



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0020/16</b>
<b>2</b>	<b>Advertiser</b>	<b>Ultra Tune Australia</b>
<b>3</b>	<b>Product</b>	<b>Automotive</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
<b>5</b>	<b>Date of Determination</b>	<b>10/02/2016</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>
<b>7</b>	<b>Date of reviewed determination</b>	<b>11/05/2016</b>
<b>8</b>	<b>Determination on review</b>	<b>Upheld - Modified or Discontinued</b>

## ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.2 - Objectification Exploitative and degrading - women
- 2.3 - Violence Causes alarm and distress
- 2.3 - Violence Violence
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.6 - Health and Safety Unsafe behaviour
- 2.6 - Health and Safety Within prevailing Community Standards

## DESCRIPTION OF THE ADVERTISEMENT

This advertisement shows two women driving a convertible car and listening to music. The car comes to a stop and we see that they are on a railway crossing. The warning lights for the crossing flash and the barrier comes down trapping the women and their car in the path of an oncoming train which we can hear and see approaching them. The women scream and the screen goes dark and we hear the sound of a crash. A male voiceover then says, "Avoid unexpected situations. Get your car serviced at Ultra Tune". We then see the two women walking away from their car which is now engulfed in flames.

## THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*In the "unexpected" ad, two women are portrayed in a stereotyped "bimbo" manner, driving and pouting their enhanced lips. Their car stalls on a railway crossing and they miraculously escape, swaggering along the tracks in a sexualised manner afterwards. Level crossing accidents claim lives and this trivialises the risk.*

*I am offended that in 2016 it is still deemed appropriate to try and sell something using suggestively or scantily clad, artificially big busted women. Not only is it degrading for women to be used in this way. Many people watch the tennis, including young women. These women are not portrayed in a positive, healthy way, rather their gender and body parts are highlighted to sell a car product.*

*Completely inappropriate for daytime TV due to the explicit content of seeing two women apparently being killed in an accident when a train crashes into them and then walking away from the crash. I was shocked that such explicit depiction of a crash was used and shown when children could be watching.*

*This advertisement is telling people that women are stupid and would sit in a broken down car on the train tracks and get hit instead of getting out of the car.*

*I find this offensive to women everywhere. Implying we are bimbo's who don't look after their cars. Disgusting.*

*The women in the car are barely dressed and have excessive make up on. They are portrayed as idiots, breaking down on a railway line and screaming in a mocking way when they see the train come. I feel the ad is derogatory towards woman - portraying females as stupid and only good for one thing.*

*I think the advertisement is insensitive to the bigger issue of keeping people off train tracks and contradicts other advertisements made by the government and transport authorities that are trying to prevent people running train signals. It is making light of a very serious and real situation where people have lost their lives. Although at the end of the advertisement the women survive, the reality of the situation is that this is an unlikely outcome if it were to actually happen.*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*Advertisements Complaint References 0020116, 0021/16, 0022/16, 0023/16, 0024/16 & 0025116*

*We refer to your email letters attaching complaints concerning Ultra Tune's three advertisements currently broadcasted on Channel 7 and our website.*

*The advertisements in questions are:*

- *Unexpected Situation advertisement: 30 & 15 second advertisements with two female actors in a motor vehicle that breaks down at a railway crossing. They can be viewed on our YouTube channel <https://www.youtube.com/watch?v=vcKXY68Bsvw> and <https://www.youtube.com/watch?v=kFxJhRQBeaw> respectively. The CAD reference numbers are P2KP2ROA and P2KPIROA respectively and they have a PG rating.*

• *January 2016 Nexen advertisement: 15 second advertisement of two female actors dressed in black figure hugging clothing holding tyre changing hand tools. It can be viewed on our YouTube channel <https://www.youtube.com/watch?v=cLpTzuHbEDA>. The CAD reference number is P2JTIROA and is PG rated.*

• *Get into Wimbledon advertisement: 15 second advertisement of two female actors dressed in black figure hugging clothing holding tennis rackets. It can be viewed on our YouTube channel <https://www.youtube.com/watch?v=cLpTzuHbEDA>. The CAD reference number is P2JTJROA and is PG rated.*

*We respond to the issues raised by the complainants (2.1, 2.2, 2.3, 2.4, 2.5 & 2.6 of the Code) as follows:*

#### *Unexpected Situation advertisement*

*1. The objective of our advertisement is to promote Ultra Tune servicing by encouraging owners to have their vehicles serviced so as to avoid unexpected situations I break downs (this is clearly stated in the voiceover near the end of the advertisements).*

*2. The advertisement was designed in an exaggerated action movie style and is not intended to be a fully realistic portrayal of real events.*

#### *3. Concerns about safety & violence*

*(a) We sympathise and extend our condolences to the complainants who have suffered or been involved in any railway related tragedy. Our advertisements are not intended to cause distress and we regret any distress it may have caused to those in the public.*

*(b) The characters do not intentionally stop at the railway crossing. There is no suggestion of a suicide or an attempted suicide. At approximately 4 seconds into the advertisement, a loud bang can be heard and the driver is seen to attend to the controls of the vehicle at first instance (as any reasonable driver would). In the next scene, the vehicle's brakes are being applied in a controlled manner (brake lights are illuminated) as any driver would do.*

