

<b>COMPLAINT NUMBER</b>	19/464
<b>APPEAL NUMBER</b>	20/001
<b>COMPLAINANT</b>	R Hepworth
<b>ADVERTISER</b>	Briscoes Group Ltd
<b>APPLICANT</b>	R Hepworth
<b>ADVERTISEMENT</b>	Briscoes, Television
<b>DATE OF MEETING</b>	09 January 2020
<b>OUTCOME</b>	Declined

## **SUMMARY**

The Chair of the Complaints Board ruled on 9 December 2019 the complaint made by R Hepworth had No Grounds to Proceed.

The Complainant appealed the Decision on the grounds that the evidence had been misinterpreted to the extent it has affected the decision, the decision is against the weight of evidence and it is in the interests of natural justice the matter be reheard.

The appeal application was considered by the Acting Chairperson of the Appeal Board. She noted the Complainant considered the advertisement was promoting illegal and abusive behaviour and encouraging a pattern of domestic violence.

The Acting Chairperson agreed with the Chair of the Complaints Board and said the image shown in the advertisement, while not ideal, had not met the threshold under the Advertising Standards Code to cause serious or widespread offence for most consumers.

The Acting Chairperson noted the Complainant's concerns regarding the Chair's Ruling, however, disagreement with a decision was not a ground on which an appeal could be accepted.

The Acting Chairperson said none of the grounds for appeal had been met and ruled the appeal application was declined.

Please note this headnote does not form part of the Decision.

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## **CHAIRPERSON'S RULING**

The Acting Chairperson viewed the application for appeal. She noted there were five grounds upon which an appeal was able to proceed. These were listed at Clause 6.4 of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and were as follows:

- (a) The proper procedures have not been followed.
- (b) There is new evidence of sufficient substance to affect the decision.

- (c) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (d) The decision is against the weight of evidence.
- (e) It is in the interests of natural justice that the matter be reheard.

The Acting Chairperson of the Appeal Board noted the Complainant appealed the Decision on the grounds that evidence provided had been misinterpreted to the extent that it has affected the decision, the decision is against the weight of evidence and it is in the interests of natural justice that the matter be reheard.

*Has the evidence been misinterpreted to the extent that it has affected the decision?*

The Acting Chairperson reviewed the complaint, the advertisement, the Chair's Ruling and the Appeal Application. The Acting Chairperson confirmed the Chair, acting on behalf of the Complaints Board under delegation, had not misinterpreted the evidence to the extent that it affected the decision.

*Did the decision go against the weight of evidence?*

The Acting Chairperson said to reach the threshold to breach Rule 1(c) of the Advertising Standards Code, the scene in question would need to stand out as a key takeout for consumers in the advertisement's story. The Acting Chairperson noted the scene subject to complaint was three seconds of a 45 second television advertisement which showed the good and the bad across day to day life.

The Acting Chairperson agreed with the Complaints Board Chair's assessment of the consumer takeout. When considered in its entirety, the likely consumer takeout of the advertisement for the major consumer goods retailer is that it portrays the ups and downs of life. The advertisement did not focus on the scene about the reaction of one partner to another.

The Acting Chairperson said the scene was unlikely to cause serious or widespread offence in light of prevailing community standards, which is the applicable test under the Advertising Standards Code.

The Acting Chairperson took into account the context, audience, medium and product and disagreed the advertisement normalised anti-social behaviour. The Acting Chairperson said the scene subject to complaint was brief and while it showed an action which could be viewed as aggressive, it did not reach the threshold to encourage or condone violent behaviour.

*Is it in the interests of natural justice that the matter be reheard?*

The Acting Chairperson said that the complaint, the Ruling and the Appeal did not raise issues of natural justice that would require the complaint to be reheard.

The Acting Chairperson acknowledged the Complainant disagreed with the Decision, but this was not a ground for appeal.

The Acting Chairperson said none of the grounds for appeal had been met and ruled the appeal application was declined.

**Acting Chairperson's Ruling:** Appeal application **Declined**

## APPENDICES

1. Description of Advertisement
  2. Appeal Application
  3. Complaints Board Decision
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### Appendix 1

#### DESCRIPTION OF ADVERTISEMENT

The Briscoes television advertisement shows a range of family situations while the voiceover says "Your home is more than just a home. It's where your story takes place." One narrative is a couple moving into a new home and then the woman throws clothing out the window to the man standing beneath. The voiceover says "We're here for the good ideas and the bad. For better starts and finishes." The couple are then shown with the word "sorry" spelt out in lights outside the home.

