

ANISIMOFF LEGAL ADVERTISING STANDARDS BOARD BULLETIN – OCTOBER 2013

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Every month we analyse the decisions of the Advertising Standards Board (ASB) to determine any that are relevant or impactful on the industry at large, or raise interesting points that reveal the ASB's position on certain matters. Below are some of the recent interesting decisions in line with the above that were released in August and September 2013.

Among the Board's concerns this month was a fire safety message that appeared to make light of fire safety, and a "preservative free" claim that appeared to make light of (or from) a little girl.

1. **0264/13 Fire and Rescue NSW – Section 2.6 – Health and Safety – Upheld:** A TVC for fire safety depicted a man wearing a t-shirt that says "Chance" placing his wet socks on a heater to dry them. He turns to another man who is sleeping, and reassures him that "everything's under control". The socks then catch fire. "Chance" however is unfazed by this and begins to warm his hands on the fire. A voiceover reminds viewers "Don't leave anything to Chance". Complaints were raised that the practice depicted was dangerous and could lead to copycat behaviour. The Board upheld the complaints as follows: "The Board noted that there is a character wearing a black t-shirt near the heater and that his t-shirt has the word 'Chance' written on it. The Board noted that this character was to represent chance and that viewers should not take risks like placing socks over the heater and 'leaving it to chance' as to whether this could cause a fire. The Board agreed that this portrayal was an adult concept that would not be understood by young children and that the likelihood of copycat behaviour could potentially be quite high. The Board considered that the message that is being delivered is a very important community message that should be taken seriously. The Board noted that the overall message is presented in a way that may not be understood by children and that it would require explanation and discussion with responsible adults. The Board noted that there is no clear consequence for the actions of the man falling asleep leaving unattended clothing on top of a heater."
2. **0335/13 and 0337/13 Murray Goulburn – Food and Beverages Code Section 2.1 – Misleading and Deceptive Claims – Upheld (x2):** A TVC for Devondale long life milk featured a young girl whose skin glows bright green. The ad depicts her as having an awkward life due to her glowing so brightly all the time. The tagline is "Preservatives have consequences" and goes on to display a claim of "100% natural, zero preservatives" related to Devondale long life milk. The ad can be viewed here: <http://www.youtube.com/watch?v=KbMSeuZ0dGQ#t=17>. Complaints were raised under the Food and Beverages Advertising Code that the ad was misleading as it greatly exaggerated the effects of preservatives on the human body. The Board upheld the complaints in 2 media (TV and Internet) as follows: "The Board considered that a 'preservative free' claim gives consumers information about the content of the product which is desirable for consumers who wish to avoid particular additives or preservatives ... the majority of the Board considered that the statement 'preservatives have consequences' has a different effect to a mere statement that something is preservative free. The majority of the Board considered that whilst the interpretation of the meaning of the text on its own is subjective and does not suggest what the consequences

are or whether they are good or bad, in the Board's view the context of the statement being used in conjunction with an image of a girl glowing green amounts to an overall suggestion that preservatives are bad for you. The Board noted that preservatives are a necessary addition to many foods and that preservative use is strictly regulated by Food Standards Australia New Zealand. The majority of the Board considered that the advertisement's reference to preservatives having consequences plays to the fears of members of the community who are concerned about the health risks associated with some preservatives and additives in food and beverage products. The Board considered that the advertisement's statement 'preservatives have consequences', although linked with an unrealistic image, is likely to imply to reasonable members of the community that preservatives might be harmful. In the Board's view the implication of harm from preservatives goes beyond a factual representation of a product as being preservative free, and creates a misleading impression about preservatives generally."

NOTE: The advertiser has subsequently replaced the line "Preservatives Have Consequences" with the line "What Are You Feeding Your Kids?". At this time it is unknown whether or not this line is acceptable to the ASB. Any such determination will be made subject to a further complaint on the revised version (if any are made).

On the dismissal side of things, the Board was less concerned about a used car salesmen doing burnouts in the parking lot, and saw the funny side of a case of mistaken pregnancy. And finally, it was third time lucky for Nissan's "fake pregnancy" TVC.

3. **0286/13 Nissan Motor Co – FCAI Code - Dismissed:** After having 2 versions of the previous "fake pregnancy" TVC upheld, the latest version was held by the ASB to be acceptable. In the latest version, the line at the end pertaining to the "personal best" has been replaced with a more speculative statement: "if we ever decide to have a baby, we'll get here in time". Same types of complaints were raised but in this case the Board dismissed the complaints as follows: "The Board noted that in the first modified version of the advertisement the overall theme of the advertisement retains the concept of racing against the clock and considered that consistent with its original determination the suggestion of a driver trying to beat his own time is a depiction which is not appropriate for a vehicle being driven on public roads and is unsafe. The Board noted that in this second modified version of the advertisement the man does not comment on the time but says that they will be able to get to the hospital easily if ever they needed to. The Board considered that this depiction is not suggestive of the driver trying to beat any previous times nor a suggestion of extreme speed."
4. **0334/13 Australian Fast Foods – Section 2.6 – Health and Safety – Dismissed:** A TVC for Red Rooster depicted a used car salesman shown to be "hard working" but in reality, actually not. Among the things he does at his workplace that are depicted as inappropriate, he "tests" cars by doing burnouts in the lot. Complaints were raised that this depicted dangerous behaviour that could be copied by others. The Board dismissed the complaint as follows: "The Board noted that the scenes depicted in the advertisement are intended to be humorous and are stereotypical of a used car salesman or someone in a mundane job, doing things to keep themselves amused. The Board noted that the actions of the man are not presented in a positive manner and that it is clear that the activities he does are not being promoted as actions that should be adopted in the work place. The Board noted that the scene that shows the

salesman performing a burnout in a car is identifiable as a car park or car yard and that it does not look as if it is performed on a road or in association with any other vehicles or people. The Board considered that performing a burnout is not behaviour that should be encouraged, and on public roads is illegal, but that in connection with the other silly behaviours of the character it is obvious that the activities are all in the context of a range of foolish behaviour leading to the need for the advertised product. "

5. **0313/13 and 0322/13 Kia – Section 2.1 – Discrimination – Dismissed (x2):** A TVC for Kia Cerato depicted a middle-aged woman trying unsuccessfully to hail a taxi when an old friend arrives in a Kia Cerato, offering her a lift. Whilst driving, the friend asks when she is due, inferring she is pregnant. The woman laughs that she is not pregnant, she “just likes cake”. The two laugh about the misunderstanding, and the tagline states that there are so many features in the new Kia Cerato that there is no room for any awkward moments. Complaints were raised that the advertisement was offensive to overweight people and sexist for implying the only reason a woman can be overweight is if she is pregnant. The Board dismissed the complaints in 2 media (TV and Pay TV) as follows: "The Board noted that the woman's reaction suggests that she is not insulted by the suggestion her weight makes her look pregnant and considered that that the overall tone of the advertisement is a humorous take on a commonly experienced potentially awkward situation. The Board noted that the advertisement does not suggest that being overweight is negative or that the man thinks any less of the woman because she is overweight rather than pregnant. The Board considered that the advertisement suggests that being pregnant can cause a woman appear to be overweight, and vice versa. The Board noted that pregnancy is associated with healthy weight gain in women and that it is possible for members of the community to mistake pregnancy-related weight gain for other weight gain, and vice versa. The Board considered that the advertisement does not depict pregnancy-related or other weight gain in a negative manner and that the advertisement did not discriminate against people based on their gender or body image."

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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