*(c) It is clear that the vehicle has broken down. At approximately 6 seconds, the vehicle stops abruptly and the red crossing signal lights are not flashing.*

*(d) The driver immediately tries to re-start the vehicle (in order to move the vehicle off the rail line).*

*(e) At 11 seconds, a long shot of the vehicle at the rail line crossing is depicted and the viewer can see smoke emanating from the front of the vehicle; a clear indicator of a mechanical problem with the vehicle. The driver is continuing to try to restart the vehicle but to no avail*

*(f) There is no depiction of the collision between the motor vehicle and a "train" (no train is actually depicted in the advertisements).*

*(g) The characters are shown surviving the inferred collision in the exaggerated unrealistic movie style mentioned above at the end.*

*(h) The advertisement was filmed in a controlled environment. At no time were the actors or production crew under any risk of harm.*

*4. We refute the suggestion that the advertisements objectifies or degrades women.*

*5. The actors are fully clothed wearing evening street clothing that is common in today's society.*

*(a) The whole advertisement is depicted at dusk and night / evening time, when it is common for women to be in such attire.*

*(b) The advertisements do not portray nor suggest sex or any sexual act and the actors are not being portrayed as objects of lust. The advertisements do not include any graphic nudity and there is no uncovered flesh.*

*6. We note a number of complaints have referred to the actors in a derogative way, based upon their appearance which is a personal bias. In other environments (such as a workplace or school yard), such derogative comments based upon appearance could be considered harassment and bullying.*

*7. We refute that advertisements suggest or encourages harassment, rape or any other violence against women. Ultra Tune strongly objects to any violence against all people including women. The clothing that the actors are wearing or any person chooses to wear is in no way an excuse or reason for harassment, rape or violence against them. Indeed one of the female actors is an ambassador of White Ribbon Australia (Australia's campaign to prevent men's violence against women).*

*8. Furthermore we refute that the actors are portrayed as being unintelligent or stupid.*

*(a) At no time are the actors shown as anything other than as normal people driving with loud music in their vehicle or otherwise.*

*(b) The characters deal with the vehicle break down without assistance and are not "helpless".*

*(c) They also escape the implied collision by themselves. The decision to abandon and escape the vehicle is the safest decision.*

*(d) The final scene was designed to emphasise the female empowerment with them confidently walking away from the vehicle without harm.*

*9. The use of a male voiceover near the end of the advertisements is a neutral announcement without condescending to the female characters. It is in no way suggesting that a male figure was required to assist the female characters. There is also no suggestion that the female characters required a male figure for assistance with the breakdown and their escape.*

*10. The advertisements are classified with a PG rating.*

*January 2016 Nexen advertisement*

11. *The advertisement is to promote tyres (specifically Nexen Tires) from Ultra Tune.*
12. *The actors are fully clothed. The images do not portray nor suggest sex or a sexual act and the actors are not being portrayed as objects of lust. The advertisement does not include any graphic nudity and there is no uncovered flesh.*
13. *The "tongue in cheek" reference to "rubber" in the super and voiceover is clearly explained as referring to Nexen Tires (which is also depicted).*
14. *The rubber reference and the actors' clothing are a continuation of Ultra Tune's previous advertisement (CAD reference PZLIROA which also had a PG rating). The previous advertisement was considered by the Board (case number 0201/14) and the complaints were dismissed.*
15. *The tyre equipment props are not used in a sexual manner or in a suggestively sexual manner.*
16. *The actors were treated fairly during the production and were remunerated for their performance.*
17. *We also refer to case number 0380/13 where the complaints were dismissed.*
18. *The advertisement has a PG rating.*

*Get into Wimbledon advertisement*

19. *The advertisement is to promote tyres (specifically GT Radial tyres) from Ultra Tune with a competition to win a trip to Wimbledon.*
20. *The voiceover explains the connection between the purchase of tyres and Wimbledon competition that viewers may enter.*
21. *There is no suggestion in the advertisement that the actors are tennis players.*
22. *The tennis props are not used in a sexual manner or in a suggestively sexual manner.*
23. *We refer to and repeat paragraphs 4, 6, 10, 12, 14, 16, 17 and 18 above.*

*In respect of all the advertisements, whilst we appreciate the time and effort the complainants have taken, the number of complaints is a small fraction of the total viewership that has seen the advertisements.*

*Nevertheless, for the reasons above, we do not believe the advertisement breaches AANA Advertisers Code of Ethics in any way.*

**THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement portrays women as idiots or bimbos who can’t drive, look after their car, recognise a dangerous situation or think for themselves, uses sexual appeal in a manner which objectifies women, causes alarm and distress in relation to an accident on a rail crossing, shows women wearing limited clothing with a focus on their cleavage, has an overall sexualised tone, and is insensitive to, and at odds with, community concerns about rail crossing safety.

The Board viewed the advertisement and noted the advertiser’s response.

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted that there are two versions of this advertisement which features two women whose car breaks down on a rail crossing and is subsequently hit by an oncoming train. The Board noted complaints that the women are depicted as unintelligent sex objects and that this is discriminatory to women. The Board considered whether the depiction of the women was discriminatory or vilifying of women. The Board noted that despite the image of the car in flames, the two women are shown walking away from the accident unscathed. The Board noted that the 15 second version is a cut-down version of the longer 30 second version and features no new footage.

The Board noted that advertisers are free to use whomever they wish in their advertisements and considered that the use of two women in a car for an automotive product or service is not of itself discriminatory. The Board noted the women are dressed in low cut tops and short skirts and also noted that the scene is set at night and considered that the clothing is not inappropriate for two women going out. The Board also noted the complainants’ concerns over the way in which the women are depicted with fake breasts, plumped up lips and shiny, plastic looking faces. The Board considered that the women are depicted sitting in a vehicle and walking away, in a Charlie’s Angels type strut, from the vehicle. In the Board’s view, while the women are wearing revealing clothes, the emphasis in the advertisement is on their position on a train track and not on particular aspects of their bodies. The Board considered that the women’s physical appearance may be considered as sexy to some viewers or exaggerated to others but that this is not of itself vilifying or discriminatory.

The Board also considered the other aspects of the manner in which the women are represented.

The Board noted that throughout both versions of the advertisement the women do not speak, although they do scream just before the train hits their car. The Board noted that when the women’s car stops suddenly their reaction is to look blank and do nothing. They appear not to realise that there is a train coming despite being on a rail crossing and despite the noise and vision of both the warning signals and the oncoming train. The Board noted the male voiceover which states, “Avoid unexpected situations. Get your car serviced at Ultra Tune”.

The Board noted that the intent of the advertisement is to depict two women unexpectedly breaking down – with the advertiser suggesting that regular services from Ultratune will prevent such an ‘unexpected situation.’ The Board accepted that the intent of the advertisement is to show an unrealistic situation. However the Board considered that the women are depicted as unintelligent in the way in which they sit passively, with blank faces, in the car on the train tracks and also in the way they appear to not notice the oncoming train. This behaviour, in the Board’s view, makes the women appear unintelligent and presents them in a stereotypical helpless female situation. In the Board’s view, the depiction of the women’s reaction to their situation is a negative depiction of women and does amount to vilification of women. The Board considered that the advertisement did portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did breach Section 2.1 of the Code.

The Board considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: “Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.”

The Board noted the complainants’ concerns that the advertisement depicts women as sex objects and noted that in order to breach this Section of the Code the images would need to be considered both exploitative and degrading.

The Board acknowledged that some members of the community would find the use of female models to promote an automotive service to be exploitative. The Board noted that the two women are wearing ‘going out’ clothing which is often revealing but considered that in this instance although the women’s breasts are enhanced by the style of clothing the women are wearing, their breasts are not the focus of the advertisement. The Board considered that, consistent with a previous determination in case 0093/12, whilst it is not necessary for the women to be wearing low cut clothing their clothing is not unusual for women to wear on a night out and the women’s physical features are not the focus of the advertisement.

The Board noted that the women walk away from the aftermath of the implied accident between the car and the train and considered that the manner in which they walk is reminiscent of Charlies Angels and that whilst the women are portrayed as sexy they are also portrayed as confident and in the Board’s view the overall manner in which the women are depicted in the advertisement does not use their sexual appeal in a manner that is degrading.

The Board considered that the advertisement did not employ sexual appeal in a manner which is exploitative and degrading to any individual or group of people.

The Board determined that the advertisement did not breach Section 2.2 of the Code.

The Board considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 states: "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The Board noted the complainants’ concerns that the depiction of a car being hit by a train is distressing to those who have lost a loved one in a similar manner. The Board acknowledged that this scene could cause concern to some members of the community based on their own

personal experience but considered that the moment of impact is not actually shown and in the Board's view the depiction of the women walking away from the aftermath lends an unrealistic air to this scenario. The Board considered that the advertisement depicts a suggestion of imminent danger which proves to be a lucky escape and is not a depiction of violence.

The Board considered that the advertisement did not present or portray violence and determined that the advertisement did not breach Section 2.3 of the Code.

The Board then considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

The Board noted the complainants' concerns that the advertisement depicts women wearing limited clothing with a focus on their cleavage and has an overall sexualised tone.

The Board noted it had previously dismissed complaints about an advertisement for the same advertiser in case 0201/14 where:

"The Board noted the complainants' concerns that the women use seductive moves around the tyres.

The Board noted that the advertisement is for tyres and tyre fitting and that the idea is to draw the attention of the viewer to the tyres. The Board noted that it is unlikely that anyone would behave in the same manner around tyres but that the actions of the women are exaggerated and unrealistic in a humorous way and are only mildly sexually suggestive."

In the current advertisement the Board noted that the women are wearing clothing consistent with going out for an evening and considered that whilst the women's cleavages are substantial the level of exposure is not excessive or inappropriate for evening wear.

