

<b>COMPLAINT NUMBER</b>	22/198
<b>ADVERTISER</b>	Universal Pictures NZ
<b>ADVERTISEMENT</b>	The Black Phone, Television
<b>DATE OF MEETING</b>	23 August 2022
<b>OUTCOME</b>	Upheld Advertisement not to be used again

### Summary of the Complaints Board Decision

The Complaints Board Upheld seven complaints about an advertisement for the film *The Black Phone*. The Complaints Board said the advertisement contained adult content which was likely to cause fear and distress to some viewers and was in breach of Principle 1 and Rule 1(g) of the Advertising Standards Code.

### Advertisement

The Universal Pictures television advertisement promoting the film *The Black Phone* shows various scenes from the film including showing a child being locked in a basement by an abductor who wears a series of horror masks. There are shots of other children with bloody faces, the child trying to escape and a black phone on the wall which rings and the child answers and hears menacing messages. Interspersed with the imagery is the text "If you haven't heard of the black phone you soon will." The film is rated R16.

### Summary of the Complaints

There were seven complaints about this advertisement. The Complainants were concerned the placement of the advertisement was inappropriate given that children were watching.

Copies of the complaints are in Appendix 1.

### Issues Raised:

- Social Responsibility
- Fear and Distress

### Summary of the Advertiser's Response

The Advertiser said the advertisement promotes a supernatural thriller film which contains numerous scenes which could be scary in nature and suspenseful. The advertising material has been produced within the context of the product being advertised. The Advertiser sought spot list approval from the Commercial Approvals Bureau who classified the advertisement with an M rating. The M rated guidelines were adhered to. Of the seven complaints, three advertisements played after 7:30pm and one was in the News. The remaining three spots ran on livestream/OnDemand with an 18-44 age restriction.

A copy of the Advertiser's response is in Appendix 2.

### Summary of the Media's Response

The Commercial Approvals Bureau confirmed the advertisement had been given an M classification which ensures that an advertisement will only play at times or during programmes where parental guidance is recommended, being post 7:30pm or during programming aimed at a non-child audience.

A copy of the Media's response is in Appendix 3.

### Summary of the Broadcasters' Responses

TVNZ confirmed the advertisement did not play on free to air TV during *The Chase*, *Shortland Street* or *TVNZ 1 News* at 6pm and those Complainants must have been viewing through the live streaming or OnDemand platforms which target user log-in profiles. It confirmed the advertisement played during *MasterChef Australia*, which is rated PG at 8:20pm. TVNZ confirmed only 8.6% of the viewing audience were under the age of 15.

Sky Sport 1 confirmed the advertisement played during the *Cadbury Netball Series* at 7:45 pm and provided Nielsen data to confirm the viewing audience was predominantly 18+ years old.

Copies of the Broadcasters' responses are in Appendix 4.

### Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

#### ADVERTISING STANDARDS CODE

**Principle 1: Social Responsibility:** Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

**Rule 1(c) Decency and Offensiveness:** Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule

**Rule 1(g) Fear and distress:** Advertisements must not cause fear or distress without justification.

#### Preliminary Matter

The Complaints Board said Rule 1(c) - Decency and Offensiveness was not relevant to the advertisement before it and did not consider this Rule as part of its deliberations.

#### Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 22/102 and 21/048 which were both ruled No Grounds to Proceed by the Chair of the Complaints Board.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

**Decision 22/102** concerned a television advertisement promoting the PG-13 rated Marvel film, *Morbius*. The advertisement shows a montage of dramatic scenes, showing a man held at knifepoint, a man flying through a subway tunnel and a hooded creature with sharp teeth.

The Chair of the Complaints Board ruled there were no grounds for the complaint to proceed, given that the GXC (General except Children) rated advertisement had played during a PG (Parental Guidance) programme which was not intended for children under the age of 13. The Chair took into account the audience figures for the date and time the advertisement was broadcast and noted less than 1% of the audience were children between the ages of 5 and 14.

**Decision 21/048** concerned an OnDemand television advertisement promoting the PG-13 rated Madman Entertainment action film *The Marksmen*, which showed images of guns, violence and a car crash.

The Chair of the Complaints Board ruled there were no grounds for the complaint to proceed. The Chair noted the Complainant had viewed the advertisement while watching TVNZ OnDemand, where advertisements are served using the account holder profile information, such as age and gender. She said the Advertiser had targeted a male 35 +age demographic and would only have been served to those viewers whose profiles were registered in line with these criteria.

### **Complaints Board Discussion**

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised, which in this case is:
  - Context: M rated trailer advertisement for a film rated R16
  - Medium: OnDemand/Live Stream, Free to Air and pay television
  - Audience: Television viewers across platforms
  - Product: The "supernatural horror" film *The Black Phone*

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement would be there is a scary horror film coming to cinemas which involves children being kidnapped and held by a masked man.

The Complaint Board began by looking at the product, placement and audience of the advertisement:

#### *Product*

The Complaints Board considered the content of the film trailer advertisement and compared it with similar advertisements from precedent decisions. The Board noted the advertisement showed very realistic scenes including a child being accosted on the street, abducted and confined in a basement by a masked man. The images included children covered with blood who looked like they had been harmed and what appeared to be a corpse strung up on hooks. The advertisement showed the child trying to escape and menacing messages coming through the phone on the wall.

The Board did not agree the images had a clear supernatural element and the realistic nature of the advertisement exacerbated the issue of an appropriate viewing audience. The Complaints Board said the content and themes in the advertisement differentiated it from the precedent decisions.

#### *Placement*

The Complaints Board discussed the placement of the advertisement based on the complaints. The Complaints Board noted five Complainants had seen the advertisement through the live-stream or OnDemand platforms during *The Chase*, *Shortland Street*, *Location Location* and *TVNZ 1 News*. The Board confirmed that advertisements on these platforms are served to consumers using the account holder profile information, such as age and gender. The advertisement had targeted a 18-44 age group. However, the Board also noted that

children had seen the advertisement while watching programmes suitable for general audiences via this platform.

The Board noted that two Complainants had viewed the advertisement while watching free to air or subscription television during *Masterchef Australia* (PG) and the *Cadbury Netball Series* (unrated) and that these programmes played at 7:30pm.

#### *Audience*

The Complaints Board noted the advertisement had been given an M rating by the Commercial Approvals Bureau which means it:

“May be broadcast after 7.30pm or during news programmes, or daytime programmes suited for mature audiences but not necessarily unsuitable for child viewers when subject to the guidance of a parent or an adult.”

The Complaints Board noted the audience data received from TVNZ regarding those watching *MasterChef Australia* on the day of the complaint showed that 8.6% of the viewing audience were children aged between 5 and 14 years old.

The audience data received from SKY Sport regarding the Nielsen’s viewer panel showed the percentage of children watching the *Cadbury Netball Series* was very low and showed as 0. The Complaints Board noted this did not mean there were no children watching but reflected the sample size of the panel.

#### *Is the advertisement likely to cause cause fear or distress without justification?*

Having considered the product, placement and audience aspects of the complaint, the Complaints Board unanimously agreed the advertisement was likely to cause fear or distress for some audience members, including children who had viewed the advertisement via OnDemand/Live streaming, free to air and subscription platforms.

The Complaints Board said it disagreed with the M classification the advertisement had been given and considered the content of the advertisement and theme of the film warranted a higher level of protection. The Board did not agree that parental guidance required of the rating provided sufficient protection for vulnerable audiences who were exposed to the images. The Board said it was a reasonable expectation that programmes such as *Master Chef Australia* and the *Cadbury Netball Series*, which screened prior to 8:30pm could be viewed without encountering this level of challenging content.

When considering the likely fear and distress caused by the advertisement, the Complaints Board said the negative reaction of viewing the images in the trailer was not something which could be easily mitigated by a parent’s or caregiver’s presence.

The Complaints Board said that although OnDemand/Live Streaming platforms serve advertisements based on the age of the profile holder, advertisers and media need to be conscious that in reality, children do view content through adult accounts. As such, when the content required it, overlaying additional protection with the use of tools such as time targeting advertisements could be employed.

#### *Was the advertisement prepared and placed with a due sense of social responsibility?*

The Complaints Board said the advertisement had not been placed with a due sense of social responsibility given its content and themes and more care was needed to protect vulnerable audiences from viewing scenes from an R16 film.

