

<b>COMPLAINT NUMBER</b>	18/369
<b>APPEAL NUMBER</b>	18/020
<b>COMPLAINANT</b>	N Watkin
<b>APPLICANT</b>	N Watkin
<b>ADVERTISER</b>	Bauer Media
<b>ADVERTISEMENT</b>	Woman's Day Television
<b>DATE OF MEETING</b>	14 December 2018
<b>OUTCOME</b>	Appeal Declined

### **SUMMARY**

The Complaints Board ruled on 27 November 2018 the complaint from N Watkin about a television advertisement for Women's Day magazine was Not Upheld.

The Decision was appealed by the Complainant, N Watkin, as, in their view, evidence to the Complaints Board had been misinterpreted to the extent that it had affected the decision and the decision was against the weight of evidence.

This appeal application was considered by the Chairperson of the Appeal Board.

The Chairperson said all the information from the Complainant and the Advertiser had been carefully considered by the Complaints Board in making its Decision.

The Chairperson acknowledged the Complainant had a different interpretation of the advertisement and the likely consumer takeout and considered the weight of evidence to support the Complaint being upheld.

The Chairperson said taking into account the context, medium, audience and product she agreed with the Complaints Board the advertisement was not advocating violence and did not reach the threshold to be considered offensive or lend support to unacceptable violent behaviour.

The Chairperson said the appeal application had not met the threshold to establish grounds on which an appeal could be accepted.

Accordingly, the Chairperson ruled there were no grounds on which the appeal could proceed, and the application was Declined.

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

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## **CHAIRPERSON'S RULING**

The Chairperson viewed the application for appeal. She noted that there were five grounds upon which an appeal was able to proceed. These were listed at Clause 6(c) 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 Appeal Application**

The Chairperson noted the substance of the appeal and the request from the Complainant, N Watkin, that the Not Upheld Complaints Board decision be overturned.

The Chairperson noted the Complainant's application for appeal was based on two of the possible grounds for appeal, specifically (c) and (d). The Complainant said the evidence to the Complaints Board had been misinterpreted to the extent that it has affected the decision and the decision was against the weight of evidence.

The Chairperson noted the Complainant's views that:

- The Yelena character was not a caricature but simply a glamorous woman who "likes to get her own way"
- The presentation is not "satirical and tongue in cheek" but gratuitous violence representing the mutilation of a man's genitals, and the advertisement trivialises sexual violence
- If the Complaints Board had properly considered the evidence, it would have found that Basic Principle 4 and Rule 7 had not been adhered to
- The advertisement uses sexual violence and possibly subliminal marketing techniques to drive its message home. It conveys the message that sexual violence is ok and perceived personal frustrations can be a justification for it

### **The Complaints Board Decision**

The Chairperson reviewed the information considered by the Complaints Board, which led to its decision that the complaint was Not Upheld.

The television advertisement for Women's Day magazine featured a stylishly dressed woman speaking to camera, while working in her kitchen. The woman, Yelena, has "big" blonde hair and heavy black eye liner. She says (with a thick Russian accent): "Men – so fabulous darling. But not always putting hand up for the cleaning and if Yelena has to do everything – bad things happen. Take time for you! Nobody die." As she says "bad things happen" she chops the carrot she has been holding in two and throws it in the rubbish bin.

The Complainant said the advertisement promoted sexual violence against males because it depicted a woman holding a carrot and saying "bad things will happen" as she cuts the carrot in half.

The Advertiser said the advertisement was designed to connect with viewers' empathy with the frustration voiced by Yelena and encouraged them to take some time out for themselves, away from their busy lifestyles. The Advertiser said the advertisement did not promote or advocate violence against men and the chopping of the carrot was symbolic of frustration with men, portrayed in a humorous fashion.

The Complaints Board said Yelena was clearly expressing her frustrations about the lack of domestic help she receives from the men in her life. However, the Complaints Board agreed Yelena's actions in chopping the carrot and tossing it into the bin, did not reach the threshold to be considered offensive or lend support to unacceptable violent behaviour, taking into account the context, medium, audience and product

The Complaints Board ruled the advertisement had been prepared with a due sense of social responsibility and was not in breach of Rules 4 or 7 of the Code of Ethics.

The Complaints Board ruled the complaint was Not Upheld.

**Are there Grounds for the Appeal to be Accepted?**

The Chairperson reviewed the evidence provided in the appeal application to support the Complaint being upheld. The Chairperson acknowledged the Complainant had a different interpretation of the advertisement and the likely consumer takeout. The Chairperson noted the Complainant's view the advertisement was not satirical or "tongue in cheek" and trivialises sexual violence.

The Chairperson said taking into account the context, medium, audience and product she agreed with the Complaints Board that the advertisement was not advocating violence and did not reach the threshold to lend support to unacceptable violent behaviour.

The Chairperson said the appeal application had not met the threshold to establish grounds on which an appeal could be accepted.

Accordingly, the Chairperson ruled there were no grounds on which the appeal could proceed, and the application was declined.

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

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**DESCRIPTION OF ADVERTISEMENT**

The television advertisement for Women's Day magazine featured a stylishly dressed woman speaking to camera, while working in her kitchen. The woman, Yelena, has "big" blonde hair and heavy black eye liner. She is wearing a top made from animal print and she has gold nail polish. She wears a big diamond ring and large metal hoop earrings. She says (with a thick Russian accent): "Men – so fabulous darling. But not always putting hand up for the cleaning and if Yelena has to do everything – bad things happen. Take time for you! Nobody die."

As she says "bad things happen" she chops the carrot she has been holding in two and throws it in the rubbish bin.

**APPEAL APPLICATION FROM THE COMPLAINANT, N WATKIN**

This appeal is made upon the following grounds:

- Evidence provided to the Complaints Board has been misinterpreted, and

- The decision is against the weight of evidence

### **Evidence misinterpreted**

The Complaints Board has obviously accepted at face value the evidence provided by the advertiser and the Commercial Approvals Bureau (CAB), with no attempt made to objectively analyse it, or to challenge it in any way whatsoever.

The following claims made by the advertiser, and apparently accepted by the board, are unreasonable and would be rejected as untrue or misleading by any reasonable person:

*Yelena is a caricature.* This is nonsense. She is simply a glamorous woman, but nothing about her appearance can be construed as “over-the-top” or “exaggerated”. Furthermore she appears to be a strong-willed woman, and one who “likes to get her own way”.

The presentation is “*satirical and tongue-in-cheek*” and “*not intended to be taken literally*”. These are very subjective views, but in context can not be justified. There is a clear, unequivocal and widely-recognised representation of a man’s genitals (erect penis), and it’s graphic and violent mutilation (severing in two by means of a sharp knife) at the hands of the strong-willed woman. Such gratuitous violence can not be construed as “tongue-in-cheek” by any reasonable person. The advertiser’s claim trivialises the sexual violence, which makes the offending even worse.

The chopping of the carrot is “*symbolic of frustration, portrayed in a humorous fashion*”. Again, this is a very subjective view but has no credibility. Genital mutilation is never humorous, in any circumstance. The advertiser’s response again attempts to trivialise the sexual violence.

The following claim made by CAB is unreasonable and would be rejected as untrue or misleading by any reasonable person:

*The commercial contains neither sex, nor violence.* This is abject nonsense, and an insult to any reasonable person’s intelligence. The CAB’s further “theatre of the mind” quote adds to the insult.

The advertiser has clearly tried to minimise the unsavoury nature of the advertisement with a litany of claims which do not withstand serious scrutiny. The cab has denied the unsavoury nature altogether which leaves the CAB with no credibility.

### **Decision against the weight of evidence**

If the various items of evidence had been properly considered, and weighted appropriately and reasonably, the Board would have reached a different decision. The Board would certainly have decided:

- Basic Principle 4 is not adhered to
- Rule 7 is not adhered to

The Board could also potentially have found that Rule 4 is not adhered to.

Decision 18/137 was also quoted by the Board as a precedent which assisted it in making its decision. However that case related to a female who “pushes her male partner”. A reasonable person would think it has no relevance to this case because the violence was at a comparatively extremely low level, and in addition it was not essentially sexual in nature.

Decision 18/137 therefore should not have been considered as any sort of precedent in this case which involves high level sexually-related violence.

### **Final comments**

The advertiser was at pains to point out one simple truth: that the advertisement was “very short”. However what the advertiser failed to point out is that the use of very short, hard-hitting ads is a commonly accepted marketing strategy which “gets into the audience’s head (a subliminal effect)”, especially if the ad is repeated after a short period of time. That is precisely what this ad was doing: it was repeated at least twice within 10 minutes at prime tv time on the night i saw it, so it is reasonable to conclude that was precisely the advertiser’s intention. The advertiser appears to be denying that this strategy has been used (see the paragraphs under the heading “availability of the advertisement”), yet the “maple marketing” feedback refers to how it “connects on some sort of subliminal level”. No doubt at the time the advertiser accepted that feedback with satisfaction. Ironically it is now not such a good look for the advertiser.

Hence, far from the innocent, tongue-in-cheek, humorous ad that it is claimed to be, this is really a clever hard-hitting ad which uses sexual violence and possibly sophisticated subliminal marketing techniques to drive its message home. That message is that sexual violence is ok, and that perceived personal frustrations can be a justification for it. That message is totally unacceptable in today’s society and the advertiser should be told so in no uncertain terms. If the advertiser really only wanted to achieve what it claims – to encourage its target audience to take time out to read its product – it produced a totally inappropriate advertisement.

### **SUMMARY OF COMPLAINTS BOARD DECISION OF 27 NOVEMBER 2018**

The television advertisement for Women’s Day magazine featured a stylishly dressed woman speaking to camera, while working in her kitchen. The woman, Yelena, has “big” blonde hair and heavy black eye liner. She says (with a thick Russian accent): “Men – so fabulous darling. But not always putting hand up for the cleaning and if Yelena has to do everything – bad things happen. Take time for you! Nobody die.” As she says “bad things happen” she chops the carrot she has been holding in two and throws it in the rubbish bin.

The Complainant said the advertisement promoted sexual violence against males because it depicted a woman holding a carrot and saying "bad things will happen" as she cuts the carrot in half.

The Advertiser said the advertisement was designed to connect with viewers’ empathy with the frustration voiced by Yelena and encouraged them to take some time out for themselves, away from their busy lifestyles. The Advertiser said the advertisement did not promote or advocate violence against men and the chopping of the carrot was symbolic of frustration with men, portrayed in a humorous fashion.

The Complaints Board said Yelena was clearly expressing her frustrations about the lack of domestic help she receives from the men in her life. However, the Complaints Board agreed Yelena’s actions in chopping the carrot and tossing it into the bin, did not reach the threshold to be considered offensive or lend support to unacceptable violent behaviour, taking into account the context, medium, audience and product

The Complaints Board ruled the advertisement had been prepared with a due sense of social responsibility and was not in breach of Rules 4 or 7 of the Code of Ethics.

The Complaints Board ruled the complaint was Not Upheld.