



**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>0021-20</b>
<b>2. Advertiser :</b>	<b>Prime Video</b>
<b>3. Product :</b>	<b>Entertainment</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - On Demand</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 television-on-demand advertisement is for season three of the television series The Marvellous Mrs. Maisel. The advertisement includes:

- a woman doing stand up comedy at an event, stating, "1960, an interesting time to be a woman"
- Women in costumes dancing in front of an American flag with soldier's cheering in the audience
- People in and around a pool, with the words "20 Emmy nominations including outstanding comedy series" superimposed on screen
- A woman standing up and cheering in a bar
- A woman dressed formally posing for pictures with soldiers
- Two women talking with one saying, "This is the first of a million tours"
- A woman listening to headphones in a radio studio asking, "is this pornography?" To which a man responds, "It's not pornography" and another woman states, "It sounds like pornography" and the man responds again, "It's not pornography."
- images of people performing on stage
- A woman squatting over a pool chair pointing at herself and saying, "remember the face".



## THE COMPLAINT

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

*I wasn't offended, and answered our kids' questions as to what pornography was - I just don't think that specific clip needs to be shown during a show aimed at families. There is no facility to skip ads.*

## THE ADVERTISER'S RESPONSE

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

*The advertisement is compliant with each element of Section 2 of the Code, as detailed further below. The advertisement is a 30-second trailer for Season 3 of television series The Marvelous Mrs. Maisel. It was rated by CAD as PG (Key Number: AMA030MRSM, CAD Reference Number: P7POXEPE) and it was played during similar or more restrictive rated content. The run of this advertisement has been completed and there are no current plans to re-run it.*

*2.1: The advertisement does not discriminate or vilify anyone based on race, ethnicity, gender, nationality, age, sexual preference, religion, disability, mental illness, or political belief. The complaint cites the use of the word "pornography." It is used in a 3-second clip where the main character of the series is asking a factual question about the fictional radio ad she is recording (the content of which is not seen or heard). It's a question sincerely posed to a radio producer who would not have been responsible for writing the content and is not identified as a member of any of the aforementioned classes.*

*2.2: The advertisement is not employing sexual appeal. The word "pornography" is only used in a factual manner in a professional setting without any sexual appeal being implied. Furthermore, the advertisement does not contain any images of minors, or anyone who appears to be a minor and is not exploitative or degrading in any way to any individual or group of people.*

*2.3: There is no portrayal of violence in the advertisement.*

*2.4: There is no depiction of sex, sexuality or nudity in the advertisement. As stated, the mention of the word "pornography" is factual in nature and there is no depiction or description of anything sexual. Our Media Buyer confirmed with the networks that because CAD rated the key number as PG, the advertisement was eligible to be broadcast at any time. However, in order to ensure the advertisement was placed with appropriate content, at the time the advertisement was released our Media Buyer*



*instructed the networks that no spot fall in P or C programming (pre-school / children). We have confirmation that, as instructed, our advertisement did not run in P or C programming.*

*2.5: The word “pornography” is not itself obscene language. The advertisement was rated PG by CAD, which allows for language that may require the guidance of parents, teachers or guardians for children. As further described in subsection d above, the advertisement was placed with programs that were given a similar or more restrictive rating and therefore would have been appropriate for the viewing audience following the ratings guides.*

*2.6: There is nothing in the advertisement that is depicting material contrary to community standards on health and safety.*

*2.7: The advertisement is clearly distinguishable as an advertisement for the latest season of The Marvelous Mrs. Maisel as it clearly identifies the show and ends with a clear identification and call to action to viewers that the new season is available December 6 only on Prime Video.*

## **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 was inappropriate for broadcast during a family program due to use of the word pornography.

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 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 considered that the advertisement did not 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 pornography is sexualised content, and that a reference to such content is a reference to 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 factor when considering whether an advertisement contains nudity.

The Panel noted that all people depicted in the advertisement are clothed and considered that the advertisement did not depict nudity.

The Panel then considered whether the issue of sexuality 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 broadcast during the program Lego Masters on On -Demand television. The Panel noted that the program is rated PG, and considered that the likely audience would include children.



The Panel considered that the word pornography of itself is not explicit and the use of the word, without any actual depiction of that type of content, is not a breach of the Code.

The Panel acknowledged that some members of the community would prefer that this word not be used on television where children can hear it, but considered that the actual content of the advertisement is not sexually explicit and did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience which would include children.

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

The Panel considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: “Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided”.

The Panel noted the complainant’s concern around the use of ‘pornography’.

The Panel considered that the word was not used in combination with any other sexualised language or images.

The Panel considered that the use of the word ‘pornography’ was not inappropriate in the context of the promotion of a television show, when the word is not used in conjunction with any sexualised depictions or references.

The Panel determined that the language used in the advertisement was appropriate in the circumstances and was not strong or obscene, and did not breach Section 2.5 of the Code.

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