



Case Report

1	Case Number	0009/12
2	Advertiser	Naked Tan
3	Product	Toiletries
4	Type of Advertisement / media	Billboard
5	Date of Determination	08/02/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

A male and female in a natural/forest type surrounding. The male is covered from the waist down. The female figure is shirtless with her long hair being used to cover her chest. The female also has peacock feathers attached to her back as wings and feathers completely covering her groin area.

THE COMPLAINT

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

There is a supposed beauty salon across the road from where I live which calls itself Natural Beauty Salon 238 Liverpool Rd Enfield NSW which has been advertising the above products. One of the posters is about 2 ½ ft by 3 ft which I can see clearly out of my lounge room window and when I am in my backyard.

I have complained to Council but they can't do anything about it. They suggested I contact your organisation I really find this advertising offensive and unnecessary. There are two primary schools within a short walk of this business and I object most strongly to having this advertisement in my face all of the time It is once again advertising that turns women's bodies into objects the male has shorts on but the female is naked. The poster shows the woman full length to half way down her thighs. The man of course has shorts on.

I am not a prude but I object to this advertising being forced on me whenever I look out my window or garden in my back yard.

THE ADVERTISER'S RESPONSE

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

We confirm that your correspondence advised our client to provide comprehensive comments in relation to the complaint, taking into account the need to address all aspects of section 2 of the advertising codes for the Board to consider.

We confirm our office has reviewed the issues raised under Section 2 of the AANA Advertisers Code of Ethics. In order to address all relevant advertising codes, we will specify which specific subsections are applicable to our client's circumstances.

We understand that Section 2 of the Code incorporates:

- AANA Code for Advertising and Marketing Communications to Children*
- AANA Food and Beverages Marketing and Communications Code*

We understand that the complaint raised the issue that there are two primary schools within a short walking distance of our clients business.

The complaint also notes that section 2.4 is the issue raised.

The Advertising and Marketing Communications to Children requirements are noted in the AANA Code as "having regard to the theme, visuals and language used, and directed primarily to Children and are for product".

We strongly militate that our client's advertisement and product is not directed to Children and further is not a food or beverage, therefore we consider that we are not required to address issues raised under the AANA Code for Advertising and Marketing Communications to Children and the AANA Food and Beverages Marketing and Communications Code.

Section 2 of the Advertisers Code of Ethics includes:

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, sex, age, sexual preference, religion, disability or political belief. This subsection will be addressed in detail within this letter.

2.2 - Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

This subsection is not applicable to our clients advertisement as it does not present or portray violence.

2.3 - Advertising or Marketing Communications shall not treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone. This subsection will be addressed in detail within this letter.

2.4 - Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising & Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising & Marketing Communications to Children applies.

This subsection is not applicable to our client's advertisements as it was earlier noted that neither the product nor the advertisement are directed to Children.

2.5 - Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be

avoided This subsection is not applicable to our client's advertisement as the advertisement does not use language which is inappropriate or obscene. It should be noted that the word 'Naked' is part of the product's name, and in turn, in the context of the name of the product the word cannot be construed to be offensive or obscene.

2.6 - Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

This subsection is not applicable as our client's advertisement does not depict any material contrary to prevailing community standards on health and safety. The models in the advertisements appear as fit and healthy and there are no suggestions in the advertisements that all men and women should look like that.

2.7 - Advertising or Marketing Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles and section 2.6 of this Code shall not apply to advertising or marketing communications to which the Federal Chamber of Automotive Industries Code of Practice applies.

This subsection is not applicable to our client's advertisement as it does not advertise motor vehicles.

2.8 - Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food & Beverages Advertising & Marketing Communications.

This subsection is not applicable to our client's advertisement as it does not advertise food or beverage products. We therefore submit that only subsections 2.1 and 2.3 need to be addressed in detail.

In addressing the above subsections, our office has referred to "Determination summary; Portrayal of gender in advertising; Interpretation guide" (herein referred to as "the guide") released by the Bureau in November 2011.

Further we have also consider the AANA code of ethics along with recent case reports handed down by the Bureau in relation to complaints of a similar nature.

Relevant sections of the Code of Ethics

Section 2.1 Advertising or Marketing Communication 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, sex, age, sexual preference, religion, disability or political belief.

The complaint

The complaint raises issues relevant to section 2.1 by claiming the advertisement "turns women's bodies into objects".

Comments in relation to the complaint We submit that our client's advertisement is not in breach of section 2.1 for the following

reasons:

1. The guide refers to the ASB's approach for issues raised under section 2.1 as the following:

"Objectification of a person is to present them as an object to be looked at and acted upon rather than as a person with thoughts and feelings. This applies equally to men and women."

2. The board has previously stated that upheld complaints usually refer to advertisements in which a woman's body is specifically used to sell a product which is unrelated to the presence of the woman in the advertisement.

3. We submit that in relation to our client's advertisement the woman's presence is relevant to the product. Our client's advertisement does not present either the male or female as an object without thoughts or feelings. The advertisements intend to empower the models as

their surroundings and costumes portray them as "gods and goddesses of nature". The emphasis is that you can release the god/goddess within by using our clients natural product.

