



Case Report

1	Case Number	0026/15
2	Advertiser	Unilever Australasia
3	Product	Toiletries
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	11/02/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

- Other Social Values
- 2.1 - Discrimination or Vilification Sexual preference
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

The TVC opens with a young man sitting on a couch watching television. The voiceover states that the young man will not always look the way he does now. The television the young man is showing various fictitious television programs featuring the young man as the main character.

Certain scenes depict the young man as a 'silver screen' movie actor and are the subject of all the Complaints. Scene 16 shows the young man and a young woman in a 'kiss and embrace' The voiceover states "kiss the hottest girl". The next scene reveals another man standing beside the young man. The voiceover then states "or the hottest boy" and the two men embrace and give each other a farewell kiss on the lips.

THE COMPLAINT

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

I am offended by the part where he kisses another man. I find it awkward and offensive to have to see that.

Man kissing another man in the ad promotes homosexual behaviour and has nothing to do

with the product.

I found it offensive to see same sex kissing on television at a time when my children are watching and are too young to be exposed to any kind of sexuality questions. Inappropriate!!!

At 7pm it shows 2 men kissing. I find this very objectionable.

I'm not happy to see that on a Sunday afternoon I have to see on a television ad, two men kissing. I'm sure that Lynx have more creative and smarter ideas to sell their products.

THE ADVERTISER'S RESPONSE

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

Your letters refer to consumer complaints (Complaints) received by the Advertising Standards Bureau (ASB) in relation to a Unilever television commercial promoting LYNX branded hair styling products (TVC). The Complaints all concern a scene in the TVC depicting two men kissing each other on the lips.

You have requested Unilever to respond to the Complaints. For the reasons outlined below, Unilever does not consider the TVC to be contrary to the Code of Ethics (Code).

1. The Complaints

The Complaints all relate to a scene in the TVC depicting two men kissing each other on the lips. We have grouped the issues raised by the complainants as follows:

- (a) showing two men kissing is generally offensive;*
- (b) showing two men kissing is offensive as it represents immoral and indecent behaviour;*
- (c) showing two men kissing is offensive to persons with religious and moral convictions;*
- (d) showing two men kissing on television is unacceptable as children may be watching;*
- (e) homosexual practices should not be displayed publicly and they are highly offensive; and*
- (f) the TVC promotes homosexual and/or bi-sexual behaviour.*

2. The TVC

Unilever is currently broadcasting a 30 second version of the TVC on free-to-air television and 30 and 60 second versions via YouTube. Both versions contain the same scene showing two men kissing and the 60 second version otherwise encompasses the 30 second version.

To ensure all aspects of the TVC are considered by the ASB, we have responded by reference to the longer 60 second version.

Description

The TVC opens with a young man sitting on a couch watching television. The voiceover states that the young man will not always look the way he does now. The television the young man is watching automatically starts surfing through various fictitious television programs featuring the young man as the main character.

The first three television programs show the young-man as a bald or balding middle-aged man. The voiceover suggests that the man will one day yearn for his youthful hair. The voiceover implores the young man to make the most of his youthful hair and do ‘amazing’ things. The television starts flicking through television programs respectively showing the young man as an action hero, animated super hero, powerful politician and ‘silver screen’ movie actor.

Scenes 16, 17 and 18 depict the young man as a ‘silver screen’ movie actor and are the subject of all the Complaints. Scene 16 shows the young man and a young woman in a ‘kiss and embrace’ scene reminiscent of classic films such as Casablanca (1942) and To Have And Have Not (1944). The man and woman are fully clothed and dressed in long overcoats. The voiceover states “kiss the hottest girl”. Scene 17 pans out from the ‘kiss and embrace’ scene to reveal the couple have been kissing on the tarmac in front of an old single propeller plane on which the young man appears soon to depart.

Scene 18 then pans to screen right to reveal another man standing beside the young man. The voiceover then states “or the hottest boy” and the two men embrace and give each other a farewell kiss on the lips.

The television channel casually changes and we see then young man as a rock star with wild hairstyles and as the subject of a prime time news story. The TVC reverts to the opening scene showing the young man on the couch and the voiceover reminds the young man to make the most of his hair while it is still there. The TVC shows the young man styling his hair with Lynx branded product and then walking out his front door to embrace the day.

