



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0005-21
2. Advertiser :	Medex Australia Pty Ltd
3. Product :	Automotive
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	20-Jan-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a man speaking about the product. He states:

We get two sorts of blokes who buy an Engine Guard overheating alarm. The first have seen our ads on the tele for years- sensor on the motor, display on the dash, buzzer if she's hot. (Shot cuts to stills of sensor on engine, display and returns to mechanic on BEEPS). Now they're going travelling and don't want to deal with a cooked engine. The other's have just dealt with a cooked engine and never want that again. We could have saved them heaps. Like I've been saying, I wouldn't travel without it.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

The first sentence the "Mechanic" says begins with "There's two types of blokes who buy Engine Guard". I believe that this is discriminatory against women as it strongly implies that only men AKA "Blokes" buy this product and this advertisement is only directed at men.



THE ADVERTISER'S RESPONSE

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

I am responding to the above case which has been brought against my company, of which I am the sole Director. I would like to begin by stating that my company is a small family owned and operated business. It employs myself, my partner and my 18-year-old son. This is NOT a large business and consequently I do not have an 'on-staff' legal adviser to prepare this response. However, I will endeavor to address the complaint to the best of my ability. I also do not use an advertising agency or buyer. My TV campaigns are handled entirely by me, and I wrote the script to the TV commercial in question.

I have supplied a copy of the commercial, script and CAD approval as requested.

I would like to begin by stating that this is quite possibly the most inopportune time to be required to attend to this matter. It is immediately following the New Year Holiday and so we are operating with limited staff. I have personally worked the past 11 days straight with average days spanning 12+ hours. The entirety of my Christmas break was 2 days. The complaint and requirement for a response therefore adds a significant burden to an already challenging situation. And this is following 2020 where COVID has laid waste to businesses across this country. I have faced a daily struggle to keep this business operating and viable.

I am not expecting sympathy, nor do I deserve any, but to be completely honest, I have considered simply letting the Community Panel adjudicate without any defense/response on my behalf. This would have almost certainly guaranteed an adverse outcome, but it may have allowed me a few extra hours to run my business. By that, I mean manually solder together products, drill holes in enclosures or process orders- all of which (and a thousand other tasks) fill my days to capacity. I am happy to provide access to our workshop should the Community Panel like to put the matter in some context.

But in the limited time that I have been allowed to prepare a response, I have found the time and energy. Why? Because I simply cannot afford to pay for a new advert to be made. I would be forced to pay to make even a small amendment. The original producer would need to complete the work. Most likely the actor (Jim Gosden) would need to be employed again and I would have to pay to rent the space again. Then, in addition, there would be a repeat of the CAD approval cost plus a re-upload charge to SBS. I ran the first advertisement for over 5 years as it took that long to accumulate the funds to make a new version.

I simply do not have the funds to complete the above should amendments be required, so my only other option is to cancel the advertising. Which is GUARANTEED to cause a reduction in sales that may force me to close the business. It might not, but I have a



family who rely on me. So I have no choice but to try to prove that the complaint is not warranted.

Here is my response to the best of my ability. I am available at any time should the Community Panel require further information or clarification:

- As I understand it, the complaint relates directly to the word use of the word BLOKE as it has been considered discriminatory by the complainant. I have read the relevant section of the AANA Code of Ethics (see below) as advised by Ad Standards. I have included it for reference purposes:*

2.1 Advertising or Marketing Communication shall not portray people 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 above clearly aims to prevent harm (in the form of discrimination or vilification) and I totally support this aim. The complaint alleges (as I understand it) that harm is being caused by the use of the word BLOKE as it implies that no female would (or perhaps could) purchase the product.

I strongly disagree. In context, the word BLOKE is being used referentially. It REFERS to specific cases as recalled in the memory of the actor portraying a mechanic. He REFERS to specific customers who have bought the product. At no time does he infer or state that the product cannot be or should not be purchased by females. And at no time does he mention any class exclusions (such as females) to imply that such exclusions should or do exist. Equally he does not state or infer any class inclusions- he does not say man, male or equivalent. To that end, it fails meet the definition of harm by discrimination on the basis of gender.

It could be argued that for the advertisement to breach the of intent of Section 2.1, the term BLOKE would need to be used in such a way as to actively discriminate in some way. From my understanding of Section 2.1, if the script referred to the product as MADE FOR BLOKES then there would an attempt to appeal to a class of buyers. It could be perceived as an attempt to dissuade another class (females) which would possibly be considered a form of discrimination.

If the complainant had tried to purchase the product online there are no barriers or impediments that are gendered. No proof of gender is required. I happily accept sales order from all genders over the phone. I make no change to my product description or customer support for different genders. No TV advertising targeting on SBS excludes women.