The Complaints Board ruled the advertisement was Upheld, taking into account context, medium, audience and product and was in breach of Principle 1 and Rule 1(g) of the Advertising Standards.

**Outcome**

The Complaints Board ruled the complaints were **Upheld**.

Advertisement not to be used again.

**APPEAL INFORMATION**

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website, [www.asa.co.nz](http://www.asa.co.nz). Appeals must be made in writing with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.

## APPENDICES

1. Complaint
  2. Response from Advertiser
  3. Response from Media
  4. Response from Broadcasters
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### Appendix 1

#### COMPLAINT 1

Multiple times there have been inappropriate advertisements for horror movies in prime family viewing time. These need to be removed, the latest one is a question is the advertisement for Black Phone

#### COMPLAINT 2

I'd like to complain about an advertisement for an upcoming horror film that aired at 7:10 pm on TV 2. My family and I were eating dinner with the tv on and the advert which was incredibly scary and disturbing came on. There were no warnings for the R16 advertisement and I would be incredibly angry if my young child and young nieces were around and saw that. Thankfully they were not in the room at the time. I understand advertising for movies like this later on in the evening but so early when young children are still awake is horrible. Why is it that for strobe lighting in movies or tv shows there is a warning beforehand, or when mature topics are discussed on tv a warning is mentioned before showing the news story or the movie/tv show, yet for something like this there are no warnings? There should be a screen that displays a warning like this before something so mature and disturbing plays. I am an adult and even I don't want to watch something like that, let alone my children. I really hope that you consider when you play these adverts a little more carefully.

#### COMPLAINT 3

On the 6th July at 7:30pm I was sitting in my lounge with my son watching Location Location on TVNZ+. An advert for a movie started to play. It was very horror graphic and my son (7) got very scared & distressed. These should not be played at these times or if timing these adverts isn't possible, users should be able to select advert ratings to avoid these adverts coming up.

#### COMPLAINT 4

My complaint is that it is general tv hours and my 3 year old and 5 year old have to witness an ad about a horror movie

#### COMPLAINT 5

I would like to complain about the advertising on sky sports 1 at about 1945 15.07.2022 (during the Cadbury series netball coverage) where they deemed it appropriate to show an advert for an R16 horror movie (The Black Phone).

We have young kids and think there will also be many young children watching these games and it is highly inappropriate to show a trailer for a movie with an R16 rating during a netball series that will be seen by many people under the age requirement.

The trailer alone has caused anxiety from my kids (10 and 7) who had been enjoying the netball so far.

#### COMPLAINT 6

We are watching Master chef (Australia), with our two children. One 12 years old and one 8 year old, the advertising for The Black Phone which is a horror movie is being advertised, in

between 730 and 830pm. We feel this is not an appropriate advert for before 8:30 pm <https://youtu.be/5Ltr8aosmPM>

### COMPLAINT 7

I would like to complain about an advertisement for "the black phone" an r16 movie due out soon.

This advert was shown during tvnz 6pm news on sunday 17th july 2022.

My 10 year old son was watching the sports news with us.

He was horrified.

This movie promo is not suitable. I even found it disturbing and i am 41 years old.

### Appendix 2

#### RESPONSE FROM ADVERTISER, UNIVERSAL PICTURES NZ

Re: Complaint: 22/198 The Black Phone

The below response is in relation to the complaints received regarding the Universal Pictures advertising for *The Black Phone*, specifically regarding TVC advertisements Principle 1: Rule 1 (c) Decency and Offensiveness and Rule 1 (g) Fear and Distress.

Thank you for bringing this to our attention, we take any complaint seriously and can confirm that;

- broadcast TV was **stopped 23 July 2022**
- livestream activity **stopped 31 July 2022**

Universal Pictures adhere to the ASA Advertising Standards Code and guidelines. *The Black Phone* is a supernatural thriller film which contains numerous scenes which could be scary in nature and suspenseful. It would therefore be reasonable to justify that our advertising materials have been produced within the context of the product being advertised.

Universal Pictures strive to advertise films of this content in a manner that remains appropriate for all consumers.

All advertising content from Universal Pictures is broadcast on FTA TV once rated by the Commercials Advice Bureau (CAB) which is industry compliant with the advertising standards code of conduct.

