



Case Report

1	Case Number	0176/16
2	Advertiser	Ultra Tune Australia
3	Product	Automotive
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	11/05/2016
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.2 - Objectification Exploitative and degrading - women
- 2.3 - Violence Violence
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.6 - Health and Safety Unsafe behaviour
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

This advertisement shows two women driving a convertible car and listening to music. The car comes to a stop and we see that they are on a railway crossing. The warning lights for the crossing flash and the barrier comes down trapping the women and their car in the path of an oncoming train which we can hear and see approaching them. The women scream and the screen goes dark and we hear the sound of a crash. A male voiceover then says, "Avoid unexpected situations. Get your car serviced at Ultra Tune". We then see the two women walking away from their car which is now engulfed in flames.

THE COMPLAINT

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

The advertisement is extremely sexist, firstly due to the way the women are dressed. It also implies that women are likely need assistance from these types of situations when driving.

As a locomotive engineman being subjected to this kind of unsolicited traumatic event displayed in my living room moments ago was completely unacceptable.

Myself and many of my colleagues have been at the controls of locomotives or passenger trains which have collided with vehicles, pedestrians and animals - all but very few of which are concluded by sudden death.

Both advertisements depict women in an offensive way. The advertisements clearly demonstrate objectification of women. They not only promote voyeurism but invite the viewer to see women as little more than stupid bimbos. The ridiculous cosmetic surgery features, including very obvious breast augmentation, combined with over-sexualised body language employed by the models in the advertisement belittles women. I cannot believe that the Advertising Board would permit such damaging stereotypes of women to be portrayed on air in this day and age and look forward to being able to watch a football match without such degrading and offensive material spoiling my viewing.

THE ADVERTISER'S RESPONSE

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

Advertisements Complaint References 0175/16 & 0176/16

We refer to your email letters attaching complaints concerning Ultra Tune's advertisements broadcasted on pay TV and Channel 9.

The advertisements in questions are 30 & 15 second advertisements with two female actors in a motor vehicle that breaks down at a railway crossing. The 30- second advertisement can be viewed at the following link:

https://www.dropbox.com/sh/yb1ui07vhutngx2/AACQMXhfK2yxKwFOobSCTID_a?lst .

The relevant CAD reference numbers are P2VHIROA and P2VHJROA respectively and we note that they have a PG rating.

We note the issues raised by the complainants (2.1, 2.2, 2.3, 2.4 & 2.5 of the Code) and respond as follows:

1. We refer to the previous decisions of the ASB complaint reference number 0020/16 and 0021/16 ("the Previous Decisions") and advise that, notwithstanding that the ASB Decision upheld the complaints, the board did dismiss all complaints regarding:

(a) the appearance of the actresses; and

(b) the allegation that any alleged violence depicted in the advertisements is capable of causing alarm and/or distress.

2. We refer to the following extracts from the Previous Decisions:

(a) "In the Board's view, while the women are wearing revealing clothes, the emphasis in the advertisement is on their position on a train track and not on particular aspects of their bodies. The Board considered that the women's' physical appearance may be considered as

sexy to some viewers or exaggerated to others but that this is not of itself vilifying or discriminatory.”

(b) “The Board considered that, consistent with a previous determination in case 0093/12, whilst it is not necessary for the women to be wearing low cut clothing their clothing is not unusual for women to wear on a night out and the women’s physical features are not the focus of the advertisement.”

(c) “The Board determined that the advertisement did not breach Section 2.2 of the Code.”

(d) “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.”

(e) “The Board noted that the women’s actions are similar to the walking style of catwalk models and considered that their actions are confident, they are filmed from a distance which minimises the focus on particular parts of their bodies, and are not strongly sexualised.”

(f) “The Board considered that the advertisement did not encourage or condone members of the community to copy the women’s actions with regards to the safe crossing of rail tracks. The Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on safety around level crossings. The Board determined that the advertisement did not breach Section 2.6 of the Code”

3. The Previous Decisions upheld the complaint from the previous advertisement regarding vilification (per section 2.1 of the Code). We have applied for, and are in the process of, having the Previous Decisions Independently Reviewed.

4. However, the abovementioned advertisements (i.e. contained in the hyperlink) are amended versions of the previous advertisements, which were the subject of complaints regarding vilification under Section 2.1 of the Code. These amendments were made in order to address the ASB’s concerns.

