



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

AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0019/19
2	Advertiser	ACON Inc.
3	Product	Community Awareness
4	Type of Advertisement / media	Billboard
5	Date of Determination	23/01/2019
6	DETERMINATION	Dismissed
7	Date of reviewed determination	17/04/2019
8	Determination on review	Dismissed

ISSUES RAISED

- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.4 - Sex/sexuality/nudity S/S/N - nudity

DESCRIPTION OF THE ADVERTISEMENT

This billboard advertisement features an image of two men in a bed, with one laying on the chest of the other and looking directly to the camera and smiling. The text on the creative states "WE TEST" and "It's who we are, it's what we do. Test for HIV & STIs at least twice a year."

THE COMPLAINT

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

it is an offensive, hypersexualised image in full view of children

The billboard depicts people in a "sexual setting"; either having sex, or about to, or just having done so, or at least intimate cuddling. This is not suitable for public broadcast; for adults who don't want to be exposed to such sexual content, let alone children. The encouragement to get tested, could be easily made, without the visual picture of people in such a sexual setting.



THE ADVERTISER'S RESPONSE

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

Thank you for your letter of 14 January 2019, advising ACON of a complaint related to ACON's 'WE TEST' campaign (Complaint Reference Number: 0019/19). As required by your correspondence, please find below our response. ACON understands the complaints raise issues under Section 2 of the AANA Advertiser Code of Ethics, and our response will be considered at the next meeting of the Community Panel for Advertising Standards. You have requested that ACON provide specific information about the advertisement – including: description, advertising agency and media buyer, digital copy of the advertisement, and comments in relation to the complaint. Further you've requested we respond under the specific section 2.4 under Section 2 of the AANA Code of Ethics, which relates to sex, sexuality and nudity. ACON will also provide a response to the complaint on the issue of advertising and marketing to children.

DETAILS OF ADVERTISEMENT Established in 1985, ACON is NSW's largest community-based HIV and lesbian, gay, bisexual, transgender and intersex (LGBTI) health organisation. ACON works to reduce HIV transmission, support people with HIV and enhance the health and wellbeing of the LGBTI community. HIV is a serious chronic disease, with between 350 and 400 people annually being diagnosed with the virus in NSW over the past decade. On average, approximately 80% of those diagnosed are gay men, or other men who have sex with men. The subject of the complaint being addressed relates to the placement of a Crosstrack panel at Central railway station which forms part of ACON's ENDING HIV 'WE TEST' campaign. This campaign aims to promote HIV testing among gay and bisexual men and ran for a period of six weeks. This broader campaign features outdoor billboards and street posters in various locations throughout Sydney. For this reason, ACON's response will include discussion of the overall ENDING HIV campaign, the billboards, citylight panels and posters. ENDING HIV ACON launched its communication platform called ENDING HIV in February 2013. ENDING HIV is an interactive community mobilisation, social marketing and education engagement platform that incorporates communication, campaign and community engagement initiatives aimed at virtually eliminating new HIV transmissions among gay men in NSW by the end of the decade. The campaign emphasises three key messages that make up an 'equation' – they are: 'Test Often', 'Treat Early' and 'Stay Safe'. ACON's major HIV prevention campaigns involve social marketing banners and poster executions, which are developed by FROST Design, in partnership with ACON and with funding from the NSW Ministry of Health. Pre-publication approval of all Ministry of Health-funded campaigns is a standing requirement of the Ministry's funding and performance agreement. ACON's standard process for campaign development includes pre-campaign focus testing and post-campaign evaluation. Successive ENDING HIV campaigns have built upon each other, introduced new research evidence and helped the key affected populations incorporate new HIV prevention technologies in their daily lives. WE TEST – 'Test



Often' Campaign As mentioned above, *ENDING HIV* includes three critical messages – one of which is 'Test Often'. The 'WE TEST' campaign, developed by creative agency *FROST Design* is an integral component of the broader *ENDING HIV* communication platform (also a *FROST Design* concept). The 'WE TEST' campaign was launched in November 2018, to coincide with the international day of remembrance, *World AIDS Day* on 1 December. This campaign aims to promote the overall goal of ending HIV transmissions by instilling strong community belief around HIV testing for all gay and bisexual men. The campaign was designed to encourage conversations among the target audience and provide them with a direct referral for more information. The campaign consisted of 10 outdoor executions that were placed throughout Sydney and outer suburban areas. These areas were identified as popular places of residence or places of work for gay men. In total, there were 15 *Crosstrack* panels at train stations managed by *APN*, one large format digital panel, 17 medium format digital panels managed by *Adshel*, and a combined 51 panels in various street, railway and transit settings managed by *Adshel* and *JCDecaux*. The outdoor elements were complimented by a suite of digital advertising including websites, mobile applications and social media. All the advertisements are linked with an engaging video (<https://www.facebook.com/endinghiv/videos/218281315786291/>) demonstrating the HIV testing process. The talent and locations for each of the images of the campaign are based on the locations featured in the video. This was strategically developed to improve recognition and recall among the target audience. The text contained in each of the campaign creative includes (Refer Attachment 1): WE TEST It's who we are, it's what we do. Test for HIV and STIs at least twice a year. *ENDINGHIV.ORG.AU* These creative concepts are easily recognisable within the gay community and consistent with *ACON's ENDING HIV branding guidelines*.

CONTEXT FOR THE COMPLAINT As the HIV epidemic has evolved, prevention with gay men has become more complex and increasingly requires engagement with a broad cross-section of men – including importantly young gay men. *ACON's* work is informed by its *Strategic Plan 2013-2018* and *HIV Action Plan 2013-2018*, both of which are aligned to the bold targets set out in the *NSW HIV Strategy 2016-2020*. The implementation of the *NSW HIV Strategy* has seen *Government and Non-Government Organisations (NGOs)* working in partnership to promote HIV prevention using public messaging and awareness-raising strategies, such as rapid HIV testing services being offered in Sydney locations including *Surry Hills, Darlinghurst, Kings Cross and Newtown* and wider sexual health services throughout *NSW*. A critical element within the *ENDING HIV* communication platform is centred around increasing HIV testing among gay and bisexual men, in addition to maintaining a strong safe sex culture among all gay men.

CAMPAIGN OBJECTIVES Key objectives of the overall *ENDING HIV* campaign include a focus on informing gay men about recent research findings, new prevention approaches and technologies that make the virtual elimination of HIV attainable. The objectives also extend to increasing knowledge about the critical need to be tested for HIV more regularly, and encourage those diagnosed with HIV to consider treating earlier. Evidence shows that early treatment assists in lowering the community viral load sufficient to attain the overall reduction in transmission. Crucially, the campaign