4. The complaint states that the man is wearing shorts, whilst the woman is naked, and therefore objectifying the woman. As stated above with regard to advertisements 1 & 3, as the man is wearing a short towel! cloth covering him from the waste to his thighs and the woman's hair is completely covering her

breasts. Further the female models genitals are also always completely covered with a feather costume and this should not be misunderstood as sexual innuendo, as it is in keeping with the natural goddess concept theme which directly relates to the product advertised.

5. We submit the same argument as in paragraph 4 above with respect to the second advertisement, which does not objectify the model, yet portrays elegance and beauty with the aim to "reveal the goddess within" which again is consistent with the product sold by our client.

6. In case report (case number 0287/10), the board dismissed the complaint and commented that the advertisement was "Tarzan style epic and is so exaggerated that it is clearly a fantasy".

7. We submit that in light of our clients product and its adverts theme the same approach is warranted here. It would be impossible to view our client's advertisements as anything other than as a fantasy based themes.

8. Further the board also stated in case report number 0287/10 that:

"The board noted that the requirements of the code is whether or not the advertisement 'discriminates against or vilifies a person or section of society on account of ... sex' In regards to this test under the code we strongly submit that on reviewing the subject adverts that it is clear that the advertisements do not discriminate or vilify women in any way, but rather promote a beauty product.

Section 2.3

Advertisers or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.

The complaint

The complaint raises issues relevant to section 2.3 by referring to the woman in our client's advertisements as "totally naked".

Comments in relation to the complaint We submit that our client's advertisements are not in breach of section 2.3 for the following reasons:

1. The guide refers to the ASB's approach to nudity and sexual innuendo as the following: "Discreet portrayal of nudity and sexuality in an appropriate context e.g. advertisements for toiletries and fashion, is generally accepted by the Board"

2. It can therefore be submitted that due to the nature of our clients product (a full body spray tan product), that the context in which the discreet portrayal of nudity is applied in the advertisements is appropriate in the context of the product being advertised.

3. The Board in L'Oreal Australia Pty Ltd (case number 0324/11) determined as follows: "The board considered that the exposure of skin is relevant to the moisturising product." The board further stated that they understood the target audience was for adults and; "The board noted that there is no mention of sex and considered that the pose of the female model is not sexualised or sexually suggestive. The board considered that the advertisement is not sexually suggestive merely by reason of including nudity and that it does treat sex, sexuality and nudity with sensitivity to the product and relevant audience."

The L'Oreal advertisement had an image of a naked woman with her arms and legs folded across her body in a way which hides her breasts and genital area, which is a similar subject matter to our client's advertisements.

Hence adopting the Board's approach in relation to our clients advertising we can submit the following:

a. The adverts are not sexually aggressive or suggestive in nature.

b. The adverts treat sex, sexuality and nudity with sensitivity in a manner that is appropriate, relevant and consistent with the product advertised. The private parts of the models are covered and in the second advertisement a wash has been applied to the image to soften the models body in order to make the image more appropriate in the context of the advertisement and the product sold.

4. In Enhance Clinic (case number 0188/11) in which the advertiser was advertising their product by way of a naked woman obscuring her genitals, the board stated:

"The board considered that it is reasonable to expect a provider of surgical/beauty treatments to show potential results of those treatments in order to promote their business"

Applying the boards approach in our clients circumstances it can be submitted that an advertisement for a body tanning product would be required to expose as much skin as reasonable in order to demonstrate the effectiveness of the product.

5. An advertisement for Supre, (case number 0145/11) which was brought to the board's attention, portrayed a female model naked with her hair covering her breasts much like our clients advertisement. To this the board determined:

"The Board considered that while the ad does depict some nakedness, the nudity does not expose any private areas at all. The Board noted that the model's breasts are not visible and her pose is only mildly sexually suggestive."

Although this advert was available to a broad audience, the Board determined that the advertisement was not sexualised, did not contain inappropriate nudity and did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach section 2.3 of the Code.

6. When considering past determinations handed down by the Board deal with the same or similar content and issues as our client's advertisements we submit that our clients adverts do not breach the Code, particularly when considering the adverts content and the nature of the product being advertised.

Conclusion

We submit that the listed advertisements do not contain any overt or ambiguous treatment of sex, sexuality and nudity and do not portray men or women in a discriminatory manner nor do the adverts objectify the models.

In summary, we submit that given the context of the advertisements they comply with all sections of the Code of Ethics.

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 features an inappropriate image of a man and a woman that is offensive and unnecessary.

The Board viewed the advertisement and noted the advertiser's response.

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 the advertisement features an image of a man and a woman, the woman is covered only by peacock feathers.

The Board noted that it was reasonable for the advertiser to depict the bodies of men and women in their advertising to reflect the types of treatments available, specifically tanning products. The Board noted that the image is relevant to the product being advertised.

The Board noted that the placement of the advertisement meant that the relevant audience was likely to include children but considered that although nude, private areas are covered and the models are not in a sexualized pose, so therefore sensitive to relevant audience. The Board noted that the connection between the image and the text describing the available treatments is also clear.

The Board noted that they have previously considered this image in other forms at three separate times (case reference: 158/10, 185/10 and 305/10) and dismissed the complaints on these occasions.

The Board considered that most members of the community would not find the imagery offensive. The Board determined that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach section 2.4 of the Code.

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