5. New footage and amended have been inserted from the 9 second mark to the 20 second mark of the advertisements. The amendments portray the driver of the vehicle and occupants as:

(a) aware of the vehicle breakdown;

(b) attentive to situation they find themselves in; and

(c) reacting to the lights / bells and general emergency (although their reaction is ultimately too late to save the vehicle).

6. For completeness, we partially repeat our original response (contained in our letter of 8 February 2016):

(a) The advertisement was designed in an exaggerated ‘slap-stick’ action movie-style and is not intended to be a realistic portrayal of real events.

(b) Concerns about safety & violence -

(i) We sympathise and extend our condolences to the complainants who have suffered or been affected by any railway related tragedy. Our advertisements are not intended to cause distress and we regret any distress they may have caused to members of the public.

(ii) The characters portrayed in the advertisements do not intentionally stop at the railway crossing. There is no suggestion of a suicide or an attempted suicide.

At approximately 4 seconds into the advertisement, a loud bang can be heard and the driver is seen to attend to the controls of the vehicle at first instance (as any reasonable driver would). In the next scene, the vehicle's brakes are being applied in a controlled manner (brake lights are illuminated), as any driver would be expected to do.

(iii) It is clear that the vehicle has broken down. At approximately 6 seconds, the vehicle stops abruptly and the red crossing signal lights are not flashing.

(iv) The driver immediately tries to re-start the vehicle (in order to move the vehicle off the rail line).

(v) There is no depiction of the collision between the motor vehicle and any "train" (no train is actually depicted in the advertisements).

(vi) The characters are shown as having survived the inferred collision in an exaggerated and unrealistic movie style (mentioned above) at the conclusion of the advertisement.

(vii) The advertisement was filmed in a controlled environment. At no time were any actors or production crew ever at any risk of harm.

(c) We refute the suggestion that the advertisements in any way objectify or degrade women. Rather, the advertisements portray an entirely different picture – confidence and strength.

(d) The actors are fully clothed in evening street clothing that is common in today's society.

(i) The scenes take place at dusk and night time, when it is common for women to be in such attire.

(ii) The advertisements do not portray nor suggest sex or any sexual act and the actors are not being portrayed as objects of lust.

(iii) The advertisements do not include any graphic nudity and there is no uncovered flesh.

(iv) Finally, we refer to the Board's previous comments that the actors "are not strongly sexualised".

(e) We refute that the advertisements suggest or encourages harassment, rape or any other violence against women.

(i) Ultra Tune strongly objects to any violence against all people including women.

(ii) The clothing that the actors are wearing are in no way an excuse or reason for harassment, rape or violence against them.

(iii) Indeed, one of the actors is a current ambassador of White Ribbon Australia (Australia's campaign to prevent men's violence against women).

(f) Furthermore, we refute that the actors are portrayed as being unintelligent or stupid.

(i) At no time are the actors shown as anything other than as normal people driving with loud music in their vehicle or otherwise.

(ii) The characters deal with the vehicle break down without assistance and are not "helpless".

(iii) The actors also escape the implied collision by themselves. The decision to abandon and escape the vehicle is the safest decision.

(iv) The final scene was designed to emphasise female empowerment and shows the actors confidently walking away from the vehicle without suffering any harm.

(g) The advertisements has been given a PG rating classification.

For the reasons above, we do not believe the advertisement breaches AANA Advertisers Code of Ethics 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 objectifies women and presents them as helpless and unintelligent, and that scene depicting a railway crossing accident is offensive to people who have been involved in such an incident.

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 that there are two versions of this advertisement - one is 15 seconds and one is 30 seconds - both featuring two women whose car breaks down on a rail crossing and is subsequently hit by an oncoming train. The Board noted that the original versions of these advertisements were previously considered by the Board in case 0020/16 and were upheld.

The Board noted the advertiser's response that the current advertisement has been modified

and new footage has been inserted from the 9 second to the 20 second mark of the 30 second version of the advertisement. The Board noted the advertiser's response that this amendment portrays the women as aware of their vehicle breaking down, attentive to the situation they find themselves in, and reacting to the lights/bells and general emergency.

The Board noted that the advertiser had requested an Independent Review of the Board's determination in case 0020/16. The Board noted its consideration of its determination in that review where:

"The Board noted that there are two versions of this advertisement both featuring two women whose car breaks down on a rail crossing and is subsequently hit by an oncoming train. The Board noted the original complaints that the women are depicted as unintelligent sex objects and that this is discriminatory to women.

The Board noted the Practice Note relevant to this matter and in relation to Section 2.1 which describes types of behaviour and restricts depictions of those types of behaviour against people within certain groups. The types of behaviour are:

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

The Board noted the Macquarie Dictionary definition of incite:

- "to urge on; stimulate or prompt to action".

The Board considered whether the depiction of the women was discriminatory or vilifying of women. The Board noted its earlier discussion around Section 2.1 of the Code of Ethics where:

"The Board noted that the intent of the advertisement is to depict two women unexpectedly breaking down – with the advertiser suggesting that regular services from Ultratune will prevent such an 'unexpected situation.' 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 noted the reviewer's comments relating to the need for the Board to reconsider the decision ensuring it properly considers the definition of 'vilification'. The Board noted that the definition to be applied is as set out in the Code of Ethics and associated Practice Note. The Board therefore considered whether the advertisement breached Section 2.1 of the Code and specifically considered the elements outlined in the Practice Note.

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

The Board noted the Macquarie Dictionary definition of ridicule:

- “1. Words or actions intended to excite contemptuous laughter at a person or thing;
- 2. To deride”.

The Board considered that the advertisement ridicules people of a certain group, namely women, in the way in which the women are depicted. Specifically, the Board considered that the overall suggestion in the advertisement is that these women can't think: their car slowly comes to a stop and their reaction is to look as though they have not fully registered what has happened and take too long to realise where they have broken down and the consequence of that.

In the Board's view the advertisement depicts women in a manner which suggests they do not get their car serviced, are unintelligent and unable to recognise a dangerous situation and the Board considered that the advertisement presents women as ridiculous. The Board considered that the stereotypical depiction of women being unable to look after their car perpetuates the depiction of women being ridiculous in relation to cars and that this incites ridicule towards their behaviour and women in general. The Board considered that this ridicule is directed at the women in a manner which does meet the grounds for vilification as defined in the AANA Practice Note for Section 2.1.

The Board noted the advertiser's request for review which stated that the women do not look blank but rather they look uncertain and that had male actors been depicted no such findings of vilification would have been made. The Board noted that it can only look at the advertisement as presented, not suppose how it might be interpreted had the actors been men.

The Board noted the Independent Reviewer's recommendation that the Board address the use of humour in the advertisement and whether this ameliorates the presentation of the women as helpless females.

The Board noted the advertiser's submission that the advertisement employs humour. The Board noted that different people will find different things humorous. In the Board's view however the attempted humour in the advertisement does not work and the overall impression taken from the advertisement is not of a funny situation but rather of a potentially dangerous situation which has come about due to the lack of intelligence employed by the main characters. In the Board's view any potential humour is directed at the women and their behaviour, adding to the overall impression that the women are being ridiculed. With regards to the situation— being stuck on a train track – this is a situation that is a significant community concern in Australia, and the depiction of this situation works against an overall impression of humour in the advertisement.

By contrast the Board considered case 0001/15. In this previous case the Board considered that the advertisement presented exaggerated and unrealistic situations that provided an overall impression of humour, as well as situations which would not be able to be replicated by the broad community, which meant that the humour was more successful. In the Board's view the humour in the current advertisement is not sufficiently obvious to mitigate against the overall impression of ridiculing women that the advertisement conveys.

The Board noted the Independent Reviewer's recommendation that the Board address the

final scene where the women walk away unscathed from the train supposedly hitting their car. The Board noted the advertiser's response that the advertisement depicts the women in a strong and capable light having rescued themselves.

The Board noted that the advertisement shows a vehicle breaking down on a train track and considered that although the women are shown to walk away there is no indication whatsoever that the women have orchestrated their escape. The Board noted that the advertisement shows the women screaming when they realise at the last minute that a train is about to hit their car and considered that we do not see how the women escape or the moment of impact. The Board noted the advertiser's response that the advertisement employs editing and dramatization to heighten the situation depicted in the advertisement. The Board acknowledged that the women are shown to confidently walk away from the accident but considered that their actions throughout the rest of the advertisement are presented as ridiculous and there is no indication in the advertisement that the women themselves have contributed to their escape but rather that their escape is a result of luck. The Board considered that this final scene does not detract from the overall impression the advertisement gives which is that the women are being presented in a manner which incites ridicule on account of their gender.

Overall the Board considered that the advertisement presents women as ridiculous suggesting that they don't look after their cars, react passively to breaking down, and are unaware of their surroundings. The Board considered that the advertisement does encourage ridicule of women and therefore does portray or depict material in a manner which is vilifying of a person or section of the community on account of gender."

The Board viewed the modified advertisement and considered that whilst some very minor changes have been made – notably at the 10 second mark where in the original version the two women look at one another but in the modified version they don't – in the Board's view these changes do not alter the overall impression given by the advertisement in that the women appear unintelligent and until the last minute are completely unaware of their surroundings or the danger they are in.

The Board considered that the modifications made by the advertiser in response to the Board's original upheld determination in case 0020/16 are not sufficient. The Board noted that these modifications were applied to both the 15 second version and the 30 second version and in the Board's view the overall impression is that the women in both versions of the advertisement are presented in a manner which incites ridicule on account of their gender.

Consistent with its original determination in case 0020/16 and its reconsideration of the original advertisement as part of an Independent Review, the Board considered that the modified 15 second and 30 second advertisements did portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender.

The Board determined that the advertisement did 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 concern that the advertisement depicts women as objects of male desire.

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 their 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.

The Board noted that the women walk away from the aftermath of the implied accident between the car and the train and considered that in these scenes there has been no modification from the original version. The Board considered that the manner in which they walk is reminiscent of the television series 'Charlies Angels' and that while the women are portrayed as sexy, they are also portrayed as confident, and in the Board's view the overall manner in which the women are depicted in the advertisement does not use their sexual appeal in a manner that is degrading.

The Board considered that the advertisement did not employ sexual appeal in a manner which is exploitative and degrading to any individual or group of people.

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 the depiction of a car being hit by a train. The Board noted that this image had not been modified from the original version. The Board acknowledged that this scene could cause concern to some members of the community based on their personal experience but considered that the moment of impact is not actually shown and in the Board's view the depiction of the women walking away from the aftermath lends an unrealistic air to this scenario. The Board considered that the advertisement depicts a suggestion of imminent danger which proves to be a lucky escape and is not a depiction of violence.

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 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 it had previously dismissed complaints about an advertisement for the same advertiser in case 0201/14 where:

"The Board noted the complainants' concerns that the women use seductive moves around the tyres.

The Board noted that the advertisement is for tyres and tyre fitting and that the idea is to draw the attention of the viewer to the tyres. The Board noted that it is unlikely that anyone would behave in the same manner around tyres but that the actions of the women are exaggerated and unrealistic in a humorous way and are only mildly sexually suggestive.”

In the current advertisement the Board noted that the women are wearing clothing consistent with going out for an evening and considered that while the women’s cleavages are substantial the level of exposure is not excessive or inappropriate for evening wear.

The Board noted that the camera focuses on the women’s reactions when they break down on the rail crossing and considered that the focus is on their faces and not their bodies. The Board noted that when the women walk away from the aftermath of the train hitting their car they are shown to strut towards the camera. The Board noted that the women’s actions are similar to the walking style of catwalk models and considered that their actions are confident, they are filmed from a distance which minimises the focus on particular parts of their bodies, and are not strongly sexualised.

The Board noted that the advertisement had been rated ‘PG’ by CAD and considered that overall the advertisement depicted two women wearing revealing clothing but did so in a manner that minimised the sexual impact of the advertisement and in the Board’s view did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience which would include children viewing the television with parental guidance.

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 noted that rail crossing safety is a genuine community concern and considered that depictions of this that are intended to be humorous should be treated with care. The Board considered that in this instance the advertisement clearly depicts the women’s actions as negative. The Board noted that the voice over enforces the negative connotation by describing the situation as an unexpected scenario which could have been avoided. The Board noted that the women survive the implied accident between the train and the car and considered that their survival is not misleading or presenting an unsafe message because the scenario of the women being able to walk away from such an accident is clearly an unrealistic outcome.

The Board considered that the advertisement did not encourage or condone members of the community to copy the women’s actions with regards to the safe crossing of rail tracks.

The Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on safety around level crossings.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.1 of the Code, the Board upheld the

complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We advise that we act on behalf of Ultra Tune Australia.

We refer to your letter to our clients dated 23 May 2016 and the draft case report detailing the Board's decision enclosed therein.

We are instructed that our client will discontinue the amended advertisement "unexpected situations" ("the Advertisement"), which is currently the subject of the abovementioned case under protest, noting that it intends to seek an independent review of the Board's decision once finalised.

Therefore kindly consider this letter as formal notice of our client's discontinuance of the Advertisement and our request that the Board publish and circulate its final decision.

We advise for the record that our client views the Board's decision that the Advertisement "did breach Section 2.1 of the Code" as without foundation and intends to vigorously dispute those findings.

Accordingly, we look forward to your confirmation of receipt of this letter and subsequently, to the Board's final decision.