



# Case Report

1	Case Number	0051/17
2	Advertiser	Brand Collective
3	Product	Clothing
4	Type of Advertisement / media	Internet-Social-FB
5	Date of Determination	08/02/2017
6	DETERMINATION	Upheld - Modified or Discontinued

## ISSUES RAISED

- 2.2 - Objectification Exploitative and degrading
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.4 - Sex/sexuality/nudity S/S/N - nudity

## DESCRIPTION OF THE ADVERTISEMENT

This advertisement consists of 8 images and one video on the advertiser's Facebook page:

Image 1 – a man has his hands inside the front of the white underpants of a person doing a handstand against his body – this other person's upper torso and head are not shown although they are wearing a pair of volleys.

Images 2 and 4 – are images of people in a car; a woman's legs are revealed as is part of a man's torso.

Image 3 – like 2, is a shot of a car with two couples on the front and back. The man and woman on the front are embracing and only wearing underpants and shoes but no part of the woman's chest is shown. The two men at the back of the car are embracing.

Images 5 and 7 – shows couples in intimate embraces with the models, Image 5 with blue background and Image 7 on a grass tennis court, wearing Volley shoes.

Image 6 – a group of naked people lined up against a net on a tennis court. They are viewed from behind and have their hands raised in the air.

Image 8 – is an image of a condom over a racket handle with the text, "make a racquet"

## **THE COMPLAINT**

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

*Seeing naked people on an ad promoting shoes is disgusting and to have such a disregard to viewers who disagree with their view of sexual expression is deplorable.*

*Having almost naked men to advertise shoes is totally inappropriate. It is pushing an agenda that has nothing to do with shoes, but has more to do with sexual preferences. It is also appearing on news feeds, openly, where children can view it. It borders on pornography.*

*The images used are pornographic. On investigation the same images are also on the company's website and other social media platforms. Completely inappropriate.*

## **THE ADVERTISER'S RESPONSE**

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

*Advertisement complaint reference number: 0051/17*

*We refer to your letters dated 23 and 30 January 2017 and telephone conversation with the ASB on 1 February 2017.*

### *Description of the Advertisement*

*You have notified us of two separate online content complaints with four complainants in total:*

- *Complaint 20/01/17 – Internet-Social-FB – “Several photos of gay men hugging on my newsfeed to advertise shoes”*
  - o *see example in attachment Image 1*
- *Complaint 20/01/17 – Internet-Social-FB – “I am looking for back to school shoes for my kids not pornographic images with models wearing nothing but shoes”*
  - o *Images on <http://www.volley.com.au/grassroots> - we are not certain which images the complainant refers to but refer the Board to the “#Grassroots I SS16” landing page link above.*
- *Complaint 27/01/17 – Internet-Social-FB – “I feel this advertising campaign BLATANTKLY breaches the Advertisier Code of Ethics . . .”*
  - o *Images on <http://www.volley.com.au/grassroots> - we are not certain which images the complainant refers to but refer the Board to the “#Grassroots I SS16” landing page link above.*

- *Complaint 20/01/17 – Internet-Social-FB – Facebook – “The advertiser used naked people in suggestive positions sexual expression. The shoe product was not even mentioned”*

- o *Images on <http://www.volley.com.au/grassroots> - we are not certain which images the complainant refers to but refer the Board to the “#Grassroots I SS16” landing page link above.*

*Comprehensive comments in relation to the complaint (taking into account the need to address all aspects of the advertising codes)*

*It is alleged that the images he subject of the complaint displayed raise issues under section 2.4 of the AANA Advertiser Code of Ethics (the Code). This section states: ‘Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.’*

*Please note that the advertising component of the #Grassroots SS16 campaign ceased on 16 September 2016.*

*Turning to any complaints of images are contained in the <http://www.volley.com.au/grassroots> landing page. Customers initially accessing <http://www.volley.com.au> (“Volley website”) are shown a home page with a clothed swimwear model, shoes for sale, several images and the following links across the top of the screen:*

