



ADVERTISING
STANDARDS
BUREAU



Ms Ann Palmer
Principal Research Officer
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600
[By email: legcon.sen@aph.gov.au]

Dear Ms Palmer

**Inquiry into the Australian Film and Literature Classification Scheme:
ASB response to questions on notice**

Please find below the Advertising Standards Bureau's (Bureau) response to the questions on notice taken during the public hearing relating to the above inquiry on 27 April 2011, as per your email of 9 May 2011.

During the hearing the Chair of the Committee, Senator Barnett, requested a response to matters raised in the Kids Free 2 B Kids (KF2BK) submission (as recorded at page 11 of the Hansard proof transcript of the hearing).

1. Images censored out of the KF2BK submission

In the course of raising questions relating to the KF2BK submission, Senator Barnett made the following statement to which we would also like to respond and provide some clarification (also at page 11 of the Hansard transcript):

"This is extraordinary because these are billboards that are available and open to the public; they are for general exhibition, including children. Yet we as a committee have deemed it inappropriate to put them on our website. They are available in hard copy for you and others who seek them, but we feel unable to make them available on the website, as a committee, because of the, in part, pornographic nature of the material, which of course comes from billboards and, indeed, certain magazines that are available in petrol stations and general stores throughout Australia."

We would like to clarify that the relevant section of the KF2BK submission displaying images of **advertising material** was in fact made publicly available on the Inquiry website. This material was

contained in an attachment that consisted of a copy of the KF2BK submission to the *Inquiry into the regulation of billboard and outdoor advertising* being undertaken concurrently with this inquiry by the House of Representatives Standing Committee on Social Policy and Legal Affairs.

The parts of the KF2BK submission that were censored and not placed on the Inquiry website were not advertising images but were actually the images taken from magazines (covers and content) that were deemed by the Committee to be inappropriate to display on the Inquiry website.

We would like to clarify for the Committee that the Bureau has no role in the regulation of magazine covers or content. The Bureau is responsible for administering the complaint adjudication component of the self-regulation system relating to advertising and marketing communications in Australia. Magazine covers/content do not fall within our remit. Magazine content is regulated by the Classification Board and any issues the Committee has with the nature of such content should be raised with the Classification Board.

2. Awareness of the Bureau and complaint process

At page 5 of the relevant KF2BK submission attachment (the submission to the House of Representatives Inquiry), KF2BK states that “groups such as Kids Free 2B Kids, The Australia Council on Children and the Media, and Collective Shout have done more to educate the public about the complaints system than the ASB”.

In response, we wish to highlight to the Committee the Bureau’s efforts in regard to raising awareness of the Bureau, the Advertising Standards Board (Standards Board) and complaints process.

As highlighted in the Bureau’s submission and during the hearings, the Bureau works hard to ensure the accessibility and transparency of the complaints process. The process is clearly set out on the Bureau’s website and available to any member of the public who requests a copy. In addition to the public awareness campaign launched by the Bureau in 2008, as referred to in our submission, the Bureau is extending that campaign later this year.

However, the awareness campaign is only one avenue to ensure the public is aware of the Bureau’s role in administering complaints about advertising. The Bureau works closely with other industry bodies to ensure that their members are aware of the Bureau’s complaint process and refer complaints they receive directly to us. For example, complaints are regularly forwarded to the Bureau from television and radio stations. Additionally, links and information about the Bureau are provided on the websites of various industry bodies ensuring consumers seeking to make a complaint about advertising are directed to us. For example, such information can be found on the websites of the following organisations:

- The Australian Association of National Advertisers (AANA)
- The Outdoor Media Association
- FreeTV Australia
- Commercial Radio Australia
- The Australian Subscription Television and Radio Association (ASTRA)
- Publishers’ Advertising Advisory Bureau Australia

- Media Federation of Australia
- The Communications Council
- The Alcohol Beverages Advertising Code (ABAC) Scheme

Information about the Bureau and how to make a complaint is also available on a number of consumer lobby groups websites including Kidsfree2bekids.com.au and junkbusters.com.au.

The Bureau also works with government departments at the state and federal level in ensuring complaints relevant to the role of the Bureau are forwarded to us for consideration. This includes providing information sheets to government bodies to ensure the complaints referred to the Bureau do in fact fall within the Standards Board's remit.

Additionally, many government bodies responsible for handling complaints, particularly those in the media sector, include information on their websites referring members of the public to the Bureau for advertising related complaints. For example, Bureau details or links to the Bureau website are listed on the following government websites providing another avenue for consumers to identify the Bureau as the body responsible for administering advertising related complaints:

- Australian Communications and Media Authority (ACMA)
- Department of Broadband, Communications and the Digital Economy
- Australian Competition and Consumer Commission (ACCC)
- The Australian Government Classification Website
- NSW Fair Trading
- Queensland Office of Fair Trading.

In addition, should someone search the internet using, for example, the Google search engine and any term as simple as 'advertising complaint' the Advertising Standards Bureau website is the first result returned.

3. Research based guidance to the Standards Board regarding the portrayal of women

At page 5 of the relevant KF2BK attachment to its submission, KF2BK indicates that there "are still no specific guidelines in the code of ethics that offer comprehensive and research based guidance to the [Standards Board] regarding the portrayal of women".

Part 4 of our submission to this Inquiry provides information about how self-regulation addresses the objectification of women in advertising. We would like to reiterate that the Standards Board, advertisers and the community have been provided guidance in the form of independent research commissioned by the Bureau in relation to:

- Community perceptions of sex, sexuality and nudity in advertising – June 2010 (undertaken by Colmar Brunton Social Research); and
- Discrimination and Vilification in Advertising – March 2009 (produced by Dr Fiona Giles, Sydney University and Jenni Whelan, Discrimination and Rights Education).

Additionally, as also highlighted in our submission, the Bureau now produces *Determination Summaries* (available on the Bureau website) aimed at assisting advertisers and consumers in understanding how the

Standards Board applies particular provisions of the Codes. As stated in our submission, the Determination Summaries are designed to assist the advertising industry, consumers and the Standards Board itself in understanding how the Standards Board has viewed particular issues covered by the Codes that have been the subject of complaints in the past. The Determination Summaries on *Discrimination and Vilification in advertising* and *Portrayal of gender in advertising* provide the Standards Board, advertisers and consumers with information regarding the portrayal of women in advertising. The Determination Summaries provide guidance to advertisers as to where the Standards Board sees community standards have moved in relation to these issues, by taking into account the views of the Standards Board expressed in recent decisions.

4. Meaning of “relevant audience”

At page 6 of the relevant attachment to the KF2BK submission, KF2BK draws the conclusion that “relevant audience” is interpreted as meaning “target market”.

This is incorrect. “Relevant audience” is taken by the Board to mean the audience that view or is likely to view the advertisement. For example, in the case of television advertising, timezone classifications are taken into consideration. For print advertising, readership demographics have been obtained and provided to the Board as part of the information it takes into consideration when making a determination. In the case of billboards, a reading of recent cases on outdoor advertising will clearly document that the Board considers the broad nature of the audience for billboard and outdoor advertising when making its determinations.

5. Quotes taken from Standards Board determinations

At page 6 of the relevant attachment to the KF2BK submission, under the hearing “Examples of ASB comments: (from 2008 KF2BK submission into the sexualisation of children)”, KF2BK provides several examples taken from Standards Board determinations to support its conclusion that “the only criteria for an ad to be pulled from the public domain, seems to be if a females ‘nipples’ or ‘genitalia’ are exposed”.

This is a simplistic analysis of Standards Board determinations that takes a select number of quotes from cases all pre-2008 (more than 3 years ago and prior to the research referred to above) and without providing any context, dates or case references that would have allowed the Committee or anyone else reading the submission to draw their own conclusions.

For example, one of the quotes (at the 4th bullet point) states:

“The board noted that the advertisement contained no nudity, but it did note that the close-up of the women’s crotch was confronting.

Does not breach sec 2.3. Complaints dismissed.”

The full Standards Board determination (from Case 49/07) indicates that the Standards Board took into account the relevant audience and late timeslot for this advertisement as well as the content, consistent with Section 2.3 of the Code of Ethics, as follows:

"The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board viewed the advertisement and considered whether it breaches Section 2.3 of the code dealing with sex, sexuality and nudity.

The Board noted the complainants' comments that the advertisement contained excessive sexual content.

The Board noted that the advertisement contained no nudity, but it did note that the close-up of the woman's crotch was confronting. However, taking account of the audience and timeslot, and of the nature of the product being advertised, on balance the Board felt that advertisement did not treat sexuality insensitively enough to warrant the advertisement's removal from air."

We have identified the case references for all but one of the quotes cited (bullet points 2 and 7 seem to be identical and we were unable to find the case from which this quote was taken). The case reference numbers for the other quotes are as follows: 101/07, 89/07, 49/07, 498/06, 48/07 and 139/06 (refer Attachments 1 – 6. Please note that 49/07 is a television advertisement so image cannot be attached). We again note that these are all cases that are four or five years old and are unlikely to reflect decisions that would be made by the current Standards Board, particularly having regard to the research undertaken on the Standards Board's behalf into sex, sexuality and nudity and discrimination and vilification since 2008.

6. Advertising images included in the KF2BK submission

The table below provides information the Bureau has available regarding the advertisements shown in the relevant attachment to the KF2BK submission.

The table includes the dates on which cases, where relevant, were determined. Again, we note that a number of the images are taken from the KF2BK submission to the 2008 inquiry into the Sexualisation of Children and as a result are not an accurate reflection of current Standards Board decision-making processes.

Links to the relevant case reports for those advertisements for which the Bureau has received complaints are also included. The case reports set out the reasons for the Board's determination in each case.

Page # KF2BK Submission (House of Reps submission)	Case Ref	Advertiser	Description	Determi- ation	Date of Determi- ation	Comment
8	N/A	Wrangler	Back shot of woman wearing no top, with thumb pulling down jeans on left side	N/A		The Bureau understands no complaints were received about this advertisement. The same advertisement featured in the KF2BK submission to the 2008 inquiry into the sexualisation of children, so it can be assumed it at least predates April 2008.
8	N/A	Zoo Weekly	Woman in a red bikini with words "On Sale Every Monday"	N/A		The Bureau has not received complaints about this
8	180/08	Ambra Corporation	Billboard displaying an image of nine sets of female legs, displayed from waist to toe, wearing stiletto heels, stockings and underwear and with text: "Let your legs do the talking. Ambra. Legwear. Underwear. Bodywear."	Upheld	11 June 2008	See case report for Board determination: http://122.99.94.111/cases/180-08.pdf
9	74/08	Coca Cola (Sprite)	Outdoor advertisement with image of young woman wearing a green bikini, standing in knee-deep water holding a bottle of Sprite with text "Truth 10. Drink Sprite. Look Sexy*" and underneath the explanation "**you must be sexy first"	Dismissed	12 March 2008	See case report for Board determination: http://122.99.94.111/cases/74-08.pdf
9	N/A	"Satisfaction Season 2"		N/A		No complaints were received about this advertisement
9	529/09	Kimberly Clark (Kotex)	Outdoor advertisement depicting naked woman with very long hair, which conceals her breasts and the text "U by Kotex Platinum"	Dismissed	25 November 2009	See case report for Board determination: http://122.99.94.111/cases/529-09.pdf

10	450/09	GASP Denim	(advertising female sanitary products) Outdoor advertisement depicting 5 images of a young woman wearing different pairs of tight fitting jeans and no top, with her hands/arms concealing her breasts and text: "The perfect fit is back" and below: "This summer its GASP jeans or nothing".	Dismissed	28 October 2009	See case report for Board determination: http://122.99.94.111/cases/450-09.pdf
10	324/10	AMI	Billboard with words "Impotence Busters" in bold red type and below: "Call or SMS "Hard" 1800 311 311".	Dismissed	11 August 2010	See case report for Board determination: http://122.99.94.111/cases/0324-10.pdf
10	81/09	AMI	Outdoor advertisement showing picture of woman lying on top of man in bed and text: "Ladies. Faking it? Feel it for real! Call the doctors at Advanced Medical Institute".	Dismissed	11 March 2009	See case report for Board determination: http://122.99.94.111/cases/81-09.pdf
11	N/A	AMI	"Sex for Life"	N/A		No complaints received.
11	N/A	Calvin Klein	Calvin Klein Jeans ad	N/A		No complaints received.
11	N/A	Sexpo	Sexpo Showtime ad	N/A		No Complaints received.
12	59/07	Sexpo	Transport/outdoor advertisement featuring woman's torso from below the breasts to the thighs, wearing jeans which are undone and with her thumbs hooked into the waistband. Text gives details of exhibition dates and location describing Sexpo as a "Health, Sexuality and Lifestyle Expo" with words "Ride the Gerbil!"	Dismissed	13 March 2007	See case report for Board determination: http://122.99.94.111/cases/59-07.pdf
12	370/06	Icon Clothing (Lee Jeans)	Outdoor advertisement featuring a young woman lying down looking towards camera with open mouth and holding lollipop to her tongue. She is wearing navy shorts and a blue striped top which is unbuttoned. Text reads: "Lee. See more at	Dismissed	12 September 2006	See case report for Board determination: http://122.99.94.111/cases/370-06.pdf Note the image provided by KF2BK shows a woman's nipple. To ASB's knowledge this is not the image that was used in the outdoor advertisement.

13	368/04	Pickwood Lodge	leejeans.com". Print advertisement stating "Sex. Chocolate and Flowers not required. Pickwood Lodge"	Dismissed	8 February 2005	See case report for Board determination: http://122.99.94.111/cases/368-04.pdf
13	148/06	The G(rosvenor)	Outdoor advertisement with black background imposed with red lips and words "Melbourne Brothel" on lips and "The G(rosvenor) in red bold type and phrase "Got the urge? Do it Now" with address and phone number.	Dismissed	9 May 2006	See attached image (Attachment 7) and case report for Board determination: http://122.99.94.111/cases/148-06.pdf
14	278/05	Kittens	Woman in bikini on side of bus	Dismissed	11 October 2005	See case report for Board determination: http://122.99.94.111/cases/278-05.pdf
14	225/10	Kittens	Woman in bikini on side of bus (case reconsidered within Board procedures)	Upheld	9 June 2010	See case report for Board determination: http://122.99.94.111/cases/0225-10.pdf As discussed in Bureau submission and during hearing, the Bureau has asked the Victorian Government to assist with this case. The Victorian Government has recently advised that it will await the outcomes of the various Commonwealth Government inquiries.
18-19	504/10	Kittens	Woman in bikini on side of ute	Upheld	8 December 2010	See case report for Board determination: http://122.99.94.111/cases/0504-10.pdf As discussed in Bureau submission and during hearing, the Bureau is continuing to pursue enforcement of this case with the Victorian government.
20	360/10	Diesel Clothing	Three poster images of guys and girls in Diesel jeans. One shows a girl wearing jeans and a red bra straddling a man wearing only jeans. Second shows a girl slouched on a sofa wearing only jeans and obscuring her naked chest with her	Dismissed	25 August 2010	See case report for Board determination: http://122.99.94.111/cases/0360-10.pdf

22	411/10	Calvin Klein	<p>arm. Third shows a man lying on a sofa wearing just jeans. Text on each: "Sex sells – unfortunately we sell jeans."</p> <p>Two part billboard in black and white with red lines painted on sides. Left image shows 3 men and a woman. Two men wearing jeans only with top buttons undone. Third man wears shirt unbuttoned to the waist and we cannot see if he is wearing jeans. The woman is wearing a black bra and she appears to be naked otherwise. The woman is lying on her back with head resting on thighs of a seated man and another man is crouched over her, while seated man has his hand on his back as though pushing him down. The third man sits on the ground looking away. The right image shows the woman sitting on a bench wearing jeans and a sleeveless top.</p>	Upheld	13 October 2010	See case report for Board determination: http://122.99.94.111/cases/0411-10.pdf
23	404/09	Australian Hair & Beauty Imports (MUK)	<p>Poster of an unclothed young man lying down in seductive pose with towel covering his genitalia and caption "wanna muk" and two other posters stating "What the muk" and "What the f*#k is muk?"</p>	Upheld	9 September 2009	See case report for Board determination: http://122.99.94.111/cases/404-09.pdf
25	519/06	AMI	<p>Outdoor advertisement featuring rear view of male wearing jeans and legs spread apart and appearance of belt undone. Between his legs we see a view of a woman in bed looking towards the man looking as if in shock.</p>	Dismissed	16 January 2007	See case report for Board determination: http://122.99.94.111/cases/519-06.pdf

26	352/08	Sexyland	Outdoor advertisement announcing "Super ideas for Fathers' Day. Sexyland. Adult Department Store" and an image of a cartoon "Sexyman" wearing a mask, hero outfit and red cape.	Dismissed	10 September 2008	See case report for Board determination: http://122.99.94.111/cases/352-08.pdf
28	N/A	Sexpo	[image shown under heading "Feb 2008"]	N/A		No complaints received.
28	60/10	Sexpo	Outdoor advertisement featuring a woman wearing a blue bikini-like outfit, on hands and knees and arching her back. A bare-chested male appears in the background. On right is a man on a motorbike depicted in mid-air.	Dismissed	24 February 2010	See case report for Board determination: http://122.99.94.111/cases/60-10.pdf
29	265/10	Sexyland	Two girls wearing lingerie – one from waist up, facing forwards wearing a black corset; the other has her back to the camera and is pictured from mid-thigh to shoulders, wearing black knickers and lace-up corset. Text: "100's of Beautiful Corsets, Knickers and Bras! SexyLand Adult Department Store".	Dismissed	22 June 2010	See case report for Board determination: http://122.99.94.111/cases/0265-10.pdf
29	38/10	Xplicit Gentlemen's Club	Outdoor advertisement for a gentlemen's club, depicting woman with her back to the viewer and wearing shiny hot pants and a bikini top.	Dismissed	10 February 2010	See case report for Board determination: http://122.99.94.111/cases/38-10.pdf
30	464/10	AMI	Yellow background with red text which reads "Be a man and ... hold your load!" with smaller black text: "Call or SMS "longer" to AMI 1800 411 411".	Upheld	24 November 2010	See case report for Board determination: http://122.99.94.111/cases/0464-10.pdf

We hope that this information satisfactorily responds to the Committee's questions.

Yours sincerely,

Fiona Jolly
Chief Executive Officer
13 May 2011