



**ADVERTISING
STANDARDS
BUREAU**

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CASE REPORT

1.	Complaint reference number	0237/11
2.	Advertiser	Vitaco Health Australia Pty Ltd
3.	Product	Food and Beverages
4.	Type of advertisement	Billboard
5.	Date of determination	13 July 2011
6.	DETERMINATION	Dismissed
7.	Date of Reviewed Determination	28 September 2011
8.	DETERMINATION ON REVIEW	DISMISSED

ISSUES RAISED

- 2.3 - Sex/sexuality/nudity Treat with sensitivity to relevant audience
- 2.1 - Discrimination or Vilification Sex

DESCRIPTION OF THE ADVERTISEMENT

This outdoor advertisement features images of a woman at the beach, wearing a blue bikini and a product shot of an Aussie Bodies ProteinFX LO CARB Bar. Accompanying text reads: Keep Australia Beautiful. The Body Beautiful Bar.

THE COMPLAINT

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

I am writing to complain about the above billboards as I object to the use of "sexy" advertising in public where people don't have a choice about whether they view it or not. While admitting that the advertisement is very cleverly done to the amusement of many; I feel that standards are sadly dropping when a company needs to use a woman's body to sell food products.

I am sure this billboard is not helping the case of parents who are trying to keep their children away from semi-pornographic material considering that they do not have a choice about whether view it or not.

How long will it be before standards drop low enough before we allow nudity on billboards as I believe has been the case in Europe for a while now?

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

We have considered whether this advertisement breaches Section 2.3 of the Advertiser Code of Ethics (Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone). Vitaco recognise that while some people may have different perceptions of the advertisement, the intent of the advertisement is to communicate the aspiration image of a fit and healthy female physique in connection with the functional benefits of a protein bar.

As such, we believe the content of the advertisement does not contravene the Code in relation to sex, sexuality and/or nudity and recommend the complaint to be dismissed.

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 complainant’s concerns that the advertisement features an image of a woman which is sexual and inappropriate.

The Board viewed the advertisement and noted the advertiser’s response.

The Board considered whether the advertisement complied with Section 2.3 of the Code. Section 2.3 states:

‘Advertising or marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone’.

The Board noted that the image on the billboard features a woman by the beach, wearing a bikini and includes the text ‘Keep Australia Beautiful’ and the picture of a protein bar below her.

The Board noted the complainants concerns that the image is in a public place where it is visible by a broad audience, including children. The Board noted that the model is clearly clothed in a bikini and the image used is viewed in connection with the text, making a clear association between the image of the woman and the product being advertised ie: a food product designed to assist with weight management and good health.

The Board noted that although the focus of the image is on the woman’s body and particularly her chest, she is well covered by the bikini, is not in a sexualized pose and the image does not include any nudity.

The Board considered that the image of the woman was not overtly sexualised and that most members of the community would consider the image a nice image of a woman at the beach. The Board noted that the size of the advertisement and the placement on a billboard meant that the relevant audience was very broad and could include children, however, the Board considered that the image was relatively mild and unlikely to be considered sexualised by most members of the community.

The Board considered that most members of the community would not find the advertisement offensive.

The Board considered that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach Section 2.3 of the Code.

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

REQUEST FOR INDEPENDENT REVIEW

One of the original complainants to the Board sought review of its decision as follows:

I write to ask for a review of the Advertising Standards Board's decision to dismiss complaints against Vitaco's 'Keep Australia Beautiful' advertisement. I have highlighted and responded to some of the comments in the ASB's determinations on this ad below. I believe the ASB's reasoning is flawed.

In considering whether the advertisement breaches Section 2.3 of the Code. (which states): Advertising or marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone'. The Board stated in its determination: The Board noted that the model is clearly clothed in a bikini and the image used is viewed in connection with the text, making a clear association between the image of the woman and the product being advertised ie: a food product designed to assist with weight management and good health.

- How does the headless body of a woman in a bikini 'communicate good health' (or as Vitaco put it, 'a fit and healthy female physique'?) it may certainly communicate contemporary ideals of beauty and sexiness, but health? The model is not participating in physical exercise; she is not wearing typical exercise clothing. She is not even touching let alone eating the 'health bar'. She is idle. If anything, she's acting in contradiction of health initiatives by sunbathing.*

- The text accompanying the ad doesn't say anything about 'health.' It doesn't say 'Keep Australia Healthy' it says 'Keep Australia Beautiful.' 'Beautiful' as defined by the cultural standard of 'young and thin' does not necessarily mean 'healthy.' Similarly, those who don't conform to cultural beauty standards are not necessarily 'unhealthy.' The Advertiser in it's response to complaints states: the intent of the advertisement is to communicate the aspiration image of a fit and healthy female physique in connection with the functional benefits of a protein bar.*

- *I dispute the claim that there is a 'clear association between the image of the woman and the product being advertised which the advertiser claims is a food product designed to assist with weight management and good health.' I also dispute the claim that the intent of the advertisement is to communicate an 'aspiration image of a fit and healthy female physique.' The image does not convey an aspiration of 'health' it conveys an aspiration of 'beauty' which is confirmed by the accompanying text. 'Beauty' and 'Health' are not synonymous. The following link is a refreshing view on our cultural view of beauty/ageing and the photograph of the artist, is truly beautiful. <http://www.theage.com.au/opinion/society-and-culture/the-true-face-of-artistic-beauty-20110729-1i477.html>*
- *It is impossible to tell someone's health simply by looking at them. It is especially impossible to get any indication of a person's health (or participation in any health giving activities) by an advertisement that focuses on a woman's breasts.*
- *The assumption that the 'beauty' of the woman is indicative of good health is a dangerous myth to promote. Both the ad and the advertiser's defence of the ad is misleading.*

In making its determination, The Advertising Standards Board did not consider whether the advertisement breached the AANA Food & Beverages Advertising & Marketing Communications Code. The advertiser claims to be promoting 'health' when it is clear they are actually promoting 'beauty.' This is misleading.

For this reason, I believe the ASB needs to review the determination and consider whether the ad breaches the AANA Food & Beverages Advertising and Marketing Communications Code, particularly these sections copied below:

2.1 Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive

2.2 Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets,

2.4 Advertising or Marketing Communications for Food or Beverage Products which include nutritional or health-related comparisons shall be represented in a non-misleading and non-deceptive manner clearly understandable by an Average Consumer.

The ASB also stated in its determination: The Board noted that although the focus of the image is on the woman's body and particularly her chest, she is well covered by the bikini, is not in a sexualized pose and the image does not include any nudity.

- *If the focus is meant to be on the health benefits of the product being advertised, how does the focus on a woman's breasts, a focus the ASB has acknowledged, in any way communicate this?*

- *This ad is most definitely fluent in the language of sexual objectification/sexualisation. The woman is headless, removing her individuality/personhood in favour of focusing on her body, particularly her breasts.*
- *The model may not be in a typically 'sexualised pose' however the choice of clothing and focus on her breasts sexualises her pose.*
- *The use of the word 'beautiful' twice in the copy reinforces this sexualisation - what is beautiful? A woman's body in a bikini, particularly her breasts. The message in this ad is to 'Keep Australia Beautiful' by conforming to cultural ideals of beauty, taking off most of your clothes, and allowing your breasts to be the main focus.*
- *Additionally, 'Being well covered by the bikini' does not equal 'being well-covered'. Context is everything - a woman in a bikini at the beach is very different from a woman in a bikini in a shopping centre, on a major road etc. Surely placing this image in non-beach contexts has a similar effect.*
- *Disagree that the image 'does not contain any nudity' - it is arguable that a bikini constitutes partial nudity, particularly depending on context as per my point above. However, the Board considered that the image was relatively mild and unlikely to be considered sexualised by most members of the community.*
- *Just because an image might be considered 'relatively mild' does not mean it is not harmful, or that its contribution to the avalanche of sexualised imagery and advertising is insignificant.*
- *The question of whether or not 'most members of the community' would consider it 'sexualised' is also highly subjective and questionable - our community is so desensitised to sexualised material that this may well be true, however this does not mean that this ad is not sexualised or offensive.*
- *Additionally 'most members of our community' are not necessarily aware of the meanings of advertising and images and therefore are not necessarily equipped to be able to read the messages of an ad like this as sexualised or otherwise.*

*For the reasons outlined above, I believe the ASB's reasoning is flawed. The ASB's decision should therefore be reviewed and the complaints against Vitaco's advertisement upheld.
Thank you.*

The advertiser was provided with a copy of this appeal but submitted no further material.

