



Case Report

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| 1 | Case Number | 0293/17 |
| 2 | Advertiser | Apple |
| 3 | Product | Entertainment |
| 4 | Type of Advertisement / media | TV - Free to air |
| 5 | Date of Determination | 12/07/2017 |
| 6 | DETERMINATION | Upheld - Modified or Discontinued |

ISSUES RAISED

- 2.6 - Health and Safety Motor vehicle related
- 2.6 - Health and Safety Unsafe behaviour
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features Delta Goodrem in the passenger seat of a convertible car choosing a playlist from Apple Music. We then see Delta and the driver singing along to the various songs played as they drive down a country road. In one scene Delta is showing with her forearm leaning on the open window with her head sticking out so the wind blows her hair. On-screen text reads, "Listen online and offline, always ad-free. [Apple Logo] Music [Telstra Logo]. Exclusive to Telstra, a free 6 month membership".

THE COMPLAINT

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

Delta Goodrem is in a car, not wearing a seatbelt. She is also driving along with her arm outside the vehicle and then she puts her head out of the car window. This is very irresponsible advertising as there are enough problems with young people today and these issues are also against the law.

Delta Goodrem is not wearing a seatbelt while traveling in a moving vehicle on the road. As

a role model for young people this is setting a terrible example to young drivers and passengers at a time when statistics show us how at risk this age group is on the road.

No seat belts are being worn. As a young woman who is a role model this sets a bad example and is illegal.

Delta Goodrem listening to music in the front seat of a moving car- not wearing a seatbelt!!!! And her body/head is out of the moving car- illegal.

This ad does not promote safe driving. At one point a part of Delta's body is outside the vehicle while it is moving. The driver is distracted by singing and dancing type body movements. And it appears that at least Delta is not wearing a seatbelt.

THE ADVERTISER'S RESPONSE

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

Complaint reference number 0293/17

I refer to your letters attaching complaints received by the Advertising Standards Bureau about Apple's Apple Music advertisement.

Apple takes community standards seriously in preparing and publishing all of its advertising materials and other communications in Australia. Apple is confident that the advertisement in question is compliant with the AANA Advertiser Code of Ethics (Code) and does not raise any issues under section 2 of the Code, nor does it include any images or other representations that are inconsistent with generally prevailing community standards in Australia.

Set out below to assist the Advertising Standard Board in its consideration of the advertisement under complaint at its forthcoming meeting is the information requested in your letters about the advertisement.

Apple's comments in response to the complaint

The advertisement under complaint does not depict, endorse or otherwise encourage any activities contrary to prevailing community standards on health and safety. The individuals in the vehicle were both wearing lap seat belts at all times while the vehicle was being driven, and the advertisement does not contain any images suggesting otherwise.

The advertisement does not raise any issues of concern to which section 2 of the Code is directed:

Section 2.1: The advertisement does not depict any material that could be described as discriminating against or vilifying any particular section of the community;

Section 2.2: The advertisement does not contain any sexual connotations or any material that could be described as exploitative or degrading of any individual or group of people;

Section 2.3: The advertisement does not contain any violent material in any context;

Section 2.4: The advertisement does not contain any sexual material or portray any nudity;

Section 2.5: The advertisement does not contain any strong or obscene language; and

Section 2.6: The advertisement does not contain any material that could be considered contrary to prevailing community standards on health and safety, particularly given that (as noted above) the individuals in the motor vehicle appearing in the advertisement are in fact both wearing seat belts appropriate for the vehicle in question, and does not condone, endorse or otherwise promote or support any unsafe activities.

Notwithstanding Apple's view that the advertisement does not raise any issues under the Code:

Apple is in the process of inserting a disclaimer stating that lap seat belts are worn to make it abundantly clear that the driver and passenger are both wearing seat belts while the vehicle is being driven, which should appear in the version of the advertisement running this week; and additionally, those scenes where the passenger's arm and hand are on the car window frame are in the process of being edited from the advertisement.

