



Case Report

1	Case Number	0039/12
2	Advertiser	Telstra - Sensis Pty Ltd
3	Product	House goods/services
4	Type of Advertisement / media	Internet
5	Date of Determination	22/02/2012
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.6 - Health and Safety within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

Advertising for the Campaign consisted of two parts, a marketing communication sent by email to subscribers of the Yellow Pages® Offers site (“Email”) and an online offer preview page (“Preview Page”). The Email featured a \$13 price point at which Anti-slip pads were made available for sale, a thumb nail image of a motorist holding a mobile device and a “view” button. Recipients of the email who clicked on that button were redirected to the Preview Page.

THE COMPLAINT

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

*Advertising something that is a bad thing and against the law. Very wrong.
The photo supplied appears to show a driver texting while driving.*

THE ADVERTISER’S RESPONSE

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

The complaints relate to the promotion of Anti-slip pads which were available for sale through the Yellow Pages® Offers site on or about 6 January 2012 (“Campaign”). Advertising for the Campaign consisted of two parts, a marketing communication sent by email to subscribers of the Yellow Pages® Offers site (“Email”) and an online offer preview page (“Preview Page”).

- 1. The Email featured a \$13 price point at which Anti-slip pads were made available for sale, a thumb nail image of a motorist holding a mobile device and a “view” button. Recipients of the email who clicked on that button were redirected to the Preview Page.*
- 2. The Preview Page included a larger version of the thumb nail image (described at point 1, above) and the various features of the offer, including the potential safety benefits of a product which can ensure devices are appropriately fastened in moving vehicles. Please be aware that the version of the Preview Page provided to the ASB includes a substitute image. Unfortunately, due to technical reasons, it is not possible to retrieve the version of the offer Preview Page which appeared on or about 6 January 2012 and included the thumbnail. The complainants broadly allege that advertising for the campaign depicts a motorist interacting with their mobile handset while driving, the implication being, that such conduct is dangerous. In particular, one complainant alleges that the motorist is looking at her mobile phone while driving, whereas a subsequent anonymous complainant alleges the motorist is texting while driving. These allegations appear to broadly fall within section 2.6 of the AANA Code of Ethics which stipulates that advertising shall not depict material contrary to prevailing community standards on health and safety. Sensis does not consider that the advertising breaches the AANA Code of Ethics.*

Background

As you may be aware, Yellow Pages® Offers is a relatively new online marketing service that allows third party businesses to promote daily deals to the Yellow Pages® offers database. Daily deals are typically special offers which represent a large discount off the advertised price of a product or service. Consumers are able to pay for the offer by credit card, once the advertiser’s minimum volume of sales is met. Sensis pays the relevant third party advertisers the proceeds of their sales once the advertised offer has concluded.

Through the Yellow Pages® Offers site, Sensis acts in the capacity of a publisher. That is, Sensis publishes advertisements at the request of third party advertisers. In relation to the Anti-slip Pad offer, Sensis was not responsible for fulfilling orders received through the Yellow Pages® Offers site, however Sensis did prepare advertising copy for the campaign (including sourcing the included images). This material was subsequently approved for use by the relevant third party advertiser.

Does the Advertisement Breach the Code?

As the complainants have alleged, the main image in the advertisement features a static image of a person who is sitting in a vehicle and is holding what appears to be a mobile device, however the resolution of the image is far from clear. For example, it is not readily apparent if the person pictured is simply holding a mobile handset, let alone texting. Most importantly, Sensis does not consider that advertising for the Campaign either directly promotes, or in any other way encourages, the use of mobile devices while driving. To the contrary, the dominant message of the advertising is one of safety. In particular, the body copy of the advertisement makes it very clear that personal devices within vehicles should be properly secured prior to travel. This will help protect both personal property as well as the safety of passengers.

While Sensis does not consider that advertising for the Campaign breaches the Code, Sensis does not intend to use the image again.

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 a dangerous activity, namely using a mobile phone whilst driving.

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

The Board considered whether the advertisement was in breach of 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 that the advertisement depicts a woman behind the steering wheel of a car which is apparently on the road. She has one hand on the steering wheel and in the other she is holding a mobile phone which she is looking at.

The Board noted that safety around mobile phone usage whilst driving is an important public safety issue and that there are significant fines for using phones whilst driving.

The Board noted that there is significant effort made in the community to educate people about the dangers of using a mobile phone whilst driving. The Board considered that in this instance the depiction of the woman using a mobile phone whilst driving is a depiction of behaviour that is unsafe and determined that the depiction of behaviour which is contrary to such messages is contrary to prevailing community standards on safety.

Based on the above, the Board determined that the advertisement depicted material contrary to prevailing community standards on health and safety and breached Section 2.6 of the Code.

Finding that the advertisement breached section 2.6 of the Code, the Board upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

Sensis confirms the advertisement subject to this complaint is currently not being advertised on the Yellow Pages Offers site in its current form. Sensis does not intend to use the image depicted in the advertisement again.

