



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0008-22
2. Advertiser :	Binge
3. Product :	Entertainment
4. Type of Advertisement/Media :	Billboard
5. Date of Determination	19-Jan-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This billboard advertisement features a man and woman embracing in bed and promotes the television series 'Love Me'.

THE COMPLAINT

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

I believe this is clearly in breach of the AANA section 2.4

How do you explain this to your kids on why the woman is clearly indicating not wearing anything with a man hugging her behind. I'm still confused on how this pass the censorship.

It is obscene and lack refinement for what is meant to be intimate. And extremely not appropriate for children.

The picture depicted for the movie advertised is of a sexually suggestive nature and highly inappropriate for 2x pedestrian bridges on a very busy main road. Our children are very embarrassed even looking at the billboard every time we drive past them (that's at least once per day for the last 2-3 weeks).

The advertising is highly inappropriate for this location



THE ADVERTISER'S RESPONSE

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

We refer to the Complaints made against Binge which were received from Ad Standards on 28 December 2021, 3 January 2022 and 4 January 2022. Foxtel Management Pty Limited (Foxtel) provides this response on behalf of Binge.

Description of the Advertisement

From the information provided by Ad Standards, we understand the Complaints relate to outdoor advertising promoting the premiere of Australian television drama series, Love Me, on Binge (Advertisement). Love Me is a story about love, loss and the complexity of family relationships experienced by three different family members at distinct times of life. The Advertisement depicts the series' main character, Clara, lying down on her side, embraced by fellow character, Peter. Clara is looking directly at the camera, while Peter has his arm wrapped around her. Their bodies are covered by bed linen from chest down.

Creative agency, Thinkerbell (Level 3, 91 Reservoir Street, Surry Hills, NSW, 2010), created the Advertisement. Mindshare (Level 13, 65 Berry Street, North Sydney, NSW, 2060) was the media agency responsible for placing the Advertisement. Various versions of the Advertisement have been placed across Sydney, Melbourne, Queensland, Adelaide and Perth between 19 December 2021 and 4 February 2022.

The versions of the Advertisement relevant to the Complaints are provided in Annexure A.

The Complaints

The Complaints include allegations that the Advertisement "clearly shows a naked woman behind a blanket with a naked man hugging her" and "is of a sexually suggestive nature and...highly inappropriate for this location".

Applicable provisions of the AANA Code of Ethics

Section 2.4

Ad Standards has raised Section 2.4 of the Australian Association of National Advertisers Code of Ethics (Code) as the applicable provision in the context of the Complaints.

Section 2.4 requires that:

"Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience."



The accompanying Practice Note to the Code relevantly provides the following definitions:

- *Sex: “sexual intercourse; person or persons engaged in sexually stimulating behaviour”.*
- *Sexuality: “the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters”.*
- *Nudity: “the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity”.*

While the couple is embracing in an intimate way, the embrace is not a depiction of sexual intercourse or sexually stimulating behaviour and therefore does not contain ‘sex’. Neither the couple’s embrace nor their facial expressions are overtly sexual or highly sexually suggestive. Consequently, Foxtel does not consider that the Advertisement contains ‘sexuality’. Further, the couple is covered by bed linen with only their faces, shoulders and arms exposed; there is no sexualised body part visible. We therefore do not consider that the Advertisement contains ‘nudity’.

If Ad Standards determines that the Advertisement depicts sex, sexuality or nudity, Foxtel’s view is that the Advertisement treats such themes with sensitivity to the relevant audience.

The Advertisements have been placed on billboards on the side of multi-lane roads that would be viewed by members of the general public who drove past the billboards. Referring to the guidance set out in the Practice Note, Foxtel considers the Advertisement is appropriate for an outdoor campaign that is viewed by the general public as the Advertisement does not contain overtly sexual imagery such as poses suggestive of sexual position, the use of paraphernalia or imagery that is highly suggestive of sexualised activity.

We understand that advertising with mild sexual references, which would not easily be understood to be sexual by children, were seen by Ad Standards to treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience (case number 0123-20). For example, Ad Standards previously dismissed a complaint regarding a billboard for ‘Sexyland’ which depicted a woman in lingerie straddling a man (case number 0281-19). In dismissing the complaint, Ad Standards considered that children viewing the advertisement would not be able to easily distinguish the sexual nature of the image, especially when viewed for only a few seconds. Ad Standards also dismissed a similar complaint regarding a billboard advertisement for the film ‘After’ (case number 0208/19). The advertisement featured a shirtless man embracing a woman with her legs around his waist as they are about to kiss. While the intimate pose could be deemed sexually suggestive, Ad Standards did not consider such an embrace to be inappropriate to be seen by a broad audience. Ad Standards determined that children viewing the advertisement would likely understand that it is a promotion for a movie and that two of the characters are embracing and may be about to kiss.



