



Ad Standards Community Panel
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Advertising Standards Bureau Limited
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Case Report

1	Case Number	0426/18
2	Advertiser	Invocare
3	Product	Professional Service
4	Type of Advertisement / media	Billboard
5	Date of Determination	26/09/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

2.1 - Discrimination or Vilification Gender

DESCRIPTION OF THE ADVERTISEMENT

This billboard advertisement features an image of a woman dressed in white, holding a flower and smelling it. The billboard says "White Lady Funerals", then says "a woman's understanding".

THE COMPLAINT

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

Firstly, I am aware that a previous complaint has been lodged regarding White Lady Funerals, complaint reference number 98/07. I believe this new complaint deserves consideration despite a similar one being previously dismissed, as more than 11 years have passed since that complaint was lodged. Within those 11 years there has been highly significant societal shift, focus and progress in areas of gender equality that require a much greater degree of consideration of statements made within advertising material.

I am claiming this advertisement discriminates against a large section of the community on the grounds of gender – condition 2.1 of the Code of Ethics.

Firstly, it is important to define the word discriminate, while noting it is not defined



within the code. Within the Oxford dictionary, the first definition of discriminate is stated as “recognise a distinction; differentiate”, and also to “perceive or constitute the difference in or between.” The word against within the Oxford dictionary is defined as “in conceptual contrast to”. This means that any depiction or presentation of difference in a contrasting fashion creates legitimate concerns regarding advertising compliance with condition 2.1.

Accordingly, I believe the statement “a woman’s understanding” proposes that there is a difference between the level of “understanding” between women and men. I note that within the Oxford dictionary, the term understanding is defined as “the ability to understand something; comprehension” and also “sympathetic awareness or tolerance.” I therefore interpret the statement (with this definition in mind) to mean that White Lady Funerals proposes, within the advertisement, that there is an ability women possess relating to a gender-specific level of awareness and comprehension; that differentiates them from men. The line highlights a purported difference or contrast between the genders, thus satisfying the definition of discrimination. It implies a perceived difference in how the either the advertiser or audience may view women-run funerals by discriminating and utilising a purported gender difference.

I am aware that the previous complaint lodged was similar in nature, and I therefore address the response from the advertiser provided within original complaint, below. I do this to provide further reasons that the advertisement breaches condition 2.1 by discriminating on the grounds of gender, and why further investigation is necessary:

-Relating to the comment “The strap line supports the fact that all White Lady Funeral staff are women”: This is certainly not clear from the billboard. Multiple conclusions could be drawn including the one I have presented above. If it were the intent to only communicate that this was a women-only service, this would be explicit within the advertising material. In my opinion, the advertisement is clearly intending to communicate more than simply a women-run service.

-Relating to the comment “The strap line, A Women’s (sic) Understanding,” isn’t discriminatory merely because it is a statement referring to women. There is no implication in this statement that ‘men don’t have the same understanding as women’ and that ‘their (White Lady Funerals) funerals therefore will be better’’: White Lady Funerals not only incorrectly referenced their “strap” line (as “women’s” when its “woman’s”), but it also fails to address the concerns raised by the complainant. The complainant stated that the line is sexist because it implies a different understanding between men and women. Addressing these concerns requires more than merely stating that the line isn’t discriminatory and that there is no implication within the statement that there is a difference in understanding or ability between the genders. I am (at least) the second person to have the view that the statement does imply a difference between the genders and is thus sexist. Its purpose is to highlight a perceived point of gender difference, for business purposes. Given this is a question about an advertisement, intent or message of the ad will differ according to the audience. Implication is in the eye of the viewer! It is not adequate for White Lady Funerals to defend the advertisement by stating that their statement does not match my or any other persons’ interpretation of it. White Lady Funerals needs to describe



how and why the line is not discriminatory, beyond their intention that it not be. Intent is not a component of the definition of discrimination, and advertisements will be interpreted by a variety of audiences with differing views. They also need to be careful not to stray into areas of competitive advantage by discrimination, based on gender. I also address the comments made by the Board, below:

-Relating to the comment “The Board agreed that the advertisement was clearly targeting people who might have preferred women to handle their relatives’ funeral arrangements. The Board did not agree that this amounted to discrimination against men generally.” In my opinion, the advertisement relies either on the currently unknown fact that it is a women-only service or that women have an understanding that differs from men. I do not understand how the Board reached the conclusion that the advertisement is clear in only encouraging a female preference (in funeral handling) in addition to the advertisement also advancing a view of difference between the genders. The advertisement clearly and specifically encourages the reader to consider how men and women would manage funerals differently. It achieves this by clearly implying that women have a particularly special ability to understand. Given the code fails to define discrimination, it is reasonable to conclude that any advertisement that differentiates and contrasts any difference on the grounds of gender may breach section 2.1 of the code – which this advertisement does. It is not sufficient to imply that the advertisement did not discriminate against men generally (as stated above), as condition 2.1 makes no mention that the discrimination must be general. According to dictionary definitions, there need only be material that portrays a contrast, difference or differentiation on the grounds of gender.

By admission, the Board has stated the advertisement clearly targets people who “might have” preferred women. If it is clearly targeting a service to only be carried out by one gender, then by the Oxford dictionary definition, it is discriminating between the genders. If there were no possibility that there was a perceived difference between funerals run only by women and those run by men, then the advertisement would have no purpose and White Lady Funerals would not offer a service run only by women. This distinction is further achieved by focussing on the quality and type of service offered only by women – a woman is pictured, and the strap-line is about women. Despite the reality that White Lady Funerals runs a women-only service, condition 2.1 does not permit advertising in such a manner.

I encourage the Board to reconsider whether this advertisement complies with the Code. Since 2007 when the original complaint was launched, gender equality has been lauded as one of the most important modern issues. The Code fully embraces these modern terms such as discrimination and vilification within condition 2.1, and the failure to define them within the Code could lead to a conclusion that a reasonable person should apply the commonly held meanings, as has been described above. If this were not the intent of condition 2.1, then the code should have defined terms within each condition. It is the responsibility of the Board to determine compliance with the code as it is written. Given that “discrimination” in its simplest form means to recognise difference, and the definition of “against” can mean in conceptual contrast



to, the failure to define these terms within the Code deems my interpretation of this advertisement presented above as reasonable and legitimate. If such presentations of difference and contrast were not intended to constitute breaches of condition 2.1, then perhaps Ad Standards should have reconsidered the inclusion of such terms within the Code without defining them.

THE ADVERTISER'S RESPONSE

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

Re: Compliant in relation to section 2 of the AANA Advertiser Code of Ethics

Thank you for your letter dated 17 September 2018 raising concerns that an InvoCare Australia Pty Limited (InvoCare) advertisement may have contravened Section 2 of the Australian Association of National Advertisers (AANA) Advertiser Code of Ethics (Advertising Code). This follows receipt of a complaint by Ad Standards which raised concerns about a White Lady Funerals advertisement (the Compliant).

InvoCare notes it is not a member of the AANA. Further, InvoCare notes it has previously responded to Ad Standards in relation to a similar compliant which the Board found had not contravened the Code. However, InvoCare has considered this matter again, and, in addition to its previous response, provides the following comments in relation to this specific complaint, considering the Code and InvoCare's broader regulatory obligations.

In relation to the Complaint and concerns raised, your letter has not specified how the advertisement may have breached the Code. InvoCare notes that this matter has been referred to InvoCare without Ad Standards '...having seen/heard the advertisement'.

InvoCare takes its compliance obligations seriously. We work closely with our advertising agencies when conducting advertising to ensure all our obligations under law are met

The advertisement, placed on street and building signage, depicts the White Lady Funerals brand name with the words: "A Woman's Understanding". A copy of a street view photograph and creative of the advertisement is attached with this letter. The advertisement represents the essence of the White Lady Funerals brand and service offering, which has been offered as a service to families in need since 1987.

In our view, having considered the requirements set out in the Code as well as the prevailing Community Standards, InvoCare does not consider it has breached any aspect of the Code, or the law more generally.



The Code's requirements

InvoCare considers section 2.1 of the Code relating to 'Discrimination' to be the most relevant part of the Code in considering this complaint. InvoCare does not consider other aspects of section 2 to have any direct relevance in relation to this complaint and as such, InvoCare has not addressed these further in this letter. If Ad Standards forms a different view, InvoCare would be happy to respond to any specific concerns raised.

Considering the Code and guidance provided in the AANA Code of Ethics Practice Note (Practice Note), the type of behaviour sought to be addressed by the Code in section 2.1 is a portrayal of people that discriminates against a person or section of the community – which in this case, is alleged to be men. 'Discrimination' in the Practice Note refers to 'unfair or less favourable treatment'.

The Complainant's definition of Discrimination

The complainant in this matter seeks to rely on Oxford dictionary definitions of discriminate as follows:

"recognise a distinction; differentiate" and

"perceive or constitute the difference in or between".

In InvoCare's view, the definition of discrimination relied on by the complainant is not an appropriate definition or standard against which any advertising can be assessed. Further, it is not an appropriate definition when considering the Practice Note's guidance, which refers to 'unfair' or 'less favourable treatment'. If the complaint's definition was applied to advertising standards, it would capture almost any advertisement of a comparative nature that sought to differentiate one product from another, one group of persons from another, or one point of view from another.

Does the advertisement treat, or depict men Unfairly, or less favourably?

In InvoCare's view, the phrase 'A Woman's Understanding' is not discriminatory. There is nothing unjust or prejudicial against men in its advisement that could be considered unfair, or that depicts or treats men less favourably. The phrase is a descriptive term that does not lead to any form of unequal treatment.

'A Woman's Understanding' is a descriptive phrase used in the context of highlighting a female only service, and to describe an interpersonal trait that many consumers associate with and seek at a time of need. The phrase does not imply that men are not capable of having the same understanding as women. Sensitivity and understanding are critical traits to any funeral service provider and can be provided by men or women.



Further, the phrase is not prescriptive – it does not seek to exclude or impose a gender bias or gender prejudice that in any way seeks to exclude any persons or promote one section of the community over another. InvoCare does not exclude or treat any groups in the community unfairly, or less favourably than other groups, and the advertisement does not purport to do so. The White Lady Funeral brand highlights an alternative service offering that InvoCare provides, being a female only funeral service offering which many consumers prefer, and which a significant portion of the community seeks and appreciates.

There are a number of sections of the community who value a funeral service conducted by females. Whether it be for religious or cultural reasons, or through personal preference, such consumers seek to have their loved ones who have passed looked after by a female, or to have the funeral service conducted by females. It enables consumers to decide what is important to them at a critical time of need – many of whom will appreciate and get comfort from a female funeral service provider rather than a more traditional provider, which is often ‘stereotypically’ depicted as the black suited, male dominated funeral director.

InvoCare provides such a service to offer a choice to consumers - an alternative to its other brands and other service providers. InvoCare operates a number of funeral brands, many of which have male and female funeral directors and arrangers, and who all require the same level of sensitivity, caring and understanding that a family expects at a time of significant stress and need.

Finally, the Practice Note discusses the use of gender stereotypes, stating that “Stereotypes may be used to simplify the process of communication in relation to both the product offered and the intended consumer.”

InvoCare does not consider the advertisement depicts a gender stereotype for reasons set out above. However, even if the advertisement were considered to depict a stereotype, the overall impression of the advertisement does not portray a negative impression of men but rather, as set out above, the advertisement’s intent is to communicate a specific service offering to a particular class of consumer who prefer to have a funeral service conducted by females.

Final Remarks

White Lady Funerals presents an alternative service offering in response to a particular need in the community. It is not intended to offend, discriminate or exclude any persons but rather recognises a significant portion of the community associates with such an offering and the service White Lady Funerals provides. The use of the phrase ‘A Woman’s Understanding’ in this context would not, in InvoCare’s view, contradict community standards and would not breach the law or Code. InvoCare would welcome



an opportunity to address this matter further should the Panel form a different view.

InvoCare trusts this information assists the Panel in its consideration.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement is sexist.

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

The Panel 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 Panel noted that this billboard advertisement features an image of a woman dressed in white with the text 'White Lady Funerals, a woman's understanding'.

The Panel noted the complainant's concern that since the advertisement was last considered 11 years ago there has been a significant change in community opinion, and that the advertisement is clearly discriminatory as it states there is a difference between the level of understanding between a woman and a man.

The Panel noted the advertiser's response that the advertisement does not contain any material that is unjust or prejudicial against men and that the phrase 'a woman's understanding' does not imply that men are not understanding.

The Panel noted the complainant's definition of discrimination, and determined that the definition that should be applied can be found in the Practice Note to Section 2.1.

The Practice Note provides the following definitions:

"Discrimination – unfair or less favourable treatment.

Vilification – humiliates, intimidates, incites hatred, contempt or ridicule."

The Panel considered that the advertisement does contain a reference to a stereotype of women being understanding.

The Panel noted the practice note for this section of the Code states:



“Stereotypes may be used to simplify the process of communication in relation to both the product offered and the intended consumer. As such, advertisements may feature people undertaking gender-stereotypical roles ... or displaying gender-stereotypical characteristics... but they should take care to avoid suggesting that stereotypical roles or characteristics are:

- always associated with that gender;
- the only options available to that gender; or
- never carried out or displayed by another gender.

as this may amount to discrimination on the basis of gender.”

The Panel considered that the phrase ‘a woman’s understanding’ is a positive stereotype of females being compassionate, and considered that the phrase does not state or suggest that males are not able to be understanding.

The Panel considered that the wording of the advertisement is relevant to the product, a service provided by females, and that a reference to the capabilities of the females in the funeral industry is not a reference that undermines or ridicules the males in this industry.

The Panel 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 and determined that the advertisement did not breach Section 2.1 of the Code

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.

