



Case Report

1	Case Number	0104/14
2	Advertiser	The Negotiator
3	Product	Professional Service
4	Type of Advertisement / media	Transport
5	Date of Determination	09/04/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.2 - Objectification Exploitative and degrading - women
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

An image of a young lady on a vehicle. The image shows a young lady with long blonde hair and dressed in a red bikini from her head to just above her knees and takes up approximately one third of the available space on the rear of the vehicle. The remaining space contains the words "GOT YOUR ATTENTION?" "Advertising does work" and "Negotiator Magazines" and contact number.

THE COMPLAINT

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

I am offended by this advertisement due to the highly inappropriate location in which these vehicles are being parked; in front of a church, across from a primary school and also a few metres from the local grocery shop (IGA).

I walk my children to school every day and having to walk past this (for lack of a better word) trash, is disgraceful, especially as often there are two vehicles displaying these advertisements parked across from each other and therefore there is no way to avoid them on our way to school. Myself and other parents have found the ads to be in poor taste, and given the location they are parked, create a very uncomfortable situation for young families in the area, as having to explain to a 5 year old why a woman with a large bust dressed in next to

nothing is meant to captivate his attention is a conversation I'd like to see the advertisers have with my child. I understand on an intellectual level that these advertisements are effective within particular settings, but the context in which they are being placed is completely inappropriate and in my opinion quite disgraceful, if not sacrilegious to church goers. I do not belong to this particular church, yet I do think that a level of respect towards other religions needs to be displayed; such advertising should not go near any place of worship or primary school. Yes, it is a high traffic area, but most if not all the people that frequent that area are either small children or the parents of the said children, not young men wishing to ogle semi clad women. Ideally I'd like to see the advertisements removed from the vehicles and replaced with something more appropriate for the environment in which they are being parked every day. Failing this, they should be moved away from this particular area.

THE ADVERTISER'S RESPONSE

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

The purpose of the advertisement is to attract the attention of prospective advertisers in the Negotiator Magazines which advertise in the Fairfield, Parramatta, Hills District, Liverpool Camden and MacArthur areas of Sydney.

This vehicle has carried this advertisement for the past eight and half years and this is the first complaint of any nature.

I have looked at the complaint and address what I consider to be the salient points.

AD DESCRIPTION:

1. *There are not "two vehicles" parked at this location. There is one vehicle, a 2000 model Proton Satria GTI which is privately registered and legally parked outside the vehicle owner's residence.*

2. *The vehicle is not "always parked in front of a church and adjacent to a primary school". The vehicle is often used in working hours when the owner travels to appointments and is not working from home. While it is not seen as relevant, the front of the Church does not face Stewart Avenue and faces Walder Road and there has never been any complaint or enquiry regarding the vehicle from the Church or its worshippers.*

From the location where the vehicle is parked, the rear wall of some of the classrooms can be seen some 52 metres away (to the school boundary fence). The building is located a further 10 to fifteen metres inside the school boundary and any student who may see the vehicle from this location would only be able to see the front of the car. This would hardly qualify as "adjacent".

3. *"standing in a provocative way", "sexually suggestive and sexually suggestive imaging". The young lady is standing with her right arm bent so that her hand is on her right hip and her left arm trails by her side with her left hand resting on her left hip. We dispute that this stance could be described as provocative or sexually suggestive.*

REASON FOR CONCERN:

The complainant states that she is offended due to the “highly inappropriate location in which these vehicles are being parked; in front of a Church, across from a primary school and also a few metres from the local grocery shop” (IGA)”.

As previously stated, there is one vehicle, it is not parked in front of a Church, it is at least 80 metres from the school pedestrian entrance and 90 metres from the school driveway, and not in sight of the school entrance or playground area. Using the footpath, the IGA store is 114 metres away and involves turning three (3) corners. Hardly “a few metres” as stated by the complainant. It should be noted that the IGA store have magazines such as “Who” and “People” amongst a large range of other magazines on display for sale. These magazines depict women in bikinis with large breasts adjacent to the checkout where children line up to make purchases but the complainant apparently finds no objection to this.

The complainant initially states “two vehicles that are always parked”, but then states “often there are two vehicles” “parked across from each other and therefore there is no way to avoid them”. As previously stated, there is only one vehicle parked at this location and the complainant seems to be attempting to bolster her complaint by overstating and embellishing the facts.