promotes the centrality of gay men taking decisions to reduce their risk of HIV transmission, which relies on gay men sustaining a safe sex culture. The 'WE TEST' campaign is designed to expand on the dialogue established between ACON and gay men within the ENDING HIV framing. The message design elaborates on the ENDING HIV community engagement platform and provides further detail on a tangible call to action for the 'Test Often' component of the framework. The talent featured within the campaign are all representatives from within the community, who volunteered their time to further promote the cause and the importance of ending HIV. As with previous campaigns, concept focus group testing was conducted by an independent market researcher Colin Macarthur in accordance with ACON's Focus Group Guidelines and the NSW Health Educational Resources Approval Policy. Two focus groups were conducted - HIV negative gay men separated by younger and older gay men – and the campaign was very positively received in each group. In addition, prior to the release of the campaign, all campaign sample creative concepts were reviewed by the Outdoor Media Association (OMA) and were subsequently approved. ACON's RESPONSE ACON strongly believes the campaign complies with the sensitivity and appropriateness requirements under Section 2.4 of the AANA Code of Ethics, and that the campaign does not market to children either directly or indirectly, as required by the AANA's Code of Advertising & Marketing to Children. Education and prevention measures continue to be the most appropriate and effective public health response to HIV/AIDS in Australia. To be effective, such measures need to be in the form of clear and concise health messages that are accessible and culturally appropriate to their target audience. As mentioned previously, 80% of new HIV infections in Australia are amongst homosexually active men, so it is important that information is made available to these men to help them look after their health and avoid HIV transmission. Also, almost 20% of HIV transmissions occur in the heterosexual population – making the public health message one that is applicable to a broad audience. The intent of this campaign was to be eye-catching and to draw attention to the public health message that relates to promoting sexual health. The aim is for an informed adult eye to understand the message and context and then provide a referral for additional information. We do not believe that a child would have an informed eye in the context of this campaign. ACON is sensitive to general community expectations and would never deliberately seek to provoke age-inappropriate engagement with our campaign material. ACON disputes the complainant's remarks that 'naked' men in a 'sexual' setting have been used. While the two men in the advertisement are shirtless, the advertisement does not show any explicit parts of the body and the focus of the image is a man's smiling face, with only their heads, arms and shoulders contained within the image. Furthermore, we do not agree with the complainant's comments regarding 'sexual setting – either having sex, or about to, or just having done so, or at least intimate cuddling.' These advertisements do not contain sexualised imagery, rather they reinforce a healthy relationship between two men. This advertisement is in many ways, far less sexualised a range of outdoor than commercial advertisements for fragrances, underwear or swimwear. The focus of this image is the face, with strong eye contact with the audience to hopefully attract attention. This is further supported



with advice regarding previous cases listed on the Advertising Standards website, in which the Community Panel have previously dismissed a number of cases of this nature; “Advertising which features couples, including same-sex couples, kissing or embracing, as long as no private parts are visible, and are appropriate for the intended audiences, would not be seen as explicit sexual content” (Media Dynamics – 0372/16; Unilever Australasia – 0131/17; and Spark Network Services – 0111/18). In the context of concern about declining HIV testing rates, commensurate calls for promotion of HIV testing awareness campaigns, that are aligned with the NSW HIV Strategy using increasingly bold public awareness raising strategies, the brief placements of these advertisements in and around Sydney and outer suburbs will hopefully generate a much needed public dialogue around the importance of HIV testing. As indicated earlier, these are messages that are not only critical for ACON’s community, but the broader community. ACON is not aware of any other complaints regarding this campaign. The vast majority of the responses ACON has had to the campaign have been extremely positive. Thank you for the opportunity to respond.

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 features sexualised images which would be inappropriate to be seen by children.

The Panel viewed the advertisement and noted the advertiser’s 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 note that the advertisement was a billboard at a train station and the relevant audience would therefore be broad and would include children.

The Panel noted that the billboard advertisement featured two men embracing in bed with the words ‘WE TEST’ superimposed over them and information on the importance of and availability of HIV testing.

The Panel noted that the men were embracing in bed, however they were not depicted engaging in sexual activity and there was no nudity.

The Panel considered that showing a couple in bed with the words ‘we test’ were relevant to the important health message being promoted. The Panel considered that the men looked relaxed, happy and loving and that their poses were not overly sexualised and that the overall advertisement was not overly sexualised, other than



being for a health message about an STD.

The Panel noted that it has consistently dismissed complaints about advertisements which feature couples kissing or embracing, as long as there are no private parts visible and the advertisements were not strongly suggestive of sexual activity (032/16, 0131/17 and 0111/18).

Consistent with previous determinations, the Panel considered that this advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad 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 complaints.

INDEPENDENT REVIEWER'S RECOMMENDATION

DESCRIPTION OF THE ADVERTISEMENT

The billboard advertisement was part of a community awareness campaign called ENDING HIV by ACON Inc, NSW's largest community-based HIV and lesbian, gay, bisexual, transgender and intersex (LGBTI) health organisation. The campaign comprised a series of advertisements with the message 'Test Often', 'Treat Early' and 'Stay Safe'. The advertisements were aimed at gay men.

The advertisement to which objection has been raised was displayed at railway stations, Sydney. It depicted two men in a bed, with one laying on the chest of the other and looking directly to the camera and smiling. The text on the image states 'WE TEST' and 'It's who we are, it's what we do. Test for HIV and STIs at least twice a year'.

THE COMPLAINT

The complaint being reviewed related to the dismissal of the complaint by the Community Panel (Panel). The complainant confined the application for review to a breach of s 2.4 of the AANA Code of Ethics (Code). That section prohibits advertising that does not treat 'sex, sexuality and nudity with sensitivity to the relevant audience'.

The Complainant relied solely on the ground:

Where there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence).



The relevant provision of the Code of Ethics related to s 2.4 states:

Advertising or Marketing Communication shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The submission in support of the application for review was based on several arguments:

The first was that the 'advertisement clearly depicts a highly sexually suggestive image which is inappropriate for children'. The argument was that it was a 'highly sexually suggestive image because:

- 'sexually suggestive' material entails content depicting which likely refers to sex in some way, as distinct from, for example, 'sexually explicit' material which actually depicts sex in some way; and
- "'a highly sexually suggestive" image is one which very likely refers to sex in some way'.

The second argument was that the advertisement 'is very unlikely to be viewed with any other understanding than that it is sexually suggestive depiction. It is unambiguously sexually suggestive and is therefore inappropriate for children.

The third argument was that 'The image is ... entirely relevant to the message being promoted [which] further confirms the highly sexually suggestive nature of the image' which 'is inappropriate for children'. Further that 'The importance of the health message is irrelevant to the question of whether the ad breaches s 2.4 of the Code'.

A fourth argument is that the advertisement 'is notably different to most, if not all, of the other ads in the same ACON 'We Test' campaign; which do not include sexually suggestive images'.

In response, the Panel:

- 'acknowledged that the billboard containing the advertisement was at a train station and the audience would include children'; and
- 'the Panel noted the complainant's concern that the advertisement features sexualised images which would be inappropriate to be seen by children',

but found that:

- 'the image was entirely relevant to the message being promoted';
- 'the men were embracing in bed, however, they were not depicted as engaging in sexual activity and there was no nudity';



- 'that showing the couple in bed with the words 'we test' was relevant to the important health message being promoted'.

Findings

The reviewer noted that the Panel agreed that the audience of an advertisement at a train station would include children. The particular train stations at which the advertisement was placed were Central Station, Martin Place, and Bondi Junction. Each of these stations is among the busiest in NSW and likely to have an audience which includes children.

The reviewer noted the third argument of the appellant that 'The image is ... entirely relevant to the message being promoted [which] further confirms the highly sexually suggestive nature of the image' which 'is inappropriate for children' and that 'The importance of the health message is irrelevant to the question of whether the ad breaches s 2.4 of the Code'.

In the context of the appropriateness of the advertising as part of a community health campaign, it is known that the highest incidence of HIV is found in the male community (as the evidence by ACON Inc indicated) and that there is a concerted effort being made by health authorities to combat that condition (also adverted to by ACON in its information about the funding support it received from the NSW Ministry of Health, and ACON's standard process for campaign development).

This advertisement is clearly designed to reinforce that awareness by reminding males to ensure they are tested regularly in order to treat carriers and to avoid communicating the disease. That is a message which is valuable for adults as well as children and is evident in the material submitted by ACON Inc.

In that context of a campaign, a disease predominantly passed on by sexual contact between males, a discreet reference to the male-to-male sexuality is an appropriate one. An image of two males together is relevant to the intended message.

The sexual implication must also be seen in the context of the 'WE TEST' words on the advertisement. Those words are depicted in large type, which dominates the image. The words highlight the health message being promoted, and have the effect of downplaying the sexual nature of the image. The result is partly to offset any sexually offensive aspect of the pose of the two men in bed together.

In addition, the fact that the principal figure is looking directly at the audience with a warm smile, indicates an invitation to the public to focus on the superimposed 'WE TEST' words. In other words, the dominant effect of the words and the image of the principal male figure partly downplay the sexual implication raised by the image.



In the reviewer's opinion the health message is relevant to the issue of whether or not the ad treats a sexual issue with sensitivity to the child audience, as many health messages will also be intended to reach older children.

The Reviewer considered the appellant's concern that the advertisement is 'highly sexually suggestive'.

The reviewer noted that the Panel considered that:

- 'the image was entirely relevant to the message being promoted';
- 'the men were embracing in bed, however, they were not depicted as engaging in sexual activity and there was no nudity';
- That the men looked relaxed, happy and loving and that their poses were not overly sexualised.

The Reviewer noted by contrast that the appellant considered the image to be highly sexually suggestive image because:

- 'sexually suggestive' material entails content depicting which likely refers to sex in some way, as distinct from, for example, 'sexually explicit' material which actually depicts sex in some way; and
- "'a highly sexually suggestive" image is one which very likely refers to sex in some way'.

The reviewer noted that the Panel is required to consider prevailing community standards in its determination of whether the depiction is 'sensitive to the relevant audience.' The Reviewer noted that the decision of whether or not an image is highly sexualised or mildly sexualised is one of which people will have diverse opinions.

In the Reviewer's opinion it was open to the Panel to find that the image is not strongly sexualised.

It is shown in a context of Australian society's actual and legal acceptance of the legitimacy of same sex relationship. It is now accepted that homosexual contact is lawful. The normalisation of such relationships is becoming acceptable to the community at large.

At the same time, the reviewer accepts that the image is suggestive of sexual contact. The two men are in close contact, one lying on the other. They appear not to have clothes on their upper torso, the only visible part of their bodies. The juxtaposition of the two bodies, although discreet, is an explicit reference to a sexual relationship.

If the two male figures had been shown in bed lying on their backs, with the top part of their bodies depicted as nude, and both focusing on the viewer, the advertisement would, in my view, have been acceptable. It is the placement of the figures with one on top of the other which creates a sexualised image.



The Reviewer also considered the second argument was that the advertisement 'is very unlikely to be viewed with any other understanding than that it is sexually suggestive depiction. It is unambiguously sexually suggestive and is therefore inappropriate for children. '

The Reviewer noted the Panel accepted that children would see the advertisement and agreed that it was not overly sexualised. The Reviewed noted however that the Panel did not clearly articulate how the depiction of a sexual scene was 'sensitive' to the audience which would include children. In particular the Reviewer noted that engaging in sex is still seen by the community as a private activity and that adults generally do not have sexual conduct in public or where they can be observed by children.

The Reviewer noted the fourth argument is that the advertisement 'is notably different to most, if not all, of the other ads in the same ACON 'We Test' campaign; which do not include sexually suggestive images'. The Reviewer noted that the Panel must consider each advertisement on its own and other images in the campaign are not necessarily relevant and certainly not determinatives. The Reviewer noted that the Panel did not refer to other advertisements in the campaign and that this is not a flaw in the decision.

In summary:

- only two persons have complained about the advertisement;
- it is appropriate to depict two males in an advertisement advocating the health message to be tested regularly to avoid a sexually transmitted disease predominantly found in male-to-male sexual contact;
- the sexuality of the pose is partly offset by the superimposition of the words 'WE TEST', and the image of one of the males focusing on the audience, not the other male.

These are mitigating circumstances.

Nonetheless, the pose of the two figures with its clear implication of the sexual relationship between the two is a sexually suggestive depiction and the Panel has not considered on the face of the determination how this depiction is appropriate for viewing by an audience which includes children.

In the Reviewer's opinion the Panel agreed that the pose of the two men was sexually suggestive, was available in the context of an audience which includes children of all ages, but did not give any reason as to how the advertisement treat the sexual suggestiveness with the sensitivity required under the Code.

The finding of the Panel that because' the two men were not depicted engaging in



sexual activity and there was no nudity ... this advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience and did not breach s 2.4 of the Code' contained a substantial flaw and the Panel should reconsider its determination ensuring it gives appropriate consideration to the issue of whether or not the treatment of sex in the advertisement is 'sensitive to the relevant audience

THE DETERMINATION ON REVIEW

The Ad Standards Community Panel (the Panel) noted the request for review of its decision and the findings of the Independent Reviewer.

In particular the Panel noted that the Independent Reviewer considered that there was a substantial flaw in Panel's determination and the matter should be reconsidered by the Panel. Specifically, the Reviewer noted:

- The Panel did not clearly articulate how the depiction of a sexual scene was 'sensitive' to the audience which would include children.

Taking into account the Independent Reviewer's recommendations and comments, the Panel again considered whether the advertisement treated sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel noted that the advertisement was a billboard at a train station and the relevant audience would therefore be broad and would include children.

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 advertisement contained sex, sexuality or nudity.

The Panel noted the image contains:

- Two men with bare torsos lying on what appears to be a bed,
- One man is lying on the other man facing the camera smiling, the other man's face is away from the camera
- The image of the men is partially obscured by text stating in large font 'We



test. Its who we are, it's what we do. Test for HIV and STIs at least twice a year.' In small font at the bottom of the image is 'test often+treat early+stay safe =Ending HIV 2020. Text at the top says 'endinghiv.org.au'

The Panel considered that the image contained partial nudity, in the images of the men's naked chest and arms. The Panel considered that the nudity did not reveal a significant proportion of the men's bodies and did not display genitals. The Panel considered that the primary nudity was in the men's arms and shoulders. The Panel considered that the image depicting men's bare arms was a depiction of partial nudity and that this nudity was mild and was a sensitive depiction of partial nudity that was not inappropriate for children to see as it is a degree of nudity that children would come across in routine situations, as it is not inappropriate or unusual for men to have bare torsos when in situations such as the beach, in the backyard or in their homes.

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 considered that the depiction of two men partially naked on a bed is sexually suggestive behaviour but considered that it is not a depiction of sexual intercourse and is not sexually stimulating. The Panel noted that the Code of Ethics does not prohibit depictions or suggestions of sex to any audience – rather the requirement is that any depiction is 'sensitive to the relevant audience'.

The Panel considered that the nature of the product or service being promoted will have an impact on whether or not the depiction is sensitive, as this will relate to whether the sexual suggestion is gratuitous and stands out or is an integral part of the message the advertisement is sending out.

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 suggestions is or might be is relevant to the Panel considering how children, and other sections of the community, might consider the advertisement.

The Panel reiterated that the Code does not prohibit sexually suggestive depictions. The Panel considered that;



- Reference to sexual health issues (STIs and HIV) is the key message of the advertisement;
- The message of the advertisement is relevant to a broad audience of sexually active people including sexually active or aware teenagers;
- The depiction of two men in bed is relevant to the message;
- The words superimposed onto the advertisement partially obscure the detail of the men.

The Panel considered that the relevant audience includes people who do not like references to homosexuality, people who do not like images of homosexual couples, and children accessing public transport, with or without parental supervision.

The Panel considered that the advertisement did not use sexually explicit language, used only a sexually suggestive image and did treat a sexualised message in a direct manner which did not include sexually explicit images or language.

The Panel considered that young children would be unlikely to understand that the advertisement is for sexual health, or that the advertisement is for sexual health issues commonly associated with same sex couples. The Panel considered that young children would not take a sexualised connotation from the image of the two men. The Panel considered that an image of two people in an embrace on a bed was not inappropriate to be seen by a broad audience which would include children, as children would not necessarily view the image as sexual and the image of the men could easily be interpreted as indicative of affection.

The Panel considered that the advertisement did depict sexually suggestive material in a manner that treated the subject matter in a direct and informative manner. The Panel considered that the depiction of sexually suggestive material in this manner was appropriate to a broad audience which included young children and while the message of STI testing may be understood by older children it is an important message for this age group.

Overall, the Panel considered that the language and messaging in the advertisement in combination with the image of two people in bed together could be interpreted as sexually suggestive, however the sexually suggestive material was depicted in a manner that took into account, or was sensitive to, the likely concerns and views of the board audience

After taking into account the Reviewer's findings, and reconsidering the content of the advertisement the Panel considered that this advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience and did not breach Section 2.4 of the Code.

