

## ANISIMOFF LEGAL ASB BULLETIN – MAY 2013

By Matt Hansen, Solicitor

Below are some of the recent interesting ASB decisions that were released over March and April 2013:

1. **0086/13 Street Strider Australia - Section 2.6 - Health and Safety - Upheld:** A TVC for Street Strider bicycles depicts various people riding around on them. Although all users have appropriate safety gear on in all shots, in some shots the users are seen to be weaving across roads that are clearly two-way streets. Complaints were raised that this behaviour was unsafe, and were upheld by the Board: "The Board noted that there is vision of a person riding the street strider on a residential road. The Board noted that as the person travels forward he is weaving from side to side and as he does so a car is seen on the opposing side of the street indicating that the road is a two-way road. The Board noted that the actions of the person do not appear uncontrolled however considered that most reasonable members of the community would consider this behaviour unsafe and against prevailing community standards ... The Board also considered a scene depicting a man weaving the strider down a winding hill road. The Board noted that the man remains within his side of the lane however he propels the strider in an exaggerated weaving manner as he proceeds down the road. The Board agreed that this is performed in a manner that is contrary to community standards on health and safety regarding road safety and use."
2. **0064/13 Unilever Australia - Section 2.6 - Health and Safety - Dismissed:** A TVC for Lipton ice tea depicts a young woman sipping the drink then jumping into a pool, joining a group of people who are having an underwater party. The tagline states: "Lipton Ice Tea Virgin Cocktails. Enjoy Irresponsibly". Complaints were raised that the ad could give the impression to young children that it is possible to live and breath underwater. The complaints were dismissed as follows: "The Board noted that the actors in the advertisement are depicted as being able to breathe under water without assistance, however the Board considered that the overall tone of the advertisement is clearly of a fantasy nature and that its unrealistic nature is not likely to be interpreted as an encouragement to try to breathe under water. The Board noted that children are known to spend time under water holding their breath as a game or competition with their friends and considered that the activities of the adults in the advertisement are unlikely to be of interest or appeal to children and are not likely to encourage children to try and spend any more time under water than they ordinarily would."
3. **0080/13 and 0111/13 Yum Restaurants Int. - Sections 2.1, 2.2, 2.4 and 2.6 - Discrimination, Exploitation, Sex and Health and Safety - Dismissed:** A series of TVCs from KFC advertising the new deluxe burger range depict a series of situations where men apologise to each other with a burger. The tagline is "say it with chicken". The ads in question can viewed here: <http://www.youtube.com/watch?v=zc7GvmcoUV8> and here <http://www.youtube.com/watch?v=X8CNToyQQag>. Many complaints were raised on a variety of scenes, including the perceived discrimination of women in the poker scene, the inappropriate sexual nature of the bedroom scene, the

inappropriate implication of uploading embarrassing photos online, the unsafe implication of the "jumping first" scene and objectification of women in the Pilates scene, among others. All complaints were dismissed by the Board including:

- “[re: *men playing poker*] The Board noted ... the voiceover refers to the ‘boys night rule’ that is a colloquial term familiar among many Australians ... the female in the advertisement does not appear to be unhappy about being at the game and she is not seen to be ridiculed for her lack of understanding about how the game works ...
- [re: *girl leaving a man's bedroom, stepping over a man in the doorway, with a sock handing over the door handle*] The Board agreed that there was a suggestion that the girl was leaving after sharing an intimate night and that the friend was made to stay outside but that this would not be something that children would immediately understand ...
- [re: Pilates] The Board considered that in this instance the advertisement depicts the women working out clothed in a manner appropriate to their activities and considered that the men are appreciative rather than threatening. The Board noted that ... to depict men admiring women does not of itself amount to material which discriminates against or vilifies women ... their poses and movements are consistent with Pilates exercises and are not sexualised or inappropriate...
- [re: *man giving his friend a burger to say sorry for posting a picture of him on social media*] The Board noted that there is significant community concern surrounding the use of social media and considered that in this instance it is not made clear what the photograph contains and that the man who posted the photograph is apologising. The Board considered that the advertisement is not condoning or encouraging people to upload images of their friends to social media sites.”

4. **0112/13 and 0129/13 UBank - Sections 2.1, 2.3 and 2.6 - Discrimination, Violence and Health and Safety - Dismissed:** A TVC for UBank on TV and PayTV depicted two men in a backyard, admiring a volcano spewing liquid gold. One man explains to the other that it is a metaphor for all the money he saved refinancing his home loan through UBank, and it was not real. Upon hearing this, the other man dips his hand in the liquid gold and laughs, only to then scream when he realises the gold is hot. See the ad here: <http://www.youtube.com/watch?v=zHdx08-wpow>. Complaints were raised that the act of the man burning himself was graphic and disturbing. Additionally, as the man who got burned was dark skinned, and the other man white, it was also perceived as racist by some complainants. Complaints were dismissed by the Board: "The Board noted the complainants' concerns that because the neighbour who gets hurt is black and the volcano's owner is white the advertisement has racist overtones. The Board noted the Advertiser's response that the actors were chosen based on their acting ability and not on their race or ethnicity and considered that most reasonable members of the community would not find that the advertisement is depicting material which is discriminatory towards a person based on their skin colour ... The Board noted the complainants' concerns that the reaction of the man putting his hand in the volcano's lava is distressing as he appears to be in real pain. The Board noted that the man is shown screaming once, briefly, before the advertisement switches to a voiceover. The Board considered that the man chose to put his hand in the lava despite being told that it was a volcano and that his reaction is in keeping with comical reactions of joy because the lava is gold rather than actual pain. The Board noted that the advertisement depicts an unreal situation and considered that that the level of violence portrayed is very mild and is self-induced ... The Board noted that the

actor in the advertisement makes it clear that the volcano is a metaphor and is not real. The Board noted that volcanoes are not found in people's back yards and are therefore not likely to present a real risk to the community. The Board considered that the advertisement does not condone or encourage members of the community to partake in dangerous behaviour."

If you have any queries or would like to discuss the above please contact any of the ASB experts detailed below.

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