

## WHAT THE FAQ: Devondale's Kids Still Aren't Alright

By Matt Hansen, Solicitor

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Devondale's follow up to the green glowy girl gone wrong has run afoul of the ASB again. Devondale's most recent TVC depicted children in a variety of mischievous situations, including duct-taping a friend to the wall, painting the family car, sword-fighting with bread sticks, and getting ready to commit an Evel Knievel style stunt, having built a ramp and preparing to jump over some of their peers. The tagline at the end says "Devondale. As sensible as kids get". The ad had the ASB pulling Soy Milk Aftertaste Face, however, so Devondale is now seeking to have the decision independently reviewed which we do not see very often.

The decision of the ASB was not a mutual one, and that, along with Devondale's insistence on a review, raises some interesting questions:

### What was the initial complainant concerned about?

The complainant was concerned that the ad portrayed bullying and would encourage other children to engage in copycat behavior (i.e. duct-tape their friends to walls).

### And did the ASB agree with this?

Actually no they did not. In the ASB's view, the depiction did not raise a concern of bullying as the child was depicted as being amused by the behavior, and was likely willingly participating in the fun rather than resisting and indicating that he did not want to be duct-taped to a wall.

### Well who doesn't? It sounds like fun. Anyway, if the ASB did not have an issue with the bullying then why did they uphold the complaint?

As the ASB is wont to do, when it receives a complaint about an ad it does not just assess it against the particular complaint it has received, it assesses the ad against the entire AANA Code of Ethics and any other applicable code, and if there is another aspect of the ad that is in breach, they will uphold the original complaint. This is why it is so important not to consider a campaign with a narrow focus.

### So in this case, what was the ASB concerned about?

The ASB was concerned that the behaviour of the children in several scenes, particularly the scene where the Evel Knievel stunt was to be attempted, and the aforementioned duct-taping scene, were indicative of activities that were unsafe and this could encourage copycat behaviour, which would be in breach of prevailing community standards on health and safety under Section 2.6 of the AANA Code of Ethics.

### But wouldn't it be obvious to anyone watching the ad that the behaviour was clearly wrong and should not be attempted? And isn't it the job of parents to make sure they supervise children?

This is a common battle cry and yes, it is even apparently a bone of contention at the ASB since a minority of the ASB in this case certainly thought this way. However, the majority took the view that these scenes could encourage copycat behaviour in children, as there were not enough indications in the ad that the behaviour was not sensible, and if a child was to watch the ad unsupervised it would warp their fragile little mind into thinking this behaviour was acceptable.

### **Was the ASB concerned with anything else?**

The ASB also upheld one scene in particular as a concern, that of the children painting the family car. In this scene, the ASB took the view that it was obvious that the children knew they were doing the wrong thing, and therefore were engaging in vandalism, which the ASB regards as a form of violence under Section 2.3 of the AANA Code of Ethics. This is a curious one, as a child knowing that their parent may not approve and having the mental state and maturity to contemplate that what they are doing constitutes the crime of vandalism is an entirely different matter.

### **On what grounds can Devondale challenge the decision in an independent review?**

There are three grounds upon which a decision may be challenged for independent review: (i) new evidence being brought to light which could affect the decision; (ii) a substantial flaw in the ASB's determination; or (iii) a substantial flaw in the process which resulted in the ASB's determination.

Devondale would likely be requesting a review under the second ground. Given the fact that the decision was not unanimous as far as the scenes that may or may not have had the effect of encouraging copycat behaviour were concerned, Devondale could certainly argue that the minority view should have been the correct one, and that the ad was clearly not aimed at children and it would be evident to any adults watching TV with their children that this behaviour is not appropriate, and the parents could then inform their children of this. If the ad were shown in an appropriate timeslot that limited children viewing, or programs not aimed at children, this would also be a helpful argument in its defence.

### **Will Devondale succeed?**

That remains to be seen. We will certainly watch closely as this one plays out, however.

### **Contact us**

If you would like further information on CAD approval, advertising standards, or assistance in defending a complaint against an advertisement, please contact one of our experts below. We can provide tailored legal and practical advice to assist you with reviewing or clearing advertising material.

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