



Case Report

1	Case Number	0067/11
2	Advertiser	My Chemist
3	Product	Health Products
4	Type of Advertisement / media	Mail
5	Date of Determination	09/03/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

2.3 - Sex/sexuality/nudity Treat with sensitivity to relevant audience

DESCRIPTION OF THE ADVERTISEMENT

Photograph of Kim Kardashian wearing a bikini and with her arms raised so her hands are resting on the back of her head. She is smiling at the camera and the text next to her reads, "Dash in for a bargain this Valentine's Day! Just arrived! QuickTrim. How hot can you be? Kim Kardashian."

THE COMPLAINT

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

On the front cover was a minimally dressed young woman in a scanty bikini posing in a sexually inviting way. The picture was almost as tall as the front of the A4 cover. The tone of the picture was quite different to an underwear advert. Next to the woman was the sentence "Go the DASH this Valentine's Day" and different varieties of perfumes. Next the leg of the woman was a dieting product.

I was offended because I felt that the picture gave the message that sexual favours can be purchased from women for the price of a Valentine's gift from their shop. I felt that the picture in its tone, size and prominence (front cover) clearly promoted the idea of women as sexual objects. I also thought that it conveyed the message that women who had less than perfect bodies should try dieting products as a way of becoming more sexy.

- 1) The image was large and prominent on the front cover of the advertisement. Unavoidable.*
- 2) It is an image which one would see on the cover of 'Ralph' or one of the other men's magazines. I do not appreciate such images entering my home under the guise of*

appropriate sales catalogue material particularly because (but not confined to the fact that) I have young children and they should be protected from such images which should be considered borderline pornographic if not actually pornographic.

3) The image was extremely unnecessary for My Chemist to use - even on the QuickTrim website I could find not find the full image, only a head shot (or midriff) was seen. Successful advertising for this product could have been easily formulated without the full image of a partially nude woman.

4) Under Section 2.3 of the AANA Code of Ethics it is stated that "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and where appropriate the relevant programmed time zone."

There is a high percentage of nudity in the image - 85% at least including partial view of nude breasts and the relevant audience was not 'sensitively' considered because the advertising is delivered to the public indiscriminately.

In conclusion, I fail to understand why images of this nature saturate the advertising world so unnecessarily. One would think that in 2011 marketers would be more creative and have more clever means to advertise their products. I find the said image cheap and smutty and am so disappointed in My Chemist for using such an image I have no intention to use their pharmacy in the future.

THE ADVERTISER'S RESPONSE

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

Kliger Partners act on behalf of My Chemist.

I refer to your letter dated 21 February 2011 to My Chemist attaching two complaints received by the Advertising Standards Bureau (the "Complaints").

Attached for your attention is a copy the advertisement distributed by My Chemist, which is the subject of the Complaints (the "Advertisement").

In the Complaints the complainants allege that the Advertisement breaches:

∴ Section 2.1 of the AANA Advertiser Code of Ethics (the "Code");

∴ Section 2.3 of the Code; and

∴ Section 2.4 of the AANA Code for Advertising and Marketing Communications to Children (the "Children's Code").

It is My Chemist's view that the Advertisement does not breach any provision of the Code or the Children's Code. My Chemist therefore refutes the allegations contained in the Complaints.

The Children's Code

The obligations imposed by the Children's Code only apply to Advertising or Marketing Communications to Children, which are defined by the Children's Code to mean "advertising or marketing communications which, having regard to the theme, visuals and language used, are directed primarily to children ... (emphasis added)".

The Advertisement is contained in a My Chemist Valentines' Day pamphlet, which exclusively advertises adult perfume and slimming food products, including:

∴ Paris Hilton for Women;

∴ Gwen Stefani Perfume;

∴ David Beckham Intimates; and

∴ Daisy Marc Jacobs.

The relevant audience of the Advertisement is adults, and the Advertisement is intended to market perfume and slimming food products to adult customers who wish to purchase gifts for their partners or significant others on Valentines' Day. (My Chemist refers the Board of the ASB to the matter of Complaint N°: 352/08, in which the Board determined that the Fathers' Day advertisement was intended to be directed at adults, and not children.)

Even if it could be said that some children are likely to have purchased Valentine's Day gifts at My Chemist, be it for girlfriends, boyfriends, or parents, it is undisputable that the Advertisement was not primarily directed to children.

Further, My Chemist notes that the design of the Advertisement does not contain a theme, visual or language, which would attract Children's attention.