INDEPENDENT REVIEWER RECOMMENDATION

The grounds on which a decision of the Board may be reviewed are:

- (1) Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided.
- (2) Where there was a substantial flaw in the Board's determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence).
- (3) Where there was a substantial flaw in the process by which the determination was made.

It is to be noted that the Board based its decision on the finding that the advertisement in question did not breach section 2.3 of the Advertiser Code of Ethics. It said also that the advertisement did not breach the Code on other grounds.

The appeal falls into two parts. The complainant initially sets out arguments why the Board failed to apply section 2.3 correctly.

Ground (1): no new evidence is provided. A better reasoned argument is not new evidence. Accordingly, the complainant does not satisfy the requirement of ground (1).

Ground (2): the complainant does not demonstrate that there is a substantial flaw in the Board's application of section 2.3 to the facts of the case. The complainant claims that the Board's reasoning is defective in the way which she spells out. However, minds may differ as to an outcome and the Board's perception of the advertisement is simply different from the complainant's. The decision was open to the Board to make and cannot be characterised as fundamentally flawed. Ground (2) is not satisfied.

The second basis for appealing advanced by the complainant is that the Board confined its consideration of the matter to section 2.3 of the Advertiser Code. It did not consider whether the advertisement breached any provisions of the Food and Beverage Advertising & Marketing Communications Code.

The complainant refers particularly to sections 2.1, 2.2 and 2.4. A detailed argument is then made that the advertisement breaches these provisions.

This ground that was not fully spelled out by the complainant in her original complaint although there is an allusion to diets being for cosmetic reasons and not health reasons.

The obligation of the Board is to consider complaints under all relevant Codes. It is not a requirement that a complainant must identify the precise section of a Code that they claim has been breached.

It may well be that a conclusion may be the same under each of the relevant Codes. That could well be the position here.

However, it is incumbent on the Board to indicate in its Determination that it has considered the complaint under each of the Codes that may be relevant to the advertisement. In this case the Food and Beverage Advertising & Marketing Communications Code is relevant to the advertisement in question. By failing to ask itself whether that Code had been breached, the decision of the Board is fundamentally flawed as provided for in appeal ground (2).

Accordingly, I recommend that the Board reconsider its decision and determine whether the Food and Beverage Advertising & Marketing Communications Code has been breached by the advertisement. In reaching its conclusion it should take into account the matters set out by the complainant in her appeal document.

BOARD DECISION FOLLOWING INDEPENDENT REVIEWER RECOMMENDATION

The Board noted the request for review, the complainant's points of concern about the Board's first decision and also noted the determination of the Independent Reviewer.

The Board noted its earlier discussion around section 2.3 of the Code of Ethics and affirmed its earlier decision.

The Board particularly noted the complainant's concern that the advertiser is misleading in stating that the advertisement is promoting good health when the image of the women is 'beautiful' but not necessarily healthy. The Board considered that its role is to consider the content of the advertisement – and that the creative intent or advertiser's intent are relevant but not determinative factors. In the Board's view, the depiction of a woman with a nice body in an advertisement for a low carb/high protein bar is not misleading.

The Board also noted the complainant's concern that the advertisement objectifies women. The Board noted that the woman is depicted without a head and agreed that the image of a woman without a head can be an image which is objectifying. The Board noted recent decisions in which it has determined that the image of a woman without a head, in the context of a particular advertisement, has amounted to discrimination against women and resulted in complaints about the advertisement being upheld (0299/11, 0210/11, 0198/11, 517/10). In the current advertisement the Board considered that the woman is depicted in a manner that is not sexualised, she is in a bikini at the beach, and the image is used in connection with a low carb/high protein food product. The Board considered that the use of the image may be objectifying but that in this particular advertisement the image is not demeaning to women or degrading and does not amount to an image that discriminates against or vilifies women. The Board determined that the advertisement does not breach section 2.1 of the Code.