The Board noted that the camera focuses on the women's reactions when they break down on the rail crossing and considered that the focus is on their faces and not their bodies. The Board noted that when the women walk away from the aftermath of the train hitting their car they are shown to strut towards the camera. The Board noted that the women's actions are similar to the walking style of catwalk models and considered that their actions are confident, they are filmed from a distance which minimises the focus on particular parts of their bodies, and are not strongly sexualised

The Board noted that the advertisement had been rated 'PG' by CAD and considered that overall the advertisement depicted two women wearing revealing clothing but did so in a manner that minimised the sexually impact of the advertisement and in the Board's view did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience which would include children viewing the television with parental guidance.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".



The Board noted the complainants' concerns that the advertisement is insensitive to community concerns about rail crossing safety.

The Board noted that rail crossing safety is a genuine community concern but considered that in this instance the advertisement clearly depicts the women's actions as negative. The Board noted that the voiceover enforces the negative connotation by describing the situation as an unexpected scenario which could have been avoided. The Board noted that the woman survive the implied accident between the train and the car and considered that their survival is not misleading or presenting an unsafe message because the scenario of the women being able to walk away from such an accident is clearly an unrealistic outcome.

The Board considered that the advertisement did not encourage or condone members of the community to copy the women's actions with regards to the safe crossing of rail tracks.

The Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on safety around level crossings.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.1 of the Code, the Board upheld the complaints.

## **THE ADVERTISER'S RESPONSE TO DETERMINATION**

We advise that we act on behalf of Ultra Tune Australia.

We refer to your letter to our clients dated 17 February 2016 and the draft case report detailing the Board's decision enclosed therein.

We are instructed that our client will discontinue the advertisement "unexpected situations" ("the Advertisement"), which is currently the subject of the abovementioned case under

protest', noting that it intends to seek an independent review of the Board's decision, once finalised.

Therefore, kindly consider this letter as formal notice of our client's discontinuance of the Advertisement and our request that the Board publish and circulate its final decision.

We advise for the record that our client views the Board's decision that the Advertisement provides "a negative depiction of women and does amount to vilification of women" as without foundation and intends to vigorously dispute these findings.

Accordingly, we look forward to your confirmation of receipt of this letter and subsequently, the Board's final decision.

## **INDEPENDENT REVIEWER'S RECOMMENDATION**

### **ISSUES RAISED**

2.1 – Discrimination or Vilification on grounds of gender

### **DESCRIPTION OF THE ADVERTISEMENT**

This advertisement shows two women driving a convertible car while listening to music. The car comes to a stop and we see that they are on a railway crossing. The warning lights for the crossing flash and the barrier comes down trapping the women and their car in the path of the oncoming train which we can hear and see approaching them. The women scream and the screen goes dark and we hear the sound of a crash. A male voiceover then says, "Avoid unexpected situations. Get your car serviced at UltraTune". We then see the two women walking away from their car which is now engulfed in flames.

There were two versions of the relevant advertisement: a 15 second one; and a 30 second one. It is the second which is being considered in this complaint.

### **THE COMPLAINT**

The advertisement was rated PG but was shown during daytime/ early evening viewing and specifically while the Australian Open tennis tournament was underway. Another UltraTune advertisement showing the same two women was also shown during these times and many of the complaints related to both. The Board did not uphold complaint relating to the second advertisement. A sample of comments which the complainants made regarding this advertisement included the following:

The women were specifically depicted as 'bimbos', too superficial to be concerned with car maintenance. Their looks are exaggerated and stereo-typed. I am offended by this advert as it is no longer the 1950s and women should not be depicted in this manner.

The women's exposed breasts, the wardrobe chosen for them, the casting decisions made to choose women who are clearly overly cosmetically enhanced (most noticeably their lips and breasts) all send a very unhealthy body image message to young women and girls, perpetuating the sexist ideal that women should unrealistically aspire to have the physically

impossible proportions of a Barbie doll, and dress in a sexually desperate and disrespectful manner, with the sole aim of attracting the sexual attention of men.

I find the portrayal of women in this advertising offensive. Due to the characters' scant clothing and demeanour, I feel that [they] are portraying women as (a) sexual objects and (b) bimbos/poor drivers. I appreciate they are probably being tongue in cheek but find the humour both inappropriate and unnecessary.

UltraTune's Managing Director's repeated and vigorous defence of the spots as "tongue in cheek humour" (despite the many complaints registered on their website) smacks of further insensitivity, suggesting that the women and men who are offended by these [lewd] and sexist spots are in some way uptight or out of touch, when in fact, the opposite is true. Further I'd suggest that these ads would never run if the women were exchanged for men; the clear implication being that men would never be so stupid as to find themselves stranded on railway track, let alone dressed as if auditioning for a hard core porn role.

I found this advertisement offensive as it is derogatory towards women. It portrays women as superficial and unintelligent and perpetuates sexist stereotypes. The advertisement contains subliminal messaging that women are stupid and cannot take appropriate care of a motor vehicle because of their gender.

I object to the ad on two counts. The first is the way it has the women dressed in such a sexually explicit way and portrays the women as stupid. Women don't need this kind of stereotyping to be continued on and on. It's degrading and offensive to women. My second point was the fact that some might find it disturbing as the train rushes toward the pair and their car. This is supposed to be amusing? I think not. Just downright dangerous. This ad is highly offensive to me and everyone in my household agreed. (Teens included). The first thing I thought was, have we returned to the 70s where these types of sexual stereotypes were valid.

## THE DETERMINATION

The Board considered and rejected the view of the complainants that the depiction of the two women was discriminatory in terms of Section 2.1 of the Code. Equally, the Board rejected claims of breach of Sections 2.2, 2.3, 2.4 and 2.6 of the Code.

However, in considering other aspects of the manner in which the women are represented the Board found that the depiction of the women amounted to vilification in terms of Section 2.1. In its finding the Board stated:

... throughout both versions of the advertisement the women do not speak, although they do scream just before the train hits their car. The Board noted that when the women's car stops suddenly their reaction is to look blank and do nothing. They appear not to realise that there is a train coming despite being on a rail crossing and despite the noise and vision of both the warning signals and the oncoming train. The Board noted the male voiceover which states, 'Avoid unexpected situations. Get your car serviced at UltraTune.'

The Board noted that the intent of the advertisement is to depict two women unexpectedly breaking down – with the advertiser suggesting that regular services from UltraTune will prevent such an 'unexpected situation'. The Board accepted that the intent of the

advertisement is to show an unrealistic situation. However, the Board considered that the women are depicted as unintelligent in the way in which they sit passively, with blank faces, in the car on the train tracks and also in the way they appear to not notice the oncoming train. This behaviour, in the Board's view, makes the women appear unintelligent and presents them in a stereotypical helpless female situation. In the Board's view, the depiction of the women's reaction to their situation is a negative depiction of women and does amount to vilification of women. The Board considered that the advertisement did portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did breach Section 2.1 of the Code.

## REQUEST FOR REVIEW

The request for review by the advertiser is on the basis that there was a substantial flaw in the Board's decision:

We seek review of the Advertising Standards Board decision that the advertisement is in breach of Section 2.1 of the Advertiser Code of Ethics ("the Code"). Specifically, we seek a review of the Board's findings that the advertisement portrays or depicts the actors in a way that discriminates or vilifies women.

In summary, the grounds on which the request was based are:

- The Board noted that the intent of the advertisement is to depict two women unexpectedly breaking down and to suggest that regular services from UltraTune will prevent such an 'unexpected situation' occurring. However the women are depicted as unintelligent and as stereotypical helpless females, a negative depiction amounting to vilification.
- This is contrary to Section 2.1 of the Code, the Practice Note to which states that 'vilification' is constituted by conduct which 'humiliates, intimidates, incites hatred, contempt or ridicule'. However, it exempts women in traditional roles provided the depiction does not suggest that such activities are 'women's work' or 'work of little value'. The submission is that the activities in the advertisement are not about 'women's work' or 'work of little value'.
- The Board did not make findings in terms of Section 2.1 of the Code that the advertisement either 'humiliates', 'intimidates', 'incites hatred against' or 'ridicule of' women.
- Nor did the Board consider whether the advertisement was acceptable because, as indicated in the Practice Note, it suggested 'stereotypical aspects of an ethnic group or gender with humour provided the overall impression ... is not ... negative ... of people of that ethnicity or gender'.
- The advertiser submitted that the clear tone of the advertisement was one of drama mixed with humour.
- The situation depicted was 'hyper-realistic'; did not depict a negative impression of women since the women safely exit of their own volition'; and shows the women as 'confident' and in a 'strong and capable light', having rescued themselves.

- Had male actors been depicted, no such finding of vilification would have been made.
- The advertiser rejects the Board's comment that after the car has stalled, the women look 'blank'. Rather the submission is that the look is clearly one of enquiry, is uncertain and confused, a normal reaction of someone of either gender whose car has suddenly broken down.
- Equally, following this scene, the driver reviews the instrument panel when the look is not blank but one of concentration as the driver attempts to restart the vehicle.
- The women have been listening and moving to the loud music on the vehicle's audio system. This was intended to heighten the dramatic tension since the actors' response to the music meant they did not react to their situation until the 'last minute'.
- The dramatic impact is enhanced as it is not until approximately 12-13 seconds into the advertisement that the viewer is made aware that the car is stalled on a railway crossing.
- The actors' apparent ignorance of the oncoming train was an edited and exaggerated dramatization of the situation designed to draw the viewer in and maintain the viewer's attention, a technique often used in cinema and other visual art forms.
- Use of this technique cannot constitute vilification of the women since it is in common use, and the over-dramatization is not farfetched or unreasonable. The Board has failed to give adequate weight to purposeful use of the technique.
- The Board has incorrectly found that the advertisement portrays the women as unintelligent and helpless.
- This is not supported by the driver's sensible attempt to restart the vehicle, and ultimately, in the women's escape from the accident. The Board's comment that 'the manner in which [the women] walk [away from the accident] is reminiscent of Charlies Angels and that whilst the women are portrayed as sexy they are also portrayed as confident'.
- The advertisement should be viewed as an over-dramatization to draw the viewer in and to sell a service using well established techniques to create drama.

#### INDEPENDENT REVIEWER'S RECOMMENDATION

The grounds on which a decision of the Board may be reviewed are:

- (1) Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided.
- (2) Where there was a substantial flaw in the Board's determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence).

(3) Where there was a substantial flaw in the process by which the determination was made.

The Independent Reviewer considered the complaint on the basis of:

- ground 3, namely, a substantial flaw in the process in the failure to specify in its finding any conduct or material which came within the definition of vilification; and
- ground 2, namely, a substantial flaw in the Board's determination since the Board had given insufficient weight to some of the evidence, errors which 'could have a significant bearing on the determination'.

The Board's finding of vilification was expressed as follows:

...the women are depicted as unintelligent in the way in which they sit passively with blank faces, in the car on the train tracks and also in the way they appear to not notice the oncoming train. The behaviour, in the Board's view, makes the women appear unintelligent and presents them in a stereotypical helpless female situation. In the Board's view, the depiction of the women's reaction to their situation is a negative depiction of women and does amount to vilification of women. The Board considered that the advertisement did portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did breach Section 2.1 of the Code.

Vilification: Ground 3

'Vilification' is not defined in the Code and could have been left undefined. The AANA, however, did choose to define the term in the Practice Note on the Code. The Practice Note states that Section 2.1 relates to certain types of behaviour which 'humiliates, intimidates, incites hatred, contempt or ridicule', and 'restricts depictions of those types of behaviour against people within certain groups'. The groups include gender.

The Code states that 'The Board shall have regard to this Practice Note as it expresses the AANA's intent in relation to the Code of Ethics'.

The Board did not comment in its discussion on how the types of behaviour in the advertisement either humiliated, intimidated, incited hatred against, or ridiculed women, a mandatory obligation in the terms of the Code. Its silence on this issue indicates it appears not to have considered the ground.

Similarly, the Board did not consider the commentary in the Practice Note which states:

Advertisements can suggest stereotypical aspects of an ethnic group or gender with humour provided the overall impression of the advertisements is not a negative impression of people of that ethnicity or gender.

The absence of reference to this element of the commentary (and see later concerning use of humour) raises a doubt as to whether the Board identified the humour and whether it took it into account as an ameliorating factor in its finding that the advertisement presented the women 'in a stereotypical helpless female situation'.

In addition, the Board did not discuss the effect of the final scene – the women having avoided the potential crash and walking apparently away unscathed and apparently unconcerned - in its overall finding of an impression that the women appeared unintelligent and were presented in a stereotypical helpless female situation.

The reviewer recommends that the Board reconsider its determination in the light of the specific kinds of behaviours proscribed by the Practice Note as vilification; and that it indicates whether it considered whether, and if so the overall impact of, the humour in the advertisement and whether this negated the impact of the stereotypical view of the women; and had taken into account the final scene in its overall finding that the advertisement presented the women as unintelligent, contributing to a stereotypical impression of the women.

These failures amount to a substantial flaw in the process by means of which the Board's finding of vilification is reached and could have a significant bearing on the determination.

#### Vilification: Ground 2

The finding of the Board was that 'the depiction of the women's reaction to their situation is a negative depiction of women and does amount to vilification of women'. The Board considered that the women were depicted as unintelligent because they sat passively, with blank faces, in the car on the train tracks, and appear not to notice the oncoming train. This behaviour, in the Board's view, makes the women appear unintelligent and presents them in a stereotypical helpless female situation.

This finding is based on the commentary on Section 2.1 in the Practice Note, namely, that:

A negative depiction of a group of people in society may be found to breach section 2.1 even if humour is used. The depiction will be regarded as negative if a negative impression is created by the imagery and language used in the advertisement.

Although the Board accepted that 'the intent of the advertisement is to show an unrealistic situation' the Board did not say whether it accepted there was humour in the advertisement nor whether it gave weight to the humour in its finding of vilification.

The humour can be said to arise from the exaggeration apparent in the scenario - the women's overemphasised facial and bodily features, their attire, their initial 'blank look' reaction to their predicament, the tension created by their apparent lack of awareness that they are on a railway crossing and a train is approaching, their 'last minute' scream of fright, in unison, when they see the train lights, and the Charlie's Angels style walk as they unconcernedly left the scene of the burning car.

It is not apparent whether the Board gave weight to the humour created by the lack of realism in the scenario arising from the behaviour of the two women actors, and their ultimate ability to escape unharmed from the collision of the train with their stalled car, and if so, whether this could have influenced their finding of vilification. The failure to do so was a substantial flaw in the Board's determination and may have had a significant bearing on the outcome.

#### CONCLUSION

In the opinion of the reviewer there was a substantial flaw in the Board's determination in its finding of vilification without identifying which of the items included in the definition of vilification were involved; whether there was humour in the hyper-realistic portrayal of the women which negated the overall impression of the women as stereotypical helpless females; and whether the final scene negated any overall depiction of the women as unintelligent and hence stereotypical helpless females. In the opinion of the reviewer, the Board also failed to give weight to the potentially humorous effect of the patently exaggerated actions involved in the unrealistic dramatic event, and whether this was taken into account in its finding of vilification.

