



Ad Standards Community Panel
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Advertising Standards Bureau Limited
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Case Report

1	Case Number	0029/18
2	Advertiser	Ultra Tune Australia
3	Product	Automotive
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	07/02/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.2 - Objectification Exploitative and degrading
- 2.2 - Objectification Exploitative and degrading - women
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

This Pay TV advertisement features three women in a vehicle which swerves to miss a tiger on the road. The women crash the car. Mike Tyson appears and helps them move their car. The Ultratune van arrives to offer assistance.

THE COMPLAINT

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

The advertisement is offensive in its portrayal of women. Particularly in its use of Mr Tyson as a "saviour" having regard to his reputation and history.

This is not the first of ultra tubes sexist and demeaning ads I have been angered by.. but this ad is offensive to me because it reinforces archaic and damaging views on women being helpless and stupid. That women are hopeless drivers who would crash into a tiger. I find the thinly veiled sexual innuendo of their party costumes insulting. Probably one of my major objections is the use of mike Tyson in their ads- the man



who 'rescues' them. He is a convicted rapist and abuser. The promotion of this man and his values in Australia should not be allowed. Thanks for your time.

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 email complaints concerning Ultra Tune Australia Ltd's Tyson advertisements.

We take very seriously our advertising and, in particular, the provisions of the AANA Code of Ethics (Code) and the AANA Code of Ethics Practice Note (Practice Note).

Mr Tyson is a former heavyweight boxing champion who holds the record as the youngest boxer to win the WBC, WBA and IBF world heavyweight titles. He was the first heavyweight boxer to hold the WBA, WBC and IBF titles simultaneously. In 2011, Mr Tyson was inducted into the Boxing Hall of Fame and, in 2013, he was inaugurated into the Las Vegas Hall of Fame.

Mr Tyson has also forged a career in the entertainment industry including blockbuster movies ("The Hangover" and "The Hangover 2"), television (2013 documentary series "Being Mike Tyson" and animated series "Mike Tyson Mysteries,"), and live theatre.

In 1992, Mr Tyson was convicted of rape and was punished for his conduct. That said, Ultra Tune again acknowledges that many of the complainants will have deep and strongly held beliefs about Mr Tyson's conduct and conviction. Ultra Tune agrees that sexual harassment, assault and rape has no place in our society.

However, we note that Mr Tyson served his punishment, publicly acknowledged his deep regret and remorse for that period of time in his life, and has re-joined society. Since that time, he has rebuilt his career as a celebrity personality.

Detailed responses

We note the issues raised by your letter (sections 2.1, 2.2, 2.3, 2.4, 2.6 and 2.7 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 advertisements do 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, 0236/16, 042/17, 043/17, 044/17, 045/17 and 203/17 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) The advertisements are clearly designed to be hyper-realistic and comedic.

(b) A road incident can happen to any person regardless of gender. Upon seeing the tiger on the road, the driver takes immediate and positive action to avoid the tiger.

(c) A female actor’s hand is shown to call for Roadside Assistance with her mobile phone (thereby helping herself). She does this before the arrival of Mr Tyson.

(d) 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. Nevertheless, it is Mr Tyson that is seeking the assistance of the women to help locate his pet tiger.

(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. Furthermore, the women and Mr Tyson clearly respond in an empowered and comedic way.

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

Clearly, there is no act in this advertisement that is intended to either incite 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 a biased view; however this should not be said to be the view of the reasonable general public.

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 advertisements 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 fully clothed in fancy dress clothing. The fancy dress clothing was used to reinforce the comedic aspect of the advertisement. Their clothing is clearly not the focus of the advertisement.

We refer to the Board’s previous decisions in Cases 0040/16, 0236/16, 042/17, 043/17, 044/17, 045/17 and 203/17 where the Board dismissed the complaints.

As noted above, the advertisement has a W 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 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.

The advertisement contains no violence against animals.

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 women were fully clothed in fancy dress clothing. The fancy dress clothing was used to reinforce the comedic aspect of the advertisement. Their clothing is not the focus of the advertisement.

There is no nudity or sexual acts displayed in the advertisement.

We refer to the Board’s previous decisions in Cases 155/14, 0040/16, 0236/16, 042/17, 043/17, 044/17, 045/17 and 203/17 where the Board dismissed the complaints.