I trust that this information will assist the Board in its consideration of the complaint, which Apple considers for the reasons above is without foundation having regard to the requirements of the AANA Advertiser Code of Ethics and community standards and expectations more broadly.

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 depicts a driver and passenger of a moving motor vehicle not wearing seat belts, the passenger leaning out of the window, the passenger distracting the driver by using her mobile phone and dancing, and the driver tapping the steering wheel and not paying attention, which all amount to a breach of the Road Rules and therefore prevailing community standards.

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

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 this television advertisement features the singer Deltra Goodrem in the passenger seat of a convertible car, singing and dancing to music she has selected from Apple

Music.

The Board noted the complainants' concerns that Delta and the driver are not wearing seat belts. The Board noted the advertiser's response that the vehicle is fitted with lap belts and that both Delta and the driver are wearing the belts when the vehicle is in motion.

The Board noted that the lap belts are not visible and a minority of the Board considered that the positioning of Delta and the driver in their seats is suggestive of some type of restraint being worn. Consistent with a previous determination about an advertisement featuring three people in a convertible where the seatbelts are not clear (0255/13), the minority of the Board considered that while Delta and the driver's seatbelts are not visible there is no suggestion that they are not wearing the appropriate seatbelt for the age of the car they are driving in, and in the Board's view the advertisement does not encourage or condone the non-wearing of a seatbelt in a moving vehicle.

The majority of the Board however noted that Delta is shown moving around in her seat, swivelling to the side, and with her leg raised and considered that whilst older members of the community may be aware that older cars would be fitted with lap belts, younger members most likely would not. The majority of the Board noted that Delta is seen as a role model to younger people and considered that a depiction of Delta dancing and moving around in a motor vehicle with no clearly visible safety belt is likely to imply to younger viewers that no seatbelt is being worn and that a relaxed attitude to safety in a moving motor vehicle is acceptable.

The Board noted the complainants' concerns that the advertisement depicts Delta with parts of her body outside of the moving vehicle. The Board noted that Section 268, Part (3) of the Australian Road Rules (http://www.legislation.act.gov.au/ni/db_37271/current/pdf/db_37271.pdf) provides:

“A person must not travel in or on a motor vehicle with any part of the person's body outside a window or door of the vehicle, unless the person is the driver of the vehicle and is giving a hand signal...”

The Board noted that in one scene Delta has her head leaning out of the open window with her arm resting just outside the vehicle, and in a later scene Delta has her elbow resting on the open window with her hand resting on the top of the window frame, external to the vehicle. The Board considered that these depictions are a breach of the Road Rules.

The Board noted the complainants' concerns that the passenger is distracting the driver of a moving motor vehicle.

The Board noted that the passenger of the vehicle is shown using her mobile phone to select music, and then singing and dancing to that music, but considered that the driver appears in full control of the vehicle at all times. The Board noted that the driver sings along to the music and taps her fingers on the steering wheel but considered that this is not of itself dangerous or unsafe and in the Board's view the vehicle is shown being driven in a safe and controlled manner throughout the advertisement and there is no suggestion that the driver is being distracted by the passenger.

Overall the Board considered that the lack of clear signs that seatbelts are being worn and the

depiction of a passenger in a moving vehicle with parts of their body external to the car are a breach of Prevailing Community Standards on health and safety around traveling in motor vehicles.

The Board determined that the advertisement did breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.6 of the Code, the Board upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Apple is disappointed with the decision of the Advertising Standards Bureau, as Apple takes health and safety very seriously.

As set out in our original response, Apple has inserted a disclaimer stating that lap seat belts are worn to make it abundantly clear that the driver and passenger are both wearing seat belts while the vehicle is being driven. This disclaimer is appearing already in the advertisement.

Apple is also editing the spot by replacing scenes where the passenger's arm and hand are on the car window frame. We requested networks today to cease running the current spot until the re-edited spot is available. The broadcast networks have confirmed they will cease running from tomorrow evening and Foxtel will cease running on Wednesday.