- *Shop*
- *Sale*
- *Blog*
- *#Grassroots*
- *Sign In*
- *Cart, and*
- *Q.*

*A customer wanting to access the images the subject of the complaint must then actively click on the link “#Grassroots” at the top of the screen, and are then taken to the #Grassroots SS16 landing page.*

*The target market for the campaign is the men and women aged 20 to 35. The intention of the campaign is to promote, in conjunction with Volley product, that our customers will not be socially engineered, are free to express their sexual preference, and are prepared to speak their minds and feel comfortable in their own skin. As a business, we support the move to legalise same sex marriage and this campaign also ties in with that public discussion. The heading “Grassroots” also harks back to Volley’s heritage as being the preferred grass court tennis shoe in days past.*

*Reviewing the elements of section 2.4 of the Code, we submit that there is no contravention.*

*Sex*

*In our view, the images the subject of the complaint do not depict the act of sex nor the sexualisation of children. The models are standing or sitting in what we acknowledge to be*

*intimate embraces and where those embraces could be construed as sexual in nature (which we do not concede), such embraces are photographed with sensitivity. Also, all models used are adults as can in our view clearly be seen in the posters.*

### *Sexuality*

*The images the subject of the complaint do depict sexuality however we believe that the actors are standing or sitting in poses typical for a model promoting a fashion label and importantly appropriate to our relevant audience.*

*Reviewing in detail each of the two images that we have been able to identify from the complainants' complaints as depicting Sex and Sexuality*

- *Images 1 – shows a male couple in intimate embraces with the models with blue background, wearing Volley product sharing their love of each other and comfortable in their own skin*

### *Nudity*

*Where models are almost naked, we believe that photographs are taken tastefully.*

### *Sensitivity*

*The images treat their subject matter with sensitivity. This is evident as:*

- *The models are in our view beautifully photographed, comfortable and relaxed with what they are wearing and doing*
- *As noted, the term “Grassroots” harks back to Volley’s heritage as being the preferred grass court tennis shoe*
- *The images are targeted at the adult, fashion-conscious, male and female ages 20 to 35, who are, using the tag lines that we have developed for the campaign, “not socially engineered”, are “prepared to speak their minds” and “feel comfortable in their own skin”. As indicated, to access the images, one must initially access the Volley website homepages and then click on “#Grassroots”. This minimises, though does not eliminate the possibility of unintended access; a customer must click twice.*

*One complainant also referred to section 2.2 of the Code. We do not believe that the images contravene section 2.2 of the Code as, in our view, it does not employ sexual appeal in a manner which is exploitative or degrading of an individual or group of people. We do not believe any other section of section 2 of the Code is relevant to the complaint.*

*Turning to complaints relating to unwittingly opening #Grassroots content or receiving via facebook or other social media feeds when attempting to make another purchase (like school shoes) or view Volley or other product sold by Brand Collective, the complainants do not provide details of how the #Grassroots content was received so we are unable to comment in detail on the method of delivery but note comments below that the #Grassroots landing page and any social media notifications has or will cease by 14 February 2017.*

## *Conclusion*

*We submit that the images do not breach the Code, as they do not show sex, sexuality or nudity with insensitivity and believe that the subject matter is treated with sensitivity to the relevant audience.*

*The images should be considered in the context of the target audience of sophisticated male and female adults ages 20 to 35 aspiring to feel comfortable in their own skin.*

## *Removal of #Grassroots landing page*

*However, we have agreed internally that, to minimize any unintentional offence taken by members of the public should they unknowingly access the #Grassroots landing page, we will by 19 February 2017, remove the #Grassroots landing page which shows Images 1 to 8 from the Volley website and will not redeploy any of the images currently found on the #Grassroots landing page to either the Volley website home page or any other landing pages of the Volley website.*

## *Cessation of #Grassroots social media content*

*Further, we have agreed internally that, to minimize any unintentional offence taken by members of the public, we have directed that by 19 February 2017, no further social media content containing the #Grassroots will be issued.*

## *Request for removal of all images*

*I confirm that the ASB called me on 1 February to discuss whether we would be prepared to immediately remove all images from the #Grassroots landing page, given the level of recent complaints received by the ASB. After giving the matter serious thought, we are not prepared to completely remove the landing page because, for the reasons set out in this letter, we believe that the campaign, as a whole, is appropriate and the subject matter is treated with sensitivity to the relevant audience and does not show sex, sexuality or nudity with insensitivity.*

*However, in acknowledging ASB's request, we have reviewed the content of the #Grassroots landing page and have removed the video and three of what we believe may be images of more concern to complainants. The removed images are attached to the email containing this letter [images 3, 5, 7].*

*In taking this step, we have amended the date for removal of the entire #Grassroots landing page to 19 February 2017 when our new campaign will be ready for activation (it being delayed by a few days).*

## **THE DETERMINATION**

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainants' concerns that the advertisement depicts nudity and sexualised images which are not appropriate for children to see.

The Board viewed the advertisement and noted the advertiser's response.

The Board considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: "Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people."

The Board noted that this Facebook advertisement includes 8 images of people in various poses. The Board noted it had previously considered the same images when used on the advertiser's website in case 0016/17 where the Board upheld the first image but dismissed the remaining 7.

The Board noted image 1 which shows a naked man with a person's legs resting against his torso and shoulders. The other person is in a headstand position, with his back to the man, is wearing volley shoes and white undies/shorts, and is visible from the waist up.

The Board noted that in order to breach this Section of the Code the image would need to be using sexual appeal in a manner that is considered both exploitative and degrading.

The Board noted the AANA Practice Note which provides guidance on the meaning of the terms exploitative and degrading:

Exploitative - purposefully debase or abuse a person for the enjoyment of others, lacking in moral, artistic or other values.

Degrading – lowering in character or quality a person or group of people.

The Board noted that the head of the person wearing the white undies is not shown and considered that although it could be seen as exploitative to have this person's groin as the central focus of the advertisement the Board considered that the overall image is a depiction of closeness between the two people and this is not degrading.

The Board considered that the advertisement did not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.

The Board determined that the advertisement did not breach Section 2.2 of the Code.

The Board 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 Board noted it had previously upheld complaints about the image number 1 when it was used on a poster displayed outdoors (0401/16):

"The Board noted the positioning of the man's hands inside the person's undies/shorts. The Board noted it is not clear if this person is male or female but regardless of their gender, a minority of the Board considered that the image is not suggestive of this couple about to

engage in sex. The majority of the Board however considered that the placement of the man's hands inside the undies/shorts of another person is strongly suggestive of sexual activity due to the proximity of the hands to the person's genitals. The majority of the Board noted that the man is naked and considered that there is a suggestion of pubic hair visible between the parted legs of the other person which increases the overall sexualised impact of the image. The majority of the Board noted that the advertised product is Volley shoes and considered that there is no relevance between the image in the advertisement of a man with his hands near the genitals of another person and the advertised product, and in the Board's view the advertisement uses a sexualised image in a gratuitous manner. The majority of the Board noted the placement of these posters outside and considered that this image does not treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience which would include children."

The Board noted the placement of the current advertisement on the advertiser's Facebook page and a minority of the Board considered that while the image is sexualised, as the audience is restricted compared to an outdoors advertisement, in their view it is not inappropriate for the audience.

The majority of the Board however noted that the advertiser sells shoes and considered that consumers looking to purchase shoes online would not expect to see sexually explicit images. The majority of the Board considered that consistent with its previous determination in case 0401/16, and with its determination in case 0016/17 for the same advertisement placed on the advertiser's website, image 1 was strongly sexualised and did not treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience of online consumers looking to purchase footwear.

The Board determined that image 1 did breach Section 2.4 of the Code.

The Board noted images 2 and 4 which feature groups of people in a car. The Board noted that in each of these images while the suggestion of nudity is high the actual nudity is relatively mild as the placement of limbs, parts of the car and the models' hair covers most of the models' bodies. The Board noted that in each image a model's feet clad in a pair of Volley shoes is central and considered that in the context of the advertised product and the placement on a website directed to adults purchasing footwear the images did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Board noted image 3 which features two couples sitting either end of a car. The Board noted the advertiser's response that this image has been removed from the website. The Board noted that the couple seated on the car's bonnet appear to be wearing only underwear and shoes. The Board noted that the woman is topless and is straddling the man's lap and considered that her breasts are covered by her arm and although the level of nudity is high it is not explicit and the image is sexually suggestive but not sexually explicit. The Board noted the couple embracing at the rear of the car and considered that while one man has his hand resting just inside the side of the other man's undies/shorts the level of sexual suggestion is not excessive or inappropriate. The Board noted that there are people seated inside the car and considered that it is not clear what they are doing however in the Board's view the level of nudity we can see is not excessive and overall the image is not so sexualised as to be inappropriate in the context of a limited Facebook audience of people looking to purchase footwear.

The Board noted images 5 and 7 which feature couples embracing. The Board noted the advertiser's response that both these images have been removed from the website. The Board noted image 5 which shows two men in a seated embrace, with their arms around each other's shoulders and their faces turned towards the viewer. The Board acknowledged that some members of the community could find this image to be confronting because it features two men wearing underpants embracing but considered that men embracing is not of itself a breach of the Code and in the Board's view the level of nudity is mild and the image is loving rather sexual. The Board noted image 7 which depicts a couple embracing on the grass of a tennis court. The Board noted that only the couple's lower torsos are shown therefore their genders are not clear and considered that while the person on the left appears to be completely naked in the Board's view the overall focus is on the shoes the couple is wearing, the level of nudity is not explicit, and the pose is not so sexualised as to be inappropriate in the context of the placement of the advertisement on the advertiser's page on Facebook.

The Board noted image 6 which features a group of naked people lined up in front of a tennis court net with their backs to the viewer. The Board noted that the naked bottoms of the 8 people are fully shown. The Board noted it had previously upheld complaints about a poster image showing 4 naked women's bottoms in case 0361/15, where it noted the size of the image and its placement in a store window and considered that the level of nudity was not appropriate in this context. The Board noted the current advertisement is an image on an advertiser's Facebook page and considered that the photograph has been taken from a distance and this, coupled with the relatively small size of the image when compared to a poster which fills a store window, means the level of nudity is not quite as confronting and in the context of the relevant audience the image is adequately sensitive.

The Board noted image 8 which depicts a condom over the handle of a racquet. The Board noted the accompanying text reads, "Make a racquet" and considered that a depiction of a condom in conjunction with this play on words between sport and safe sex is not explicit and while this is not an image you would expect to see on a shoe retailer's Facebook page, in the Board's view it is not so graphic as to be inappropriate for this audience.

Overall the Board considered that version 1 of the advertisement did not treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and determined that the advertisement did breach Section 2.4 of the Code.

Finding that version 1 of the advertisement did breach Section 2.4 of the Code, the Board upheld the complaints.

## **THE ADVERTISER'S RESPONSE TO DETERMINATION**

In response to the Advertising Standards Bureau's determination of Case 0051/17 where the ASB determined that some of the images issued via social media in relation to the #Grassroots "Volley" campaign breached Section 2.4 of the Advertiser Code of Ethics administered by the ASB, we confirm that the following measures have been taken:

- The #Grassroots "Volley" campaign has ended and no images from the campaign will be redeployed via social media.

We therefore ask that the case report when published include the heading:



“Complaint Upheld – Advertising Modified/Discontinued”.