2.6 Health and Safety within prevailing community standards

Section 2.6 of the Code states that

“Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

We refer and repeat our submissions above.

We further submit it is absurd to suggest that the advertisement may encourage unsafe driving.

(a) The advertisements were designed to be an exaggerated slap-stick movie style and is not intended to be a realistic portrayal of real events. Early in the advertisements, their comedic tone becomes apparent, and that tone then persists to the end.

(b) In order to create an unexpected story, the script called for the driver to swerve after seeing the tiger and place the vehicle in an undriveable elevated orientation. This was a plot device used to create an “unexpected situation” reminiscent of the Buster Keating videos. It was designed to be overly unrealistic and unbelievable.

(c) We deny the complaint of driver inattention. As mentioned above the accident is a plot device for the advertisements. The advertisements do not encourage unsafe driving as the consequences (albeit comedically portrayed) are clearly shown. We further submit that collisions with animals (which does not occur here) can and do occur even when a driver is fully focused on the road (for example kangaroo hits are all



too common in Australia regardless of the skill of the driver). In this instance the driver does not initially see the tiger as the tiger is running on to the road but not yet on the road and she is looking at the road. The driver's passengers see the tiger running towards the road first and points that out to the driver. When she sees the tiger, she immediately takes evasive action (swerves) to avoid hitting the animal. No animals were harmed or portrayed being harmed in these advertisements.

In respect of Mr Tyson, we repeat our submissions above. The advertisements do not promote nor endorse any sexual harassment, or assault. He has been punished for his crime committed over 25 years ago in accordance with the law. He has repented and rebuilt his life and career as an entertainment celebrity. Mr Tyson is not being rewarded for his past misdeeds. The advertisements only seek to leverage this celebrity status.

We believe and submit on any reasonable viewing that the advertisement material is well within Prevailing Community Standards on health and safety.

2.7 Clearly Distinguishable Advertising

Section 2.7 of the Code states that

"Advertising or Marketing Communications shall be clearly distinguishable as such to the relevant audience."

The complaints do not raise any issue relating to this section. We submit that the advertisements are clearly advertising.

We wish to add to our response in this case the following:

- Mr Tyson has also been in other TV advertisements post his conviction in 1992. For example, Foot Locker also leverage his celebrity status in their advertisement which is available on YouTube <https://www.youtube.com/watch?v=n4pmCfFHoWA>.*
- In 2009 Mr Tyson was interviewed by Oprah Winfrey wherein the Mr Tyson spoke about how he has changed his life (partial clip can be found at <http://www.ebaumsworld.com/videos/mike-tyson-on-oprah-the-oprah-winfrey-show/82387569/>).*
- In respect of Mr Tyson "rescuing" the women, we submit the women do not require any rescue as they have already called Ultra Tune Roadside assistance service (using our app).*
- The advertisements do not promote ownership of tigers. Part of Mr Tyson's celebrity status is that he used to own a tiger which was parodied in The Hangover movie and which we have parodied in these advertisements. Mr Tyson no longer has a pet tiger. As we have previously mentioned, the advertisements leverage Mr Tyson fame, in particular Mr Tyson and his tiger's appearance in The Hangover movie. Mr Tyson fame is built upon his incredible boxing career and entertainment career (the latter being forged in the 2000s). Our use of Mr Tyson does not promote his convictions nor*



condone sexual harassment in any way.

We do not believe the advertisement breaches the Code in any way.

Conclusion

For the reasons above, we do not believe the advertisement breaches the Code 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 complainant’s concerns that the advertisement features Mike Tyson who is a convicted rapist and that he should not be allowed to be used to promote a product in Australia.

The Board noted the public concern around this issue however considered that advertisers are free to use whoever they wish in advertisements and that this is not a matter which falls within Section 2 of the Code unless the use of the person is in some way depicting a breach of the Code.

The Board considered the depiction of Mr Tyson and noted that his history was not mentioned in the advertisement and that not all viewers would be aware of who he was. The Board noted that his appearance with the tiger is a reference to his character in a movie. The Board considered that the advertisement did not reference or condone his criminal history , and that his depiction in the advertisement was not a depiction that breached a provision of the Code.

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 this Pay-TV advertisement featured three women in a car when one of the women spots a tiger on the road. The driver swerves and their car becomes stuck. The driver uses their phone to contact Ultra Tune before being rescued by Mike Tyson who is looking for his pet tiger.