### Appendix 2

#### APPEAL APPLICATION FROM COMPLAINANT, R HEPWORTH

I appeal the Outcome of this hearing on the grounds:

- C: The evidence to the Complaint Board has been misinterpreted
- D: The decision is against the weight of evidence
- E: It is in the interests of natural justice that the matter be reheard

The written response to my complaint has listed the incident concerned as:

***"Fleeting"***

***"A dramatic representation often seen in movies to demonstrate an argument"***

***"Followed by a reconciliation"***

This advertisement promotes an illegal and abusive behavior ... as such it gives it legitimacy to abuse

This is inappropriate

"fleeting" statement colludes and legitimizes the minimization of a serious, and increasing social abuse issue ... domestic violence

The "dramatic representation" and "reconciliation" assumption ignores the weight of police, court and social service evidence which clearly shows that:

- Domestic violence is learnt behavior
- This behavior has a predictable pattern .... TRIGGER: ESCALLATION: HONEYMOON PHASE (reconciliation/ fantasy ) ..... **REPEAT!**  
This pattern is known to escalate and intensify .... Resulting in the "honeymoon phase" being discarded and the behavior moving from Trigger to increasing Escalation and increasing levels of VIOLENCE

I believe that the ASA hearing has misinterpreted the information and evidence provided (C )

I believe that the decision is against the weight of evidence provided (D )

On these grounds my complaint should be reconsidered

In the interests of natural Justice ( E )

It is my observation and understanding that

- The behavior demonstrated is illegal and not in the viewers interest
- It justifies and minimizes the inappropriate "projection of anger" onto a relationship partner
- The inclusion of this scene into the advertisement is specifically and intentionally designed to reach a specific TARGET AUDIENCE  
This is a high budget sophisticated production advertisement ... not one aspect of this is included by accident or oversight  
This scene has been designed to specifically appeal to a target audience .. that's the intention of advertising ..... that's what this advertisement does!  
It is an inappropriate message ..... at any time .... especially at Christmas when domestic violence is at peak prevalence
- The scene depicted has specific camera angles aspects and intentional subliminal emphasis  
The elevation of the person throwing the items is significant . it denotes Power  
The possessions are thrown down in anger ... it demonstrated dominance  
The person below is ... disempowered ..... he is not IN the home ... he is OUT of the dwelling ... just as are his belongings  
The anger is not contained, reasonable or rational ... it is externalized and PROJECTED . "at" the partner ... the personal belongings are simply the "messenger"
- Any reconciliation scene is irrelevant in the context of the preceding behavior demonstrated

On these grounds my complaint should be reconsidered

I wish to emphasize to the ASA Hearing that the behavior advertised contains material that is contrary to accepted social behavior , it is illegal and fundamentally abusive

## Appendix 2

### COMPLAINTS BOARD DECISION

<b>COMPLAINT NUMBER</b>	19/464
<b>COMPLAINANT</b>	R Hepworth
<b>ADVERTISER</b>	Briscoes Group Ltd
<b>ADVERTISEMENT</b>	Briscoes, Television
<b>DATE OF MEETING</b>	9 December 2019
<b>OUTCOME</b>	No Grounds to Proceed

**Advertisement:** The Briscoes television advertisement shows a range of family situations while the voiceover says “Your home is more than just a home. It’s where your story takes place.” One narrative is a couple moving into a new home and then the woman throws clothing out the window to the man standing beneath. The voiceover says “We’re here for the good ideas and the bad. For better starts and finishes.” The couple are then shown with the word “sorry” spelt out in lights outside the home.

**The Chair ruled there were no grounds for the complaint to proceed.**

**Complainant, R Hepworth, said:** I believe the broadcast breached the following standard(s):

- 1 - Good Taste and Decency
- 4 - Violence
- 6 - Discrimination and Denigration

The reason I believe the broadcast breached the nominated standard(s): the Briscoes advertisement has content which shows a woman throwing the clothing (belongings) of her partner out of the house.

This breaches the standard required for "good taste and decency"

This behavior is defined as "property abuse" and identified in NZ law as domestic violence.

The advertisement is broadcast at a time that is "general viewing" when impressionable young people and families are the intended target viewers.

This behavior glamorises and justifies a legally defined "abusive" category of behavior.

This behavior serves to act as an inappropriate social model for relationship behavior.

This behavior gives an inappropriate "permission" to act out abusively when angry or frustrated within a domestic relational situation

It is discriminatory because it is clearly understood within family Court proceedings; over decades of precedent; that any man that moves / removes or damages a partner's clothing and/or belongings will be severely penalised through the court system

As such it is gender discriminatory ... in addition to being entirely inappropriate

**The relevant provisions were Advertising Standards Code - Principle 1, Rule 1(c);**

**Principle 1: Social Responsibility:** Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

**Rule 1 (c) Decency and Offensiveness:** Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.

**The Chair** noted the Complainant's genuine concern the advertisement showed inappropriate behavior and property damage, which would not be tolerated if the genders were reversed.

The Chair confirmed she was required to consider whether the advertisement breached the Advertising Standards Code.

Rule 1(c) required her to consider whether the advertisement was likely to cause serious or widespread offence in light of generally prevailing community standards.

The Chair said the fleeting image of a woman throwing clothing out a window was a dramatic representation often seen in movies to demonstrate an argument in a relationship, followed by a reconciliation as part of life's ups and downs in the story depicted in the advertisement.

Whilst the Chair acknowledged this behaviour was not ideal, irrespective of gender, she did not consider this scene, in the context of a 45 second advertisement, reached the threshold to cause serious or widespread offence.

The Chair ruled there were no grounds for the complaints to proceed.

**Chair's Ruling:** Complaint **No Grounds to Proceed**