



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0004/13</b>
<b>2</b>	<b>Advertiser</b>	<b>Freedom Furniture Ltd</b>
<b>3</b>	<b>Product</b>	<b>Retail</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>16/01/2013</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.1 - Discrimination or Vilification Lifestyle Choices
- 2.4 - Sex/sexuality/nudity S/S/N - general

### DESCRIPTION OF THE ADVERTISEMENT

The TVC opens with an older male looking out of his window. We follow his gaze to a young couple making out on the sofa in the apartment opposite. We then cut back to the older man and see his wife approaching him from behind and he tells her he is looking at their neighbours' sofa.

Next, the wife then also looks into the neighbouring apartment and says that the sofa is indeed the exact piece of furniture the couple wanted.

There are more cuts between the ambiguous expressions of the husband and wife admiring the furniture as the couple who are hugging and kissing on their furniture progress to the rug, the man's shirt off and the girl wearing an undergarment.

After having her attention drawn to the rug, the man's wife finally comments that she also quite likes the rug.

The TVC ends with a voice over 'The Freedom sale, for whatever turns you on'.

The above is a description of the M rated TVC. The other two versions (W and PG) have much more moderated scenes of the couple next door. In these versions, the younger couple are fully clothed and their level of intimacy and the duration of such shots is much less.

### THE COMPLAINT

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

*The Freedom ad that was shown this morning featuring an older couple peering in on a younger couple on the pretence they are checking out the sofa and rug is inappropriate or morning TV. Our kids are over exposed to sexualised content and it is in the media. If this ad must be shown surely it can be late at night. Eventually your kids outgrow ABC TV but we should be able to watch morning shows without blatantly obvious sexually suggestive content.*

*It is offensive because do they really need to be that graphic to sell furniture? The ad is been shown at the time the children's movies are still on. I have also seen it in Channel Ten when the Simpsons are on.*

*Not only were the theme and 'tagline' entirely inappropriate, but the fact that there were younger family members present while the advertisement was being shown makes it worse. I was given absolutely no prior warning as to the following content and this is also unacceptable.*

*It was far too sexually suggestive bordering on explicit. My husband and I do not wish to be confronted with such inappropriate and sexual content at all, let alone repeatedly and without prior warning or consent. Very indecent.*

## **THE ADVERTISER'S RESPONSE**

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

*We are writing in response to your letters dated 3 January 2013 and 7 January 2013, detailing the complaints concerning the Freedom TVC "Whatever Turns You On".*

*We note the CAD reference numbers and ratings for the three versions of the TVC are:*

- 15 second TVC – CAD reference number MX0OYOA, W rating.*
- 30 second TVC – CAD reference number PX0OZROA, PG rating.*
- 30 second TVC – CAD reference number WX0P0ROA, M rating.*

*Our comments in relation to the complaints*

*The AANA Code of Ethics*

*We note that the complaints have been made under Section 2 of the AANA Code of Ethics (the 'Code').*

*As you have set out on page 4 of your letter dated 3 January 2013, and page 3 of your subsequent letter dated 7 January 2013, the specific issues raised relate to:*

- *Section 2.1 - discrimination or vilification gender;*
- *Section 2.1 - discrimination or vilification lifestyle choices;*
- *Section 2.4 - Sex/sexuality/nudity S/S/N - general.*

*The following are extracts of the above sections from the Code.*

*Section 2.1:*

*“Advertising and 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, gender, age, sexual preference, religion, disability, mental illness or political belief.”*

*Section 2.4:*

*“Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”.*

*Also relevant is the definition of Prevailing Community Standards.*

*“Prevailing Community Standards means the community standards determined by the Board as those prevailing at the relevant time in relation to Advertising or Marketing Communications. Prevailing Community Standards apply to clauses 2.1 – 2.6 below. The determination by the Board shall have regard to Practice Notes published by AANA and any research conducted by the Advertising Standards Bureau.”*

*We submit the following response to the complaints.*

*Lead arguments – Sections 2.1 and 2.4*

*The basis of most of the complaints is that the TVC is inappropriate for display in time periods when children are watching television. As you will see in more detail below, we do not believe that we are in breach of the Code because:*

