



CONSEIL NATIONAL DU SIDA
39-43 QUAI ANDRÉ CITROËN
75902 PARIS CEDEX 15
T. 33 [0]1 40 56 68 50
F. 33 [0]1 40 56 68 90
CNS.SANTE.FR

POSITION PAPER

2008 APRIL 24TH

PUBLIC ACTION, DISCRIMINATION, PREVENTION EN POSITION PAPER ON THE APPLICATION OF ADVERTISING CONTROL REGULATIONS TO HEALTHCARE PREVENTION AND EDUCATION CAMPAIGNS

In December 2007, a poster aimed at preventing the transmission of HIV designed and published under the auspices of the INPES (French health protection agency) was the subject of an objection raised by the Bureau de vérification de la publicité (BVP). By issuing this objection to the advertisement, the organisation called upon the INPES and the providing companies involved to suspend the advertisement's publication. The INPES subsequently announced its decision to continue publishing the advertisement in question despite the BVP's statement.

In line with its mission statement, and as a continuation of the recommendations that it has previously made in the field of prevention, the Conseil national du sida felt it necessary, in the context of this incident, to examine the procedures and to clarify the responsibilities exercised during the creation and subsequent publishing of messages aimed at healthcare prevention and education. The Conseil proceeded to a hearing involving the INPES and the BVP in turn.

THE GAY PUBLIC SECTOR OF A PREVENTION CAMPAIGN IS OBJECTED TO IN THE NAME OF RESPECT FOR "DECENCY" AND "PUBLIC SENSITIVITY".

The campaign promoting the use of condoms devised by the INPES on the 1st of December 2007 includes a wide-audience commercial broadcast on TV showing alternating images of three couples. Viewers can easily recognise that the three couples involved are a heterosexual couple, a male gay couple and an immigrant heterosexual couple. The situations represented show very clearly that these couples are in the act of making love. In the closing scenes, a kind of model of HIV appears, representing the virus as lying in ambush in a corner of the picture, close to each of the couples. The commercial ends with the campaign message: "HIV is still here. Protect yourself".

A more targeted version of this campaign was created for a gay audience in the form of a poster. The same message is associated with a visual comprising a photograph, taken by photographer Nan Goldin, of two naked men, one lying on top of the other, on a bed. Just like the TV commercial, a representation of the virus is visible by the edge of the bed. Aside from the campaign's general message, the poster also includes the following text: "Each day in France, 4 gay men learn that they are HIV positive". This poster was published partly in gay hang-outs via the members of the Syndicat national des entreprises gays (SNEG) and partly through publication in 22 gay press titles, as well as through the advertisement publishing networks of Loomedia (specialising in gay venues) and Insert Marais (networks of advertising space in retail stores).

The objection raised by the BVP relates to this part of the campaign aimed at a gay audience. In a letter of notification sent to the INPES, the BVP, while highlighting "the entirely laudable character of the cause being defended", believes that "the visual used nevertheless appears to be of a nature that would shock the public" and that "this advertisement is, in this sense, contrary to the measures relating to respect for decency included in the recommendation entitled 'The image of the person'". That said, it is more the publication by means of posting via the Insert network, i.e. through advertising spaces located outside venues that are explicitly gay, that has prompted the BVP's statement, as well as the homosexual nature of the relationship represented, which is held to be unacceptable to the public. The same letter also stipulates: "We (the BVP) can only warn you regarding the risks of negative reactions associated with the visualisation, in the context of an advertisement published by posting (i.e. on a medium visible to all), of the acts of a homosexual couple, taking due account of the public's sensitivity and bearing in mind the current level of acceptance of the issue of homosexuality by the social body".

THE CAMPAIGN DEvised BY THE INPES IS PART OF A COHERENT PROCESS OF INFORMATION AND PREVENTION IN LINE WITH THE ISSUES OF THE HIV/AIDS EPIDEMIC

The Conseil national du sida has issued statements on numerous occasions on the issues involved in preventing the epidemic of HIV/AIDS and, particularly in its report dated 17 November 2005, drew up various recommendations aimed at improving the effectiveness and coherence of prevention and education measures for health undertaken both by the state and by association-related players in the fight against AIDS. When inviting the state to promote prevention campaigns that are commensurate with the challenges being faced, the Conseil most notably made reference to the need to paint a more realistic picture of the infection

and to improve the reception of prevention messages through regular campaigns that are better-targeted to specific audiences. It recommended, among other ideas, that activities aimed at a gay audience be stepped up.

