



Case Report

1	Case Number	0435/13
2	Advertiser	Transport for NSW
3	Product	Community Awareness
4	Type of Advertisement / media	TV
5	Date of Determination	15/01/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

Transport for NSW's television commercial - "Get Your Hand Off It" forms part of a major road safety campaign in respect of driving whilst using a mobile phone. The advertisement features a man singing a song about not using your mobile phone whilst driving and we see him in a car using his phone. In one scene a woman pulls up next to him and looks disgusted to see his hand moving in his lap before the camera pans in and we see he is tapping his phone against his thigh.

THE COMPLAINT

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

No-one should be using a mobile whilst driving. But the main character is seen punching his mobile whilst it is in his lap. The tag line is "Get your hand off it. There is no excuse". It looks as if the character is masterbating, which is the reason for the young woman's disgust. This is really not appropriate for a safety campaign.

The message throughout the advertisement and the written message at the end is 'Get Your Hand Off It'. There is a particular scene where the bearded man has the mobile phone in his lap and a lady in another car looks over at the bearded man and the connotation is that the bearded man is masturbating. I find this advertisement appalling, what's wrong with the message 'Don't text and drive'? Why does the NSW Government need to sink to such levels? Who are they trying to target with this advertisement? Shame on them.

*There is a high level of sexual innuendo - especially in the scene where the main subject is alongside a female driver and there is a marked innuendo that the subject has his hand in his pants on his penis and masturbating.
Despite the community awareness message, this is offensive.*

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 letter concerning a complaint received by the Advertising Standards Bureau (ASB) in respect of Transport for NSW's television commercial - "Get Your Hand Off It" – communicated to the public via Television (Television Commercial).

The Television Commercial was developed as part of a major road safety campaign by the Centre for Road Safety, within Transport for NSW, a statutory authority of the NSW Government.

The complaint cites issues – "There is a high level of sexual innuendo - especially in the scene where the main subject is alongside a female driver and there is a marked innuendo that the subject has his hand in his pants on his penis and masturbating. Despite the community awareness message, this is offensive." – that may raise issues under section 2.4 of the AANA Advertiser Code of Ethics (Code) which provides that - 'Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience'.

For the reasons set out below, Transport for NSW:

- considers that the Television Commercial accords with prevailing community standards and is appropriate for the relevant audience and public purpose; and*
- strenuously denies that the Television Commercial infringes section 2.4 or any other section of the Code.*

Background to the Television Commercial

The Television Commercial forms part of a major road safety campaign, called the "Get Your Hand Off It" campaign. The Television Commercial will also be communicated via cinema advertising and online. The Television Commercial was launched on 1 December 2013 and is intended to serve the public purpose of communicating the dangers of mobile phone distraction while driving.

The Television Commercial targets male and female car drivers aged between 17-59 years (Target Audience).

The campaign aims to reach the Target Audience as research indicates that males and females aged 17-39 years have the highest rates of mobile phone ownership and highest rate of claimed use while driving. Drivers 40-59 years also have a propensity to hold and use their phone while driving.

The Television serves an extremely important public safety purpose. In March 2013 the Joint Standing Committee on Road Safety of the NSW Parliament tabled its report on Driver and Road User Distraction. The Report made various recommendations in regard to road user distractions and the need for further public awareness campaigns.

Statistics indicate that in 2012 there were 42,893 infringements issued to motorists for using a mobile phone while driving. Centre for Road Safety data from 2008 - 2012 inclusive indicates that a total of 216 crashes were identified where mobile phones used by the driver were identified where mobile phones used by the driver were identified as contributing factors. These include four fatal, 96 injuries and 116 tow-away crashes.

Further, while two thirds of the driving population agree that using their mobile phone while

driving is dangerous, statistics show that more than a third of those surveyed in the 20-29 age group indicate that they send text messages while driving. These concerning statistics form a strong aspect of the motivation behind the Television Commercial.

To overcome the attitudes and societal norms that drive this dangerous behavior the campaign aims to challenge a series of excuses that drivers are likely to use, to highlight that no matter what the excuse might be, there is no excuse good enough to justify using a mobile phone while driving.

Although touching on a very serious issue, the Television Commercial is intended to be fun, humorous and engaging. Minister for Roads and Ports NSW, Duncan Gay, stated in the enclosed media release of 12 June 2013 that “‘Get Your Hand Off It’ provides the community with a cheeky phrase that empowers them to speak out against friends and family who use their phones in a reckless manner behind the wheel.”

The campaign is intended to be effective in achieving its road safety aim as it:

- offers a more positive prevention message;*
- uses humour to create cut through and talk-ability;*
- challenges the myriad of excuses that resonate with the target audience;*
- highlights that no excuse is valid when it comes to using a mobile phone while driving;*
- gives an old term in the vernacular a powerful new meaning; and*
- empowers the community to speak out against peers.*

The Television Commercial

The Television Commercial has been given a PG CAD rating. The Television Commercial is colourful, stylised and abstract, and depicts a young man in a television studio environment, “driving” through different types of scenery while using his mobile phone.

Although the genre of music and the stylistic aspects of the Television Commercial may not appeal to every member of the Target Audience, it provides a clear and important message - that it is against the law, socially unacceptable and extremely dangerous to use a mobile phone while driving. In particular, the chorus of the Television Commercial makes comment on the absurdity of typical excuses used by the Target Audience in relation to driving and sending text messages:

*‘Get your hand off it, But I am at a red light
Get your hand off it, Gotta get this text right
Get your hand off it, But I’m gonna be late...
Get your hand off it, But I never look down
Get your hand off it, But there’s no one around.’*

The musician in the Television Commercial, Derek Anderson, collaborated with the creative team who developed “the Bondi Hipsters” and “Beached Az”, both of which have been hugely successful in producing online content and commercials amongst members of the Target Audience. The “it” referred to in the expression “Get your hand off it” is clearly a reference to a mobile phone. The Television Commercial makes this clear as the mobile phone appears numerous times during the commercial and further clarity is given through the line ‘Wow what you think I’m talking about? It’s a smart phone dude I can’t live without it’.

The complaint

Transport for NSW takes compliance with the Code very seriously. We consider that the Television Commercial treats any references to sex, sexuality and nudity with sensitivity to the relevant audience.

Does the Competition treat sex, sexuality and nudity with sensitivity to the relevant audience?

The “relevant audience”

The Practice Note to the Code provides that the relevant audience ‘is the audience that the advertiser intends to see the marcomms’. The sole intention of the Television Commercial is

to convey an important public safety message to drivers in NSW which form the Target Audience.

The Practice Note to the Code further provides that ‘the Board shall have regard to the audience or readership composition data for the relevant audience’ when determining the relevant audience. Transport for NSW relied on Roy Morgan media consumption data considering seven media channels and how best to reach the 17 - 59 NSW demographic through media. This data indicated television, internet / online video and cinema as having the heaviest consumption and in turn offers the best opportunity to reach our core demographic.

Sex, sexuality and nudity with sensitivity to the relevant audience

The Board of the ASB has noted in relation to the issue of “sex, sexuality and nudity” in its Determination Summary (March 2012) that:

“In areas of subjective and often strongly-held beliefs, it is impossible to say that no single advertisement should ever offend anyone. In practice, the Board would normally interpret rules of this sort to mean that an advertisement should not cause serious offence to the members of the group in question or the general community”.

The notion of “serious offence” contemplates a strong reaction and an overall negative impression created by the Television Commercial as a whole, which is not the case. The Commercial is not overly sexualised or lacking sensitivity in relation to sex, sexuality and nudity.

Sex, sexuality and nudity with sensitivity to the relevant audience in the context of the Television Commercial - Section 2.4

In making reference to the issue of mobile phone distraction while driving, the Television Commercial uses cheeky and inoffensive lyrics such as “I can’t keep it in my pants for more than 10 minutes”, “Whoa, what do you think I’m talking about? It’s a smartphone dude...” and “it’s time to put it away”.

The connection is clearly made between the “it” referring to a smartphone, which is supported when the camera zooms in on the smartphone in Derek Anderson’s hand at 0:13/1:00 minutes of the Television Commercial.

Although the lyrics of the Television Commercial could be interpreted as having sexual innuendo, the lyrics are not overt or overly sexualised, as has been considered important in previous ASB case reports in determining there to be no breach of section 2.4 of the Code (for instance, 0371/12, Dick Smith Electronics). The parts of the Television Commercial the subject of the complaint are stylised and we note that there is no nudity or explicit images in the Television Commercial.

Further, it is important that the sexual innuendo is mild and unlikely to be understood by children. We note that the Television Commercial is not scheduled to air on television before 19:30 pm so children are unlikely to come across the Television Commercial. Most reasonable members of the community would accept that the lyrics in the Television Commercial are subtle to the point that it is extremely unlikely that any child would pick-up on any sexual innuendo, should they come across it.

Focus group testing of the campaign with the Target Audience recognised the concept as cheeky but did not highlight the concept as offensive or as overly sexualised or lacking sensitivity in relation to sex, sexuality. The mild sexual innuendo is relevant to the message which is that using your mobile phone whilst driving is not acceptable regardless of the reason.

Other Considerations under section 2 of the Code

We note that in addition to considering specific issues raised by the individual complainant, the ASB Board will also review the advertisement in its entirety against Section 2 of the Code. The only other potential issue that may be raised under the Code in relation to the Television

Commercial is whether the language used in the Commercial is appropriate in the circumstances, in accordance with section 2.5 of the Code. Section 2.5 of the Code is often considered by the ASB in conjunction with section 2.4.

There is no strong or obscene language whatsoever used in the lyrics of the Television Commercial, and, as such, the Commercial does not breach section 2.5 of the Code.

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 is sexist in its suggestion that men, not women, text and drive and that it contains sexual innuendo which is offensive.

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 the advertisement features Derek Anderson singing a song with lyrics about keeping your hands off your mobile phone whilst driving and that it is part of a road safety campaign aimed at young drivers.

The Board noted the complainant’s concerns that the advertisement is sexist because it only shows a man texting whilst driving, and not a woman.

The Board noted that it had previously dismissed a similar concern about an advertisement which highlighted domestic abuse against women but made no mention of domestic abuse against men (0302/13). The Board noted that in that instance it had considered that “by highlighting the issue of violence against women the advertisement is not negating the serious issue of violence committed against men”. The Board noted that in this instance the advertisement is not suggesting that only men would text and drive and considered that the overall message is about the action of texting whilst driving and that the gender of the person used in the advertisement is not relevant to the important safety message the advertisement is conveying.

Based on the above the Board considered that the advertisement did not portray or depict material in a way which discriminates against a person or section of the community on account of gender.

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 2.4 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 that it had previously considered an internet version of the advertisement in case 0227/13 where it noted that “the lyrics at the start of the advertisement could be interpreted as being a reference to touching yourself but considered that the advertisement quickly makes it clear that Derek is singing about keeping your hands off your phone. The Board noted that road safety campaigns have traditionally used shock tactics to get the important safety message across and considered that in this instance the use of humour is intended to appeal to the younger target demographic and that mild sexual innuendo is not inappropriate or offensive in this context.”

The Board noted that in the current advertisement the opening sequence shows Derek singing about “whipping it out” and we see his arm moving up and down rapidly. The Board noted that this depiction could be interpreted as a reference to auto-eroticism but considered that the advertisement quickly makes it clear that Derek is tapping his phone against his thigh and his lyrics are related to keeping your hands off your mobile phone whilst driving. The Board noted that Derek is seen by a female driver who looks disapproving and considered that her reaction is further endorsing the fact that his actions are not desirable.

The Board noted that the advertisement has been rated ‘PG’ by CAD and considered that the advertisement does make it clear that the message is about keeping your hands off your mobile phone whilst driving and the level of sexual innuendo is unlikely to be understood by young children and is sufficiently mild to be not inappropriate for children to view.

Consistent with its previous determination the Board considered that the use of humour in the advertisement is intended to appeal to the younger target demographic and that overall the sexual innuendo is not inappropriate or offensive in this context.

The Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and determined that the advertisement did not breach Section 2.4 of the Code.

Further finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaint.