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| <b>COMPLAINT NUMBER</b> | 18/321                  |
| <b>COMPLAINANT</b>      | L Perry & 3 Others      |
| <b>ADVERTISER</b>       | Hanes Australia         |
| <b>ADVERTISEMENT</b>    | Berlei Bras, Television |
| <b>DATE OF MEETING</b>  | 24 October 2018         |
| <b>OUTCOME</b>          | Not Upheld              |

## **SUMMARY**

The television advertisement for Berlei Bras shows breast-like balls being used in a variety of sporting situations by women including tennis, basketball, soccer and boxing. The tagline graphic says “Stop your boobs playing their own game with Berlei.” Five women are shown wearing sporting attire and sports bras with the final tagline “Berlei – The best support for sports.”

Four complaints were received. The complainants were concerned about the abusive and degrading portrayal of women’s body parts and said the level of aggression used against the “boob balls” was offensive. There was also concern the breast-like balls in the advertisement were very similar to breast implants which was disrespectful, particularly to women who were breast cancer survivors.

The Advertiser said the advertisement dramatises the impact that playing sport can have on women's breasts by drawing a correlation between that and the impact that is seen on soccer balls, basketballs and tennis balls in a slow-motion replay. The dramatisation urges women to stop their breasts "playing their own game". There are no real body parts used in the Advertisement and as such, no nudity. The Advertiser said the breasts were clearly not real and there was no encouragement to treat breasts like balls, but instead to show the impact on breasts of exercising without the support of a proper sports bra.

The majority of the Complaints Board said the overall takeout of the advertisement was that breasts suffer impact from playing sport and Berlei is promoting wearing a sports bra to lessen that impact. It said the images of the ‘boob balls’ being used in various sporting situations illustrated the tagline “Stop you boobs playing their own game with Berlei”.

A minority of the Complaints Board said the images of breasts including nipples and their treatment overrode any metaphor the Advertiser intended. A minority of the Board said consumers who have personal experiences of violence or breast health issues were likely to be offended by the advertisement and in the minority view, the advertisement was in breach of the Code of Ethics.

However, the majority of the Complaints Board said the advertisement had not reached the threshold to breach Basic Principle 4 or Rules 4, 5 and 7 of the Code of Ethics.

In accordance with the majority, the Complaints Board ruled the complaint was Not Upheld.

**[No further action required]**

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

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## **COMPLAINTS BOARD DECISION**

The Chair directed the Complaints Board to consider the complaint with reference to Basic Principle 4 and Rules 4 and 7 of the Code of Ethics.

The Complaints Board was required by Basic Principle 4 to consider whether the advertisement had been prepared with a due sense of social responsibility.

Rule 4 Decency required the Complaints Board to consider whether the advertisement contained anything which in light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product.

Rule 5 Offensiveness required the Complaints Board to consider whether the advertisement contained anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).

Rule 7 Violence required the Board to consider whether the advertisement contained anything which lent support to unacceptable violent behaviour.

### **The Complaints Board ruled the complaint was Not Upheld.**

#### **The Complaints**

Four complaints were received. The Complainants were concerned about the abusive and degrading portrayal of women's body parts and said the level of aggression used against the "boob balls" was offensive. There was also concern the breast-like balls in the advertisement were very similar to breast implants which was disrespectful, particularly to women who were breast cancer survivors.

#### **The Advertiser's Response**

The Advertiser said the advertisement dramatises the impact that playing sport can have on women's breasts by drawing a correlation between that and the impact that is seen on soccer balls, basket balls and tennis balls in a slow-motion replay. The dramatisation urges women to stop their breasts "playing their own game". There are no real body parts used in the Advertisement and as such, no nudity. The Advertiser said the breasts were clearly not real and there was no encouragement to treat breasts like balls. Instead the advertisement shows the impact on breasts of exercising without the support of a proper sports bra. The advertisement was played within its rating of S9 (after 9:00pm) and was not targeting children

#### **The Media's Response**

The Commercial Approvals Bureau said the advertisement had a S9 rating meaning it only aired after 9:00pm and as the advertisement was for sports bras, the use of the breast/ball metaphor was appropriate to illustrate a problem that their products have been designed to solve.

#### **The Complaint Board Discussion**

The Complaints Board began by discussing the likely consumer takeout of the advertisement.

The majority of the Complaints Board said the overall takeout of the advertisement was that breasts suffer impact from playing sport and Berlei is promoting wearing a sports bra to lessens that impact. It said the images of the 'boob balls' being used in various sporting situations illustrated the tagline "Stop you boobs playing their own game with Berlei".

A minority of the Complaints Board disagreed and said it primarily saw breasts which were being kicked, punched and roughly treated. For the minority, the addition of the nipple shifted the image from a ball to a more realistic representation of a woman's breast and therefore made the treatment of it in the advertisement unacceptable.

*Is the portrayal of a breast-like image likely to cause serious or widespread offensive?*

The majority of the Complaints Board said the breast-ball images were clearly not real and there was a sufficient correlation between the image and the product being promoted, a sports bra, to justify the metaphor being used. The majority of the Complaints Board said the scenarios in the advertisement, combined with the straplines "Best support for sport" and "stopping breasts playing their own game", provided enough context to ensure that most consumers would appreciate the intended message of breast support rather than breast harm. The Board also noted the advertisement was not targeting children or younger viewers and had played in accordance with its S9 rating after 9:00pm.

A minority of the Complaints Board said the images of breasts including nipples and their treatment overrode any metaphor the Advertiser intended. A minority of the Board said consumers who have personal experiences of violence or breast health issues were likely to be offended by the advertisement in breach of Rules 4 and 5 of the Code of Ethics.

*Does the advertisement lend support to unacceptable violent behaviour?*

The majority of the Complaints Board said the images of "boob balls" being hit, punched and kicked were used to illustrate the impact of sport on breast tissue. The Board said it was important to note that all images showing impact with the breast balls were aligned with sporting activities and were in keeping with the overall metaphor of the advertisement. The majority of the Complaints Board did not consider the advertisement encouraged or lent support to violent behaviour.

A minority of the Complaints Board said that for some consumers, seeing the balls as breasts meant the kicking and punching scenes would be seen as supporting violence against women and disrespectful of women's bodies in breach of Rule 7 of the Code of Ethics.

*Summary*

The Complaints Board acknowledged that some consumers, for a variety of reasons, may be offended by the 'boob-balls' in scenes showing punching and kicking and associate that treatment with violent behaviour towards women.

However, the majority of the Complaints Board said the advertisement used sporting imagery and tagline references to highlight the benefits of a sports bra for an active life.

The majority said the advertisement was not likely to cause serious or widespread offence and did not lend support to unacceptable violent behaviour. The majority said the advertisement was not in breach of Basic Principle 4 or Rules 4, 5 and 7 of the Code of Ethics.

In accordance with the majority, the Complaints Board ruled the complaint was Not Upheld.

## DESCRIPTION OF ADVERTISEMENT

The television advertisement for Berlei Bras shows breast-like balls being used in a variety of sporting situations such as tennis, basketball, soccer and boxing. The tagline graphic says "Stop your boobs playing their own game with Berlei." Five women are shown wearing sporting attire and sports bras with the final tagline "Berlei – The best support for sports."

## COMPLAINTS

Four Complaints were received about the advertisement and the issues raised are summarised below:

- Woman's breasts are a "private" part of a woman- not for a company to use in such a degrading manner to make money from women.
- Berlei is showing disrespect and abuse of a woman's human right to be treated with dignity.
- These breasts looked similar to breast implants. This advert is very disrespectful to women who get implants after treatment for cancer.
- This advertisement is not suitable for any teenagers or children who may be still up watching the programme.
- This is an inappropriate depiction of women's breasts and the ad is offensive, degrading and misleading in its entire context
- In the Berlei ad promoting their sports bra, an imitation breast was kicked. It is an aggressive act on a part of woman's anatomy. At a time when we are advocating against family violence and know the statistics of violence against woman, this ad seems to be using bizarre and unnecessary violence.

## CODES OF PRACTICE

### CODE OF ETHICS

**Basic Principle 4:** 4. All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

**Rule 4: Decency** - Advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services).

**Rule 5: Offensiveness** - Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).

**Rule 7: Violence** - Advertisements should not contain anything which lends support to unacceptable violent behaviour.

## RESPONSE FROM ADVERTISER, HANES AUSTRALIA PT LTD

**RE: HANES AUSTRALIA PT LTD - COMPLAINT REFERENCE PAC0023301**

We refer to your letter dated 25 September 2018 in relation to the complaints reference PAC0023301. We have considered the complaints and the advertisement in question in light of the NZ Advertising Standards Authority Code of Ethics (**Code of Ethics**) and in particular - Basic Principle 4, Rule 4, Rule 5 and Rule 7. We have carefully considered the Code of Ethics and assessed the relevant provisions against the content of this advertisement. We

submit that the advertisement does not breach the Code of Ethics on the grounds set out below.

Before addressing the Code we wish to describe the Advertisement and the rationale behind its creation. Berlei is an intimate's brand that manufactures, markets and retails bras and underwear for women. Berlei has worked with the Australian Institute of Sport for over 20 years to gain a real understanding of the impact exercise has on women's breasts and to aid in the development of bras that are scientifically tested as to the support they provide. Berlei has also been a proud partner of Breast Cancer Network Australia since 2005, and have donated over 130,000 My Care kits to Australian women who have undergone breast cancer surgery. Berlei is committed to pioneering products, backed by ongoing research and development that offers support to those affected by the disease.

Our research shows that a staggering 40% of Australian women do not wear a sports bra while exercising. Many women are unaware of the damage that can happen below the surface to the soft tissue and delicate Coopers' ligaments inside their breasts if they do not have the correct support. To prevent this damage Berlei wants women to be aware of the importance of wearing the right sports bra for the different sports in which they participate. The Advertisement dramatizes the impact that playing sport can have on women's breasts, by drawing a correlation between that and the impact that is seen on soccer balls, basket balls and tennis balls in a slow motion replay. The dramatization urges women to stop their breasts "playing their own game". There are no real body parts used in the Advertisement and as such, no nudity.

This Advertisement has been given a S19 rating in New Zealand, and has been approved for use by Google. As well as being available online, the Advertisement is aired on Free to Air television and has been scheduled so that it is not intended to be shown during any free-to-air program targeting children.

Addressing each section of the Code of Ethics, the relevant provisions and our comments in relation to each are as follows:

*Basic Principle 4 All advertisements should be prepared with a due sense of social responsibility to consumers and to society.*

The message of the Advertisement is for women to be aware of the impact that exercise can have on their breasts (if unsupported) and to then empower women to care for and invest in themselves by choosing the right bra for their sport. The Bouncing Balls shown in the Advertisement are clearly not real breasts or implants. The Advertisement is not encouraging people to treat women's breast like bouncing balls but is showing the impact women themselves are having on their breasts by exercising without a sports bra.

The Advertisement is an important health message that educates and encourages all women to feel empowered to invest in themselves and, contrary to what is currently occurring, use an appropriate sports bra when exercising so as to avoid damage to their bodies.

A range of women of varying age, race and ethnicity are used in the Advertisement and none are depicted differently from the other on the basis of their age, gender, race, ethnicity or other such characteristic.

*Rule 4 - Decency — Advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services).*

And

*Rule 5 - Offensiveness — Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).*

As well as being available online, the Advertisement is aired on Free to Air television and has been scheduled so that it is not intended to be shown during any free-to-air programming targeting children. The Advertisement contains an important health message that educates and encourages all women to feel empowered to invest in themselves and use an appropriate sports bra when exercising so as to avoid damage to their bodies. It does not show anything which could be construed as offending prevailing community standards of decency or offence.

*Rule 7 Violence — Advertisements should not contain anything which lends support to unacceptable violent behavior.*

There is no violence present or portrayed in the Advertisement. The Advertisement shows in slow motion the impact that certain sports can have on a ball. By depicting the balls as breasts, the Advertisement is drawing a correlation between the impact that can be seen on the ball, and the impact that often goes unnoticed on an unsupported women's breast. The Advertisement is not encouraging people to treat women's breast (or women in general) like bouncing balls or something that can be hit or kicked. The balls are intentionally, and clearly, not real breasts and there is no violence present or portrayed against the women in the Advertisement.

We are in the business of selling bras and feel that this advertisement is well within the lines of social responsibility — and is relevant to the product and its audience.

On the above bases, we submit that the advertisement does not breach the Code of Ethics

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|---|---|
| Contact person for advertising complaints   | Jade Massaad - Hanes Australasia  |
| Name and contact at creative agency   | Greig Carlow - The Monkeys  |
| Name and contact at media agency  | Elsa Hedman - OMD   |
| A basic, neutral description of the advertisement   | The Advertisement dramatizes the impact that playing sport can have on women's breasts  |
| Date advertisement began  | Campaign went to air on Sunday 9th September  |
| Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)  | TV, Berlei website <a href="http://www.berlei.com.au">www.berlei.com.au</a> , social media - Instagram & Facebook   |
| Is the advertisement still accessible - where and until when?<br>September  | TVC has finished running on NZ TV as of 29 <sup>th</sup>  |
| A copy of digital media file(s) of the advertisement - if the complaint relates to on-screen graphic, please send a broadcast quality | 30 second clip<br><a href="https://www.dropbox.com/s/nyidiv7c81fa74c/PACO023-30-1.mov?d1=0">https://www.dropbox.com/s/nyidiv7c81fa74c/PACO023-30-1.mov?d1=0</a> |

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| Who is the product / brand target audience?  | Women aged 25 - 54   |
| Clear substantiation on claims that are challenged by the complainant.   | <i>Enclosed</i>  |
| The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an |  |
| <b>For Broadcast advertisements:</b>   |  |
| A copy of the script   | <i>Enclosed</i>  |
| A copy of the media schedule and spot list<br>(Please remove all financial information)  | <i>Enclosed</i>  |
| CAB key number and rating  | PAC0023/15/2 & PAC0023/30/1<br>Both TVC's carried a CAB rating of Post 9pm |
| <b>For Digital advertisements:</b>   |  |
| What platform tools have you used to   | We ran TV within the NZ market   |

## RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU

### Hanesbrand (Berlei) Television Advertisement - Complaint 18/321, Key # PAC0034/30/1, Rating: S9

We have been asked to respond to the complaints that the above commercial is in breach of the Code of Ethics BP 4, Rules 4 (Decency), 5 (Offensiveness) and 7 (Violence).

CAB approved this Berlei commercial on 3/8/2018 with an S9 classification. An S9 classification means that the commercial cannot be broadcast before 9pm.

The advertisement uses the metaphor of the stresses and strains endured by sporting equipment to illustrate the discomfort experienced by many sportswomen. As the advertiser is in the business of selling sports bras, it is entirely appropriate for them to use such metaphor to illustrate a problem that their products have been designed to solve. That said, the post 9pm restriction is an acknowledge that many people are likely to consider the advertisement's depiction of breasts to be inappropriate for a younger audience.

In our opinion it would be an extreme interpretation to conclude that the use of this metaphor somehow "lends support to unacceptable violent behaviour"

#### APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website [www.asa.co.nz](http://www.asa.co.nz). Appeals must be made in