



ADVERTISING
STANDARDS
BOARD

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Case Report

1	Case Number	0233/15
2	Advertiser	Victorian Hearing
3	Product	Health Products
4	Type of Advertisement / media	Internet
5	Date of Determination	10/06/2015
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.1 - Discrimination or Vilification Disability

DESCRIPTION OF THE ADVERTISEMENT

Web Banner put on the Victorian Hearing website on 16th April 2015. The image was a side profile of a woman with a prawn sitting behind her ear with the caption "Hearing aids can be ugly. Ours are invisible. Lyric". (Removed from website on 25th May after public complaints first received on that day.)

THE COMPLAINT

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

I am personally affected by this, I have a deaf child and I think it's insulting to anyone with Special needs or anyone that has a heart that would be made to feel degraded.

Hearing aids are part of life for thousands of Australians, including vulnerable and impressionable children and teens who NEED hearing aids in order to engage with their education and their peers. To publicly declare them "ugly" is risking a huge number of young people's futures. If these youths shy away from their hearing aids they face disengaging with their education and social isolation from their peers. This can have a devastating flow-on

effect. Hearing aids are not ugly, and to label them as such is tantamount to disability discrimination and hate.

THE ADVERTISER'S RESPONSE

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

About Us:

Victorian Hearing is a small independent hearing care practice, operating since 2006. We pride ourselves on our ethical and professional service provided to our clients. We are one of only 6 clinics in Victoria who are qualified to provide the 100% invisible, extended wear Lyric hearing device. We do not provide services to children. All hearing impaired children in Australia have services provided to them by Australian Hearing (a Federal Government statutory body).

Our business has the sole focus on bettering the lives of people with hearing loss by offering technology and services aimed at reducing the effects of hearing loss.

The Product:

Lyric, the Product advertised is a premium hearing aid device consisting of the latest in technological improvements in hearing aids. The Product is, consistent with the advertisements, invisible (as worn by the user), can be worn by the user 24 hours a day 7 days a week, including in the shower or in rain.

The product is placed into the external ear canal. As such it is not available off the shelf and requires customisation to the user by a specialist audiologist after assessment for suitability. The Product is new to the market, having been introduced to Australia in 2011. The Product is an alternative to traditional hearing aids and surgically administered implants. Based on our market research, there is a large body of people with hearing loss who are unaware of the Product and live with no solution to their hearing loss as traditional hearing aids do not offer solutions without associated difficulties.

The Advertisement

The advertisement in question has been used in many forums since 2013 and has not, as far as we are aware been subject to any negative response until now. Please see attached summary of this advertisement in previous print and outdoor campaigns; and email from Fairfax media confirming they have not received any complaints from the same advertisement having been circulated to a possible 700,000 readers.

The aim of the advertisement was to inform and educate adults in the process of considering hearing aid options, or looking at replacing their outdated devices, with an invisible hearing solution option. Based on our market research, 1 in 6 Australians suffer hearing loss and delay the fitting of hearing aids for many reasons, one of the most common reasons being vanity. The advertisement is aimed to appeal to those people who need the assistance of a hearing aid, but are avoiding clinical assistance. We want this advertisement to result in more people seeking professional assistance for hearing loss.

Advertisement is not advertising to Children:

The advertisements are not, and could not be said to be, directed primarily to Children. There are no themes, visuals or language used which make the advertisements appealing to Children. Further, the Product, is not targeted for sale to Children and it cannot be said to

have "principal appeal to Children".

The primary focus of 7 of the 10 complaints the subject of your letter of 26 May 2015 is with regard to Children with hearing loss.

Advertisement does not discriminate against persons with disabilities:

The advertisement does not depict hearing aids in a way which discriminates against persons with hearing loss. The advertisement is an illustrative comparison as between a new product and old technology.

Characteristics of the Product, with old technology includes the fact the Product is invisible, it does not clip or is fixed to the ear, as it is not fixed externally to the ear it is not uncomfortable to wear.

Based on our market research, from discussions with our clients, behind-the-ear hearing aids can often be perceived by users as what is often described as 'ugly' and for this reason invisible hearing devices are considered by some as a desirable alternative.

The concept of hearing aids possibly being 'ugly' and resembling a prawn over the ear came to us from direct consumer interaction. In our decades of experience, many of our clients over the years have described their hearing aids as 'ugly', unsightly, and resembling prawns or even bananas over their ears.

Whilst a number of the complaints concern allegations of discrimination in respect of people who are "deaf", there is no connection in respect of the advertisements and people who are "deaf" (or total hearing loss), but rather the Product is for use by people with hearing loss.

Our response to the complaints:

Based upon the complaints, and the social media campaign responding to the advertisement, it has become apparent that a portion of the public have interpreted the advertisements in a manner that was unintended. For this reason all of the advertisements have been removed from publication. We do not accept that the advertisements breached the Code as they do not depict the Product in a way that discriminates against people suffering hearing loss, nor are the advertisements aimed at children. Clearly the advertisements are not conveying the intended message, and as such we will refocus our future advertising.

We are a clinic of audiologists and are trying to promote the Product, which has the potential of being used by people with hearing loss, who may also not seek treatment because they do not wish to wear an over-the-ear hearing device. The advertisement was aimed at these people and not intended to in any way create a negative impression of users of traditional hearing devices.

Choice of style of hearing aid, be it behind-the-ear or invisible-in-the -ear, is something all hearing impaired clients should be aware of, but hearing aids are not a one size fits all device, and suitability must be professionally advised. Invisible hearing options are very new to the Australian market, and not all hearing clinics specialise or even have the ability to provide these options, hence we have focused our advertising on this unique selling point of our clinic, to ensure people know they have choice.

The primary purpose of the advertisement was to encourage a section of the public with hearing loss to seek clinical advice and services. The overall benefit to the community was to increase awareness of new products that improve the wellbeing and general life experience of those with hearing loss, notwithstanding that the advertisement may have struck a sensitivity some people. For this reason we removed all instances of the advertisement from publication.

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 suggests hearing aids are ugly which is offensive, discriminatory and distressing to people who have no choice but to use them.

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

The Board noted that the advertiser had voluntarily withdrawn the advertisement in response to the complaints received.

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 this internet advertisement depicts an image of a woman wearing a prawn in place of a hearing aid and the accompanying text reads, “Hearing aids can be ugly”.

The Board noted the advertiser’s response that they are promoting an alternative to traditional hearing aid products and that this alternative is invisible.

The Board noted the complainants’ concerns over the use of the descriptor ‘ugly’ to describe hearing aids. The Board noted that the advertisement says that hearing aids can be ugly, not that they necessarily are ugly but considered that by displaying the word ‘ugly’ in capital letters the focus of the advertisement is on this word in relation to hearing aids. The Board noted the definition of vilification in the Practice Note to Section 2.1 of the Code which provides:

“Vilification – humiliates, intimidates, incites hatred, contempt or ridicule”

The Board considered that linking the word ‘ugly’ to a product used by people with hearing disabilities does incite contempt or ridicule as it suggests that people who wear traditional hearing aids, either by choice or by necessity, are wearing something which is ugly and this is likely to cause offense and distress.

The Board noted the advertiser’s intent was to promote an alternative hearing aid product but considered that the overall message of the advertisement is vilifying of a person or section of the community on account of disability.

The Board determined that the advertisement did breach Section 2.1 of the Code.

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

THE ADVERTISER'S RESPONSE TO DETERMINATION

As advised in our Advertiser Responses, each of the advertisements have been removed from publication. We hereby undertake to not publish the advertisements in the future. Our future publications will focus on the positive benefits of the hearing devices that we supply.

The intention behind the advertisements was not to offend, and particularly not to offend those we provide services, but rather to communicate for the purpose of product awareness. It is clear that our communication has wholly failed as it has given rise to offence. For this we unreservedly apologise.