

## Determination Summary

### Discrimination and Vilification in advertising

- This document provides a general overview of Board determinations on complaints about discrimination and vilification in advertising.
- It is designed to assist the advertising industry, the self-regulatory body, consumers and others interested in ensuring that advertising does not breach the AANA Code of Ethics or community standards in relation to matters of discrimination and vilification and that such advertising is positive, responsible, suitable for general viewing and contributes to the elimination of systemic discrimination and vilification.
- It is not a “how-to” guide, nor does it cover all situations which require care in understanding elements of discrimination and vilification.
- The Board considers overall impressions of communications as well as particular elements and can uphold complaints in relation to either the entirety, or specific parts of an advertisement.
- Humour, works of art and historical settings can all be positive elements in advertising. However, the Board will consider whether in its opinion, these techniques are used as an excuse to stereotype or discriminate against people or to portray behaviour which it considers unacceptable today.
- This document refers to specific Advertising Standards Bureau (ASB) case numbers to provide practical examples of the issues under discussion. These were current at the time of writing and should be used as a starting point only. Please refer to the ASB website for more recent examples.

Relevant section of the *AANA Code of Ethics*:

- 2.1 *Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.*

### Definitions

#### **Discrimination:**

Acts with inequity, bigotry or intolerance or gives unfair, unfavourable or less favourable treatment to one person or a group because of their race, ethnicity, nationality, sex, age, sexual preference, religion, disability and/or political belief. [For further discussion of discrimination relating to gender, see the Portrayal of Gender Determination Summary]

#### **Vilification:**

Humiliates, intimidates, incites hatred towards, contempt for, or ridicule of one person or a group of people because of their race, ethnicity, nationality, sex, age, sexual preference, religion, disability and/or political belief.

#### **Race:**

People of a common descent or ancestral lineage.

Race can be viewed as a broad term and can include colour, descent or ancestry, ethnicity or ethnic origin, nationality or national origin. This interpretation would include ideas of ethnicity or common descent thus enabling people of Jewish origin or groups such as Muslims to be covered.

Examples: [0344/10](#) Panasonic; [0175/10](#) NAB

**Ethnicity:**

Segments of a population distinguished from others by a sufficient combination of shared customs, beliefs, traditions and characteristics derived from a common or presumed common past, even if not biologically the same race.

Ethnicity involves the concept of an historically determined social identity as perceived by both the group itself and those outside the group. This identity is based not simply on group cohesion and solidarity but also on their belief about their historical antecedents.

An ethnic group would be seen by themselves and outsiders as a distinct community by virtue of certain essential characteristics such as:

- a shared history distinguishing it from other groups and the memory of which it keeps alive; and
- a cultural tradition of its own, often but not necessarily associated with religious observance.

Other relevant but not essential characteristics of an ethnic group are:

- a common geographical origin or descent from a small number of common ancestors;
- a common language not necessarily peculiar to the group;
- a common literature peculiar to the group;
- a common religion different from that of neighbouring groups or the general community surrounding it; and
- being a minority or an oppressed group within a larger community.

Example: [0399/10](#) Holeproof Explorer

**Nationality:**

The status of belonging to a particular nation by origin, birth or naturalisation.

The status of nationality can be transient and can change during a person's lifetime.

Examples: [311/07](#) Kevin Bloody Wilson; [59/08](#) Townsville Automotive Detailing; [393/09](#) Unilever; [91/09](#) Red Bull; [93/09](#) Skycity Adelaide; [408/08](#) Jamba; [453/07](#) Herringbone Clothing; [422/08](#) Lion Nathan; [12/09](#) Fosters; [421/09](#) La Famiglia; [29/10](#) Commonwealth Bank; [0207/10](#) Balfours.

**Sex:**

The status of being male, female, intersex, trans-sexual, or transgender and of having characteristics attributed to an individual or a group because they are male, female, intersex, trans-sexual or transgender.

All Commonwealth and State and Territory legislation prohibits discrimination on the basis of sex. State and Territory legislation includes people who are intersex, trans-sexual and transgender.

