

Dr Paul Tyler



3 March 2011

Committee Secretary  
House of Representatives Standing Committee on  
Social Policy and Legal Affairs  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

Dear Sir/Madam

Thank you for the offer of an extension to the submission deadline. My submission to the Standing Committee on Social Policy and Legal Affairs for their enquiry into the regulation of billboard and outdoor advertising is attached. I have also attached a copy of an Advertising Standards Bureau case report that is referenced in the submission. If you have any questions regarding this submission, please do not hesitate to contact me.

Yours sincerely,

Dr. Paul Tyler

**Submission to the House Standing Committee on  
Social Policy and Legal Affairs enquiry into  
The Regulation of Billboard and Outdoor Advertising**

**By**

**Paul Tyler**

## **Abstract / Summary**

This submission presents arguments concerning what the author considers a lack of appropriate regulation of outdoor advertising. It does so firstly by way of case study using a complaint to the Advertising Standards Bureau (ASB) with case number 0445/10. In this case a relative of the author complained about a billboard on a trailer towed by a vehicle on a major Sydney suburban roads. The advertisement was for a brothel's online services. The essence of the complaint was the inability of parents to control exposure of children to the advertisement. The complaint was dismissed. No appeal was lodged.

Using this case and as example, the author ultimately argues that the current regulatory system fails to take account of an individual's right to avoid advertising which he/she considers inappropriate or personally offensive. Similarly a caregiver is also unable to control the exposure of those under their care to advertising which is inappropriate for those under their care, especially children. Most importantly, the author argues that in his brief survey of academic literature, there is evidence that the content of some advertising is harmful and detrimental to children. In all these cases the regulatory system fails.

In examining the case study, the author argues that the complaint process is flawed because of both the Australian Association of Nation Advertisers' (AANA) codes and the way the ASB applies those codes. In applying the codes, the ASB's procedure is not consultative and a complainant only has one chance to put a case.

In particular the author questions the vagueness of what is "audience" and "relevant audience" in the AANA code and the ASB's interpretation of that code. This is especially relevant to outdoor advertising where a number of minority groups such as children may be exposed. He also examines how the ASB self-determines "community standards" without any reference, justification, research or proof of that those standards are in fact community standards.

Finally the author considers the question of whether people ought to have the option to controlling their own or those under their care's exposure to advertising. Further to that is whether our society ought to restrict advertising that may be detrimental to a section of our community. The author argues that in a multicultural, multi-faith, age diverse society, a single general audience community test is inappropriate and that tests for many different parts of the community, especially children, ought to be part of the process. The author has a particular concern for children's exposure to advertising, irrespective of whether they are the target of the advertising.

Finally the author puts the case that the self regulatory system can not be corrected. The conflict of interest involved in being funded by the industry being regulated means the ASB is not truly independent and seeks wherever possible to justify the actions of advertisers over those of complainants.

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## **Introduction**

Outdoor advertising is a difficult subject. At the core is a balance of rights. On one side is the advertiser who might claim a right to advertise their products in what is otherwise a legal manner. On the other, an audience member has a right to ignore or avoid objectionable advertisements. Most significantly though, all members of our community, whether young, old, weak, strong, of a particular faith or many other areas have a right to live in a community that is not harmful to them. If there is a link between advertising and harm to a section of the community, the right to protection from that harm ought to also be considered.

This submission will consider these issues by firstly looking at a case study. In this case a complaint was made to the Advertising Standards Bureau (ASB) regarding a mobile (trailer mounted) billboard. It will examine this case and argue that the current regulatory system does not balance these rights nor does it take much heed at all of the right of the individual or the potential harm to particular groups.

## **Case Study**

This case study is of a complaint submitted to the ASB concerning a mobile billboard advertising the online services of a brothel. The complaint case report can be found at <http://www.adstandards.com.au/casereports/determinations/standards?ref=0445/10> and is attached as appendix A. The ASB applies Australian Association of National Advertisers (AANA) codes found at <http://www.aana.com.au>.

## **Background**

A relative of the author was driving alone and had pulled up at lights on Port Hacking Rd in southern Sydney in the middle of the day on a Saturday. A vehicle towing a mobile billboard also pulled up at the lights in an adjacent lane. The advertisement on that billboard was for a brothel and its website. While her three children were not in the car at the time, they could have been exposed to this advertising material. A complaint was submitted highlighting the potential exposure of children on the route of that vehicle to material that was not suitable for children.

The board determined only to consider section 2.3 of the AANA code of Ethics. It concluded that the advertisement did not go beyond the code and the complaint was dismissed. The case report has further details.

## **Analysis of the Case**

In analysing this case, two issues will be presented. Firstly, an analysis of the ASB's application of the code will be given. Secondly, issues with the AANA code itself will be presented.

## **The ASB application of the code**

This section examines ASB application the AANA Code of Ethics. Given the complaint, the ASB decided the relevant part of the code was section 2.3. No other section of the code was considered. Neither was the AANA Code for Advertising & Marketing Communications to Children. Section 2.3 of the Code of Ethics reads:

*2.3 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.*

Neither the code, nor the case report makes an attempt to define what is meant by “relevant audience”. Rather the report refers to the “community”. It appears the board took the general community as the relevant audience and so applied what it considered to be general community standards, standards they ascertain themselves. In the case of outdoor advertising, it is not clear this is a correct interpretation. It is a convenient interpretation because it is easy and simple to apply a single audience test. However no consideration was given to the possibility of different or changing audiences.

The ASB also determine the general community standard that will apply and do so without reference, proof or evidence. There is no evidence to support their view of a general community standard on brothel advertising and there is some evidence (such as ongoing complaints about Advanced Medical Institute) which suggests they are out of touch with general community standards.

Secondly, the case report makes no mention of “relevant programme time zone”. Clearly the ASB did not consider it necessary for this advertisement to have a relevant programme time zone. This too seems to be in error. Had it been a TV advertisement, it would not be on at a time when children might be watching. And that is with a medium that can be avoided. How much more ought a relevant time zone apply to a medium that is unavoidable. If outdoor advertising does not allow controlling the “programme time zone”, then clearly the advertisement ought to be “sensitive” to all time zones.

Thirdly, the contents of the advertisement included a website URL (address) yet the contents of that website played no part in the ASB’s determination. Again the code is unclear and the lack of consideration given to the website’s contents is problematic. For a advertisement type that could result in children going to the web – even on their phone – all without parent knowledge, this too is of concern and demonstrates a failure of the current regulatory system.

It is also worth noting that the ASB did not apply the “AANA Code for Advertising & Marketing Communications to Children”. There is no reason given in the case report. It appears the ASB only applies this code when the advertisement is directly targeting children.

As for the process, the ASB process is not consultative. There is no opportunity to put these arguments without paying \$500 for a review. The complaint is simply interpreted by the ASB and then a report is made.

Lastly, the process never seems to raise the possibility of review of the AANA code. The ASB appears to apply the code blindly, with what is perceived as prejudice against the complainant. There is no opportunity for a complainant to question the way the ASB interprets a complaint without paying for a review. Failure to provide a full legal argument when submitting a complaint (which is beyond most people) results in allowing the ASB to simply address only those things convenient to the

advertising industry with the aim of dismissing the complaint. It also seems to the author that the ASB could end up believing itself by making decisions that manipulate, erode and set future precedent for “community standards”.

### ***Comments on the AANA code***

This case demonstrates that the ANNA code itself is flawed. The lack of definition of “relevant audience” clearly poses a problem of interpretation. Is this the target audience? Is it a collective group of people exposed to the advertisement as a whole? Or as argued above, ought it be plural, and many different “audiences” ought to be considered? Also the lack of distinction between types of advertising fails to recognise the ability of people to avoid that advertising.

In the case of outdoor advertising, the question of “relevant audience” is particularly vexing. An outdoor advertisement is hard to focus on a “target”. The case study clearly illustrates the broad exposure of an outdoor advertisement to an audience larger than the target.

The ASB effectively decided the “relevant audience” was the general community – treated as one audience. It then applied a general community standards test. However this is problematic. Just because an advertisement might pass general community standards doesn’t mean it is acceptable to a minority group that is exposed to that advertising or a specific audience that is exposed at a particular time. Neither does it mean it is acceptable for the particular community in which it has been placed. And in the case of a mobile outdoor advertisement, whether it is acceptable for every particular community through which it passes. For example a billboard outside a school will have a significant minority audience of children. An advertisement outside a church may have another minority audience. A mobile advertisement that passes a school, church or minority culture suburb may have many minority audiences.

This submission argues that a “general community standard” is the wrong concept of “relevant audience”. Rather, an outdoor advertisement is to multiple audiences. This is even more so for mobile advertising. So even within the scope of the current code, the “sensitivity” test ought to be applied to every possible “audience” that may be exposed to that advertisement. This will usually include an audience of children or others audiences consisting of different religious group. On the balance, the failure of the AANA / ASB regulatory system to consider different specific audiences of outdoor advertising appears to fall to a failure of the AANA codes.

Looking back at the case, it might be argued that the mobile billboard could be acceptable for driving up and down Oxford St, Sydney on a Saturday night. The particular audiences present at that location at that time are unlikely to have “sensitivity” issues with the billboard. In the author’s opinion it is not acceptable to drive it past a school, or on streets where families are present during the day on the weekend or any other time when children might be exposed. However neither the AANA codes nor the ASB make this distinction. Under the current system, there are only two choices, to allow or disallow. In my opinion this is a significant flaw in the code, especially when it comes to outdoor advertising.

Outdoor advertising raises two further issues. Firstly is the issue that an individual cannot avoid the first and sometimes subsequent exposure to the advertisement. While many advertising mediums afford an individual the option of avoiding the advertisement (print, online, TV), it is more difficult to avoid outdoor advertising. In the case study, the situation allows for exposure at 1 metre without consent and filling an area that a driver cannot avoid looking at. The codes make no distinction that recognises this difference. That is a serious flaw in the code.

Secondly and further to the first point, when it comes to outdoor advertising, a parent or care giver is stripped of their right to control the exposure of children under their care to material they as a parent deem to be inappropriate. While a parent can restrict access to unsuitable print media, control TV access and monitor online exposure, no such control exists for outdoor advertising. What is worse is mobile advertising that can pull up within 1 metre beside children, even without parental knowledge. Yet the code makes no provision for exposure of children to general advertising and the children's code only applies to advertising directed at them.

## Suggestions for consideration

At the heart of my submission are two points. They are that

- 1) exposure of some minority sections of the community such as children to some kinds of advertising is harmful and this ought to be regulated
- 2) outdoor advertising impinges on the right of people to control what they and those under their care can see, hear or are otherwise exposed and this too ought to be regulated.

A short examination of the academic literature shows that children are vulnerable to advertising, including advertising that is not directly targeting them. One abstract<sup>1</sup> from the Journal of the American Academy of Child & Adolescent Psychiatry where "media" include advertising, the author concludes:

*The primary effects of media exposure are increased violent and aggressive behavior, increased high-risk behaviors, including alcohol and tobacco use, and accelerated onset of sexual activity.*

Our community pay some lip service to this in control of advertising during children's TV shows. The code for advertising to children is stricter. Also where the audience have some control, financial pressures mean inappropriate advertising is self limiting. Parents who are not happy will turn the TV off, not only protecting the child but reducing the TV network's return on advertising. Yet the current codes provide less protection in the less limited and less regulated outdoor advertising space. In this space, parents may have little option in protecting their children and there is potential for children to be exposed to mobile advertising without the parents even knowing.

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<sup>1</sup> S. Villani, *Impact of Media on Children and Adolescents: A 10-Year Review of the Research*, Journal of the American Academy of Child & Adolescent Psychiatry, Vol 40, Iss 4. ([http://www.jaacap.com/article/S0890-8567\(09\)60387-7/abstract](http://www.jaacap.com/article/S0890-8567(09)60387-7/abstract))



As a society, we ought to be protecting those who cannot protect themselves and assisting those care givers in protecting those under their care. However nobody can protect themselves against outdoor advertising. As the author is not an expert on the effects of advertising to children, this submission recommends the committee seek more information in this area from Education and Medical experts.

Secondly, outdoor advertising impinges on the right of people to control what they and/or those under their care can see, hear or are otherwise exposed. In general individuals ought to have a right to control what they see or experience, at least to the extent that is controllable. Perhaps he/she can avert his/her look from things he/she doesn't wish to see but this might be difficult when driving behind a mobile billboard or bus. More importantly though, wherever possible a parent ought to be able to control exposure to those things they consider harmful for their children. That ought to include outdoor advertising. This case study demonstrates that when it comes to outdoor advertising, that right has been taken from the parent. The choices left to parents are few to none – other than keep their children at home.