- *We created special PG and W versions of the TVC, in addition to the M TVC.*
- *We worked extensively with FreeTV (CAD) and adjusted the TVCs in accordance with feedback provided by CAD prior to the TVCs receiving the ratings issued by CAD.*
- *We undertook steps to ensure that all TVCs were run within the correct timeslots and programming classifications.*
- *All TVCs were run within the correct timeslots and programming classifications. Please see enclosed the slot schedule provided to us by Carat for your reference.*
- *The target audience of the TVCs are not children, as children do not buy our*

*products. Rather, the audience is all adults aged between 18 and 64.*

*We submit that the other complaints in regards to our TVC portraying people in a discriminatory way or in a way that could vilify them sits ill with the prevailing community standards of any reasonable and tolerant viewer. The suggestion that this TVC is ageist or vilifying is, with respect, simply unsustainable set against current drama on television programme. Considered in the context of literature in general from Shakespeare, to Dickens, to Hemingway we find these complaints to not be credible on any measure.*

*We can elaborate on this refutation if you so request but feel that these particular Section 2.1 complaints are demonstrably weak and do not justify an exhaustive response.*

#### *Use of humour*

*Our TVC has been the subject of complaint that it is inappropriate, offensive, degrading and distasteful. We disagree and contend that the TVCs display instead a sophisticated dry humour which is highly amusing to many in the community and especially the demographic which is being targeted by Freedom. To complain that they are “inappropriate, offensive, degrading and distasteful” is intolerant of prevailing community standards.*

*The essence of the TVCs’ pitch is the joke of the older couple being oblivious to the youthful antics of the couple on the sofa. The sexual element of two people smooching is merely part of the joke and not the joke itself. It is therefore not the ultimate point of interest for the audience rather it is whether or not the husband will be mistakenly “caught out” by his wife. We respectfully submit this is a critical distinction to be considered. The wife then goes on to reinforce the humour to also admire the rug as well.*

*This TVC is a clever, harmless play on human behaviour, having a valid edginess, which is required for any advertisement to cut through the media noise in the market place.*

#### *Prevailing community standards*

*It is noted by the Australian Standards Bureau itself in its Practice Note on sexuality that there is an obligation on the Australian Standards Bureau to be tolerant to prevailing community standards and the Code states that prevailing community standards apply to Sections 2.1 and 2.4 of the Code.*

*On that basis we think it is clear such standards would render this TVC as decidedly tame when compared to accessible drama and documentary content. In this regard please see, for example, the acclaimed HBO series “Magic City” recently shown on the Ten Network and Foxtel where scenes of explicit sexual acts including masturbation, sodomy, graphic full frontal nudity and language are in all episodes.*

*The record will show we have been sensitive to social mores by creating three (3) different versions of the TVC appropriate to various programming classifications, and ensuring the TVCs are shown in the relevant timeslots.*

#### *Fashion exemption*

*AANA Practice Notes also confirm that discreet portrayal of sexuality and nudity is*

*generally permissible in an appropriate context (and the examples of toiletries and fashion are provided).*

*On that basis we submit that our furniture products are analogous to fashionable clothes. Freedom Furniture is not a general bulk retailer of family furniture but rather has always been promoted as a purveyor of stylish, high-fashion furniture with a prominent design element in products it sells. We submit that if it is acceptable to have discreet portrayal of sexuality in a fashion advertisement, this should also be acceptable in a fashionable furniture TVC.*

#### *Relevant audience*

*We maintain that the relevant audience for the purposes of Section 2.4 is the furniture buying audience. This audience is adults who have residences and can afford to furnish them. Four audience categories were chosen strategically for this campaign. They included Trend Seekers, Style Indulgers, Guidance Seekers and Haven Makers. The age groups of these categories are all between 18 and 64, clarifying that adults are the relevant audience.*

*A number of the complainants allege that the sexual content in the advertisement was inappropriate and overly suggestive for children.*

*We share the view that the extended version of the TVC is inappropriate for a child audience. The 'Code for Advertising and Marketing and Communications to Children' is not directly applicable in our scenario because children are not the audience of the TVC but we recognise that the Board may consider the broader audience (as mentioned in the Practice Notes).*

