



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0047-20
2. Advertiser :	Honey Birdette
3. Product :	Lingerie
4. Type of Advertisement/Media :	TV - Out of Home
5. Date of Determination	22-Jan-2020
6. DETERMINATION :	Upheld - Not Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This TV Out of Home advertisement has two versions.

Version 1 is four seconds long and features a blonde woman seated on a chair as a brunette woman walks behind her, trailing her hand along the blonde woman's shoulders.

Version 2 is nine seconds long and featured a brunette woman standing, then being forcefully guided into a chair by a blonde woman. The blonde woman holds the brunette woman's ponytail as she walks around her.

THE COMPLAINT

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

The ads were on display in high traffic areas of the malls. In one centre, the ads formed the backdrop for a children's Santa parade. The ads are highly sexualised and indistinguishable from an ad for the sex industry (eg strip venue) and unsuitable for display in general public space, let alone places where children are specifically invited to participate in activities. Moreover, people are working in these spaces- people who have a right to work without being exposed to sexualised imagery. The space does not



belong to the advertiser and the advertiser has no right to impose its porn-themed ads onto an all-age, non-consenting audience who are not its customers.

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 concern that the advertisement is highly sexualised and unsuitable for display in a public place.

The Panel viewed the advertisement and noted the advertiser did not provide a 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 images 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 women in revealing lingerie is not of itself a depiction of sexual intercourse, sexual stimulation or suggestive behaviour. The Panel considered that there was no explicit sexual touching or interaction between the two women in the advertisement and that the advertisement as a whole did not contain sex.



The Panel considered whether the advertisement featured 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 the style of lingerie being promoted was sexualised and that the interaction between the women was sexual, both due to their clothing and the manner in which they touched and interacted with each other. The Panel determined that the advertisement did contain 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 a factor when considering whether an advertisement contains nudity.

The Panel considered that both women are wearing a red bra, underpants and garter set. The Panel noted that the lingerie did cover the women's breasts and genitals. The Panel considered however that many members of the community would consider the depiction of a woman in lingerie to be partial nudity.

The Panel then considered whether the advertisement treated the issue of sexuality and nudity 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.

Version 1 is four seconds long and features a blonde woman seated on a chair as a brunette woman walks behind her, trailing her hand along the blonde woman's shoulders.



Version 2 is nine seconds long and featured a brunette woman standing, then being forcefully guided into a chair by a blonde woman. The blonde woman holds the brunette woman's ponytail as she walks around her.

The Panel noted that this video appears in store windows and considered that the relevant audience includes retail and service workers, people shopping in the Honey Birdette store and people who are not shopping at Honey Birdette but who are walking past the store, and that this last group would be broad and would include children.

The Panel considered Version 1 of the advertisement. The Panel considered that there is a mild degree of sexual tension and sexuality between the two women in the advertisement. The Panel considered however that there is no explicit sexual touching between the women, and considered that the overall impression is one of an artistic style, similar to a fashion advertisement. The Panel also noted that the length of the advertisement, four seconds, meant that advertisement was quite fleeting. The Panel considered that Version 1 of the advertisement treated sexuality with sensitivity to a broad audience.

The Panel considered Version 2 of the advertisement. Similar to Version 1, the Panel considered that there is a mild degree of sexual tension and sexuality between the two women in the advertisement, but that the interaction between the women was not explicit.

The Panel noted that Version 2 depicts a blonde woman pushing a brunette woman into a chair, and that this action did imply a mild degree of sexual aggression, particularly when the blonde woman then pulls on the brunette woman's ponytail.

The Panel noted that Version 2 is nine seconds long, and considered that the video would not be considered fleeting by most members of the community. The Panel considered that the length of this version enabled the audience to focus on the scenario depicted, and that that scenario was one which was indicative of a mildly sexual relationship. The Panel considered that due to the mildly aggressive nature of a woman pushing another woman into a chair, the sensual pull of a ponytail and the length of the advertisement, this depiction did not treat sexuality with sensitivity to the relevant broad audience.

The Panel considered that both women are wearing a red bra, underpants and garter set. The Panel noted that the lingerie did cover the women's breasts and genitals. The Panel noted that the lingerie worn in the advertisement is available for purchase at Honey Birdette, however considered that products must still be advertised in a manner that is suitable for advertising on the front window of a store that is located in a shopping centre.

The Panel considered the Practice Note for the Code which provides:



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

The Panel considered that although the women’s cleavage was visible, their full breasts and nipples are not exposed, and there is no focus on the women’s breasts in the advertisement. The Panel considered that their pubic region is likewise well covered and although the style may be sexualised, the level of nudity is not inappropriate for a broad audience.

Overall, the Panel determined that Version 1 did treat sexuality and nudity with sensitivity to the relevant audience.

Overall the Panel determined that Version 2 did not treat sexuality and nudity with sensitivity to the relevant audience and did breach Section 2.4 of the Code.

Finding that the advertisement breached 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.