CAD Details

The CAD reference numbers and classification for the TVC follow:

- (a) 60 second version:*
 - a. Reference Number: P0TU4TCF;*
 - b. Classification: P;*
- (b) 30 second version:*
 - a. Reference Number: P0OG1TCF;*

b. *Classification: P.*

While CAD have reviewed, classified and approved the 60 second version of the TVC, Unilever has not yet caused it to be broadcast on free-to-air television.

3. *“P” classification broadcasting times*

During the preparation of this response, Unilever became aware that the TVC had been mistakenly booked during general programming times for the weeks commencing 18 and 25 January 2015.

Unilever has now investigated the issue and confirms that the free-to-air networks moved all but one of the mistakenly booked spots to appear during “P” appropriate broadcasting times. The only spot not moved was broadcast during The Project on Channel 10 at 6.53pm on Wednesday, 28 January 2015.

Unilever has taken immediate action to ensure all future broadcasts of the TVC on free-to-air television will occur during “P” appropriate broadcasting times. In addition, Unilever is investigating the cause of the mistake and will take steps to rectify the matter for all future campaigns.

Unilever respectfully submits that the above does not preclude the Advertising Standards Board (Board) from determining that the TVC is not contrary to the Code.

4. *The Code*

LYNX is a brand with a history of fun, playful advertising. LYNX also has a proud history of award winning commercials which both entertain and surprise its consumers. The TVC continues this tradition.

Section 2.1

Unilever disagrees that the TVC portrays or depicts materials which discriminate against or vilify persons or a section of the community on account of their gender, sexual preference or religion in any way.

The scenes in the TVC depicting the young man kissing another man on the lips are in line with prevailing community standards which treat gender and sexual preference fairly, impartially and tolerantly. For example, the TVC has received praise both nationally and internationally for the progressive and nonchalant manner in which it shows the two men kissing on the lips:

(a) *‘Axe Brand’s Australian Commercial Features a Gay Kiss’, Huffington Post, 15 January 2015;*

(b) *‘Never Thought We’d See This, but Here’s an Axe Ad That Has Two Men Kissing: Brand continues to get more inclusive’, AdWeek, 14 January 2015;*

(c) *‘Lynx Australia Features Gay Kiss on TV Ad Like It’s Nothing, Earns Praises Online’, International Business Times, 12 January 2015;*

- (d) *'Watch: New Aussie Lynx commercial features gay kiss', Gay News Network, 10 January 2015;*
- (e) *'New Lynx Ad Encourages Kissing the Hottest Boy', Gay Aussie, 9 January 2015;*
- (f) *'Watch: Lynx Hair – Kiss the Hottest Boy', DNA Magazine Online, 9 January 2015;*
- (g) *'Lynx Hair Products As Wants You To Kiss The Hottest Girl... Or the Hottest Boy!', Instinct Magazine, 8 January 2015;*
- (h) *'Lynx ad: Kiss the hottest girl – or the hottest boy', SameSame, 8 January 2015;*
- (i) *'Axe's Australian Brand Lynx Features Same-Sex Kiss In Commercial: Watch', NewNowNext, 8 January 2015;*
- (j) *'Lynx breaks new ground to feature gay kiss in new ad: Company have finally realised gay and bisexual men occasionally use Lynx/Axe products', Gay Star News, 8 January 2015.*

It is clear from the Complaints that some consumers regard homosexuality and homosexual acts as being contrary to their religious beliefs. Unilever acknowledges the concerns expressed by those consumers, but submits that a scene depicting two men kissing each other on the lips in a non-sexual way cannot be regarded as discriminating against or vilifying consumers with religious beliefs in a manner contrary to the Code. Those consumers are not being prejudiced or treated or portrayed unjustly or unfairly by the imagery in the kiss scene.

Section 2.2

Unilever submits that no aspect of the TVC employs sexual appeal in an exploitative or degrading manner.

Section 2.3

Unilever submits that no aspect of the TVC portrays or presents violence.

Section 2.4

Unilever disagrees that the TVC shows sex, sexuality or nudity without sensitivity to the relevant audience. The Board has consistently dismissed complaints regarding same sex kisses in advertising and the Advertising Standards Authority in New Zealand recently dismissed complaints regarding the TVC. In addition, same sex relationships and kisses commonly feature in prime time television shows and news programs.