*M&C Saatchi and Carat genuinely put in every effort during programming negotiations to ensure children were not subjected to the M rated TVC.*

*Three (3) different rated versions of this TVC were made (W, PG and M) to comply with different time slots, keeping in mind the need to make the sexual connotations appropriate to community standards of the audiences watching at the time.*

*Advice was sought from CAD at every stage of the production process – scripting, storyboarding, finalising TVCs, and particular attention was paid at the time of shooting to ensure the level of sexual interaction would comply with the usual imagery in TV shows with corresponding ratings. There is no sex in this TVC and there is no nudity (noting that the naked chest of a man is not generally seen as “nude”) in any version other than the fact the girl in the M version is seen wearing a brassiere undergarment (fully clothed elsewhere).*

*We instructed Carat to restrict viewing of the M rated TVC to after 9pm and to only play the PG rated TVC in PG rated shows. The W and PG rated TVC that was viewed by children did not contravene prevailing community standards as the kissing was significantly edited and abbreviated and there was no nudity. The content of this TVC is also of little interest to children and is likely to go unnoticed by most, as they are not engaged by the product or the people.*

### *Complaints around 'Australia's Funniest Home Videos'*

*The majority of the audience for this series is 18+ and the highest percentage of viewers is in the 35-54 age bracket (36%). That programme itself is rated PG and the only TVCs that ran within this programme were the W rated 15sec and the 30sec PG rated. Carat has advised that Network Nine did not notify them of any issues with running either of these TVCs within the programme.*

*Even though the W and PG TVCs are correctly rated to run within this programme, Carat on our behalf have since instructed Network Nine to withdraw the TVCs from 'Australia's Funniest Home Videos'.*

### *Complaints around 'The Simpsons'*

*The Simpsons is a core programme for males 18-39 and ran on both Ten and Eleven with the W and PG rated TVCs. The Simpsons rating varies from G to PG based on content of the show itself and the restrictions applicable to Ten or Eleven. Carat has advised us that prior to going on air Network Ten confirmed that there were no restrictions with placing the W/PG TVC within this programme as it was not aimed at children.*

*Even though the W and PG TVCs are correctly rated to run within this programme, Carat on our behalf have since instructed Ten and Eleven to withdraw the TVCs from 'The Simpsons'.*

### *Complaints around childrens' movies*

*All obvious children's movies/programmes had spots pre-emptively removed by Carat when the title was known to them and no longer TBA. Despite all care taken by Carat, some spots ran in family movies – for example, 'Surf's Up'. Unfortunately these were not flagged by the Network to Carat as potential issues and so we were not provided with the opportunity to remove spots before going to air. We would most definitely have done this as children are not our target audience. We have subsequently been advised that the movie 'Surf's Up' ran on the Nine Network from 19:30pm to 21:30pm and was rated PG.*

*Given that both the 15sec W rated and 30sec PG rated TVCs ran within this programme, which is consistent with the program rating, no issue was identified by the Network.*

### *Correct time parameters and program ratings*

*Importantly, all of the TVC variations have run within the correct time parameters and program ratings across main and digital channels as per regulation. Despite this, the specific programming spots noted in the complaints were cancelled upon notification and replaced in alternate programming.*

*Prior to Christmas, Carat instructed all Networks that, before any TVCs were to run, if there should be a program change or a TBA that was later allocated and not suitable to our audience, then they would contact Carat who would then advise the Network as to whether the Freedom TVC should run or not. For the remainder of the campaign, Carat is conducting daily audits on whether programming spots for the TVCs are appropriate. The Networks have all confirmed that they will monitor booked spots and advise if any need rescheduling.*

## *Adult audiences*

*We uphold that we are not in breach of Section 2.4 with respect to its relevant audience because the humorous nature of the TVC dilutes the sexual imagery and retains sensitivity for our relevant audiences that are subjected to the different versions of the TVC. The M version of the TVC was only screened together with programs of that rating or within the restricted time parameters for M rated TVCs, hence providing sufficient warning for the audience. Also, in accordance with Section 2.4, the level of nudity is low, the couple only has their shirts off; and the sexual imagery in the TVC is not profane or disturbing to the average M rating viewer.*

