



Case Report

1	Case Number	0471/17
2	Advertiser	University of Sydney
3	Product	Education
4	Type of Advertisement / media	Billboard
5	Date of Determination	08/11/2017
6	DETERMINATION	Upheld - Modified or Discontinued
7	Date of reviewed determination	24/01/2018
8	Determination on review	Upheld - Modified or Discontinued

ISSUES RAISED

2.1 - Discrimination or Vilification Race

DESCRIPTION OF THE ADVERTISEMENT

The advertisement complained about in this case is the “unlearn criminal” billboard. The image depicts children’s hands gripping a chain link fence, under the headline “unlearn criminal”, with the word “criminal” struck-out.

THE COMPLAINT

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

I believe this violates the AANA code of ethics specifically section 2.1"2.1 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. "

This is offensive particularly given the over representation of Aboriginal and Torres Strait Islander women in our prison system. These women make up around 34 per cent of the female prison population but only 2 per cent of the adult female population.

THE ADVERTISER’S RESPONSE

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

The substantive elements of our response are as follows.

We have considered the complaint and the advertisement in question in light of the provisions of the AANA Code of Ethics (“the Code”).

The advertisement, along with other advertisements in the ‘Unlearn’ campaign, communicates the University’s new undergraduate education model, which aims to give students the critical thinking skills that allows them to question established beliefs and to think critically in order to foster positive change in the world.

The advertisement does not depict Aboriginal or Torres Strait Islander women, nor does it depict a prison setting per se.

The image used is an editorial image sourced from the United Nations Refugee Agency (UNHCR) depicting the hands of children in detention holding a chain-link fence, and it is intended to provoke thought regarding the way society treats children in detention. This is an area of academic research focus for University of Sydney academics Professor Ben Saul and Professor Mary Crock. They are exploring the intersection of the law with humanity, legal rights and human rights. These academics are working on projects with Harvard, AusAid and the United Nations to challenge society’s thinking about immigration and refugee law in Australia and around the world, questioning how child refugees are selected for resettlement, and what it is like to live as a refugee with a disability.

The University contends that this meaning is clearly communicated, that it is clear that the image is of children rather than women, and that the image does not allow the audience to identify the children depicted in the advertisement as belonging to any particular race or having any particular ethnicity.

While the University has academics who research the issue of Aboriginal and Torres Strait Islander incarceration rates and who share the complainant’s concerns about the plight of Aboriginal and Torres Strait Islander women in prison, this advertisement is about an entirely different issue. It is the University’s view that the complaint does not reflect the general public’s perception of the advertisement or of the broader campaign, which has been very well received and clearly understood.

The University’s strong view is that the advertisement does not portray people or depict material in a way that discriminates against or vilifies any person or any section of the community on account of race, ethnicity, age, or any other ground, as stipulated under section 2.1 of the Code. If anything, it encourages the very opposite – it advocates an approach to controversial subject matter that is non-discriminatory and open- minded.

On the above bases, we submit that the advertisement does not breach provision 2.1 of the Code. Further, we submit that the advertisement does not breach any other provisions 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 complainant’s concerns that the advertisement depicts people from a particular ethnic background in a negative way.

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 Practice Note to Section 2.1 of the Code which provides the following definitions:

“Discrimination – unfair or less favourable treatment

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

The Board noted this outdoor advertisement features a wire fence with smallish hands, reaching through the holes. The hands appear to be of children or young people and are dark skinned. The words on top of the image read “unlearn criminal.” The details of the advertiser, Sydney University appear on the bottom right and the words “we’ve reimagined the way we teach, so our students can reimagine the world.”

The Board noted the complainant’s concerns that the advertisement is offensive because of the overrepresentation of Aboriginal and Torres Strait Islander women in our prison system.

The Board noted the advertiser’s response that the campaign promotes the University’s education model which ‘aims to give students the critical thinking skills that allow them to question established beliefs and think critically...’.

The Board considered that the word ‘criminal’ is very prominent – even though it is struck through- and is likely to be the word that catches the eye of the reader in the first instance and that this word and the image of dark skinned hands behind a fence are the most impactful parts of the advertisement. In the Board’s view the overall impression of the advertisement is that non Caucasian people are criminals – whether in the context of being held in gaol or in detention camps.

The Board noted that the advertisement uses the word ‘unlearn’ and has a description of the ‘We’ve reimagined the way we teach, so our students can re-imagine the world’ and considered that this is the component of the advertisement which is endeavouring to ask the audience to not make assumptions about what they can see. The Board considered that the meaning of the word ‘unlearn’ is ambiguous and that the concept of the campaign is quite complex. In the Board’s view the overall impression of the advertisement, in the medium of an outdoor advertisement, would be likely to be often seen in quite a fleeting manner is likely to be at best ambiguous but is more likely to be taken as representing a stereotype of non-

caucasian young people being held in gaol or other form of detention.

The Board considered that the depiction of solely non-caucasian young people in the image, accompanied by the prominent word 'criminal' is a depiction that gives less favourable treatment to people on account of their ethnicity or race.

The Board considered that though the intent of the advertiser was in fact to ask people to challenge stereotypical assumptions regarding race, the particular emphasis of the word 'criminal' words in connection with the choice of image was unlikely to give that impression and in the Board's view did depict material in a way which discriminates against a section of the community on account of ethnicity. The Board determined that the advertisement breached Section 2.1 of the Code.

Finding that the advertisement did breach the Code, the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We refer to your letter advising that our advertisement breached one or more of the Advertiser codes administered by the ASB. We wish to advise that the campaign period has ended and the "Unlearn Criminal" advertisement, which is the subject of the complaint, has been taken down.

INDEPENDENT REVIEWER'S RECOMMENDATION

I confirm that I have accepted the request for review of the decision of the Advertising Standards Board (ASB), received from the University of Sydney, on 1 December 2017.

I have now viewed and reviewed the relevant material considered by the Board, together with the additional submission concerning new evidence provided to me by the advertiser.

The ground of review relevant to this request is that 'new or additional relevant evidence which could have a significant bearing on the determination becomes available'. If this ground is submitted, there is a requirement that:

An explanation of why this information was not submitted previously must be provided. The explanation is as follows. The complainants have cited the new research completed since the complaint was received as being relevant to the Board's determination. The market research outcomes were received by the University only six days after the Board's determination. The short time frame indicates that the research was not commissioned following the determination by the Board. That is supported by the fact that the research covers other advertisements in the campaign.

The relevant term in the AANA Code of Ethics most commonly raised in the complaints is clause 2.1 which 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 provisions of Section 2 of the Code are subject to Prevailing Community Standards. Prevailing Community Standards are determined primarily by the Board, whose members are representative of the community, on a case by case basis, as part of the complaints process.

In effect the Board found that the advertisement discriminated against people on account of their ethnicity or race. That is, the determination was discriminatory. 'Discrimination' is defined in the Code as 'unfair or less favourable treatment'.

The Board in its determination placed weight on two circumstances relating to the advertisement:

'the word 'criminal' is very prominent ... and that this word and the image of dark skinned hands behind a fence are the most impactful parts of the advertisement' and that 'the overall impression of the advertisement is that non Caucasian people are criminals - whether in the context of being held in gaol or in detention camps'.

'the overall impression of the advertisement, in the medium of an outdoor advertisement, would be likely to be often seen in quite a fleeting manner is likely to be at best ambiguous but is more likely to be taken as representing a stereotype of non-Caucasian young people being held in gaol or other form of detention.

These reasons have been challenged by the new evidence provided by the University of Sydney.

Although the number of people contacted by the market researchers (477) was relatively small, nearly half were prospective undergraduate or post-graduate students, and the remainder were described as the 'informed public', 43 per cent of whom were 'interested in attending university'.

In other words, the 'relevant audience' surveyed was relatively well educated and were informed members of the community. The choice was made since these were the people for whom the campaign was intended – current or potential tertiary students.

As the Code of Ethics requires the Board to take the content of the advertisement into account in the context of the relevant audience, this sample of people surveyed by the market research was appropriate and needed to be taken into account by the Board. The Board did not have access to the market research at the time it made its determination.

The research findings were that there was overwhelming support for the message of the campaign that 'unlearning' or rethinking of one's preconceptions was a feature of the University of Sydney's educational programs. Some 67 per cent of those surveyed were positive about the campaign. More specifically, the highest percentage (30 per cent) agreed that the criminal advertisement 'makes me think [University of] Sydney provides a quality education experience'.

The research indicated that that the word cloud responses to the key messages in the criminal advertisement used words such as 'change', 'New', 'different', 'unlearn', 'educate', 'World better', 'think'. None of the words appear to reflect a perception of those depicted as 'criminals' or refer to their non-Caucasian ethnicity or race. That supports the view that the line through 'criminal' was seen and appropriately taken into account.

The University has not provided the Board with all the responses received. However, in the

University of Sydney's letter to the Board seeking a review the quoted responses to the question 'what were the key messages' specifically noted responses such as 'refugees are not criminals', 'that widely held assumptions about 'criminals' and asylum seekers need to be challenged to progress' and 'changing our notions of what was traditionally seen, or is sometimes still considered criminality, by depicting what looks to be refugees'. These responses did not indicate that viewers saw those depicted in the advertisement as criminals. The University also stated that 'From the individuals surveyed there was no reference to indigenous or dark-skinned people in prison or other comments which would indicate a strong misinterpretation of the campaign's meaning'. Since these reported responses reflect the overall positive response to the campaign identified by the market researchers, including the word cloud responses, I accept that the quotations accurately reflect the tenor of the responses received.

If the viewing channels identified in the marketing research are considered, only 20 per cent of the 219 people surveyed in relation to the criminal advertisement saw the advertisement at a bus or train station. It can be assumed that this would predominantly be the 'outdoor advertisement' source referred to by the Board viewing of which would be 'fleeting'. In my experience long waits at such venues often leads to more than a 'fleeting' view of advertisements on display.

If billboards and posters are added to bus and train stations, some 44 percent or less than half those surveyed saw the advertisement on either billboard, poster, bus or train station. That is less than half those surveyed saw the advertisement in an outdoor location. In any event, even if viewing of any of these sources was 'fleeting' the earlier evidence indicates that the intention of the advertisement was correctly identified. The research was targeted at a specific segment of the community – existing or would be tertiary educated persons. The responses indicating that the messages intended by the campaign were understood. The audience of the marketing campaign, being above average intelligence, were evidently capable of discerning the message being presented in the campaign.

Nonetheless, the University also noted that the train station advertising was estimated to have reached roughly 22 million people, a much more substantial group than those from whom specific responses were sought. Despite that large number of viewers, representative of the community at large, the University notes that the complaint against the advertisement was made by only one person and there were no official complaints to the University. This evidence, coupled with the new evidence provided by the specific responses to the market research, contradicts the Board's assumption that the crossing out of the word 'criminal' was unlikely to be perceived and would create misinterpretation of the campaign's meaning.

Accordingly, I recommend that the Board reconsider its decision on this advertisement in light of the new evidence received.

THE DETERMINATION ON REVIEW

The Board noted the request for review of its decision and the findings of the Independent Reviewer.

In particular the Board noted the recommendation from the Independent Reviewer that the Board's determination be reviewed in light of new evidence received.

The Board noted research provided by the University which consisted of campaign research surveying three audience groups and their reactions to the advertisement.

The Board considered the research findings which showed that the majority of research participants would not misinterpret the advertiser's intended meaning and would understand the campaign related to challenging assumptions.

The Board then considered this new material in determining 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 the new research was conducted with current and potential students and with 'informed public' members and the research indicated that 'audiences understood that the message was about the University changing education and encouraging people to question the established'. The Board noted the advertiser's view that the research indicated that people have not misinterpreted the campaign and that having received only one formal complaint strongly suggests the campaign's message was understood by most commuters.

The Board noted that it needed to consider whether the advertisement 'portrayed or depicted material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality,...

The Board noted that the Practice Note defines:

- Race – viewed broadly this term includes colour, descent or ancestry, ethnicity, nationality, and includes for example ideas of ethnicity covering people of Jewish or Muslim origin
- Ethnicity – those with a common social identity as a result of customs, traditions and belief about historical origins

• Nationality – people belonging to a particular nation either by birth, origin or naturalisation. This can change over time so a person born in the United States who becomes a citizen of Australia by marriage may describe their nationality as both Australian and American.'

The Board considered that the relevant group of people depicted in the advertisement is people of a certain 'race' with the only images being of brown skinned people.

The Board also noted that the AANA Practice Note to the Code defines:

- Discrimination – unfair or less favourable treatment;

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

A minority of the Board felt that the research was sufficient to show that the public aren't confused by the message and that the viewers of the advertisement would understand the meaning of the advertisement to be that the University will educate through challenging the assumptions people make about, in this case, people of a certain race specifically people either behind bars or in detention camps.

In particular, the minority of the Board considered that the logo and link to an educational institution, which was displayed prominently in an orange box, was enough to place the advertisement in the context of provoking thought and challenging conceptions. The minority felt that this would be enough to clarify that the advertiser was not suggesting that non-Caucasian people are criminals and that the research provided by the advertiser supported this interpretation.

The majority of the Board noted that the market research demonstrated that an informed audience understood the meaning of the advertisement. However the majority of the Board considered that the respondents to this research were from the advertiser's targeted audience, not the broader community, and also noted that there was no indication from the advertiser about the race or ethnicity of the research participants.

The majority of the Board considered that the research did not provide insight into the likely interpretation of the advertisement of the broad and larger audience, that would see the

advertisement. The majority of the Board considered that the research did not take into account how the broader uninformed community may perceive the advertisement. The Board also noted that as a billboard advertisement, the broad community would only have a fleeting view of the advertisement.

The majority of the Board considered that the advertisement was depicting people of a certain race in the advertisement and that the initial impression of a wire fence with non-Caucasian hands and the words 'Unlearn Criminal' in a prominent position, was a depiction that suggests that people of a certain race are criminals.

The majority of the Board noted the word 'criminal' did have a strike through it – but considered that this was not obvious and people viewing the advertisement fleetingly would be likely to only see the words 'unlearn criminal'.

The majority of the Board felt that the prominence of the words 'unlearn criminal' in conjunction with the depiction of non-Caucasian hands behind a wire fence, is a depiction that is unfair to people of that race or could be seen as a depiction that is humiliating to people of that race.

After taking into account the Independent Reviewer's finding and the new evidence provided by the advertiser, the Board considered that the depiction of brown skinned people behind a fence, in conjunction with the text 'unlearn criminal', is a depiction of people in a manner that is discriminatory or vilifying of people of that race. The Board determined that the advertisement breached Section 2.1 of the Code.

Finding that on review the advertisement breached Section 2.1 of the Code, the Board confirmed its initial decision to uphold the complaint.