



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0017-21
2. Advertiser :	ContextLogic
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet - Social - Facebook
5. Date of Determination	10-Feb-2021
6. DETERMINATION :	Upheld - Not Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.2 Exploitative or Degrading
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This Facebook advertisement consisted of a series of product listings and images which could be scrolled through within the Facebook feed. These images included:

Image 1 - Images of a young girl in a swimming costume available in five different colours.

Image 2 - An image of a girl in a seven piece leopard print bathing set.

Image 3 - Two images of a girl in black frilly shorts, a white crop top. In one image she is wearing suspenders.

Image 4 - A young boy with his pants down using a blue cow-shaped urinal attached to a wall. A superimposed image of a chick covers his penis.

Image 5 - An image of an adult in a patterned diaper, long socks and a printed shirt holding a soft toy.

Image 6 - An image of an adult woman sitting with her back to the camera in a patterned adult diaper with her head turned. She has a dummy in her mouth.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:



Because they are putting little girls in lingerie, using little girls and boys inappropriately and also showing ads of baby fetishes and sex toys next to the ads using children.

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 concerns that the advertisement is sexualising young children and depicting baby fetishes and sex toys next to ads using children.

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

Section 2.2: Advertising or marketing communications should not employ sexual appeal where images of Minors, or people who appear to be Minors, are used.

Does the advertisement use sexual appeal?

The Panel noted there are six images relating to this advertisement. The Panel considered whether each image contained sexual appeal.

Image 1

The Panel noted that the girl in the advertisement appears to be quite young, approximately aged 5-12. The Panel considered that she is looking into the camera as she poses, and her pose appears vulnerable in the way she holds one arm. The Panel considered that her expression is solemn and there is a feeling that she is sad or vulnerable. The Panel noted that such a pose and expression is not uncommon for adult fashion models, however considered that the feeling invoked from the appearance of the girl is different to an adult model.

The Panel considered that the overall impression of the image suggests that the girl is trying to appear alluring and considered she is portrayed in a manner which treats her as an object of sexual appeal.



Image 2

The Panel noted that the girl in the advertisement appears to be quite young, approximately aged 5-12. The Panel considered that she is looking into the camera as she poses, and she is posed with one hand on her hip. The Panel noted that her face is partly covered by a price label, but that she appears to have a neutral expression. The Panel noted that the bathing set advertising contains a robe, and that the girl is posed with the robe open and partly off her shoulders.

The Panel considered that the overall impression of the image suggests that the girl is trying to appear alluring and considered she is portrayed in a manner which treats her as an object of sexual appeal.

Image 3

The Panel noted that the girl in the advertisement appears to be quite young, approximately aged 5-12. The Panel noted that there are two images of the girl, one in which she is holding a suspender with one hand, and one in which she is posed with one leg cocked out, her hand on her hip and a serious expression.

The Panel noted that she is looking into the camera as she poses, and the pose in the second image is quite adult with her leg cocked out, and her serious, model-like expression. The Panel noted that such a pose and expression is not uncommon for adult fashion models, however considered that the feeling invoked from the appearance of the girl is different to an adult model.

The Panel considered that the overall impression of the image with both depictions of the girl suggests that the girl is trying to appear alluring and considered she is portrayed in a manner which treats her as an object of sexual appeal.

Image 4

The minority of the Panel noted that a toilet training aid is a common purchase for parents, and considered that it is reasonable to depict how the product can be used. The minority considered that the boy does not appear to be sexualised, and although his bare bottom is visible that is not unreasonable given the product. The minority considered that the image is clearly demonstrating the use of the product and noted that his genitals are covered with a rubber duck label. The minority of the Panel considered that this image did not contain sexual appeal.

The majority of the Panel considered that the product could have been advertised without the use of a semi-naked child. The majority considered that in conjunction with the other images in the advertisement, Image 4 does convey a sexual connotation. The majority considered that while the image is not highly sexualised, it is exploitative of the boy and that exploitation is related solely to the depiction of his partial nudity.



The majority considered of the Panel considered that the image does treat the boy as an object of sexual appeal.

Image 5

The Panel noted that this image featured a person who appears to be a male adult, wearing a t-shirt and an adult nappy and holding a stuffed toy. The Panel considered that while the image itself was unlikely to be sexually appealing to a broad audience, there is a suggestion of a sexual fetish and the Panel considered that the image contained sexual appeal.