*The level of sexual interaction and nudity is not insensitive to prevailing community standards. Nudity, sexuality and sex seen on television in modern times is quite frequent. As mentioned above “Magic City”, the American programme recently screening on Network Ten and Foxtel, has very graphic sex scenes and is acclaimed. In the M rated version of this TVC, the level of sexual interaction is very tame in comparison to many M and even PG rated TV shows and movies.*

## *Conclusion*

*In addition to the above, we would like to note that on or about Monday, 31 December 2012, a complaint was received directly by Freedom in regards to the airing of a TVC during a family program. Freedom investigated this complaint with Carat regarding the appropriateness of programming, and put in place the process mentioned at the last paragraph under the heading Correct time parameters and program ratings above by the next business day (Wednesday, 2 January 2013).*

*Freedom has adhered to all of the time parameters applicable to the different ratings of TVCs.*

*We take these complaints very seriously, however we feel in this instance the complaints are not reflective of broader community standards and do not take into account the care taken to produce varying versions of the commercial.*

*Please consider our submission above and do not hesitate to contact us if you need any further information concerning the Freedom advertisement.*

## **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 is insulting to women, degrading to men, is suggestive of ‘swinging’ which is not appropriate, features sexual activity and is not appropriate for viewing by children.

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

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 that the advertisement features a young couple getting amorous in their lounge whilst an older couple watch them through their window under the guise of admiring their furniture. The Board noted there are three versions of the advertisement which have been rated 'W', 'PG' and 'M' by CAD.

The Board noted the complainant's concerns that the advertisement is insulting to women and degrading to men and considered that both the younger and older couple are presented as equals in their respective relationships and that there is no suggestion of discrimination or vilification against either gender.

Based on the above the Board determined that, in this instance, that the advertisement did not depict any material that discriminated against or vilified any person or section of society. The Board determined that the advertisement did not breach Section 2.1 of the Code.

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 'W' rated version of the advertisement features a couple kissing and then sitting on their lounge whilst being observed by an older couple whose apartment window overlooks them. The Board noted that the kissing scene is very brief and that the younger couple are fully clothed. The Board noted that the voiceover says, 'whatever turns you on' and considered that this phrase does not necessarily refer to sex as it is commonly used in Australian vernacular to refer to whatever you prefer to do.

The Board considered that the overall tone and content of the 'W' rated advertisement is mild and does treat sex, sexuality and nudity with sensitivity to the relevant audience which could include children.

The Board noted the 'PG' rated version of the advertisement features more kissing and the younger couple are shown moving from their lounge to the floor. The Board noted that at the end of the advertisement the younger man is about to remove his t-shirt when he notices that he is being observed by the older couple. The Board noted that no nudity is shown and considered that the suggestion of removing an item of clothing is not inappropriate in this instance. The Board noted that the focus of the advertisement is on the older couple more than the younger couple and considered that whilst this version is more sexualized than the 'W' rated version, its content is still appropriate for viewing by an audience which could include children.

The Board noted the advertiser's response which stated that care had been taken to place the different versions of the advertisement in the appropriate programming material and that following complainants' concerns regarding placement of the 'PG' version in 'PG' rated family movies the advertiser had instructed their media buyer to take greater care for the remainder of the campaign as their target audience is adults not children despite the rating.

The Board considered that the overall tone and content of the 'PG' rated version of the

advertisement does treat sex, sexuality and nudity with sensitivity to the relevant audience which could include children.

The Board noted the 'M' rated version of the advertisement features more passionate kissing from the younger couple and that they both remove their tops, although the woman keeps her bra on.

The Board noted that this version of the advertisement is sexualised and it is clear that the couple are about to engage in sexual activity however the Board considered that the level of nudity and the overall sexual tone is consistent with its 'M' rating and that most members of the community would not consider the advertisement to be inappropriate for an 'M' audience.

The Board considered that the 'M' rated version of the advertisement does treat sex, sexuality and nudity with sensitivity to the relevant audience which would be unlikely to include children.

The Board noted the complainant's concerns that the advertisement is suggestive of the sexual practice of 'swinging' and considered that this interpretation is unlikely to be shared by the broader community as the advertisement does not suggest that the older couple want to join in with the younger couple.

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