



## **CASE REPORT**

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|-------------------------------|---|
| 1. Complaint reference number | 48/09   |
| 2. Advertiser                 | FOXTEL Management Pty Ltd                       |
| 3. Product                    | Telecommunications                              |
| 4. Type of advertisement      | Transport                                       |
| 5. Nature of complaint        | Portrayal of sex/sexuality/nudity – section 2.3 |
| 6. Date of determination      | Wednesday, 11 February 2009                     |
| 7. DETERMINATION              | Dismissed                                       |

## **DESCRIPTION OF THE ADVERTISEMENT**

There are two advertisements seen on public transport vehicles from Foxtel for its series Gossip Girls.

The first has an image of a man and woman in bed. The woman's head is on the man's shoulder and the man has his arm around the woman. Words on the advertisement say: "Mind-blowingly inappropriate" - PARENTS TELEVISION COUNCIL' and has details about the time and date the show airs.

The second advertisement has an image of a man and a woman in a pool kissing. The couple are shown from the shoulders/chest up and no clothes can be seen. Words on the advertisement say: "A nasty piece of work" - NEW YORK POST' and has details about the time and date the show airs.

## **THE COMPLAINT**

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

*I strongly feel that this ad is not appropriate for the general public to view. I have a son aged 11 years old and this ad, to him, is mild porn! To show this scene on tv, the channel would have to warn the viewers of "sexual references" or "sex scenes"... so what is that ad doing on the back of buses for EVERYONE to see?!!!*

*I have just followed a Bus with the ad on the back – “Gossip? a Fox 8 series - picture of male & female lying together with the caption “mind blowingly inappropriate”. This is a public bus & we are sick to death of it - haven't we got enough perverts & rapists around without encouraging it.*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

*FOXTEL submits that the Complaints are not valid and that the advertisements in question do not breach the section 2 of the Code of Ethics for reasons set out below.*

*The Advertisements were included on posters and on the back of public buses.*

*The subject of the Advertisements to which the ASB received the Complaints, is a television programme entitled "Gossip Girl". The programme screens on the FOX8 network on the FOXTEL platform at 8.30pm. The programme generally carries an "M" classification.*

### *(a) Depiction of sexual activity in the Advertisements*

*The Advertisements depict teenagers and, in the case of the second advertisement noted below, an*

*older adult, who are clearly at the age of consent. FOXTEL does not believe that people not familiar with the programme would reasonably understand or interpret the people depicted in the advertisements as being under the age of consent.*

*The depiction of sexual activity involving consenting adults in [the advertisement of kissing teenagers in the pool] is low in impact. The adults are kissing and it cannot be reasonably implied that there is any depiction of sexual intercourse. The depiction of sexualised nudity in this advertisement is low in impact as there is no genital visibility or detail. Further, the program the subject of the complaint itself does not include any actual depictions of nudity.*

*There is no sexual activity depicted in [the advertisement of teenagers in bed]. The image is of two people at the age of consent who appear to be asleep in bed. The depiction of sexualised nudity in this advertisement is low in impact as the female does not appear to be naked and there is no genital detail.*

*(b) Description of sexual activity in the advertisements*

*FOXTEL does not believe that the scripting used in the Advertisements breach section 2.3 of AANA Advertiser Code of Ethics as there is no use of highly sexual or coarse language in either of the Advertisements. The sexual impact of this language in the Advertisements is therefore low.*

*The advertisement of kissing teenagers in the pool contains the words, "A nasty piece of work". FOXTEL does not believe that this scripting breaches Section 2.3 of the AANA Advertiser Code of Ethics as these words are not sexually: • exploitive; • offensive; • gratuitous; or • detailed.*

*The advertisement of teenagers asleep in bed contains the words: "Mind-blowingly inappropriate". FOXTEL does not believe that this scripting breaches Section 2.3 of the AANA Advertiser Code of Ethics as these words are not sexually:*

*• exploitive; • offensive; • gratuitous; or • detailed.*

*Further, FOXTEL submits that the quotes contained in the Advertisements were clearly intended to raise Interest in the program by contrasting critical quotes of bodies or publications that disapproved of the program with images that caused such critical commentary. This was obtained not through explicit or offensive language or through depictions of actual nudity or, even in the case of the second advertisement described above, implied nudity. Rather, the imagery used was neither sexually explicit nor unnecessarily provocative.*

*FOXTEL does not agree with the complainants view that FOXTEL breached clause 2.3 of the AANA Advertiser Code of Ethics by virtue of the fact that the Advertisements do not contain depictions or language that is sexually inappropriate for public viewing. We thank you for providing us this opportunity to respond to the Complaints.*

## **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 about the sexually suggestive nature of the images shown on the back of buses and considered the application of Section 2.3 of the Code, relating to sex, sexuality and nudity.

The Board noted that, in both advertisements, there was nothing to suggest that the man and woman depicted were not of the age of consent. The Board noted that there was implied nudity in the advertisement depicting the couple kissing in the pool, but no nipples or genitals visible. The Board also noted that the woman depicted in the bedroom advertisement was clothed and the couple appeared to be sleeping in bed.

The Board considered that the combination of the image and text in both advertisements were sexually suggestive. However, the Board noted that these were not explicit sexual references. The Board therefore considered both advertisements treated sex, sexuality and nudity sensitively to the relevant outdoor audience and found no breach of Section 2.3 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the

complaint.