Image 6

The Panel noted that this image featured a woman who appears to be adult, wearing a t-shirt and nappy, with a dummy/pacifier in her mouth and a hair clip in her hair. The Panel considered that while the image itself may not be sexually appealing to a broad audience, there is a suggestion of a sexual fetish and the Panel considered that the image contained sexual appeal.

Does the advertisement use images of Minors, or people who appear to be Minors?

Image 1

The Panel considered that the girl depicted in the advertisement is clearly a Minor and she is depicted in a manner which treats her as an object of sexual appeal. The Panel determined that Image 1 did use sexual appeal where images of Minors, or people who appear to be Minors, are used.

Image 2

The Panel considered that the girl depicted in the advertisement is clearly a Minor and she is depicted in a manner which treats her as an object of sexual appeal. The Panel determined that Image 2 did use sexual appeal where images of Minors, or people who appear to be Minors, are used.

Image 3

The Panel considered that the girl depicted in the advertisement is clearly a Minor and she is depicted in a manner which treats her as an object of sexual appeal. The Panel determined that Image 3 did use sexual appeal where images of Minors, or people who appear to be Minors, are used.

Image 4

The Panel considered that the boy depicted in the advertisement is clearly a Minor and she is depicted in a manner which treats her as an object of sexual appeal. The Panel determined that Image 4 did use sexual appeal where images of Minors, or people who appear to be Minors, are used.

Image 5



The Panel noted that the male pictured appears to be adult. The Panel noted that while there is a suggestion of Paraphilic Infantilism (a sexual fetish that involves role-playing a regression to an infant-like state) due to the depiction of the nappy, this is not explicit in the image and the man depicted does not seem to be particularly child-like.

The Panel determined that Image 5 did not use sexual appeal where images of Minors, or people who appear to be Minors, are used.

Image 6

The Panel noted that the female pictured appears to be adult. Similar to Image 5, the Panel noted that there is a suggestion of Paraphilic Infantilism (a sexual fetish that involves role-playing a regression to an infant-like state) due to the depiction of the nappy. However, the Panel considered that the reference to a sexual fetish is more apparent in this image, due to the woman having a dummy in her mouth and a childish clip in her hair.

The Panel noted that the Code refers to Minors or people who appear to be Minors, and acknowledged that the woman in the advertisement does physically appear to be adult. However the Panel considered that the intention of the advertisement is to present the woman as a Minor and therefore make her appear to be a Minor. The Panel considered that the advertisement could be considered under this provision of the Code.

The Panel determined that Image 6 did use sexual appeal where images of Minors, or people who appear to be Minors, are used.

Section 2.2 conclusion

The Panel found that Image 5 did not contain sexual appeal and the provision of Section 2.2 did not apply to this image.

The Panel found that Images 1, 2, 3, 4, and 6 did employ sexual appeal in a manner where images of Minors, or people who appear to be Minors, are used and did breach Section 2.2 of the Code.

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

The Panel noted the Practice Note for the Code states:

“Models who appear to be minors should not be used in sexual poses.”

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*”.

Image 1

The Panel noted that the girl in the advertisement was not engaged in sexual activity. The Panel considered that Image 1 did not contain sex.

Image 2

The Panel noted that the girl in the advertisement was not engaged in sexual activity. The Panel considered that Image 2 did not contain sex.

Image 3

The Panel noted that the girl in the advertisement was not engaged in sexual activity. The Panel considered that Image 3 did not contain sex.

Image 4

The Panel noted that the boy in the advertisement was not engaged in sexual activity. The Panel considered that Image 4 did not contain sex.

Image 5

The Panel noted that the man in the advertisement was not engaged in sexual activity. The Panel considered that Image 5 did not contain sex.

Image 6

The Panel noted that the woman in the advertisement was not engaged in sexual activity. The Panel considered that Image 6 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*”.

Image 1

The Panel considered that for the reasons discussed under Section 2.2, Image 1 did depict sexuality.

Image 2

The Panel considered that for the reasons discussed under Section 2.2, Image 2 did depict sexuality.

Image 3

The Panel considered that for the reasons discussed under Section 2.2, Image 3 did depict sexuality.



Image 4

The Panel had similar considerations under Section 2.4 as it did under 2.2 in regards to whether the advertisement depicts sexuality. Overall, the majority of the Panel considered that for the reasons discussed under Section 2.2, Image 4 did depict sexuality.

Image 5

The Panel considered that a reference to a sexual fetish, though not explicit, is still a reference to sexual matters. The Panel considered that Image 5 contained sexuality.

Image 6

The Panel considered that a reference to a sexual fetish is a reference to sexual matters. The Panel considered that Image 6 contained 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”*.

Image 1

The Panel noted that the girl is wearing a one piece swimsuit. The Panel considered that Image 1 did not contain nudity.

Image 2

The Panel noted that the girl is wearing a two piece swimsuit and a robe. The Panel considered that Image 2 did not contain nudity.

Image 3

The Panel noted that the girl is wearing a white shirt, black shorts and suspenders. The Panel considered that Image 2 did not contain nudity.

Image 4

The Panel noted that the boy in the advertisement is shown to have his pants around his knees and his bare bottom is visible. The Panel considered that Image 4 did contain partial nudity.

Image 5

The Panel noted that the man is wearing a t-shirt and a nappy. The Panel considered that Image 5 did not contain nudity.

Image 6

The Panel noted that the woman is wearing a t-shirt and a nappy. The Panel considered that Image 6 did not contain 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 advertisement appeared on Facebook as a sponsored post. The Panel noted that the advertisement is presented in a scrolling format, meaning that the first image appears in a ‘feed’ and then a user can continue scrolling across to view more images. The Panel noted that this advertisement would likely be targeted towards users that had shown an interest in parenting or children’s products.

Image 1

Similar to the comments discussed in Section 2.2, the Panel considered that overall the image amounted to a depiction of a young person which is sexualised and is therefore not appropriate.

Image 2

Similar to the comments discussed in Section 2.2, the Panel considered that overall the image amounted to a depiction of a young person which is sexualised and is therefore not appropriate.

Image 3

Similar to the comments discussed in Section 2.2, the Panel considered that overall the image amounted to a depiction of a young person which is sexualised and is therefore not appropriate.

Image 4

The minority of the Panel considered that this image contains mild nudity, and the nudity is not presented in a sexualised context. The minority considered that the image is clearly demonstrating the use of the toilet training product and noted that the boy’s genitals are covered with a rubber duck label. The minority of the Panel considered that this image was not sexualised, and did depict partial nudity with sensitivity to the relevant audience.

The majority of the Panel considered that the product is obvious and could have been advertised without the use of a semi-naked child. The majority considered that in conjunction with the other images in the advertisement, Image 4 does have a sexual connotation even if the image itself is not intended to be sexualised.



Similar to the comments discussed in Section 2.2, the majority of the Panel considered that overall the image amounted to a depiction of a young person which is sexualised and is therefore not appropriate.

Image 5

The Panel considered that while the advertisement is suggestive of a sexual fetish, this is not explicit and would not be clear to all viewers.

The Panel considered that the image was not highly sexually suggestive and was not inappropriate for a broad, predominately adult Facebook audience.

Image 6

The Panel considered that the advertisement is suggestive of a sexual fetish. The Panel noted that Image 1 may be considered to be promoting only the nappy product, however Image 2 depicts the person in a moderately sexualised manner. The Panel considered that a reference to a sexual fetish is not of itself a breach of the Code, and noted that Paraphilic Infantilism is not a fetish characterised by attraction to children, but rather adults role-playing. However the Panel considered that most members of the community would not be familiar with the nuances of such a matter and would view the advertisement as sexualising a person intended to be representative of a child, and find it to be inappropriate.

The Panel noted that the depiction of Image 6 in conjunction with several other images which feature children in a sexualised manner made the impact of Image 6 more substantial.

The Panel considered that the image did not treat sexuality with sensitivity to the relevant audience.

Section 2.4 Conclusion

The Panel found that Image 5 did treat sex, sexuality or nudity with sensitivity to the relevant audience and did not breach Section 2.4 of the Code.

The Panel found that Images 1, 2, 3, 4, and 6 did not treat sex, sexuality and nudity with sensitivity to the relevant audience and did breach Section 2.4 of the Code.

Conclusion

Finding that the advertisement did breach Section 2.2 and 2.4 of the Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION



The advertiser has not provided a response to the Panel's determination. Ad Standards will continue to work with the advertiser and other industry bodies regarding this issue of non-compliance.