



Case Report

1	Case Number	0376/12
2	Advertiser	Bendon Ltd
3	Product	Clothing
4	Type of Advertisement / media	Internet - Social
5	Date of Determination	12/09/2012
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

The Facebook page for Loveable Besties features an image of two female models wearing loveable underwear. They have their arms around each other and the accompanying text reads, "Take selfies with Besties to win weekly loveable prizes". Underneath are pictures submitted to the Facebook page of women with their besties. All images feature fully clothed adults and consist mainly of head shots. At the bottom of the page the conditions of entry are stated, one of which is that you need parental consent to enter the competition if you are under 18 years of age.

THE COMPLAINT

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

I feel that the campaign is encouraging young girls to take photos of themselves in their underwear and post it on the internet. I am aware that the actual competition form does not say this. However I feel that the campaign implies this and that even if it is unintended it is pretty close to encouraging child pornography. I think that this campaign sends a terrible message to their target audience about self-image as well as encouraging young females to use social media irresponsibly and even dangerously as these sorts of 'selfies' could attract sexual predators and paedophiles. I am deeply offended by these messages. I think it is offensive to all young females. I have a 10 year old sister and I hope this campaign is removed before she has a chance to see it.

THE ADVERTISER'S RESPONSE

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

We refer to your letter of 27 August 2012 in which you provide notice of a complaint received in response to an advertisement featuring the BESTIES range of a Bendon brand of intimate apparel, LOVABLE. Thank you for providing the opportunity to respond to the complaint in advance of the forthcoming meeting of the Advertising Standards Board. We have considered the matters raised by the complainant and set out below information in response to assist with prompt resolution. Before proceeding to respond to the advertisement in question we feel it important to record that Bendon is one of the world's leading intimate apparel companies and has been in business for more than 60 years. It operates from offices located in Sydney, Melbourne, Auckland, Hong Kong, New York and London and offers a range of 12 product brands covering both men and women. Bendon's products are sold globally through its retail store network and to wholesale customers including a number of the world's leading department stores and specialist boutiques. Bendon owns a number of trademarks associated with its brands, including LOVABLE in respect of which Bendon is the registered proprietor of trade marks dating back to 1960. Bendon's application for the BESTIES trade mark was filed in March 2012 in anticipation of the July 2012 launch of this range of intimate apparel products. The complaint references advertising featured on Facebook at <https://apps.facebook.com/211134699014939/?fbsource=search&refs=ts>. The advertisement promotes a competition running between 13 August and 9 September to support the launch of the new BESTIES range of intimate apparel within the LOVABLE collection. Entrants are invited to submit a self-portrait photograph ('selfie') featuring them with their best friend ('bestie') and have the opportunity to win a weekly prize of BESTIES product. The substance of the competition is the BESTIE brand name which in current parlance connotes 'best friend'. The complainant presents the view that the advertisement encourages young girls to take photos of themselves in their underwear and to then post the images on the internet. The key premise and central theme of the complaint is youth. The complaint makes reference to "girls", "young females", "young girls", "child pornography", and to "sexual predators and paedophiles". The complainant suggests that the messages attributed by the complainant to the advertising are offensive to all young females. We take a different view to that of the complainant. In our view, it is significant that the advertisement features adult women. Further, we do not accept that the advertisement portrays the messages reported by the complainant concerning young girls and the irresponsible use of social media, and which reference child pornography and paedophiles. It is significant that the text of the advertisement clearly records that entrants do not need to present an image featuring them in their undies when entering the competition. Further, the rules of the competition featured within the advertisement do not require or encourage entrants to present images featuring the usage of BESTIES product. Indeed, all entries are subject to comprehensive and robust conditions of entry (<http://www.lovable.com.au/selfies>). Such conditions impose an age restriction on entrants to exclude children and require parental or legal guardian consent in respect of other entrants. We also wish to highlight that the conditions of entry provide that entries submitted that are indecent, obscene, offensive, inappropriate or objectionable will not satisfy the entry criteria and will not be accepted. Accepted entries are displayed at the same location as the advertisement being the subject of the complaint (<https://apps.facebook.com/211134699014939/?fbsource=search&refs=ts>). None of the entries feature images of entrants in their underwear and the entries do not support the

claims or concerns made by the complainant. In accordance with Section 2 of the Advertiser Code of Ethics, we submit that the advertisement is entirely appropriate in the context of our business and of the advertised product. Put simply, we produce and sell intimate apparel and the advertisement, quite reasonably, displays our product as it is worn. In our view the advertisement is very clearly relevant to the product advertised, does not cause offense, does not contain inappropriate nudity, and does not portray a suggestively sexual pose or sexual innuendo. We refer also to the care and attention we have taken to ensure that the advertised competition does not facilitate the messages of concern raised by the complainant. We believe the advertisement is a legal, decent, honest and truthful representation of the advertised products, and that the advertisement complies in all respects with the AANA Advertiser Code of Ethics. We thank you for raising the complaint with us and respectfully submit that the complaint should be dismissed. If we can be of any further assistance in respect of this matter, please feel free to contact me.

