



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0043-22
2. Advertiser :	adidas Australia Pty. Ltd.
3. Product :	Lingerie
4. Type of Advertisement/Media :	Email
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 email advertisement features an image of 24 pairs of naked breasts.

THE COMPLAINT

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

There was option to avoid seeing the content, nor was there any warning that I was about to see it. They were attempting to seek female sports bras.

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 Email 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 Email, 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 Email 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 Email is intended to tie in with the variety of new styles and the diversity of the range.

Medium in which the Ad appears

The Email was sent to consumers who have subscribed to our email marketing newsletters. Subscription is via our website, and currently requires consumers to confirm that they are at least 15 years of age; previously, they were required to confirm that they were over 16 years of age.

As such, we would argue that consumers who received the Email:

- 1. Are of sufficient maturity to view the contents of the Email; and*
- 2. Have a similar mindset to adidas and the adidas' brand and would therefore understand the intent and the messaging behind our campaign.*

Again, by its very nature, consumers receiving the Email had opted-in to do so. The Email was only received by those who specifically signed up and chose to be provided with adidas newsletters. Arguably such users would have similar values to those espoused by the Brand.

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 discussed above, only consumers who have actively chosen to receive adidas newsletters would see the Email.

In addition, the Email subject line is "Support is here. Sports bras for every fit and move". As such, any male subscribers or any subscribers who are not interested in sports bras are unlikely to open the Email.

We therefore submit that the relevant audience of the Email is women/those with breasts.

The likely response of that audience

We would highlight that all of the participants in the images 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.

As discussed above, we are of the view that the relevant audience is women/those with breasts, who we would not expect to be offended by images of breasts or to find them inappropriate. This is particularly the case for women who have the mindset to actively engage with adidas and its usual forms of brand messaging.

We would like to draw your attention to the response to a similar post on Instagram. Admittedly, that post was censored, however we would argue that the consumers who follow us on Instagram and those who subscribe to our newsletters would be similar. As such, the response to the Instagram post gives us some highlights into the likely response of the relevant audience to the Email.

Generally, the majority of the audience responded well to the Instagram post, with 83.3% positive and neutral comments. As at 22 February 2022, the post has 5792 likes. 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 Email is neither overtly sexual nor inappropriate having regard to the relevant audience, and should not therefore be viewed as harmful or prohibited*
- *the Email is relevant to the product being advertised and should therefore not offend Prevailing Community Standards nor be unacceptable*
- *as the Email is of breasts alone, it does not constitute full frontal nudity*
- *given the medium of the Email, the opt-in nature of receipt of our newsletters/marketing communications, the minimum age requirement, as well as the fact that the Email would be seen only by consumers who receive it and choose to open it, when the subject line is clearly intended for women/those with breasts, the Email 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 Email 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 confident 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 Email focuses on body parts, we draw the Panel’s attention to the fact that the Email is advertising bras, which are relevant to the body parts shown. Pursuant to the above reasoning, the focus is therefore not unacceptable.



In line with our comments at Part 1 above, we submit that the Email 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 Email 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."*

All of the participants in the images 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 Email 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 Email 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.

We would also like to mention that one of our consumers had contacted us directly to express her dissatisfaction with the Email. Our Brand team member explained to her



the rationale of the Campaign and offered to remove the consumer in question from our marketing database, however the lady refused this offer. Give the strength of the lady's comments, we believe that she may be the complainant.

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 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 the multiple bare breasts in the advertisement did represent 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 email that was sent to people who subscribed to the advertiser’s email database. The Panel noted the advertiser’s response that the target audience was women who would be interested in the product. The Panel noted that the relevant audience is the audience who is likely to see the advertisement, and in this instance it would be people aged 15 years and over who had subscribed to receive emails.

The Panel noted that there was growing concern in the community relating to the sexualised portrayal of women in advertising, however considered that while it did contain a high level of nudity, the advertisement was not sexual in nature. The Panel considered the non-sexualised nudity was relevant to the advertised product of a sports bra range.

The Panel considered that the advertiser was best known for selling sportswear and shoes and that people who subscribed to the emails may not expect the advertiser to send images of naked breasts, and might find the image confronting, particularly if they opened it in public or in a workplace. However, the Panel considered that many people in the age bracket would not be concerned or upset by the depiction of breasts in an advertisement for bras.

Overall, the Panel considered that the relevant audience of adults and older teenagers would not be shocked or offended by the use of non-sexualised nudity. 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 complaint.