Decisions

For more than a decade, the Board has been considering complaints about advertisements depicting same sex kisses and has consistently found those types of advertisements to not breach the Code. For example:

(a) *Case Number 0087/12: complaints were received in relation to a billboard promoting Manhunt, a dating website for gay men, which showed two topless men embracing each other about to kiss. The complainants regarded the billboard as unnecessarily provocative and not something they wished to explain to their young children. The Board dismissed the complaints and determined the billboard did not breach section 2.4:*

“The Board considered that the test of appropriateness regarding the sexualised nature of an image is applied equally to images of homosexual couples as to images of any couple, but recognised that some members of the community would find an image of a gay couple about to kiss offensive...

The Board considered that the image appearing on the billboard did mean that it was easily viewed by a broad audience that could include children. The Board noted however that the location of the Billboard in Sydney is an area that has a high concentration of gay and lesbian residents and that most members of the community would not find the imagery offensive.”

(b) *Case Number 259/02: complaints were received in relation to an outdoor advertisement promoting Levi jeans which showed a passionate kiss between two women in a female change room. The complaints alleged the advertisement was contrary to section 2.4 (then section 2.3) of the Code. The Board dismissed the complaints and stated:*

“[W]hile it might offend some individuals and particular groups, the advertisement portrayed a legal activity as might be witnessed in any public place.

The Board noted advice from the advertiser that the advertisement was one of a series that Levi Strauss believed to reflect the company’s long standing tradition of celebrating and respecting diversity and tolerance, within core values based on freedom of expression and self-empowerment.

Remarking that tolerance is a feature of prevailing community standards, and that the activity portrayed in the advertisement carries the endorsement of current law, the Board determined that it did not contravene the provisions of the Code relating to the portrayal of sex, sexuality and/or nudity”.

(c) *Case Number 59/01: complaints were received in relation to an outdoor advertisement promoting Ruski Vodka which featured two heavily clothed men in a kissing embrace. The complaints alleged the advertisement was contrary to section 2.4 (then section 2.3) of the Code and should not have been displayed on a suburban street. The Board dismissed the complaints, simply stating:*

“The Board was of the view that the scene depicted within the advertisement did not contravene prevailing community standards with regard to the provision of the Code relating to the portrayal of sex/sexuality/nudity. The Board also determined that the advertisement did not breach the Code on any other grounds and, accordingly, dismissed the complaint.”

(d) *Case Number 181/00: a complaint was received in relation to a television advertisement promoting Levi jeans which showed two young men skipping on a beach and two young women kissing. The words “Kevin. Pittsburg.... Attacked in the street....because of his sexuality” were displayed on-screen at the beginning of the advertisement and the words*

“Free to move. Levi’s” at the end. The complaint alleged the advertisement was contrary to section 2.4 (then section 2.3) as it was offensive and inappropriate to show the images at 8.55am on a Sunday morning when children were likely to be watching television. The Board dismissed the complaint stating:

“The Board was of the view that the portrayal of sex/sexuality/nudity within the advertisement was not inappropriate given the advertisement’s rating and broadcast restriction to relevant time zones.”

The above decisions clearly demonstrate that prevailing community standards treat homosexuality and images of same sex couples kissing tolerantly and in the same manner as heterosexuality and images of heterosexual couples kissing.

Television shows

The iconic Australian television drama, Neighbours, has featured same sex kisses several times over the past decade. Neighbours is broadcast from 6.30pm to 7.00pm AEST, Monday to Friday on Network Ten and is commonly watched by younger persons.

In 2013, the show featured a brief first kiss between two young men as they prepared for a barbeque at a local Ramsay Street home. In 2012, the show featured an understated yet passionate kiss between two young men at a house-party. In 2004, the show featured a clumsy kiss on the lips between two young women.

Depicting same sex couples kissing during those programming times should not be regarded as controversial or inappropriate for the relevant audience (which would certainly include younger adults and children).

News coverage

Discussion about same-sex relationships and same-sex related matters is regularly the subject of prime time news coverage. For example, the Australian Capital Territory Government recently passed a bill to establish Australia’s first same-sex marriage scheme. The first same-sex marriages occurred late last year and much news coverage was given to those events during general programming times.