Noting the Independent Reviewer's recommendation the Board considered whether the advertisement met the requirements of the AANA Food and Beverages Advertising and Marketing Communications Code. The Board noted that the advertisement is for a food product – a Vitaco protein bar.

The Board considered section 2.1 of the Food Code which requires that “Advertising or marketing communications for food or beverage products shall be truthful and honest, shall not be misleading or deceptive or otherwise contravene community standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.”

The Board first considered whether the advertisement is truthful and honest and not misleading or deceptive. The Board noted that the advertisement does not make any particular claim about the product but that the advertisement contains the statement “the body beautiful bar’ and ‘Keep Australian Beautiful’. The Board considered that these statements suggest that use of the product will assist with having a good looking body. The Board considered that this is a statement and suggestion that most people would consider appropriate for the type of product advertised and that a low carbohydrate/high protein bar will assist with body shaping when used as part of an appropriate diet and exercise regime. The Board considered that the statements are not statements that reasonable members of the community would consider misleading or dishonest. The Board determined that the advertisement is not misleading or deceptive.

The Board then considered whether the advertisement would ‘otherwise contravene community standards’. The Board considered that there is a level of concern in the community about the use of images of women, particularly scantily clad women, in advertising. The Board acknowledged this concern but noted that there is not a prohibition in advertising on the use of images of scantily clad women in advertising – with the Code of Ethics particularly prohibiting only images that ‘discriminate against or vilify’ women or that do not treat sex or nudity with sensitivity to the relevant audience. Under the Food Code the test that the Board must apply is whether the advertisement would ‘otherwise contravene community standards’. The Board considered that the image of the woman is being used to show that the product advertised can assist with obtaining a beautiful body. The Board noted concerns about body image for women and young girls but considered that, while there are members of the community who consider that images such as this should be prohibited, most members of the community would consider the image a tasteful image of a woman with a nice body at the beach and would not find the advertisement inappropriate or offensive. The Board considered that the advertisement, by using an image of a woman with a nice body to promote a product, does not contravene prevailing community standards.

The Board determined that the advertisement did not breach section 2.1 of the Food Code.

The Board then considered section 2.2 of the Food Code which provides that: “Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of products or portion sizes disproportionate to the setting portrayed or by means otherwise regarded as contrary to prevailing community standards.”

The Board considered that advertising a low carb/high protein bar is not of itself an advertisement that undermines healthy or active lifestyles nor the promotion of healthy balanced diets. The Board considered that there is nothing in the advertisement additional to the image of the product which makes any recommendations concerns frequency of consumption and that it

does not make any suggestion that would undermine a healthy balanced diet. The Board determined that the advertisement did not breach section 2.2 of the Food Code.

The Board noted the complainant's reference to section 2.4 of the Food Code which requires that "Advertising or Marketing Communications for Food or Beverage Products which include nutritional or health-related comparisons shall be represented in a non-misleading and non-deceptive manner clearly understandable by an Average Consumer." The Board considered that the advertisement does not make any comparisons and that a suggestion that the product will assist with having a beautiful body is made in a manner that, in the Board's view, a reasonable consumer would not consider misleading. The Board's decision is based on its view, as members of the community, that most people understand that this is an advertisement for a product that is only part of a person's overall diet and exercise regime. The Board determined that the advertisement did not breach section 2.4 of the Food Code.

The Board considered that the advertisement did not contain any material that would breach any of the other provisions of Part 2 of the Food Code.

The Board noted that Part 3 of the Food Code does not apply as the advertisement is not directed primarily to children and is not for a product that is of principal appeal to children and determined that the advertisement did not breach any other provisions of the Food Code.

Finding that the advertisement did not breach any of the Codes on any grounds, the Board dismissed this complaint.