Anti-discrimination legislation includes sexual harassment as a type of sex discrimination when it refers to unwelcome conduct of a sexual nature which targets a specific individual who feels offended, humiliated or intimidated (and a reasonable person in their shoes would feel the same). Unwelcome sexual conduct could include, among other conduct, lewd comments, smutty jokes, asking for sex, and displays of offensive material.

Examples: [193/07](#) Sydney Breast Enlargement Cosmetic Centre; [277/07](#) Inghams; [95/08](#) Kotex U; [130/08](#) Cockatoo Ridge Wines; [123/08](#) Roads and Traffic Authority; [143/09](#) Nando's; [278/09](#) Pharmicare; [131/09](#) IAG Insurance; [406/08](#) Fosters; [59/09](#) Australian Gourmet Meats; [261/09](#) Custom Security Services; [0412/10](#) MLC; [0417/10](#) VIP Home Services.

**Age:**

The number of years that someone has lived or characteristics generally pertaining to a stage or phase in someone's life, or characteristics generally imputed to people of that stage or phase.

Commonwealth and some State legislation proscribe discrimination on the basis of age where an opportunity is denied to a person because of their age, or because of characteristics generally pertaining to age, and where age is irrelevant to the person's ability to take advantage of that opportunity.

Examples: [444/07](#) Rugby WA; [7/07](#) SBS; [82/08](#) Virgin Money; [13/07](#) APIA; [133/09](#) Kimberley Clark; [226/09](#) Wicked Campers; [375/09](#) Hungry Jacks; [65/10](#), [106/10](#) ANZ; [0404/10](#) Combe.

**Sexual preference:**

Homosexuality, heterosexuality, bisexuality and trans-sexuality.

Under Commonwealth legislation discrimination on the grounds of sexual preference is not unlawful so there is no enforceable remedy under that legislation. Under State and Territory legislation, some States have made discrimination on the grounds of sexual preference unlawful, but there is no uniformity regarding this issue. Under the AANA Code of Ethics, the Board will consider complaints regarding discrimination relating to sexual preference including homosexuality, heterosexuality, bisexuality and trans-sexuality.

Examples: [286/07](#) Heinz baked beans; [14/09](#) Cadbury Schweppes; [7/09](#) Autobarn; [345/09](#) Freedom Furniture; [0291/10](#) McDonald's; [0416/10](#) Kellogg's Crunchy Nut.

**Religion:**

People's beliefs and opinions about the existence, nature, and worship of God, a god, or gods, and divine involvement in the universe and human life or an institutionalised or a personal system of beliefs and practices relating to the divine.

Even though discrimination on the basis of religion is only unlawful in Western Australia, Tasmania and the Australian Capital Territory, such discrimination is proscribed under the Code, and should be interpreted in the plain English meaning as defined above.

Examples: [448/07](#) Beta Electrical; [528/06](#) CUB; [39/09](#) Red Bull; [159/09](#) Café Bella Vista; [291/09](#) Planet Health; [416/09](#) Tourism Victoria; [528/09](#) iSelect; [47/10](#) Tartarus; [0140/10](#) Ferrero Rocher; [0208/10](#) Penrite Oil; [0304/10](#) Red Bull; [0396/10](#) Fosters.

**Disability:**

A current, past or potential physical, intellectual, psychiatric, or sensory illness, disease, disorder, malfunction, malformation, disfigurement or impairment.

Disability is broadly and comprehensively defined in both Commonwealth and State anti-discrimination legislation. For the purposes of the Code, the definition stated above should be observed and the Board will consider complaints in which there is a reference to any form of disability which could cause offence.

Examples: [238/09](#) Rivers clothing; [324/09](#) Multiple Sclerosis Society; [267/09](#) Youi; [412/09](#) Youi; [0145/10](#) Trading Post; [0179/10](#) Drug and Alcohol WA; [0319/10](#) Crazy John's; [0353/10](#) Adam Internet; [0386/10](#) Status Anxiety.

**Political belief:**

Support for, or opposition to, government or civil administration or a particular political party.

Discrimination on the basis of political belief is only unlawful in Western Australia, Victoria, Tasmania and the Australian Capital Territory. However, this is an aspect of life that can

generate significant heat and the Board will consider complaints which include offensive reference to political issues in advertisements.

Examples: [52/08](#) Mars; [302/08](#) Coopers Brewery.

## **Socio-ethical considerations**

The Board applies legal standards on discrimination and vilification as its basis for considering complaints of discrimination and vilification. It then undertakes additional socio-ethical considerations. While legal standards have primacy, it is likely that socio-ethical considerations will assume significant importance in cases where there is a difference of views among Board members.

As with many ethical dilemmas and debates, there are no absolute right or wrong answers, only more and less justifiable solutions to problems considered on a case-by-case basis.

The Board seeks to determine if any ethical breaches or risks identified are defensible and worthwhile in terms of the possible meanings of the advertisements to their potential audiences by addressing the following questions.

**(a) *Identifying and avoiding offence with regard to stereotyping, misrepresentation, vilification or satire***

- Does the advertisement portray a negative stereotype (A negative stereotype is an assumption about a person or group that is not a positive assumption e.g.: accountants are boring (negative) vs accountants are good with money (positive))
- Does the negative stereotype implicate a disadvantaged or minority population group covered by the Code?
- If so, is it done humorously and in a lighthearted, comfortable tone and clearly produced by people belonging to, or sensitive to the same group?
- If the advertisement is intended to be humorous, is the humour successful and relevant?
- Is the stereotype hurtful, prejudiced and/or biased against the individual or population group to which the individual belongs?
- If the stereotype is based on evidence, is the negative representation socially useful? (for example; if the advertisement is a campaign against racism which depicts racist comments but does so in the context that such comments are inappropriate and possibly illegal)
- Is the stereotype satirising the behaviour of the individual based on choice, or is it satirising a feature of the individual over which he or she has no control?
- Is the person exhibiting the stereotype passively or actively in the advertisement? Passivity can contribute to negative treatment and an unfortunate tone.
- Could this advertisement cause offence?
- If so, is the offence caused to a minority or disadvantaged group?

**(b) *Identifying and avoiding offence with regard to using divisive social issues in order to gain support of one group at the expense of another group, or with regard to incitement. This could be termed “wedge advertising”.***

Could the advertisement be regarded as a form of wedge advertising? That is:

- Does the advertisement promote the interests of one population group at the expense of another group?
- Does the advertisement include negative stereotyping?
- Does the advertisement include inflammatory language?

Where any of these approaches could incite hatred or contempt by one group for another group, or conflict between groups. If so, this can also be considered to be discriminating or vilifying a person or section of the community and breach Section 2.1.

## Other considerations

In addition to the issues outlined above, the Board will also consider the nature of the media used when developing campaigns, and the times in which advertisements are placed.

- **Outdoor advertising:** Outdoor advertising is in the public domain and has a broad audience. The Board believes that messages and images presented in this medium need to be developed with a general audience in mind and has given particular attention to the placement of such advertising e.g. outdoor advertising depicting violence or sexual content that is placed close to schools and churches is of particular concern.

Examples: [218/09](#) – Thomas William Productions; [220/08](#) Wicked Campers

- **Digital media:** Given the global reach of electronic networks and the variety and diversity of recipients, the Board believes that it would be wise for digital advertisements to respect the potential sensitivities of a global audience with particular reference to principles of social responsibility and the possibility of causing offence.

Example: [283/09 – Brothers Ink](#)

- **Timing:** Advertising on television is prescribed by the Broadcasting Services Act and classified by Free TV. Consumers express strong concern about contravention of this code, especially in relation to explicit sexual material. The Board is particularly concerned that only material that is suitable for a particular classification zone is broadcast in that zone.

Example: [278/09](#) Pharmacare

## Level of community concern about this issue

Community concern about discrimination and vilification in advertising has been reflected in complaints to the Advertising Standards Bureau. Such complaints comprised 16 per cent of all complaints received in 2009 [24 per cent of all complaints between 2005 and 2009].

The ASB and the advertising industry have demonstrated their responsibility and commitment to good practice in this area by developing a coherent and responsible approach to the issue. This approach is grounded in ensuring that advertisements are legal, decent, honest and truthful and are prepared with a sense of obligation to the consumer and society.

In addition, the ASB commissioned research into this issue and published a comprehensive research report on the matter in March 2009. This report is available on the ASB website [www.adstandards.com.au](http://www.adstandards.com.au)

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