Advertising Standards Authority

The Advertising Standards Authority in New Zealand (ASA) recently received several consumer complaints about the TVC. The complaints alleged that the scene showing two men kissing was inappropriate because it was broadcast during family television viewing times and because homosexuality was still considered an immoral act to families who adhere to Christian values.

The ASA dismissed the complaints, without seeking a response from Unilever, stating:

When considering the content, the Chairman said the depiction of homosexuality was not grounds for complaints in itself.

In response to the view [that] the advertisement should not be aired at a time when children

were among the viewing audience, the Chairman noted the advertisement carried a “G” rating which meant the advertisements could be broadcast at any time to any audience.

While the Chairman acknowledged the offence the advertisement had caused the Complainants, she said it was not likely to cause either serious or widespread offence in the light of generally prevailing community standards and had been prepared with the due sense of responsibility to consumers and to society. Therefore, the Chairman said there was no apparent breach of the Code of Ethics.

Section 2.5

Unilever submits that there is no inappropriate or explicit language in the TVC.

Section 2.6

Unilever submits that that the TVC does not depict material contrary to prevailing community standards on health and safety.

5. Approvals

Unilever is a responsible advertiser and has numerous internal review processes, including review by Unilever’s Legal Department and corporate relations, to critique all advertisements to ensure they comply with current advertising laws, ethical considerations and prevailing community standards.

6. Conclusion

We submit that the TVC is well within prevailing community standards and complies with the Code.

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 features a scene that shows two men kissing which is offensive and inappropriate for viewing on television.

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

The Board noted that the majority of concerns raised related to the men kissing. The Board noted that while some people may find this inappropriate, the Board noted that the kiss is fleeting and in today’s society it is not inappropriate to show gay intimacy particularly in an advertisement that is humorous and over-the-top.

The Board considered whether the advertisement was in breach of Section 2.1 of the Code.

Section 2.1 of the Code states: “Advertising or Marketing Communications 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...sexual preference...”

The Board noted that the advertisement features a young man watching television and the shows he is viewing are varied. The voiceover talks about how you will not always look the way you do when you are young and that hair loss and changes are likely to happen. The advertisement then shows the young man transformed into several characters and superheros with ‘amazing’ hair. The man is seen using the hair product in the bathroom as the tagline says and reads “less effort more style.”

In the current advertisement the Board noted the part of the advertisement that depicts two men kissing shows the main character as a ‘silver screen’ actor and as referred to by the advertiser the scene is reminiscent of classic films such as Casablanca. The Board agreed that the particular scene as well as the overall advertisement is highly stylised and cinematic.

The Board noted that it had previously dismissed a television advertisement for Tabcorp in case 0487/12 where a man kisses another man in a bar after a betting win. In that case the Board noted that :

“...The Board considered that the advertisement does not suggest that the sexual success of the man who has won a bet has been elevated as a result of his win but rather that he is happy to have won on this occasion and is reacting with an over the top display of affection towards both males and females.”

Similar to the decision above, the Board considered that the depiction of one man kissing another in the current advertisement is intended to be light hearted and is clearly part of a movie scene depicting a balanced response by the man supported by the voiceover saying “...kiss the hottest girl or the hottest boy...”

The Board noted that the scene is very fleeting and that as part of the whole advertisement does not depict material in a way which discriminates against or vilifies a person or section of the community on account of...sexual preference...”

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 overall tone of the complainants concerns suggesting that the advertisement features sexually explicit material.

The Board considered the scene involving the two men kissing and noted that the scene is very brief and that the kiss is not lingering and is not particularly passionate and does not then lead to any further kissing or intimacy.

The Board considered that it is reasonable for the advertiser to develop creative and fictitious characters to draw the attention of the viewer to the product being advertised.

The Board noted that the advertisement was given a “P” rating by CAD and that it was aired in the appropriate times for the rating. The Board noted that the advertisement was

inadvertently aired outside of the given timeslot on one occasion but accepted the advertiser's assertion that this was in error. The Board noted concern from complainants that it was inappropriate to show men kissing but considered that as the kiss is not sexually suggestive the advertisement was not inappropriate and did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and did not breach Section 2.4 of the Code.

Further finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaints.