of young men to 'trick' a woman into liking one of them. The Board noted that the woman is depicted in the advertisement as making the move to kiss the man once the others have left the bar and that she is not depicted as an unwilling participant. The Board noted that the woman is being 'tricked' into thinking that there is a catastrophic event occurring but was of the view that she is still clearly in the position of choosing what to do.

The Board noted that the issue of consensual sexual relations is important in the Australian community but considered that the advertisement is a lighthearted and comical representation of an unlikely and exaggerated situation. The Board considered that the advertisement is not trivialising or condoning non-consensual sexual relations.

The Board determined that the advertisement's exaggerated story did not suggest that men generally are conniving or are likely to or inclined to non-consensual sexual relations and that the advertisement did not vilify men or women. The Board determined that the advertisement did not depict rape and did not breach section 2.2 of the Code.

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