Accordingly, Foxtel submits that the Advertisement treats sex, sexuality and nudity with sensitivity to its relevant audience.

In considering cases under Section 2.4, we understand Ad Standards will also consider the relevance the sex, sexuality or nudity has to the product or service being promoted. The Advertisement is a necessary and accurate indicator of the characters and the themes and relationships that are explored in the series. Foxtel submits that it is reasonable that the advertising materials have been produced to align with the series' narrative.

For the above reasons, we submit that if Ad Standards determines that the Advertisement depicts sex, sexuality or nudity, the Advertisement treats such themes with sensitivity to the relevant audience and, accordingly, does not breach Section 2.4. Further, we submit that the Advertisement does not breach any other provisions of the Code.

Foxtel takes the Complaints very seriously and regrets any offence caused to the complainants or anyone else.

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 complainants' concern that the advertisement was inappropriately suggestive of sexual activity.

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

Section 2.4: Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel noted the Practice Note for the Code states:

"Overtly sexual images are not appropriate in outdoor advertising or shop front windows.

"Although not exhaustive, the following may be considered to be overtly sexual:

- Poses suggestive of sexual position: parting of legs, hand placed on or near genitals in a manner which draws attention to the region;*
- People depicted in sheer lingerie or clothing where a large amount of buttocks, female breasts, pubic mound or genital regions can be seen; The use of paraphernalia such as whips and handcuffs, particularly in combination with images of people in lingerie, undressed or in poses suggestive of sexual position;*
- Suggestive undressing, such as pulling down a bra strap or underpants; or*
- Interaction between two or more people which is highly suggestive of sexualised activity.*



“Discreet portrayal of nudity and sexuality in an appropriate context (eg advertisements for toiletries and underwear) is generally permitted but note the application of the relevant audience. More care should be taken in outdoor media than magazines, for example.

“Images of models in bikinis or underwear are permitted, however, unacceptable images could include those where a model is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person), or where there is clear sexual innuendo from the ad (e.g. depicting women as sexual objects).”

Does the advertisement contain sex?

The Panel considered whether the advertisement contained sex. The Panel noted the definition of sex in the Practice Note is “sexual intercourse; person or persons engaged in sexually stimulating behaviour”.

The Panel noted that the advertisement features a man embracing a woman from behind, with his face pressed against the side of her head. The Panel noted that while the man and woman are depicted in bed together in an intimate manner, there is no indication that they are moving or currently engaged in sexual intercourse or sexually stimulating behaviour. The Panel considered that the advertisement did not contain sex.

Does the advertisement contain sexuality?

The Panel noted the definition of sexuality in the Practice Note is “the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters”.

The Panel considered that the advertisement featured two people in bed together embracing and that the advertisement did contain sexuality.

Does the advertisement contain nudity?

The Panel noted that the definition of nudity in the Practice Note is “the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity”.

The Panel noted that the people in the advertisement are appropriately covered by the sheet, however there is a suggestion that they may not be wearing clothes. The Panel considered that this is a depiction of suggested nudity.

Are the issues of sexuality and nudity treated with sensitivity to the relevant audience?

The Panel noted that the definition of sensitivity in the Practice Note is “understanding and awareness to the needs and emotions of others”.



The Panel considered that the requirement to consider whether sexual suggestion is 'sensitive to the relevant audience' requires 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 Panel noted that this television advertisement was a billboard advertisement which would be seen by a broad audience, which would include children.

The Panel considered that the two people were appropriately covered by the sheets and the suggested nudity was mild and not inappropriate for broad audiences.

The Panel considered that while the couple's embrace was intimate it was not highly suggestive of sexualised activity. The Panel considered that the most likely interpretation of the advertisement was two people embracing while in bed together, and that the advertisement was not overtly sexual or inappropriate for a broad audience.

Section 2.4 Conclusion

The Panel determined the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and did not breach Section 2.4 of the Code.

Conclusion

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