To ensure due diligence, prior to activity going live IMD (on behalf of Universal Pictures) liaises with CAB to obtain approval on *The Black Phone* TVC spots.

Universal Pictures produced a number of TV spots for *The Black Phone* TV campaign and each spot was classified by CAB - the TV spot in question received a M rating (as requested, attached is the key number/and spotlist for this campaign).

Approval was obtained by Universal Pictures from CAB with an **M rating**:

**Definition:** May be broadcast after 7.30pm or during news programmes, or daytime programmes suited for mature audiences but not necessarily unsuitable for child viewers when subject to the guidance of a parent or an adult.

The above CAB guidelines were adhered to, and the spot was cleared for broadcast.

It is worth noting that we spend considerable time, resource and investment in refining TVC spots to ensure that these met the required CAB criteria for an M rating. It was also made very

clear to all networks at the start of the campaign that we required precautions and boundaries in place given the nature of the advertising.

Of the seven complaints, three were after 7.30pm and one was in the news. TVNZ investigated the remaining three spots which ran on livestream as part of our programmatic campaign. These spots had an 18-44 restriction from the outset and with additional restrictions put in place notified of the complaint.

- cannot play on g/pg rated content on TVNZ+
- can only play **post 8:30pm** on live stream

Please also note that all advertising materials for this film prior to the film being rated displayed the CTC (Check the Classification) logo for the required duration. Once the film was rated, the full rating (R16 Horror, violence, domestic violence & offensive language) was displayed for the required duration.

Universal Pictures and MediaCom exercised care with the planning and selection of the TV schedule and focused on programming that reached our intended 16+ audience group. We strive to evaluate each media placement to ensure that the materials are being seen by the intended target audience.

We apologise for any distress caused and would like to reassure all parties involved that we have adhered to all required standards and the industry code of conduct in relation to the advertising materials and placements for this film.

Please let us know if you require any further substantiation.

### Appendix 3

#### RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREU

<b>Complaint</b>	<b>22/198</b>	<b>Universal</b>
<b>Pictures</b>	<b>Key: UPI300850</b>	<b>Classification: M</b>

This advertisement for Universal Pictures was approved on 11/07/22 with an 'M' parental guidance required classification. The 'M' classification ensures that an advertisement will only play at times or during programmes where parental guidance is recommended, being post-7:30pm or during programming aimed at a non-child audience.

The trailer advertisement for 'The Black Phone' fits the CAB classification of 'M' as it requires parental guidance.

The classification for commercial advertising suitable for child audiences is 'G'. That is the time for general audience viewing.

