



**Ad Standards** Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

**AdStandards.com.au**

Ad Standards Limited  
ACN 084 452 666

## Case Report

<b>1. Case Number :</b>	<b>0008-20</b>
<b>2. Advertiser :</b>	<b>PLAY HAWKERS SL</b>
<b>3. Product :</b>	<b>Clothing</b>
<b>4. Type of Advertisement/Media :</b>	<b>Email</b>
<b>5. Date of Determination</b>	<b>22-Jan-2020</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

### DESCRIPTION OF ADVERTISEMENT

This email advertisement features a promotion for a black Friday sale, with a countdown and the text 'Black Friday 3For1 + free Shipping. The image behind the text 'three's company' changes. The first image shows a blurry picture of three men, two of the men are kissing and one is reaching out to touch the shoulder of the third. The second image features a blurry picture of three women who appear to be laying down, two of them are upside down. The image is cropped to only show their heads. The third image features a blurry picture of two men and a girl from the waist up, they appear to be naked. The fourth image features a blurry picture of two women and a man, the two women are leaning in to kiss the man.

### THE COMPLAINT

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

*The sexualisation of sunglasses for a promotion is highly inappropriate & completely unnecessary. I do not expect to have blurred pornography shoved in my face when trying to purchase sunglasses, encouraging having a sexual threesome through a 3 for 1 special. This ad also is accessible by all ages and young children are potentially targeted & exposed to inappropriate sexual messages.*



*Ad standards need to do a better job at regulating and removing the sexualisation from ads.*

## **THE ADVERTISER'S RESPONSE**

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

*Advertiser did not provide a response.*

## **THE DETERMINATION**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement features inappropriate sexual content to promote sunglasses, which may be seen by children.

The Panel viewed the advertisement and noted the advertiser did not provide a response.

The Panel 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 Panel considered whether the advertisement contained sex, sexuality or nudity.

The Panel noted the Practice Note for the Code states:

"Images which are not permitted are those which are highly sexually suggestive and inappropriate for the relevant audience. Explicit sexual depictions in marcomms, particularly where the depiction is not relevant to the product or service being advertised, are generally objectionable to the community and will offend Prevailing Community Standards."

The Panel considered whether the image depicted sex. The Panel noted the dictionary definition of sex most relevant to this section of the Code of Ethics is 'sexual intercourse; sexually stimulating or suggestive behaviour.' (Macquarie Dictionary 2006).

The Panel noted that the advertisement featured a header with four rotating images.

The Panel noted that the first image featured three topless men, with two of them kissing. The Panel considered that this image with the text 'three's company' was a suggestion of sexual intercourse, and sexually stimulating or suggestive behaviour. The Panel considered that image one did contain sex.



The Panel noted that the second image features three women laying down, with their heads pressed closely together. The Panel considered that this image with the text 'three's company' was a suggestion of sexually stimulating or suggestive behaviour. The Panel considered that image two did contain sex.

The Panel noted that the third image featured a blurry image of a woman and two men, all of whom appear topless. The Panel considered that this image with the text 'three's company' was a suggestion of sexual intercourse, and sexually stimulating or suggestive behaviour. The Panel considered that image three did contain sex.

The Panel noted that the fourth image features a blurry picture of two women and a man with the two women leaning in to kiss the man. The Panel considered that this image with the text 'three's company' was a suggestion of sexual intercourse, and sexually stimulating or suggestive behaviour. The Panel considered that image three did contain sex.

The Panel considered whether the advertisement depicted sexuality.

The Panel noted the definition of sexuality includes 'sexual character, the physical fact of being either male or female; The state or fact of being heterosexual, homosexual or bisexual; sexual preference or orientation; one's capacity to experience and express sexual desire; the recognition or emphasising of sexual matters'. The Panel noted that the use of male or female actors in an advertisement is not of itself a depiction of sexuality.

The Panel considered that all four images contain a suggestion of sexual relationships between three people, and that these are depictions of sexuality.

The Panel considered whether the advertisement contained nudity and noted that the dictionary definition of nudity includes 'something nude or naked', and that nude and naked are defined to be 'unclothed and includes something 'without clothing or covering'. The Panel considered that the Code is intended for the Panel to consider the concept of nudity, and that partial nudity is a factor when considering whether an advertisement contains nudity.

The Panel noted that the men in image one were depicted from the chest up and were not wearing shirts. The Panel considered that some members of the community may consider three shirtless men to be a depiction of partial nudity.

The Panel considered that the women in image two were depicted from the shoulder upward, however considered that they did not appear to be wearing clothing. The Panel considered that some members of the community may consider three women who appeared not to be wearing clothing to be a depiction of partial nudity.



The Panel noted that the two men and woman in image three were depicted from the waist up and were not wearing clothing. The Panel considered that this was a depiction of nudity.

The Panel noted that the fourth image featured a man and two women, one of the women can only be seen from the neck up, the man is shirtless, and the other woman appears to be wearing a bra or singlet. The Panel noted that the exact details of the advertisement could not be seen because the image was blurry, but there was a suggestion of nudity.

The Panel then considered whether the issue of sex, sexuality and nudity was treated with sensitivity to the relevant audience.

The Panel considered the meaning of 'sensitive' and noted that the definition of sensitive in this context can be explained as indicating that 'if you are sensitive to other people's needs, problems, or feelings, you show understanding and awareness of them.' (<https://www.collinsdictionary.com/dictionary/english/sensitive>)

The Panel considered that the requirement to consider whether sexual suggestion is 'sensitive to the relevant audience' is a concept requiring them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement – the concept of how subtle sexual suggestion is or might be is relevant to the Panel considering how children, and other sections of the community, might consider the advertisement.

The Panel noted that this advertisement was received via email by a person who was subscribed to receive communications from the company. The Panel considered that the company did not sell children's sunglasses and that subscribers would most likely be adults who had purchased from the company before.

The Panel considered that the pixelization of the images adds to the sexual feel of the advertisements. The Panel considered that the link between the images and the product is that the advertiser was offering three products for one in their sale.

The Panel considered that there was little relevance between the images and the product, however considered that this is a brand known for their edgy advertising targeted at a young adult demographic, and therefore the sale promotion would be consistent with their brand image.

The Panel considered that the four images were not explicit, and did not depict full breasts or genital. The Panel considered that whilst there was a suggestion of sexual activity, this was not explicit.

The Panel considered that the images and text in this email advertisement were mild and not sexually explicit and did treat the issue of sex, sexuality and nudity with sensitivity to the relevant adult subscriber audience and did not breach Section 2.4 of the Code.



Finding that the advertisement did not breach any other section of the Code, the Panel dismissed the complaint.