For the above reasons, it is My Chemist's submission that the Advertisement is not an Advertising or Marketing Communication to Children within the meaning of the Children's Code, and that the Advertisement does not breach any provision of the Children's Code.

Discrimination or Vilification

Section 2.1 of the Code provides that "advertising or marketing communications 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, sex, age, sexual preference, religion, disability or political belief".

The complainants allege that the Advertisement portrays women in a way which discriminates against or vilifies women.

My Chemist refers the Board of the ASB to the matter of Complaint N°: 73/09, in which the Board determined whether an advertisement showing a woman covering her bare breasts with her hands breached section 2.1 of the Code.

The Board held that the advertisement objectified the woman, but was not demeaning, and that the advertisement did not breach section 2.1 of the Code.

Similarly, in the matter of Complaint N°: 276/09, the Board considered whether an advertisement ("the Sexpo Advertisement") that contained five naked men and one naked woman covered by a banner (with the words "Free 'love rocket' on entry") breached section 2.1 of the Code. In that matter, the Board also held that the Sexpo Advertisement objectified the men and the woman, but was not demeaning.

The Advertisement in this case depicts Kim Kardashian, an American celebrity model, standing tall and posing proudly in a full bikini swimsuit. The Advertisement does not contain any nudity.

The Advertisement neither objectifies nor demeans Kim Kardashian, nor women generally, and My Chemist therefore submits that the Advertisement does not breach section 2.1 of the Code. Based on the Board's clear precedents, it is submitted that there is no proper or reasonable basis to find otherwise. To do so would be discriminating against My Chemist. Section 2.3 of the Code provides that "advertising or marketing communications shall treat sex, sexuality, and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone".

As I have previously mentioned, the relevant audience of the Advertisement is adults, who wish to purchase adult perfume and slimming food products for their partners or significant others on Valentines' Day, a day to celebrate love.

As the Board has noted in the matters of Complaint N°s: 276/09 60/10, 0264/10, & 0265/10, the relevance of the image to the product advertised is the determining factor of whether the advertisement treats sexuality, sex or nudity with sensitivity to the relevant audience. The Board will also consider whether the reasonable persons of the relevant audience would find

the portrayal to be unacceptable, in that the portrayal is highly sexually suggestive and indiscrete.

The key product that is advertised in the Advertisement is Quicktrim's Fast Cleanse, a slimming food that is intended to assist customers to lose weight (when used in conjunction with a healthy diet and lifestyle).

The Advertisement features a celebrity model, Kim Kardashian, posing in a full bikini swimsuit. Ms Kardashian's wholesome and healthy figure is fully portrayed in the Advertisement in order to promote and to evoke the relevant audience's desire to achieve good health and physical well-being.

The image of Ms Kardashian's figure in the Advertisement is relatively discrete, in that it does not contain any nudity. Further, Ms Kardashian's pose is mildly sexualised and not sexually explicit or overly sexually suggestive.

My Chemist therefore contends that the Advertisement is only mildly sexual, that the image of Kim Kardashian's figure is relevant to the Fast Cleanse product, and that the Advertisement does not therefore breach section 2.3 of the Code.

My Chemist hopes and expects that its response will assist the Board in finding that the Advertisement does not breach sections 2.1 or 2.3 of the Code, or section 2.4 of the Children's Code.

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 complainant’s concerns that the advertisement includes an image of a young woman in a bikini posing in a sexually inviting way.

The Board reviewed the advertisement and noted the advertiser’s response.

The Board first considered whether the advertisement complied with section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of ...sex...'

The Board noted that the advertisement is for My Chemist Valentines' Day pamphlet, which exclusively advertises adult perfume and slimming food products and in this case depicts Kim Kardashian, an American celebrity model, standing tall and posing in a full bikini swimsuit. The Advertisement does not contain any nudity.

The Board considered that the depiction of the model in a bikini in this image is not demeaning to women, and has relevance to the product being advertised ie: slimming products. The Board determined that, in this instance, the advertisement did not depict any material that discriminated against or vilified any person or section of society and did not breach section 2.1 of the Code.

The Board then considered whether the advertisement was in breach of section 2.3 of the Code. Section 2.3 of the Code states: “Advertising or Marketing Communications shall treat

sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone”.

The Board noted that the private parts of the model are completely covered and considered that the level of nudity depicted is not unacceptable. The Board considered that the woman was not posed in a sexually suggestive manner.

Based on the above the Board determined that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach section 2.3 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.