I recommend that the determination of the Board in case 0020/16 be returned to the Board for further consideration of the complaints in relation to Code section 2.1.

## **THE DETERMINATION ON REVIEW**

The Board noted the request for review, the advertiser's points of concern about the Board's first decision and also noted the determination of the Independent Reviewer which recommended that the Board:

- Review its consideration under Section 2.1 giving more precision to its consideration of the definition of vilification, the use of humour and the effect the final scene in the advertisement has on the overall tone.

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted that there are two versions of this advertisement both featuring two women whose car breaks down on a rail crossing and is subsequently hit by an oncoming train. The Board noted the original complaints that the women are depicted as unintelligent sex objects and that this is discriminatory to women.

The Board noted the Practice Note relevant to this matter and in relation to Section 2.1 which describes types of behaviour and restricts depictions of those types of behaviour against people within certain groups. The types of behaviour are:

- Discrimination – unfair or less favourable treatment
- Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.

The Board noted the Macquarie Dictionary definition of incite:

- “to urge on; stimulate or prompt to action”.

The Board considered whether the depiction of the women was discriminatory or vilifying of



women. The Board noted its earlier discussion around Section 2.1 of the Code of Ethics where:

“The Board noted that the intent of the advertisement is to depict two women unexpectedly breaking down – with the advertiser suggesting that regular services from Ultratune will prevent such an ‘unexpected situation.’ The Board accepted that the intent of the advertisement is to show an unrealistic situation. However the Board considered that the women are depicted as unintelligent in the way in which they sit passively, with blank faces, in the car on the train tracks and also in the way they appear to not notice the oncoming train. This behaviour, in the Board’s view, makes the women appear unintelligent and presents them in a stereotypical helpless female situation. In the Board’s view, the depiction of the women’s reaction to their situation is a negative depiction of women and does amount to vilification of women.”

The Board noted the reviewer’s comments relating to the need for the Board to reconsider the decision ensuring it properly considers the definition of ‘vilification’. The Board noted that the definition to be applied is as set out in the Code of Ethics and associated Practice Note. The Board therefore considered whether the advertisement breached Section 2.1 of the Code and specifically considered the elements outlined in the Practice Note.

- Discrimination – unfair or less favourable treatment
- Vilification – humiliates, intimidates, incites hatred, contempt or ridicule of women.

The Board noted the Macquarie Dictionary definition of ridicule:

- “1. Words or actions intended to excite contemptuous laughter at a person or thing;  
2. To deride”.

The Board considered that the advertisement ridicules people of a certain group, namely women, in the way in which the women are depicted. Specifically, the Board considered that the overall suggestion in the advertisement is that these women can’t think: their car slowly comes to a stop and their reaction is to look as though they have not fully registered what has happened and take too long to realise where they have broken down and the consequence of that.

In the Board’s view the advertisement depicts women in a manner which suggests they do not get their car serviced, are unintelligent and unable to recognise a dangerous situation and the Board considered that the advertisement presents women as ridiculous. The Board considered that the stereotypical depiction of women being unable to look after their car perpetuates the depiction of women being ridiculous in relation to cars and that this incites ridicule towards their behaviour and women in general. The Board considered that this ridicule is directed at the women in a manner which does meet the grounds for vilification as defined in the AANA Practice Note for Section 2.1.

The Board noted the advertiser’s request for review which stated that the women do not look blank but rather they look uncertain and that had male actors been depicted no such findings of vilification would have been made. The Board noted that it can only look at the advertisement as presented, not suppose how it might be interpreted had the actors been men.

The Board noted the Independent Reviewer's recommendation that the Board address the use of humour in the advertisement and whether this ameliorates the presentation of the women as helpless females.

The Board noted the advertiser's submission that the advertisement employs humour. The Board noted that different people will find different things humorous. In the Board's view however the attempted humour in the advertisement does not work and the overall impression taken from the advertisement is not of a funny situation but rather of a potentially dangerous situation which has come about due to the lack of intelligence employed by the main characters. In the Board's view any potential humour is directed at the women and their behaviour, adding to the overall impression that the women are being ridiculed. With regards to the situation— being stuck on a train track – this is a situation that is a significant community concern in Australia, and the depiction of this situation works against an overall impression of humour in the advertisement.

By contrast the Board considered case 0001/15. In this previous case the Board considered that the advertisement presented exaggerated and unrealistic situations that provided an overall impression of humour, as well as situations which would not be able to be replicated by the broad community, which meant that the humour was more successful. In the Board's view the humour in the current advertisement is not sufficiently obvious to mitigate against the overall impression of ridiculing women that the advertisement conveys.

The Board noted the Independent Reviewer's recommendation that the Board address the final scene where the women walk away unscathed from the train supposedly hitting their car. The Board noted the advertiser's response that the advertisement depicts the women in a strong and capable light having rescued themselves.

