



**ADVERTISING  
STANDARDS  
BOARD**

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ACN 084 452 666

# Case Report

<b>1</b>	<b>Case Number</b>	<b>0203/17</b>
<b>2</b>	<b>Advertiser</b>	<b>Ultra Tune Australia</b>
<b>3</b>	<b>Product</b>	<b>Automotive</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Pay</b>
<b>5</b>	<b>Date of Determination</b>	<b>24/05/2017</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.3 - Violence Violence
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.6 - Health and Safety Within prevailing Community Standards

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement depicts two women returning to their car at night. They notice the car has a flat tyre and then turn to see a group of young men standing near them, one of whom asks if they have car troubles. The actor Jean Claude Van Damme then approaches them and stands between the two women and says, "Big trouble, guys". The men all reach in to their jackets to retrieve something and Van Damme adopts a karate pose as though preparing for a fight but then we see that the men were reaching for their phones to take photos of Van Damme. As Van Damme poses for photos we see one of the women using her phone to contact Ultra Tune then an Ultra Tune employee arrives and asks if they have car trouble.

## THE COMPLAINT

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

*The ad is promoting the sexualisation of women but also the predatory behaviour of men. The fear portrayed from a group of men approaching 2 women at night and the fact that they need to be 'saved' is very damaging as it is normalising this predatory behaviour.*

## **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 attaching various complaints concerning the Ultra Tune Australia Ltd (Ultra Tune) "Van Damme" advertisement (Advertisement) broadcast on Foxtel.*

*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>*

*The relevant CAD reference numbers are G4877ROA and it has a G rating.*

### *Submission*

*We refer to ASB complaint references number 045/17 where the Board considered complaints and our response (of 6 February 2017) in respect of this same advertisement on other media:*

*"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>*

*The relevant CAD reference numbers are G4877ROA and it has a G rating.*

### *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 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.*

*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.*

*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.*

*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 who actually or appear to offer to assist with the flat tyre.*

*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.*

## *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 (as one particular complainant would have it) put ideas of disabling cars in dangerous people’s minds or otherwise suggest any new or inventive methods to instigate or encourage violence against any person of any gender. Nor does the advertisement suggest (as another complainant would have it) that it is not appropriate to ring Triple Zero.*

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

*Conclusion*

*For the reasons above, we do not believe the advertisement breaches the Code in any way.”*

*The Board dismissed the complaints against our advertisement in those matters.*

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

*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.*

## **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 sexualises women and suggests they need to be saved by predatory men.

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 this television advertisement depicts two women returning to their car on a night out to find it has a flat tyre and then being asked by a gang of young men if they are in trouble.

The Board noted it had previously dismissed similar complaints about the same advertisement when it was aired on free to air television in case 0045/17 where the Board noted:

“...the women realise they have a flat tyre as soon as they return to their car and considered that shortly after Jean-Claude van Damme arrives we see one of the women use her phone to contact Ultra Tune. The Board noted that the women do not ask Mr van Damme for assistance as he just appears and considered that there was no suggestion that the women were not capable of managing the situation themselves and in their view the depiction of one of the women contacting Ultra Tune is suggestive of the women being in control rather than passive observers. 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 gender.

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 consistent with its previous determination the advertisement did not suggest that women need to be saved from predatory men and that it 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.

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 be in breach of this section of the Code the image would need to use sexual appeal in a manner that is both exploitative and degrading.

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 exploitative. The Board noted that the two women are wearing clothing which is tight and reveals their legs and cleavage, clothing which is often worn by young women in Australia, and considered that in this instance although the women’s breasts are enhanced by their choice of clothing, their breasts are not the focus of the advertisement.

The Board considered that, consistent with a previous determinations in cases 0093/12 and 0042/16, whilst it is not necessary for the women to be wearing low cut clothing their clothing is not unusual attire for young women and the women’s physical features are not the focus of the advertisement. The Board considered that there is no undue focus on the women’s bodies and in their view it is not exploitative to use women in an advertisement and as the women are depicted as being in control the advertisement is not degrading or demeaning to women.

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 and 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 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 noted there is a slight hint of menace between Mr van Damme and the group of men and women but considered that this is quickly resolved and there is not a strong suggestion that the women are in any danger or that they would have been in danger had Mr van Damme not appeared.

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 concerns that the advertisement has an overall sexualised tone.

The Board noted that the women are wearing evening wear which accentuates their breasts and considered that their nipples are not visible and the level of nudity is very mild. The Board noted 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 ‘PG’ by CAD for airing on Free to Air television (0045/17). The Board noted that CAD ratings do not apply to Pay TV and noted that the advertisement was viewed on a Saturday night on the Fox Footy Channel. The Board noted the ASTRA Code provides, “The Licensee must take into account the intellectual and emotional maturity of the intended audience of the channel when scheduling advertisements...” (Astra Code, Section 6.5) and considered that while the Footy Channel would attract a broad audience of sports fans of all ages, in the Board’s view the content of the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience of a sporting match aired on a Saturday night on pay television.

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.