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 encourages young girls to take photographs of themselves wearing underwear and that this is irresponsible and potentially dangerous.

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 the advertisement is featured on the Facebook page for Bendon’s Besties campaign and that next to an image of two female models wearing Besties underwear the text reads, “Take selfies with Loveable Besties to win weekly loveable prizes”.

The Board noted that the models in the advertisement are wearing Loveable Besties underwear and considered that it is reasonable to expect an underwear advertisement to feature imagery of underwear. The Board noted that the models are presented in a manner which is not sexualised and that there is no unnecessary or inappropriate nudity.

The Board considered that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

The Board considered whether the advertisement was in breach of Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted the advertisement encourages members of the community to upload photographs with their “Besties” and that the competition is open to Australian residents over the age of 13 years. The Board noted that the advertisement states, “...you don’t have to be in your undies...obvs” and considered that this phrase suggests that although you don’t have to, you can send in photographs wearing undies.

The Board noted that the advertisement was intended to be an interactive way of engaging the target audience which is identified by the advertiser in the advertisement as women over the age of 13 years and considered that the language used (“obvs”) is intended to appeal to teenagers.

The Board noted that there is significant social concern around appropriate online behaviour and considerable resources are directed to teaching children and young adults about appropriate behaviour in social media. The Board noted the Australian Communications Media Authority’s Cybersmart website which provides resources to schools, students and children about safe use of social media. The Board noted that this includes specific information about uploading and tagging photos, particularly those that are provocative or posted by people under the age of 18.

The Board noted that the advertiser’s stated terms and conditions state that entries cannot be indecent, offensive, inappropriate or objectionable and that parental or legal guardian consent is required for entrants under the age of 18 years.

The Board considered that an advertisement encouraging people to upload photos of themselves is not of itself problematic. The Board noted the advertiser’s response that entrants are being invited to submit photographs of themselves with their best friend, “bestie”, however the Board noted that the invite states, “take selfies with loveable besties” and considered that this phrase could also be interpreted as encouraging entrants to take a photograph with their loveable besties underwear.

While accepting the Advertiser's commitment to refusing to publish inappropriate photos, the Board considered it possible that younger people would see the current advertisement as condoning or at least giving some legitimacy to the behaviour of uploading images of themselves in underwear and that this is a message that the community views as unacceptable.

The Board noted it had recently upheld a complaint against a Mossimo Facebook advertisement (ref 0076/12) which encouraged the uploading of photographs and considered that consistent with its previous determination, in this instance the advertisement depicted material contrary to prevailing community standards on online behaviour and safety and was in breach of section 2.6 of the Code.

Based on the above, the Board determined that the advertisement did depict material contrary to prevailing community standards on health and safety and did breach Section 2.6 of the Code.

Finding that the advertisement breached Section 2.6 of the Code, the Board upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

We refer to your letter of 18 September 2012 in which you advise the Advertising Standards Board's determination of a complaint made in respect of an advertisement featuring the BESTIES brand of lingerie.

Thank you for confirming the Board's determination that the advertisement treated sex, sexuality and nudity with sensitivity to the relevant audience, and that the advertisement did not breach Section 2.4 of the Code.

We note with disappointment the finding of the Board that the advertisement did breach Section 2.6 of the Code in determining that the advertisement depicted material contrary to prevailing community standards on health and safety with reference to the uploading of photographs.

The advertisement being the subject of the complaint promoted a prize draw competition which operated from 13 August to 9 September. Accordingly, the advertisement has discontinued. We have however engaged with the relevant advertising agent in an effort to ensure the determination of the Board based on a possible interpretation of the advertisement is understood in the context of current social concerns and community views relevant to

online and social media behaviour.

We wish to record that no entry to the competition attested to the interpretation of the advertisement as indicated by the Board in its determination.