



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0042-22
2. Advertiser :	adidas Australia Pty. Ltd.
3. Product :	Lingerie
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	23-Feb-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement dated 11 February features an image of 20 pairs of breasts. The nipples are coloured out (not pixelated).

The caption states "Breasts of all shapes and sizes deserve support and comfort tailored to them. Which is why our new sports bra range contains 43 styles, so everyone can find the right sports bra for them. In sport, everybody should feel free and inspired by what their bodies can achieve. [link emoji] To see the full story and explore the collection, click the link in our bio. #SupportIsEverything"

THE COMPLAINT

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

showing 24 pictures in a photo of women breasts where minors and children have access to instagram, social media accounts and posts.

This is highly inappropriate.

THE ADVERTISER'S RESPONSE

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



OUR COMMENTS IN RELATION TO THE COMPLAINT

Section 2 AANA Advertiser Code of Ethics (“Code of Ethics”),

2.1 Advertising shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual orientation, religion, disability, mental illness or political belief

2.2 Advertising shall not employ sexual appeal:

- (a) where images of Minors, or people who appear to be Minors, are used; or*
- (b) in a manner which is exploitative or degrading of any individual or group of people.*

2.3 Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

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

2.5 Advertising 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.

2.6 Advertising shall not depict material contrary to Prevailing Community Standards on health and safety

2.7 Distinguishable as advertising: Advertising shall be clearly distinguishable as such

While you have stated that our response should not be limited to Section 2.4 and that we must consider all of the other subsections, we do not consider that the Post falls within subsections 2.1, 2.3, 2.5 or 2.7. We shall therefore limit our comments to Sections 2.2, 2.4 and 2.6.

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

The AANA Guide to Overtly Sexual Imagery in Advertising states that, when considering complaints under Section 2.4, the Community Panel will take into account the following:

- The nature of the product/service advertised;*
- The context of the ad and its location;*
- The medium in which the ad appears, including the size of the advertisement;*
- The audience; and*
- The likely response of that audience.*

Nature of the Product/Service Advertised

As mentioned in the Post, the product advertised is our new sports bra range.



The collection comprises of 43 new styles across 18 product franchises, available in an extensive and inclusive size range to help more athletes experience sports without restraint. Using the insights described in the next section below, adidas set out to redefine its current offering and create a range of sports bras that deliver added comfort and better fit, enabling more female athletes to participate in sport and experience the benefits it brings. Using the latest material and design innovations, the new collection features Everyday bras designed for lounging and gentle movement, Studio bras for yoga, Pilates and other low-to-mid intensity activity, Train bras designed to provide enhanced support during HIIT classes and more intense sport or training, and Run bras that offer the highest level of breast support in the collection.

Context of the Ad

With women's needs being historically under-served when it comes to sportswear designed for the female form, adidas unveiled its extensive new sports bra collection after undergoing extensive research, development and multiple testing stages. Studies have shown that inadequate breast support leads to movement-related breast pain in nearly half of female respondents, whilst over 90% of women have been reported to be wearing the wrong size sports bra. To better support the specific needs of active women, adidas re-engineered its entire sports bra portfolio, catering to more bodies and workouts than ever before. In partnership with leading independent research body, University of Portsmouth, adidas is shining a light on breast movement in sport and the importance of adequate breast support.

The main message that we want to communicate via the Post is that breasts come in many different sizes and forms. This, combined with the fact that a sports bra is the single most important piece of equipment for those with breasts, is precisely why we have created 43 new sports bras and 72 sizes that cater to more bodies than ever before.

The number of breasts shown in the Post is intended to tie in with the variety of new styles and the diversity of the range.

We also draw the Community Panel's attention to the fact that the nipples have been censored from the Post.

Medium in which the Ad appears

The Post appears on Instagram, which is an opt-in social media platform and which is monitored to ensure that posts are in line with its Terms of Use. Instagram's Terms of Use state that "We can remove any content or information that you share on the Service if we believe that it violates these Terms of Use, our policies (including our Instagram Community Guidelines) or we are permitted or required to do so by law."

The Instagram Community Guidelines state:

Post photos and videos that are appropriate for a diverse audience.

We know that there are times when people might want to share nude images that are artistic or creative in nature, but for a variety of reasons, we don't allow nudity on Instagram. This includes photos, videos, and some digitally-created content that show



sexual intercourse, genitals, and close-ups of fully-nude buttocks. It also includes some photos of female nipples, but photos in the context of breastfeeding, birth giving and after-birth moments, health-related situations (for example, post-mastectomy, breast cancer awareness or gender confirmation surgery) or an act of protest are allowed. Nudity in photos of paintings and sculptures is OK too. where the link to “nudity” in the paragraph leads to a page with the following content (emphasis added):

Policy rationale

We restrict the display of nudity or sexual activity because some people in our community may be sensitive to this type of content. Additionally, we default to removing sexual imagery to prevent the sharing of non-consensual or underage content. Restrictions on the display of sexual activity also apply to digitally created content unless it is posted for educational, humorous or satirical purposes. Our Nudity Policies have become more nuanced over time. We understand that nudity can be shared for a variety of reasons, including as a form of protest, to raise awareness about a cause or for educational or medical reasons. Where such intent is clear, we make allowances for the content. For example, while we restrict some images of female breasts that include the nipple, we allow other images, including those depicting acts of protest, women actively engaged in breastfeeding and photos of post - mastectomy scarring. For images depicting visible genitalia or the anus in the context of birth and after-birth moments or health-related situations, we include a warning label so that people are aware that the content may be sensitive. We also allow photographs of paintings, sculptures and other art that depicts nude figures. The Post falls within the allowable exceptions to nudity as extracted above. In addition, the adidas Bra Revolution gallery was meant to highlight and celebrate the diversity in women’s breasts, and it is therefore in line with the policy rationale for allowing nudity on Instagram. As such, the Post does not breach Instagram’s Terms and Conditions but is in accordance with Instagram’s policy on allowable images. We also highlight that Instagram users have accepted these Terms and Conditions in order to access the platform. Moreover, Instagram has not removed the Post.

Relevant Audience

Pursuant to the Practice Note, “Relevant audience is informed by the content of the advertising or marketing communication as well as other material that may be provided by the advertiser including classification material, audience measurement data and the media placement plan, to determine the audience that the advertiser intends to see the advertising or marketing communication.

In the case of social media, the Community Panel should have regard to the opt-in nature of the medium and the age gating which may apply to some social media sites in determining the relevant audience. The Community Panel will consider reasonable members of the relevant audience in making its determinations.”

As the Community Panel will appreciate, Instagram requires users to signup for an account before content can be viewed. In order to do so, users must be 13 years or older: Instagram’s Terms of Use prior to 19 January 2013 required users to be 13 years or older to use the site; they currently state that “You must be at least 13 years old or the minimum legal age in your country to use Instagram.” We therefore disagree



with the comments of the first complainant that “minors and children have access to instagram, social media accounts and posts.” While it may be the case that minors and children have access in reality, this is not the intention of Instagram and is in breach of its Terms and Conditions.

Further, users agree to the Instagram Terms and Conditions to access the platform. As discussed above, our Post is in line with the same.

Moreover, only consumers who follow adidasau (adidas’ Instagram page) would see the Post. Arguably users who follow adidasau would have similar values to those espoused by the Brand.

The likely response of that audience

We would highlight that all of the participants in the images in the Post volunteered to be photographed for the purposes of the Campaign. They would arguably themselves be members of the relevant audience who clearly had a positive response to the Campaign.

We are able to provide data on the actual response of the audience. Generally, the majority of the audience responded well, with 83.3% positive and neutral comments. As at 22 February 2022, the Post has 5792 likes. We therefore submit that the likely response of our audience on Instagram is positive. Some of the positive comments on the Post are extracted below:

Pursuant to the Code of Ethics Practice Note dated February 2021 (“Practice Note”):

- “Images that are considered harmful and which are not permitted are those which are overtly sexual and inappropriate having regard to the relevant audience.”*
- “Nudity: The depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity.”*
- “Overtly sexual depictions where the depiction is not relevant to the product or service being advertised are likely to offend Prevailing Community Standards and be unacceptable.”*
- “Full frontal nudity and explicit pornographic language are not permitted.”*
- “Images of genitalia are not acceptable. Images of nipples may be acceptable in advertisements for plastic surgery or art exhibits for example.”*
- “Images of naked people when viewed in a public space, where the nudity is evident and the focus of the advertisement, have been found not to treat the issue of nudity with sensitivity to the relevant audience, even when the image is not sexual in nature.”*

Drawing upon the discussion above in relation to the factors to be considered pursuant to the AANA Guide to Overtly Sexual Imagery in Advertising, in response to the Practice Note we respectfully submit that:

- the Post is neither overtly sexual nor inappropriate having regard to the relevant audience, and should not therefore be viewed as harmful or prohibited*
- the Post is relevant to the product being advertised and should therefore not offend Prevailing Community Standards nor be unacceptable*



- *as the Post is censored and is of breasts alone, it does not constitute full frontal nudity*
- *given the medium of the Post, the opt-in nature of Instagram, the minimum age requirement, the acceptance of Instagram Terms and Conditions, as well as the fact that the Post would be seen only by users who follow adidasau Instagram, the Post does not breach Section 2.4 of the Code of Ethics.*

Summary

Bearing in mind our comments above in relation to each of the factors for consideration in the AANA Guide to Overtly Sexual Imagery in Advertising, as well as the guidance set out in the Practice Note, we respectfully submit that the Post does not contravene Section 2.4.

2. Section 2.2: Advertising shall not employ sexual appeal:

*(a) where images of Minors, or people who appear to be Minors, are used; or
(b) in a manner which is exploitative or degrading of any individual or group of people.
For completeness, we also wish to address Section 2.2 of the Code of Ethics, which prohibits the use of sexual appeal in advertising which is exploitative or degrading to any individual or group of people.*

We note that the Practice Note states that (emphasis added):

*“Material can be found to be exploitative or degrading even where the model is looking confiden where the model is being depicted as a product or commodity or the focus on body parts is not relevant to the product or service being advertised. ...
‘Focusing on body parts’ can include a close-up, multiple close-ups or long-still on breasts or buttocks or cropping in such a way as to emphasise these body parts. Such focus on body parts is not acceptable unless used to advertise relevant products and services.”*

To the extent that the Post focuses on body parts, we draw the Panel’s attention to the fact that the Post is advertising bras, which are relevant to the body parts shown. The nipples have also been censored.

Pursuant to the above reasoning, the focus is therefore not unacceptable.

In line with our comments at Part 1 above, we submit that the Post does not employ sexual appeal, nor is it exploitative or degrading to any person. To the contrary, in no way are we positioning this image in a sexual context. The adidas Bra Revolution gallery was meant to highlight and celebrate the diversity in women’s breasts. We believe all bodies should be supported, without shame or exception. Our goal was to inspire current and future generations to have confidence in their own bodies and realize their own potential.

We therefore respectfully submit that the Post does not breach Section 2.2 of the Code of Ethics.



3. Section 2.6: Advertising shall not depict material contrary to Prevailing Community Standards on health and safety

Since this Section of the Code of Ethics addresses body image, we also draw the attention of the Community Panel to the following statements in the Practice Note:

- “Advertising must not portray an unrealistic ideal body image by portraying body shapes or features that are unrealistic or unattainable through healthy practices. Exposure to unrealistic body ideals can lead to harmful body dissatisfaction and disordered eating and for this reason it is not acceptable in advertising.”
- “UNREALISTIC IDEAL BODY IMAGE: Advertising that provides an unrealistic ideal body image by portraying body shapes or features that are unrealistic or unattainable through healthy practices, which is not justifiable in the context of the product or service being advertised, will be contrary to prevailing community standards relating to health and safety.”
- “ALTERATION OF IMAGES: ...Advertisers should refrain from altering images in a way that changes the body shape or proportions portrayed.”

As mentioned above, all of the participants in the images in the Post volunteered to be photographed for the purposes of the Campaign. They are real women depicted without any alteration of images. We would argue that, far from contravening Section 2.6 of the Code of Ethics, our Post in fact supports the policy rationale behind this Section by demonstrating realistic body images. At adidas we believe women’s bodies and breasts should be celebrated, without shame or exception, so future generations can have confidence in their own bodies. Our goal was to inspire current and future generations to have confidence in their own bodies and realize their own potential. We therefore respectfully submit that the Post does not breach Section 2.6 of the Code of Ethics.

Conclusion

In summary, and for all of the reasons set out above, we respectfully submit that we have not breached Section 2 of the Code of Ethics.

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 featured inappropriate nudity.

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 includes:



“Full frontal nudity and explicit pornographic language are not permitted. Images of genitalia are not acceptable. Images of nipples may be acceptable in advertisements for plastic surgery or art exhibits for example...

...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 naked people when viewed in a public space, where the nudity is evident and the focus of the advertisement, have been found not to treat the issue of nudity with sensitivity to the relevant audience, even when the image is not sexual in nature.”

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 did not feature imagery of any two people interacting. The Panel considered the advertisement did not include 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 people in the advertisement were posed in a natural manner and not in a way which was sexualised. The Panel considered that although there was a focus on breasts, the overall advertisement was not related to sexual matters and did not 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 although the nipples in the image were obscured, the multiple bare breasts in the advertisement meant that it did contain a high level of nudity.

Is the 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 was an Instagram post on the advertiser's own page and the relevant audience would be people who follow the brand on social media. The Panel noted that users of Instagram should be aged 13 and over, and that it was likely the advertiser's page would include teenagers interested in the sportswear brand. The Panel considered that the relevant audience was teenagers and adults who followed the Instagram account.

The Panel noted that there was growing concern in the community relating to the sexualised portrayal of women in advertising, however considered that while the advertisement did contain a high level of nudity it was not sexual in character.

The Panel considered that other posts on the advertiser's Instagram page featured images of sportswear or shoes and that followers of the page may not expect the advertiser to post images of naked breasts. However, the Panel noted that the adult and teenage audience of the advertisement would be used to a certain level of nudity on social media. Further, the non-sexualised nudity was relevant to the advertised product of a sports bra range.

Overall, the Panel considered that the relevant audience of followers of the Instagram account would not be shocked or offended by the use of non-sexualised nudity that was in line with the social media platform's guidelines. The Panel determined that the advertisement did treat the issue of nudity with sensitivity to the relevant, restricted 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.