The Board noted that the advertisement shows a vehicle breaking down on a train track and considered that although the women are shown to walk away there is no indication whatsoever that the women have orchestrated their escape. The Board noted that the advertisement shows the women screaming when they realise at the last minute that a train is about to hit their car and considered that we do not see how the women escape or the moment of impact. The Board noted the advertiser's response that the advertisement employs editing and dramatization to heighten the situation depicted in the advertisement. The Board acknowledged that the women are shown to confidently walk away from the accident but considered that their actions throughout the rest of the advertisement are presented as ridiculous and there is no indication in the advertisement that the women themselves have contributed to their escape but rather that their escape is a result of luck. The Board considered that this final scene does not detract from the overall impression the advertisement gives which is that the women are being presented in a manner which incites ridicule on account of their gender.

Overall the Board considered that the advertisement presents women as ridiculous suggesting that they don't look after their cars, react passively to breaking down, and are unaware of their surroundings. The Board considered that the advertisement does encourage ridicule of women and therefore does portray or depict material in a manner which is vilifying of a person or section of the community on account of gender.

The Board determined that the advertisement did breach Section 2.1 of the Code.

The Board considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: "Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people."

The Board noted the complainants' concerns that the advertisement depicts women as sex objects and noted that in order to breach this Section of the Code the images would need to be considered both exploitative and degrading.

The Board acknowledged that some members of the community would find the use of female models to promote an automotive service to be exploitative. The Board noted that the two women are wearing 'going out' clothing which is often revealing but considered that in this instance although the women's breasts are enhanced by the style of clothing the women are wearing, their breasts are not the focus of the advertisement. The Board considered that, consistent with a previous determination in case 0093/12, whilst it is not necessary for the women to be wearing low-cut clothing their clothing is not unusual for women to wear on a night out and the women's physical features are not the focus of the advertisement.

The Board noted that the women walk away from the aftermath of the implied accident between the car and the train and considered that the manner in which they walk is reminiscent of Charlies Angels and that whilst the women are portrayed as sexy they are also portrayed as confident and in the Board's view the overall manner in which the women are depicted in the advertisement does not use their sexual appeal in a manner that is degrading.

The Board considered that the advertisement did not employ sexual appeal in a manner which is exploitative and degrading to any individual or group of people.

The Board determined that the advertisement did not breach Section 2.2 of the Code.

The Board considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 states: "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The Board noted the complainants' concerns that the depiction of a car being hit by a train is distressing to those who have lost a loved one in a similar manner. The Board acknowledged that this scene could cause concern to some members of the community based on their own personal experience but considered that the moment of impact is not actually shown. The Board considered that the advertisement depicts a suggestion of imminent danger which proves to be a lucky escape and is not a depiction of violence.

The Board considered that the advertisement did not present or portray violence and determined that the advertisement did not breach Section 2.3 of the Code.

The Board then considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

The Board noted the complainants' concerns that the advertisement depicts women wearing limited clothing with a focus on their cleavage and has an overall sexualised tone.

The Board noted it had previously dismissed complaints about an advertisement for the same advertiser in case 0201/14 where:

“The Board noted the complainants’ concerns that the women use seductive moves around the tyres.

The Board noted that the advertisement is for tyres and tyre fitting and that the idea is to draw the attention of the viewer to the tyres. The Board noted that it is unlikely that anyone would behave in the same manner around tyres but that the actions of the women are exaggerated and unrealistic in a humorous way and are only mildly sexually suggestive.”

In the current advertisement the Board noted that the women are wearing clothing consistent with going out for an evening and considered that whilst the women’s cleavages are substantial the level of exposure is not excessive or inappropriate for evening wear.

The Board noted that the camera focuses on the women’s reactions when they break down on the rail crossing and considered that the focus is on their faces and not their bodies. The Board noted that when the women walk away from the aftermath of the train hitting their car they are shown to strut towards the camera. The Board noted that the women’s actions are similar to the walking style of catwalk models and considered that their actions are confident, they are filmed from a distance which minimises the focus on particular parts of their bodies, and are not strongly sexualised

The Board noted that the advertisement had been rated ‘PG’ by CAD and considered that overall the advertisement depicted two women wearing revealing clothing but did so in a manner that minimised the sexual impact of the advertisement and in the Board’s view did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience which would include children viewing the television with parental guidance.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted the complainants’ concerns that the advertisement is insensitive to community concerns about rail crossing safety.

The Board noted that rail crossing safety is a genuine community concern but considered that in this instance the advertisement clearly depicts the women’s actions as negative. The Board noted that the voiceover enforces the negative connotation by describing the situation as an unexpected scenario which could have been avoided. The Board noted that the woman survive the implied accident between the train and the car and considered that their survival is not misleading or presenting an unsafe message because the scenario of the women being able to walk away from such an accident is clearly an unrealistic outcome.

The Board considered that the advertisement did not encourage or condone members of the community to copy the women’s actions with regards to the safe crossing of rail tracks.

The Board considered that the advertisement did not depict material contrary to Prevailing

Community Standards on safety around level crossings.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.1 of the Code, the Board affirmed its original decision and upheld the complaints.