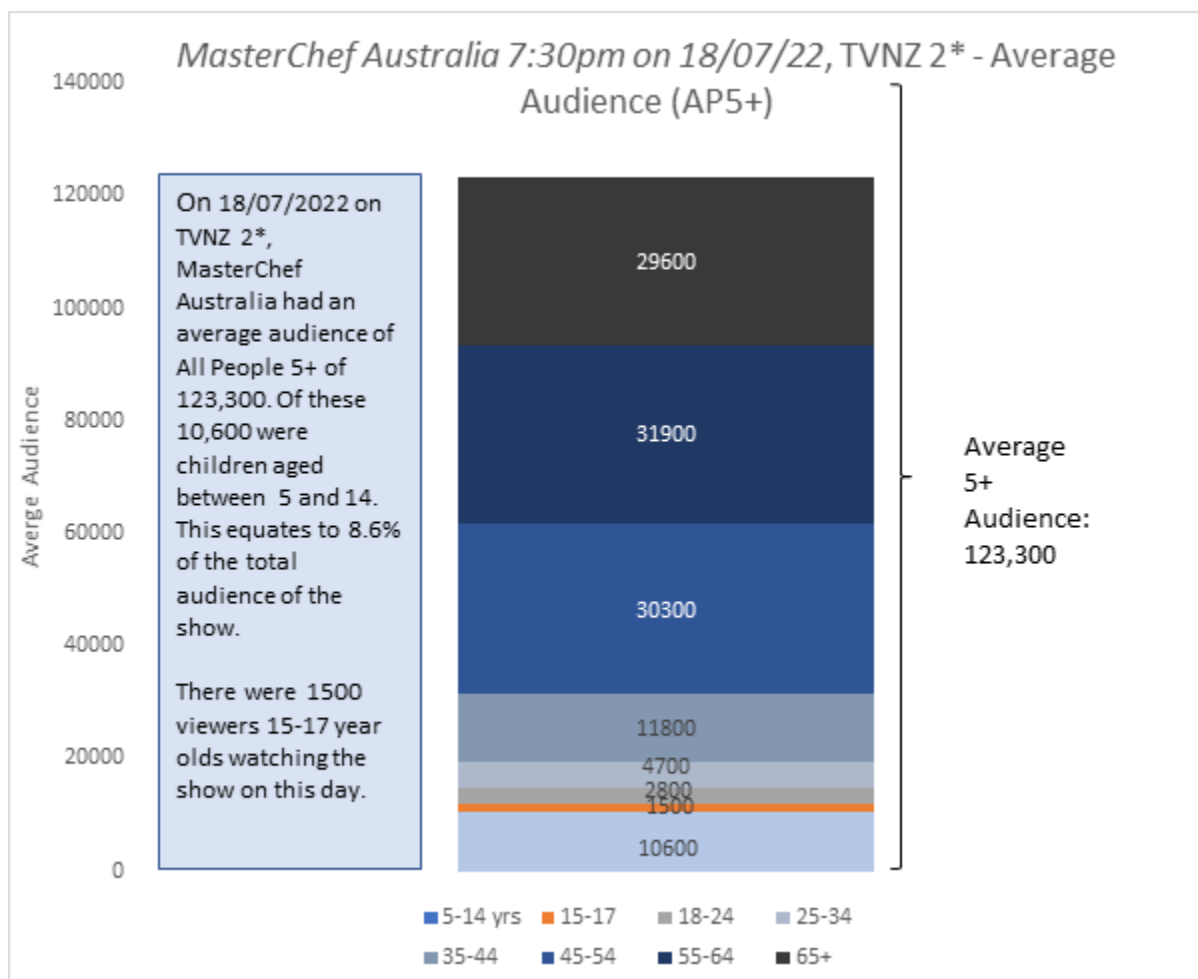
### Appendix 4

#### RESPONSE FROM BROADCASTER - TVNZ

This ad was not broadcast on television at the times specified. It appears that these people were watching the programmes livestreamed through TVNZ+ or just on TVNZ+.

Sales reviewed the content of the ad before it screened and applied a post 8pm restriction for on television plays (spotlist attached). So the only television programme that it screened in from your list was *MasterChef Australia* (it played in the 20.20 break), and here's the audience breakdown for that screening:





For the TVNZ+ screenings (which is all the other programmes) targeting for *The Black Phone* ad was set to 18-44. This age group is identified by user log-in and TVNZ+ provides information about how to have child log-ins which would stop these types of ads being screened if children are viewing which states:

*Ads on TVNZ + may be tailored to your log-in, and personal viewing preferences as an adult as well as to the genre of the programme which you are watching.*

*If you wish, you can create a profile for your children which will mean that they are only served material appropriate for their ages, when they are watching. Information is available here about this:*

*You can set profiles to allow content recommended for preschoolers (2 - 5 years), kids (5 - 12 years) or adults (13+). Within the kids category, you can choose whether or not to allow PG (Parental Guidance) content.*

<https://helptvz.zendesk.com/hc/en-us/articles/360032592172-What-are-the-content-restrictions-on-TVNZ-OnDemand-Profiles->

You can also contact the support team here: [https://helptvz.zendesk.com/hc/en-us/requests/new?mobile\\_site=false&utm\\_source=lterable&utm\\_medium=email&utm\\_campaign=service\\_updatesep19](https://helptvz.zendesk.com/hc/en-us/requests/new?mobile_site=false&utm_source=lterable&utm_medium=email&utm_campaign=service_updatesep19)

Because of these complaints further targeting restrictions have now been added for the TVNZ+ screenings. The ad cannot play on G/PG rated content on VOD and can only play post 8:30pm on livestream for people aged 18-44 years log-ins (the age range targeted).

**RESPONSE FROM BROADCASTER – SKY SPORTS**

The audience was all 18+: