



The Advertising Standards Authority of South Africa

[COMPLAINTS](#)[RULINGS](#)[CODES](#)[AD ALERTS](#)

[Home](#) ■ [Rulings](#) ■ [WE THE BRAVE / K THOMPSON & OTHERS / 2016 – 3151F](#) ■■

WE THE BRAVE / K THOMPSON & OTHERS / 2016 – 3151F

- Ruling of the: ASA Directorate
- In the matter between:
 - MRS KARIN THOMPSON; MR CLAUDE MADELL; MR THEODORE BARKLEY; MR WIEKUS MEYERS and MS THELMA TOMASICCHIO Complainant(s)/Appellant(s)
 - ANOVA HEALTH INSTITUTE t/a WE THE BRAVE Respondent
- 26 May 2016

Consumer complaints were lodged against an Anova Health Institute television commercial promoting their Health4Men campaign called "We the brave".

The commercial opens with what appears to be a family dinner with a guest. The two male friends are seated at the table and the mother is visible in the kitchen. As the scene plays out in slow-motion, the one young man gets up and kisses the guest to the amazement of his parents. The words "WE'RE BRAVE ENOUGH TO COME OUT" appear in large lettering on the screen.

The scene then changes to show a condom being unwrapped and removed from its wrapper, while the words "SO WE'RE DEFINITELY BRAVE ENOUGH TO COVER UP" appear on-screen.

COMPLAINTS

The complainants expressed their discontent at the fact that same-sex relationships are being promoted on television without the possibility of shielding their children.

RELEVANT CLAUSES OF THE CODE OF ADVERTISING PRACTICE

In light of the complaint, the following clauses were taken into consideration:

- Section II, Clause 1 – Offensive advertising
- Section II, Clause 14 – Children

RESPONSE

The respondent submitted that the complaints highlight the level of stigmatisation and discrimination that gay men who have sex with men face. According to Clause 9 of the Bill of Rights, which is enshrined in the Constitution "No person may unfairly discriminate, directly or indirectly, against anyone on one or more grounds ..." These grounds include sexual orientation.

4.9 million South African, nearly 10% of the population identify as homosexual. This section of the population is the most vulnerable HIV acquisition and transmission, making it a matter of public interest and urgency. The "We The Brave" initiative was created by Anova Health and The Elton John AIDS Foundation, with the aim of helping men who have sex with men lead healthy, sexual lives. As such, the initiative exercises its right to freedom of expression contained in Clause 16 of the Bill of Rights, which states "Everyone has the right to freedom of expression, which includes freedom to receive or impart information or ideas".

With regards to Clause 1 of Section II, the respondent believes that the advertising was presented in a manner that "is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom." Based on the nature of complaints, the respondent submitted that the fact that a particular service is "offensive to some in not in itself sufficient grounds for upholding an objection to an advertisement for that product or service".

It added that the commercial was not aimed at children and was not "likely to influence children" as catered for in the Code. It does not "contain any statement or visual presentation which might result in harming [children] mentally, morally, physically or emotionally" as there is no gratuitous display of sex. The only impression created is that it is okay to be homosexual and to practice safe sex.

The commercial asks affected men to be brave enough to make healthy sexual choices like wearing a condom, getting tested regularly and knowing their status. The aim is not to shock, but to attract the relevant market through creating scenarios to which they relate.

ASA DIRECTORATE RULING

The ASA Directorate considered all the relevant documentation submitted by the respective parties.

Clause 1 of Section II states, *inter alia*, that advertising may not cause serious, widespread or sectoral offence. Furthermore, it states that the fact that a particular piece of advertising is offensive to some, does not in itself justify upholding such a complaint. Consideration has to be given to, *inter alia*, the context, medium, likely audience and the degree of social concern.

Clause 14 of section II states, *inter alia*, that advertisements addressed to or likely to influence children should not contain any statement or visual presentation which might result in harming them, mentally, morally, physically or emotionally.

It would appear that some complainants are offended by the fact that young men are openly homosexual as is evident from the long, passionate kiss. This cannot in itself be found to be offensive within the meaning of the Code. As the respondent correctly noted, the dignity and freedom to choose one's sexual orientation is constitutionally protected. Provided that the commercial does not depict inappropriate sexual acts or references (which is certainly not the case here), the Directorate sees no reason to uphold an objection on the basis that same sex relationships are offensive. While the Directorate accepts that there are different opinions and values on the issue of homosexuality, it remains a choice that is open to the individual.

As such, the commercial cannot be said to be in contravention of Clause 1 of Section II of the Code.

The only remaining concern is whether or not this commercial is likely to cause harm to children. From the complaints at hand, it appears that this concern stems from the fact that a condom is shown at the end.

It is accepted that discussing sex and safe sex is likely an uncomfortable situation for many parents, and that they would probably prefer to control the context and communication as much as possible. This does not, however, automatically imply that any exposure to sex-related content is likely to cause harm to children.

The image shown is that of a condom being unwrapped and taken out of its wrapping. At the same time the words "SO WE'RE DEFINITELY BRAVE ENOUGH TO COVER UP" appear, in order to complete the message "We're brave enough to come out, so we're definitely brave enough to cover up".

For a child to interpret the underlying sexual message in this commercial, he/she would need to understand the notion that men who fall in love and kiss are likely to engage in sexual intercourse. Assuming that a child is aware of this, has an understanding of what sexual intercourse entails, and make the link between a condom and sex, there is no argument to make that that child would be harmed in any way by seeing this commercial. Such a child would not be confronted with anything new, or beyond the realm of his/her understanding.

Arguably, a similar approach is relevant for children who are not sexually educated. Assuming (for the sake of the argument) that a child does not comprehend the notion of sex or intercourse or even homosexuality, the Directorate is hard-pressed to be convinced that such a child would understand the relevance of the condom, or even comprehend what a condom is.

If children are encouraged to ask for clarity on the commercial, parents are provided with the opportunity to assume control of the discussion, and explain in a manner they see fit as much as they deem necessary. On its own, however, the image of a condom or of two men kissing cannot be said to be likely to cause mental, emotional or physical harm in a manner that the Code seeks to prevent.

For the above reasons, the Directorate does not believe that the commercial is in contravention of Clause 14 of Section II of the Code.

PREVIOUS RULING

20
MAY
2016

GENTLE MAGIC SPF 30 SKINCARE CREAM / BEIERSDORF / 2016-3541F

In this competitor dispute, the advertiser's SPF claims were challenged. The advertiser confirmed that these claims had been removed and that new packaging was being produced.

■ [MORE INFO](#)

NEXT RULING

30
MAY
2016

CELL C "WIDEST NETWORK" / VODACOM / 2016-3227F

This ruling deals with an alleged breach of an earlier ASA ruling against the advertiser's claim of offering the "Widest Network Coverage". The breach allegation relates to examples of advertising that were not removed.

■ [MORE INFO](#)

QUICK LINKS

- [About](#)
- [Media](#)
- [Codes](#)
- [Payment Details](#)
- [Your Profile](#)
- [Site Map](#)
- [Contact](#)

COMPLAINTS

- [Lodge a Complaint](#)
- [How to Lodge a Complaint](#)

RULINGS

- [Subscriptions](#)
- [Latest Rulings](#)
- [Latest Ad Alerts](#)

TERMS

[Terms & Conditions](#)

CONTACT US



TEL: +27 11 781 2006
FAX: +27 11 781 1616



info@asasa.org.za