The Conseil notes that the prevention campaign run by the INPES is fully compliant with the Conseil's recommendations. Healthcare prevention requires that the messages are explicit, clearly targeted and facilitate identification. In this case, the objective of the offending poster was to promote the use of condoms during sexual intercourse, and its target was the gay public. Consequently, it appears justifiable and necessary that the audience, whatever it may be, is able to identify clearly as much the homosexual nature of the relationship being shown as the instance of sexual activity, the moment in which prevention is crucial. Since the target audience of men who have sex with men is not restricted to gay men who frequent specialist establishments, the publication of posters outside such venues also marks a new and interesting approach. The fact that this campaign could be seen by a non-homosexual audience does not represent a barrier in the wider view of sex education. By helping to make the image of two men making love more commonplace, it also helps to promote the idea of the equal status of differing sexual orientations. In this sense, it is fully relevant to the fight against discrimination.

The Conseil also notes that the drawing-up of the prevention campaigns by the INPES is subject to a chain of controls and approval by various bodies in order to ensure the appropriateness of the INPES' campaigns for the objectives of public health as defined by public authorities. As such, the campaigns operated by the INPES represent the implementation of a public policy devised and adopted by the Ministry for Health and the National Health Directorate, with whom the INPES collaborates closely throughout the creation of its campaigns. Each project is subjected to discussion and validation by a panel of experts comprising doctors, biomedical and social science researchers and representatives of the associations involved in the fight against AIDS. Each project is given its final approval by the Minister for Health.

Given the well-founded nature of the campaign devised by the INPES, and also bearing in mind that the institutional frameworks in which the campaigns are drawn up provide the expected guarantees as regards the quality of production and their appropriateness for the required objectives of public health, the Conseil can only question the relevance of the objection by the BVP in that it compromises the activities by public authorities.

THE JUSTIFICATION FOR AND THE WAY IN WHICH THE BVP RAISED ITS OBJECTION APPEAR TO BE UNCLEAR

The terms used by the BVP to justify its objection implicitly empower the BVP with a mission to defend the interests of the public against drift in advertising. The BVP's institutional positioning is that of an interprofessional, associative and self-regulating body in the advertising sector, not that of a consumer organisation. The members of the BVP and its exclusive financiers are companies from various domains of public relations, including advertisers, communications agencies and broadcasters. The BVP's intention, according to its own terms, is to ensure "better advertising" and to this end has established a body of ethical rules that it wants the profession to abide by. These rules have been established by and for the industry. Consequently, the BVP's authority with regard to advertising regulation is based on the self-discipline of its adherents, its legitimacy being based solely on the recognition that the profession gives it, and its fields of action and methods being those which it determines itself.

In this regard, the question over the BVP's eligibility to publish an opinion on a prevention campaign is answered not in terms of public regulations, but in the area which the BVP itself defines as its sphere of intervention. All messages published via advertising media are considered advertisements. The nature of the medium, and not the message, determines its advertising character. Campaigns such as those by the INPES, which do not advertise goods or services and whose objective is strictly to provide information and education, fall clearly into the domain of control of the BVP - in the non-commercial advertising sector.

The regulation of advertising by the BVP is based on three types of intervention: the BVP offers a consultancy service to its adherents when they ask for it, covering all advertising media. This is a voluntary service, and the opinion provided is optional. In practice, professionals do not ask for advice except on projects that they feel could be risky. The second type of intervention exclusively involves television-based advertising: in this sphere, television channels are obliged to submit all advertisements for systematic monitoring by the BVP before they are broadcast. The third type of intervention takes the form of objections, of the type exercised in the case of the poster by the INPES, either on its own initiative or following complaints from the public. This type of intervention is understandable, given that, apart from television-based advertising, the majority of advertising projects are not monitored by the BVP before they are made public. Objections after publication, when the BVP is notified or becomes aware of an advertisement that transgresses its rules, involve asking the publisher to stop running the ad, or to pledge to not renewing the contract. The publisher can, in theory, ignore this opinion without legal consequences, but doing so may eventually lead to exclusion from the BVP, which would compromise its position within the industry. Through this mechanism, the BVP therefore has the power to considerably influence its adherents.

In the case of the INPES poster, the objection appears to have been motivated by complaints received by the BVP. This is at least the justification put forward by the managers of the BVP at its interview with the CNS, which notes in the meantime that the letter addressed to the INPES simply mentions "the risks of negative reactions" that seeing the poster could generate, without making reference to any actual complaints. The Conseil has been unable to obtain any more information on this and limits itself to stating that the BVP's language appears to be extremely vague as regards the origins of any complaints, since it mentions

“people”, “families” and “lots of families”. The Conseil is curious as regards the nature of the complaint made by such a “family”. Without specific information, the origin of the complaint remains in doubt.

An examination of the process whereby alleged complaints are handled and an opinion is issued also raises doubts, since the decision-making step is taken at an “informal” meeting of “four or five people” (whose positions are not specified) with the director of the BVP. A simple exchange of opinion between these people has seemingly provided sufficient grounding for this decision. No external expertise was sought. The Conseil acknowledges the existence of an “ethics committee” within the BVP, but this was not consulted in order to justify the decision. The ethics committee’s sole vocation is to consider the BVP’s general ethics, and not to issue statements on individual cases, in order to keep it immune from the pressure that companies who have a vested interest in the decision may exert on it. Although there is no apparent reason why managers and employees of the BVP should be protected against such pressure any more than the members of the ethics committee, the decisions are thus left entirely to their own judgement. Individual experience in this case appears to represent the sole tool of evaluation that is extrapolated to represent society. The evaluation of the poster is restricted to what the views of society would be, views that are expressed by employees based on their own views of what constitutes decency and the views that they hold to be acceptable by their peers.

The lack of any expert methodology and systematically referring to the sole “experience” of the people involved in the decision as a means of justification casts serious doubt on the BVP’s claim to understand “public sensitivity” or “the level of acceptance of the subject of homosexuality by the social body” – claims whose conceptual lability appears to be rather telling. Instead of an evaluation based on established knowledge, the BVP’s views look more in this case like a panel of critics whose deliberations are justified by the questions that would arise from an incontrovertible figure in respectable society, i.e. the “family”.

Fairly considerable confusion prevails, therefore, in the reasoning put forward by the BVP: i.e. defending, in turn, the “public”, “consumers”, “families” and “accepted public mores”. It is not clear whose interests the BVP is representing here, other than those of advertising professionals. The link between the law (respect for decency) and standards (the profession’s ethical rules) appears mostly to serve the profession in that, bearing in mind the financial stakes of any advertising campaign, the BVP must ensure that the message, whatever form it takes, allows its objectives to be achieved without causing scandal. The “defence of the public” exercised by the BVP primarily seems to be the defence of the profession’s interests: the BVP is sensitive to the interests of the sectors of the public likely to be shocked by a poster aimed at prevention, and which could commence court proceedings if they so wished, but ignores the interests of the other sector of the public – the poster’s target audience for whom the objective, which is of paramount importance, is to avoid infection with HIV. In this case, the consumer or the public serves as an element of social justification for a practice that is undoubtedly useful from the perspective of advertising companies, but this would-be taking-into-account of wider interests cannot conceal the real determining factors behind the actions of an organisation set up by and for the profession.

THE BVP’S “DOCTRINE” IS IN PART INCOMPATIBLE WITH PUBLIC HEALTH POLICY

The interests represented by the BVP and the decision processes it executes do not provide room for a reasoned taking-into-account of the public health objectives. For reasons that are understandable from the point of view of the advertising profession’s interests, the objectives of achieving as much perception of the message as possible take precedence over the content of the message. The real objectives of the message come second to those of its perception. The BVP aims to be, in its own words, “in touch with opinion”. Public campaigns for healthcare education, however, follow a different logic. They do not aim to encourage generally accepted ideas from all or part of the public, nor do they necessarily aim to please it. Their primary aim is to intervene, on a voluntary basis, when the interests of individuals and public health require it, on the social body in order to help modify a certain number of opinions and behaviours.

Such actions necessarily include the possibility of challenging certain standards of behaviour at the risk of offending the sensitivity and beliefs of certain sectors of the public. It is down to public authorities to act with good judgement, but it is also their responsibility to assume this risk when required. In this regard, among the BVP’s evaluation criteria, the criterion related to “not shocking”, applied regardless of the educational objective, represents a detrimental obstacle to the prevention policy put in place by public authorities.

Given this difficulty, the Conseil national du sida wants the educational objectives and interests of public health to take precedence over those of preserving decency or acceptable mores. The boundaries of what could be demonstrated or suggested in the context of prevention campaigns may legitimately be different to those that the advertising profession lays down in line with its own interests. Currently, the control exercised by the BVP gives the organisation a power of influence on prevention campaigns and healthcare education. It has neither the means, skills nor legitimacy, other than by title alone, to exercise this power in a responsible manner.

The formation that is currently in progress within the BVP of a “joint advertising committee” could offer an opportunity to improve the way public healthcare problems are addressed by the profession. This committee’s aim will be to develop the BVP’s doctrine and will comprise a number of professionals from the world of advertising and a number of representatives of civil society. The Conseil recommends that the committee integrates into each of these groups and into its working parties at the very least healthcare communications professionals and representatives of public or associative organisations that are qualified and recognised within the field of public health.

The Conseil is not sure, however, that this potential development of the BVP and the way it operates will actually clear up any ambiguity. The BVP remains, in effect, by its very nature and institutional positioning, an organisation that has neither the primary vocation nor the particular expertise to get involved in the field of public health campaigns. The economic interests which it inherently shares may often turn out to be contradictory to the objectives of the public prevention policies, and this extends beyond the field of preventing HIV infection. Although the Conseil agrees with the general principle of self-regulation within the advertising industry, a move which without doubt would be useful in many respects, it does however feel that the practices of this principle have reached their limits in the field of communication relating to prevention and healthcare education. As a consequence, the Conseil recommends that the public authorities consider the opportunity to define a specific statute for this type of communication that would most notably permit the control regulations exercised by the BVP to be avoided.