A major question before the committee is whether the right to advertise is greater than the right of a parent to protect their children from inappropriate advertising and the obligation of society to protect children. Where there is a link between a type of advertising and a risk of psychological harm to a child, surely the child wins out?

If we agree that sections of our community deserve protection and the right to avoid particular outdoor advertising, the question left is whether the current self-regulation is capable of delivering those aims. Given the case study and many other cases of the ASB, it would be hard to fathom a way in which the AANA code could be reformed and the ASB delivering rulings that delivered the desired aims. Whether this is driven by vested interests in the AANA and ASB, or simply by poor design, it seems that self regulation has failed. It seeks the self-interest and defines things like “community standards” to suit its own cause. This cannot be fixed, especially with regard to outdoor advertising.

The author recommends the committee seriously consider alternatives to self regulation. While not in a position to suggest a full framework, the authors wonders whether the framework ought involve government set codes of conduct, overseen by the Commonwealth Ombudsmen , and with sanctions for repeat offenders.

I submit this for your consideration and look forward to following the ongoing work of the committee.



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0445/10</b>
<b>2</b>	<b>Advertiser</b>	<b>Tiffany's</b>
<b>3</b>	<b>Product</b>	<b>Sex Industry</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Transport</b>
<b>5</b>	<b>Date of Determination</b>	<b>10/11/2010</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

2.3 - Sex/sexuality/nudity      Treat with sensitivity to relevant audience

### DESCRIPTION OF THE ADVERTISEMENT

Large image of a female sat astride a chair, facing its back. She is visible from the behind and we can see from her mid face downwards (her nose, eyes, and top of head are not visible). She is wearing a pair of lacy black knickers, a red tie which is flung over her shoulder so that it hangs down and obscures any view of her chest, and a pair of red shiny boots.

The accompanying text to the left of the woman reads, "Tiffany's. Check out our NEW fully renovated rooms on our NEW website. We love you always... 99 Albion St, Surry Hills, [www.tiffanysgirls.com.au](http://www.tiffanysgirls.com.au), 9211 3804

### THE COMPLAINT

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

*My primary objection to this advertisement is the image that was depicted on the billboard. The photographic image was of a very scantily clad female, seated in a sexually suggestive pose. The image was the full length of the billboard and hence was highly visible. I was offended by the sexually suggestive nature and nudity of the image. On this occasion my 3 young children were not present in my vehicle but I was angered that any child travelling in a vehicle along that route would be exposed to such sexually explicit/nude images.*

## **THE ADVERTISER'S RESPONSE**

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

*We enclose a picture of the trailer and advise:*

- 1. There is no advertising agency instructed as to this advertising campaign.*
- 2. The female image is no more nude or suggestive than many lingerie and swimming advertisements displayed in public places and is sensitive to and consistent with prevailing community standards.*
- 3. The advertisement is only mildly sexually suggestive and the image is relevant to the services advertised.*
- 4. The wording on the display is only identifiable with an escort agency/brothel to an adult or relatively sophisticated older teenager.*
- 5. The image is identical with newspaper advertising which has been used for a period of approximately four years without complaint.*
- 6. The advertisement is obviously not and cannot in any way be interpreted as being "an advertising or marketing communication to children" and consequently is not covered by the AANA Code for Advertising and Marketing Communication to Children as referred to in your letter.*

## **THE DETERMINATION**

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 noted the advertiser's response.

The Board considered whether the advertisement was in breach of section 2.3 of the Code. Section 2.3 of the Code 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 the complainant's concerns that the advertisement is sexually suggestive and not suitable for viewing by children.

The Board noted that this advertisement features a woman astride a chair wearing black knickers, a red tie and red boots. The Board noted that the woman's breasts were obscured by the tie, and that her back and thighs are naked and visible. The Board considered that this level of nudity is not excessive and that this image is relevant to the product advertised.

The Board noted that whilst some members of the community may find this image to be sexually suggestive, most members of the community would consider this image to be mild and inoffensive.

The Board considered that the advertisement does treat the audience with sensitivity and also considered the image was not sexually suggestive or overtly sexualised and did not overtly bring the issue of sex in front of children.

The Board determined that the advertisement did not breach section 2.3 of the Code.

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