If the complaint was to be upheld as discrimination on the basis of gender, then it could be argued that the advertisement also discriminates against others who fail to be mentioned in the advert such as: a person or section of the community (on account) of race, ethnicity, nationality, age, sexual preference, religion, disability, mental illness



or political belief. The advert makes no mention of these classes, categories or groups either. But as the owner of the business, rest assured I would like all classes, groups and categories of people to buy an Engine Guard.

So for the script to be inherently discriminatory as it is claimed, a direct gendered reference must have been made. And the complainant has identified the word BLOKE is gendered. Therefore, the harm in the form of discrimination results directly from this. If the reference to the specific customers were amended to something genderless it would (at least in theory) cease to cause harm. For example, if the script was amended to the words PEOPLE or CUSTOMERS then harm in the form of gender discrimination would be impossible to argue.

So to this point, the entire basis for the complaint turns on whether BLOKE is gendered. If a BLOKE can be female then it becomes harder to argue a case for discrimination.

I refer to the following quote from Wikipedia:

“The word "bloke" does not always mean exclusively male.”

(ref: <https://en.wikipedia.org/wiki/Bloke>)

This may not be the most authoritative source but I would note that the Australian Concise Oxford Dictionary concurs. The context is an issue (and language is historically fluid) but I strongly believe that females can be referred to as BLOKES. I completely respect the fact that this may be not the norm, but when my 21-year-old daughter was told about the complaint she commented that there is no finer complement amongst her group than to be described as a GOOD BLOKE. She is studying undergraduate law with a minor in gender studies amongst other subjects, so I do not doubt her contemporary knowledge in such matters.

Further, if overt gender discrimination has resulted in harm to a class of people as defined in Section 2.1, there would be ample, significant or even some evidence. It could be argued that there is a complaint, so harm has already occurred and this is sufficient evidence. However, the “harm” being alleged is that the term BLOKE has prevented females from buying the product or wanting to buy the product. The numbers do not bear this out. The advert began airing mid last year (2020). Since that point in time the proportion of buyers (and site visitors) has not changed in gender balance from the pre-advert numbers.

I feel terribly sorry and apologetic that a complaint has been made. I would like to pass on my sincere apologize to the complainant that she feels as she does about the use of the word BLOKE. I will continue to respect and adhere to the Australian advertising. But in making any judgements I hope that the Community Panel might take into account the certain but totally avoidable harm that will be done to a small Australian manufacturing business if the decision goes in favor of the complainant.



I look forward to your favorable consideration.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement is discriminatory towards women by suggesting that only men buy the advertised product and the advertisement is only directed towards men.

The Panel viewed the advertisement and noted the advertiser's response.

Section 2.1: Advertising or Marketing Communication shall not portray people 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 Panel noted the AANA Practice Note which provides guidance on the meaning of:

- Discrimination - unfair or less favourable treatment
- Vilification - humiliates, intimidates, incites hatred, contempt or ridicule
- Gender - male, female or trans-gender characteristics.

The Panel also noted that the Practice Note provides further guidance around the use of gender stereotypes:

Stereotypes may be used to simplify the process of communication in relation to both the product offered and the intended consumer. As such, advertisements may feature people undertaking gender-stereotypical roles e.g. a woman cleaning the house or a man doing DIY, or displaying gender-stereotypical characteristics e.g. a man being assertive or a woman being sensitive to others' needs, but they should take care to avoid suggesting that stereotypical roles or characteristics are:

- *always associated with that gender;*
- *the only options available to that gender; or*
- *never carried out or displayed by another gender.*

as this may amount to discrimination on the basis of gender.

Does the advertisement portray material in a way which discriminates against or vilifies a person on account of gender?

The Panel noted that the man in the advertisement states that "there are two sorts of blokes who buy an Engine Guard overheating alarm".

The Panel noted that there is no reference to women in the advertisement, and women do not appear in the advertisement. The Panel considered that advertisements featuring only one gender are not necessarily discriminatory towards another gender, unless there is language or imagery referring to the omitted gender.



The Panel considered that the advertisement does not suggest that women do not purchase the advertised product, or that women are uninterested or uneducated about vehicle engines.

The Panel noted the complainant's concern that the advertisement is directed towards men. The Panel considered that advertisers are allowed to target their advertising to whatever audience they wish, and an advertisement directed towards one gender is not in itself a breach of the Code.

Section 2.1 conclusion

Finding that the advertisement did not portray material in a way which discriminates against or vilifies a person or section of the community on account of gender, the Panel determined that the advertisement did not breach Section 2.1 of the Code.

Conclusion

Finding that the advertisement did not breach any other section of the Code, the Panel dismissed the complaint.