



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0027/18
2	Advertiser	Ultra Tune Australia
3	Product	Automotive
4	Type of Advertisement / media	Internet - Social
5	Date of Determination	07/02/2018
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.3 - Violence Violence

2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

This internet advertisement depicts women approaching a car at night being approached by a group of men asking about car troubles, a martial arts star appears and the group of men take photos with him.

THE COMPLAINT

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

This ad portrays violence and threatening behaviour towards women, with a gang member smashing their car headlight with a baseball bat.

Although a shorter edit of this ad has previously been considered - and cleared - by the ASB (Ref 0045/17) on the grounds that it did not portray violence, I do not believe the ASB has considered this edit of the ad - <https://www.youtube.com/watch?v=CQVlaF-H97U> - which shows the car headlight being smashed (00:15), portraying a much more threatening situation for the women than the version previously adjudicated upon.

In the interests of transparency, I should point out I am a marketing journalist who has





written about this ad previously, and I am submitting this complaint because I am curious why it is still available online, despite what seems to be an obvious breach of the guidelines.

THE ADVERTISER'S RESPONSE

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

We refer to your email letter of 17 January 2018 attaching a complaint concerning the Ultra Tune Australia Ltd "Van Damme" advertisement (Advertisement) broadcast on Foxtel.

The Advertisement in question is a 60 second advertisement where motor vehicle has a flat tyre and Mr Van Damme renders assistance. The 60-second advertisement can be

viewed at the following link:

<https://www.youtube.com/watch?v=fflw7eRJIww>

We refer to ASB complaint references number 045/17 and 203/17 where the Board considered complaints and our response (of 6 February 2017) in respect of this same Advertisement on other media. The Board dismissed the complaints against our Advertisement in both those matters.

We refer to and repeat our previous response and rely upon the reasons of the Board in the foresaid complaints.

In respect of section 2.7 Clearly Distinguishable Advertising, the complaint does not raise any issue relating to this section. We submit that the Advertisement is clearly advertising.

Conclusion Ultra Tune does not believe there are any merits in the complaints.

In particular, and for the reasons above, we do not believe the Advertisement breaches the Code in any way.

Advertisements Complaint References 045/17

We refer to your email letter of 18 January 2017 attaching email complaints concerning Ultra Tune Australia Ltd's (Ultra Tune) Van Damme advertisement (Van Damme advertisement) broadcast on Channel 7, Internet and Social Media.

Subsequent to that letter we also received from you three letters dated 19 January, 23 January and 30 January 2017 attaching further email complaints.

The advertisement in question is a 30 second advertisement where motor vehicle has a flat tyre and Mr Van Damme renders assistance. The 30-second advertisement can be viewed at the following link:

<https://www.youtube.com/watch?v=hy6jQZVGfbw>



Preliminary comments

Ultra Tune takes very seriously its advertising and, in particular, the provisions of the AANA Code of Ethics (Code) and the AANA Code of Ethics Practice Note (Practice Note).

Mr Jean-Claude Van Damme is a famous Belgian actor, martial artist, screenwriter, film

producer and director best known for his martial arts action films. He has had a long career in martial arts (Karate and Kick-boxing) and in films and television. He has featured in previous automotive advertisements, in particular for Volvo trucks in 2013 where he does the splits between two trucks, an advertisement that went viral in a very short time.

It would appear to Ultra Tune that many of the complainants have not watched the advertisement particularly closely, but instead have seen it simply as a continuation of the previous Ultra Tune advertisements with the two women actors.

In that regard, we observe that some complainants do not appear to have realised who Mr Van Damme is.

While it is part of that series, the Van Damme advertisement plays upon the expectation deriving from the previous advertisements that again there will be some disaster with the car or for the women. Instead what happen, as a comedic twist, is that all the “gang”, recognising who Mr Van Damme is, commence to take selfies with him and photographs of him. It is also to be noted that the “gang” as first shown comprises both males and

one woman and is multi-ethnic including two of European descent as well as three of non-European descent. Later in the advertisement additional men and women have joined into the photo session with Mr Van Damme, who are similarly multi-ethnic.

The overriding impression left with the viewer by the advertisement, reinforced by the final scenes, is of a group of young people – male and female - of diverse ethnic backgrounds doing what people of that age do, taking photos on their phones of themselves and of a famous actor with them.

Ultra Tune cannot say if these complaints are again part of a campaign although the wording of the emails, as well as the fact that there appears to be almost a “knee jerk” reaction to the advertisement, might suggest that they are.

That said, Ultra Tune again acknowledges that many of the complainants will have deep and strongly held beliefs about objectification of women and sexualisation of girls in advertising.

However, the issue is not particular complainants’ beliefs but instead, and as the Practice Note recognises, Prevailing Community Standards. In this respect the Board will also be

aware that an objective assessment is required, and the intolerance of a particular



viewer of an advertisement is not determinative where that intolerance does not accord with Prevailing Community Standards.

The Board will be further aware that it is not the volume of complaints per se that is important, this particularly if they appear to be the product of a campaign. The question instead is whether there is any merit in the complaints.

We further note that following upon the Board's decisions last year in respect of Ultra Tune's advertising, Ultra Tune has sought by its most recent advertising to avoid any depiction of women as unintelligent or unaware of their surroundings.

This because cases 0020/16 and 0175/16 (being the only cases where a complaint was upheld against Ultra Tune – 0175/16 was a "reconfirm(ation)" of 0020/16) the depiction of women in the "Train wreck" advertisement as a negative stereotype, unintelligent or unaware of their surroundings, was the determinative matter that resulted in a finding of breach of section 2.1 of the Code.

The Board will be conscious that it is important for advertisers that there be consistency in its decisions, in particular because an advertiser will rely, and in this instance Ultra Tune has relied, upon the Board's prior decisions to guide the advertiser in its subsequent advertising. In particular, with the Van Damme advertisement (which is clearly intended as hyper-realistic and comedic), Ultra Tune has striven to avoid that particular negative stereotype.

Detailed responses

We note the issues raised by your four letters (sections 2.1, 2.2, 2.3, 2.4 and 2.6 of the Code) and respond as follows:

2.1 Discrimination or Vilification Gender

Section 2.1 of the Code provides:

"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 race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief."

The Practice Note elaborates on the above by saying:

Discrimination - unfair or less favourable treatment;

Vilification - humiliation, intimidation, incites hatred, contempt or ridicule.

In our respectful submission, the Van Damme advertisement does not show any form of discrimination, vilification, humiliation, contempt or ridicule against women.

We refer to the Board's previous decisions in Cases 0040/16 and 0236/16 where the Board dismissed the complaints.

In case 0236/16 the Board, inter alia, stated 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 considered that the women's' (sic) physical appearance may be considered as sexy to some viewers or exaggerated to others but that this is not of itself vilifying or discriminatory". We submit that there is no basis for the Board to determine that the advertisement vilifies, humiliates, or ridicules women. (a) A flat tyre can happen to any person regardless of gender. There is no suggestion that the female actors cannot change a flat tyre. Often people choose not to change their own tyre for many reasonable reasons. For example, a person may decide that they do not wish to get their hands and clothes dirty.

(b) Being approached the "gang" can happen to any person regardless of gender. The advertisement uses a common cinematic technique of building some tension with the audience (as to the gang's intentions) for dramatic impact and to contrast the gang's ultimately benign intentions.

(c) The assistance of a stranger (called for or uncalled for) can happen to any person regardless of gender. Often strangers do assist people in need, particularly in the case of breakdown.

(d) A female actor is shown to call for Roadside Assistance with her mobile phone (thereby helping herself). She does this regardless of being surrounded by people of both genders; none of whom actually or appear to offer to assist with the flat tyre.

(e) The use of a male actor as the Roadside Assistance driver is not intended to be a statement or comment on gender roles. This character is an employee of the company and is a continuation from our previous advertisements.

Nothing in this advertisement encourages or incites any violence or harm to any person regardless of gender.

Clearly, there is no act in this advertisement that is intended to either excite contemptuous laughter (i.e. laugh at rather than with the characters), or urge on, stimulate or prompt to action, hatred, contempt or ridicule for women. Any such finding

could naturally be the result of an agenda driven biased view, however this should not be said to be the view of the reasonable general public.

2.1 Discrimination or Vilification Race

This complaint appears to arise from complainants failing to properly view the advertisement.

As we noted above, the "gang" is multi-ethnic, the group of young people towards the end of the advertisement is similarly multi-ethnic. Multi-ethnic groups of young people are commonplace in all Australia's major cities. It would be an unreal situation to portray otherwise in present times.

Nothing in the Van Damme advertisement suggests discrimination or vilification by reason of race.

2.2 Objectification Exploitative and degrading – women



Section 2.2 of the Code states that

“Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.” We refute the suggestion that the Van Damme advertisement in any way exploits or degrades women. The advertisement neither diminishes the actors’ self-respect or humiliates them in any way.

At all times the female actors are in modern evening clothing.

As noted above, the advertisement has a G rating classification.

2.3 Violence - violence and Violence – causes alarm and distress

Section 2.3 of the Code states that:

“Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised”.

The Van Damme advertisement contains no acts of violence nor portrays violence.

Nothing in the advertisement encourages or incites the audience to commit any violence or harm to any person regardless of gender or race.

Any suggestion of violence (which is denied) by the “gang” can be justified in the context that the advertisement builds tension for dramatic impact and contrasts with the gang’s ultimately benign intentions.

We say this recognising that in the Practice Note it is said that the Board has found a “strong suggestion of menace” to present violence in an unacceptable manner that breaches section 2.3.

However, the Board has also found that where the whimsical and ironic tone of an advertisement becomes apparent early on, then that overcomes any suggestion of menace: see case 187/98. See also case 8/09 (Autobarn). Here the comedy of the “gang” whipping out their phones for photographs occurs within seconds of when the “gang” first approaches. In other words early in the advertisement, its comedic tone becomes apparent, and that tone then persists to the end.

Similarly, Mr Van Damme’s martial arts stances are those typical of his martial art prowess and do not incite the audience to commit any violence or harm to any persons.

2.4 2.4 Sex/sexuality/nudity S/S/N - general

Section 2.4 of the Code provides:

“Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”.

We also note what the Board said in case 0175/16 which was:

“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 they are wearing, their breasts are not the focus of the



advertisement. The Board considered that, consistent with a previous determination in case 0093/12, while it is not necessary for the women to be wearing low-cut clothing, it is not an unusual style of clothing for women to wear on a night out and the women's physical features are not the focus of the advertisement." At all times, the female actors were fully clothed in modern summer evening clothing. Indeed the clothing of all the young people in the advertisement is consistent with what one regularly sees worn at night in summer in any urban area that they congregate. There is no nudity or sexual acts displayed in the Van Damme advertisement.

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 violence and threatening behaviour towards women.

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 the Practice Note to Section 2.1 of the Code which provides the following definitions:

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

The Board noted the advertisement featured a group of men approaching two women who have a flat tire. One of the men has a baseball bat across his shoulders. He hands the baseball bat to a man who smashes the side mirror and a headlight with it. John Claude van Damme then appears to help the women.

The Board noted there had been recent concern in the news about gang violence in Melbourne and that there is growing community concern about depicting certain races as gang members.



The Board noted that it had previously considered a version of this advertisement on television in case 0045/17, in which:

“The Board noted the complainants’ concerns that the gang of men depicted in the advertisement are all ethnic minorities. The Board noted that the ‘gang’ is made up of men and women and considered that their ethnic backgrounds appear varied and to include Caucasians. The Board considered that the advertisement did not suggest that ethnic minorities would or should form gangs and that overall the advertisement did not depict any material which suggested that people from any particular ethnic background would behave in a manner which is negative or inappropriate.

Overall the Board considered that the advertisements did 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.”

Consistent with the above determination the Board determined that in the current advertisement the ‘gang’ is made up of men and women of varying ethnic backgrounds and that advertisement did not appear to suggest that ethnic minorities would or should form gangs.

The Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of ethnicity.

The Board determined that the advertisement did not breach Section 2.1 of the Code.

The Board then 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 advertisement features featured a group of men approaching two women who have a flat tyre. One of the men has a baseball bat across his shoulders. He hands the baseball bat to a man who smashes the side mirror and a headlight with it. John Claude van Damme then appears to help the women. The ‘gang’ reacts enthusiastically taking photos of van Damme. The women then use an app to contact Ultra Tune for help.

The Board noted the complainants’ concerns that the advertisement portrays violence and threatening behaviour towards women in particular the scene where their headlight is smashed.



The Board noted that it had previously considered a version of this advertisement on television in case 0045/17, in which:

“The Board noted that while a man holding what appears to be a baseball bat over his shoulders does ask the women if they are having car trouble the Board noted that the man does not make any verbal or physical threats to the women. The Board noted that when Mr van Damme appears he immediately takes on a defensive stance and considered that as he is known for his martial arts skills this is not inappropriate and in the Board’s view while there is a momentary sense of menace between Mr van Damme and the group in front of him, the men and women quickly make it clear that they are fans of Mr van Damme and are reaching for their phones to take selfies and not for weapons to start fighting.”

The Board considered that unlike the television advertisement, the current advertisement is longer and includes a depiction of one of the gang members using the baseball bat to smash a side mirror and a headlight on the women’s car.

A minority of the Board considered that even though the actions of the men were more violent in this version of the advertisement, the overall advertisement was highly stylised to appear like an action movie. The minority considered that the unlikely appearance of van Damme and the happy resolution to the advertisement mitigated any violence depicted.

The majority of the Board however noted that, unlike the previously considered advertisement, the current advertisement did portray violence in the form of a man smashing the side mirror and the headlight with a baseball bat. The majority of the Board considered that this action made the advertisement more violent and menacing.

The majority considered that the happy resolution at the end was not enough to mitigate the violence. The majority of the Board considered while this level of violence may be relevant to the action movie theme of the advertisement, the level of violence was not justified in the context of an advertisement for road side assistance.

In the Board’s view the advertisement did portray violence that was unjustifiable in the context of the service advertised and did breach Section 2.3 of the Code.

Finding that the advertisement breached Section 2.3 of the Code the Board upheld the complaint.



THE ADVERTISER'S RESPONSE TO DETERMINATION

I understand that the advertisement is being modified.