The Board noted the complainant’s concern that the advertisement portrayed women as helpless and stupid.

The Board noted it had previously considered similar complaints about the same two women whose car broke down on a rail crossing in cases 0020/16, in which:



“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.”

On the other hand the Board noted it had also previously considered similar complaints about the same two women whose car broke down and started a fire in case 0154/17, in which:

“The Board noted in the current advertisement that as soon as the muffler falls off the car and catches fire, the women are shown to notice this and to contact Ultra Tune before they attempt to put out the fire. The Board considered that unlike in case 0020/16, the women are shown to be aware of their situation and considered that while the women’s handling of the fire extinguishers is not ideal, in the Board’s view the women are depicted as being aware and in control therefore there is no suggestion that these women are stupid or helpless with regards to their predicament. The Board noted that a muffler falling off a car and catching fire, while uncommon, could happen to any person and considered that the advertisement’s depiction of this happening to two women, who then take control of the situation, does not discriminate against or vilify a person or section of the community on account of gender.”

The Board noted that in the current advertisement the women are shown to have an accident after swerving to miss a tiger. The Board considered that, unlike case 0020/16, the women are aware of their situation and they contact Ultra Tune for help. The Board also considered that in the current advertisement the driver swerving was a natural reaction to a situation outside of the women’s control, and was not a suggestion that the women were stupid or unable to drive.

The Board noted that swerving to avoid an animal is not recommended driver behaviour, but considered that the advertisement did depict a reaction that was not unnatural.

Consistent with the determination in case 0154/17, the Board considered that while some members of the community may not like women being shown as being ‘rescued by a man’, the women are not depicted in a manner that is unfair nor in a manner



that would be likely to humiliate or incite ridicule of women.

In the Board's view the current advertisement does not discriminate against or vilify a person or section of the community on account of gender.

The Board determined that the advertisement did not 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 complainant's concerns that the women in the advertisement are depicted in sexualised costumes.

The Board noted the Practice Note for Section 2.2 which provides the following definitions: "Exploitative means clearly appearing to purposefully debase or abuse a person, or group of person, for the enjoyment of others, and lacking moral, artistic or other values; Degrading means lowering in character or quality a person or group of persons."

The Board acknowledged that some members of the community would find the use of female models to promote an automotive service to be objectifying. The Board noted that in the television advertisement the three women were shown to be dressed in a leather outfit, a cat outfit and a maid outfit.

The Board noted that the women are dressed as if to go to a hens party or costume party and that their outfits were sexy but not overly revealing.

The Board considered that the women's costumes and physical features are not the focus of the advertisement.

The Board considered that the women are shown to be confident and in control, and that the overall manner in which the women are depicted in the advertisement does not use their sexual appeal in a manner which is degrading.

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 that it is illegal to own a pet tiger in Australia, however considered



that there was nothing in the advertisement to suggest where the advertisement was set.

The Board considered the unlikely and fantastical theme of the advertisement and considered that the advertisement could easily have been set in Las Vegas, similar to the movie the Hangover in which Mike Tyson owns a tiger.

The Board considered that the interpretation that the tiger is a pet in Australia, and that this amounts to animal cruelty, was unlikely.

Overall 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 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 complainant’s concern that the advertisement depicts women in sexualised costumes.

The Board noted that in the current advertisement the women are dressed as if to go to a hens party or costume party and that their outfits were not overly revealing.

The Board noted the complainants’ concerns that the advertisement has a sexualised tone but considered that while the appearance of the women is sexy their behaviour is not sexualised.

The Board noted that the advertisement had been rated ‘W’ by CAD and considered that although the advertisement depicted two women wearing revealing clothing the overall tone of the advertisement was not sexualised.

In the Board’s view the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience and 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 considered that there is general safety advice that you should not swerve if an animal, such as a kangaroo, crosses the road in front of you vehicle, however considered that swerving is a natural reaction to the situation.



The Board noted the advertiser's response that the vehicle swerving was designed to be overly unrealistic and unbelievable.

The Board considered that the fantasy nature of the advertisement, the likelihood of a tiger appearing in the street, and the fact the vehicle was shown to crash all amounted to an overall impression that would be unlikely to suggest or condone swerving to avoid an animal on the road.

The Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety. The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.

