



# Case Report

1	Case Number	0234/15
2	Advertiser	Victorian Hearing
3	Product	Health Products
4	Type of Advertisement / media	Internet - Social
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

This advertisement was placed on the Victorian Hearing Facebook page on the 5th February 2015 and features 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. 100% invisible. 24/7 wearable. Shower-proof".

## THE COMPLAINT

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

*Children or adults who have current hearing aids and cannot afford the new 'invisible' ones are pointed out as wearing UGLY devices. Imagine the impact this awareness has on children already feeling different due to their difficulties and the ammunition provided to those already bullying them?*

*This is shameful advertising, which tells those (including kids) that hearing aids are something that should be hidden because of the ugliness. Not only is this disrespectful to those who are hearing impaired but extremely offensive.*

*This advertisement has offended a large proportion of the hard of hearing and deaf community. Saying that 'hearing aids can be ugly' only reinforces people to feel ashamed of their hearing ability and to feel more self-conscious about their image. I'm particularly*

*concerned about this message being seen by younger generations. Children have enough pressure put on them about their image. This shouldn't be one of them.*

*As a mother of a Deaf child, I am deeply offended by this advertising campaign. It is sending a very negative message to anyone that uses hearing aids. I strongly believe it is damaging to children especially. These ads are on trams and various other places in public where children will see them. It is putting someone down for their disability. It is shameful.*

*The advertising is offensive for people who currently use behind the ear hearing aids and other cosmetically unappealing hearing devices such as cochlear implants.*

## **THE ADVERTISER'S RESPONSE**

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

*The advertisement was first published on the Victorian Hearing facebook page on week of 5 February 2015. It contains the same pictures and text as the advertisement the subject of the complaint set out in your reference 0233/15, and as such our detailed response to that complaint should also be taken as a response to this complaint.*

*We first became aware of a social media campaign raising complaints, similar to that the subject of the complaints to the Board, on 25 May 2015.*

*On this date we removed the advertisement from Victorian Hearing facebook page.*

*Unfortunately, however, the participants in the social media campaign have circulated the advertisement to an audience well in excess of those that visit our facebook page.*

*Further to our detailed response (under reference 0233/15), the advertisement being published on our facebook page is clearly not a media that is directed to Children, as facebook is not a media intended for use by Children.*

### *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 Facebook 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.