The complainant refers to “a woman with a large bust dressed in next to nothing”. We would dispute both that the woman is large busted and that she is dressed in next to nothing. The image is no more than an attractive lady dressed in a modest bikini.

She further states “the context of which they are being placed is completely inappropriate and in my opinion quite disgraceful, if not sacrilegious to church goers”, and “that a level of respect towards other religions needs to be displayed.”

The definition of sacrilegious is to be “grossly irreverent towards what is held sacred”.

We fail to see how this image is disrespectful to any person or cultural group. It is far less revealing than can be seen on most beaches, a vast array of magazines and in some cases nightclubs and other public places. The image is used to attract the attention of prospective advertisers as it is being driven travelling to appointments. The Negotiator Magazines respects the views of all cultures and proudly carries advertisements for people from a number of cultural backgrounds including Muslim, Buddhist and Hindi just to name a few. We are confident that these advertisers have seen this vehicle and have not been offended by the image it carries.

The vehicle is not parked there for any other reason other than that is where the owner resides. As stated the vehicle is registered, legally parked and entitled to be parked on a public street.

ADDRESSING THE CODE:

It would appear that the Code applies in this instance by virtue of:

- *“all advertising of marketing communications under the reasonable control of the*

advertiser, whether or not consideration has been paid” and

· “all advertising or marketing communications with an Australian customer link (ie any or all of the customers of the product, service etc are physically present in Australia) and which is under the control of an Australian company”

Prevailing Community Standards;

Negotiator Magazines submit that the image portrayed does not breach current prevailing community standards which have changed greatly in recent years. Recent court cases have resulted in the dismissal of charges and no convictions for persons charged with using foul language in public, using foul and abusive language towards persons in authority and assaults on police officers.

Portrayal of People (Section 2.1)

Discrimination, “to draw distinction, to distinguish from or between”. This image does not deal unfairly with or provide less favourable treatment to any class of person.

Vilification, “to speak ill of”. This image makes no comment in regard to the women depicted in the advertisement, and does not humiliate or intimidate her, nor does it incite hatred or invite contempt or ridicule.

This image is of an attractive young woman dressed in a modest bikini with the purpose of getting a person’s attention so that they will then take note of the advertiser’s details.

Objectification: (Section 2.2)

Exploitative/Degrading

This image clearly depicts a young lady in a bikini which is neither revealing nor immodest. She is not overly endowed and there is no focus on any particular part of her body. Her pose is not suggestive in any way and does not degrade women in any way.

Violence: (Section 2.3)

Does not apply

Sex,sexuality or nudity (Section 2.4)

The image is not explicit, depicts no nudity and nor is it sexually suggestive. This vehicle has carried this image over the past eight and a half years throughout South Western Sydney, The Sydney Hills District and Camden and Mac Arthur areas. These areas are populated by a culturally diverse range of people from a wide range of ethnic backgrounds. If offence were to have been caused to prevailing community standards then it surely would have been done so in this time.

AANA Code of Ethics Practice Note (Portrayal of Women Section 2.1) states, “Portrayal of a woman as attractive does not of itself constitute discrimination or vilification of women ”

Sections 2.5 (Language) and 2.6 (Health and Safety) do not apply.

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 depicts an image of a woman in a manner which is inappropriate for outdoor display where children could see it.

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 advertisement features an image of a woman in a bikini on a car with the text, “Got your attention?” and additional wording promoting the advertiser’s magazine.

The Board noted that some members of the community would prefer that women were not used to promote products in this manner but considered that in this instance a depiction of a woman in a bikini is not of itself a depiction which discriminates or vilifies women.

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 that in order to breach this Section of the Code the images would need to be considered both exploitative and degrading.

The Board noted that whilst some members of the community would consider the use of an image of a woman in a bikini to be exploitative in the Board’s view the woman is presented in a manner which is empowering rather than degrading.

The Board determined that the advertisement did not breach Section 2.2 of the Code.

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 that it had previously dismissed a similar image of a woman on a vehicle in case 198/10 where:

“The Board noted that the woman in the advertisement is scantily dressed but the depiction is not inappropriately sexualised with the placement of the wheel minimising the impact of the image and there is no nudity.”

In this instance the Board noted that the woman’s bikini fully covers her private areas and considered that the pose of the woman is not overtly sexualised.

The Board noted that the image is on a vehicle which means it would likely be seen by children however the Board considered that the advertisement is relatively mild and does treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

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