



**Ad Standards** Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

**AdStandards.com.au**

Ad Standards Limited  
ACN 084 452 666

## Case Report

<b>1. Case Number :</b>	<b>0070-21</b>
<b>2. Advertiser :</b>	<b>Nine Network Australia Pty Ltd</b>
<b>3. Product :</b>	<b>Media</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Facebook</b>
<b>5. Date of Determination</b>	<b>14-Apr-2021</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

### DESCRIPTION OF ADVERTISEMENT

This Facebook advertisement features an image of a woman lying on her stomach wearing a g-string while a man can be seen biting her exposed buttock. The image has the caption, ""I'm definitely not the WAG." Vanessa Sierra is coy about how much money she earns through OnlyFans, only admitting it's enough for herself and her partner tennis star Bernard Tomic, to live a luxurious lifestyle. #60Mins".

### THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*It is without a doubt a sexual act between a couple who have sex (While she also has her OnlyFans site). Children as young as 13 have legal permission to access Facebook. In fact sometimes it's how schools and coaches engage students. There is no child safety filter and children do and should be able to follow news stories without being subjected to this sort of image.*

### THE ADVERTISER'S RESPONSE



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

*We write on behalf of Nine Network Australia Pty Ltd (Nine) regarding your correspondence dated 16 March 2021 in relation to a Facebook post on the 60 Minutes Facebook page (the Post). You have asked Nine to address whether the Post complied with the requirements under Section 2 of the Advertiser Code of Ethics (the Code).*

*Nine takes extremely seriously its compliance with all relevant broadcasting and advertising codes, and the need to inform the public about matters of public interest.*

#### *Compliance with Section 2 of the Code*

*While the focus of this investigation appears to be compliance with section 2.4 (sex, sexuality, nudity), we note your request to address compliance with the entirety of section 2. Having reviewed the Post, Nine has not identified any material which would constitute:*

- discriminatory or vilifying material;*
- employment of sexual appeal where images of minors are used;*
- employment of sexual appeal in a manner which is exploitative or degrading of an individual or group of people (noting that Sierra had created the image herself for the purpose of publication and neither she, nor Tomic, were being degraded or exploited in any way);*
- portrayals of violence;*
- strong or obscene language;*
- material contrary to Prevailing Community Standards on health and safety; and*
- material that was not clearly distinguishable as advertising.*

*Accordingly, Nine does not consider the Post raises any issues concerning sections 2.1, 2.2, 2.3, 2.5, 2.6, or 2.7 of the Code.*

#### *Specific Compliance with Section 2.4 of the Code*

*With respect to section 2.4, the Code states 'Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience'.*

#### *Relevant Audience & Context*

*On the issue of the 'relevant audience', the Post was published on the Facebook page for the 60 Minute program. Accordingly, the likely audience of the Post would be persons who were viewers of the 60 Minutes television program who had, in turn, subscribed to the Facebook page.*

*Nine notes that under the Commercial Television Industry Code of Practice 2015 (the TV Code), current affairs programs are exempt from classification (see clause 2.3.3). Further, unlike other television programs, the TV Code allows news and current affairs programs to be scheduled at any time during the broadcast day provided that broadcasters exercise care in selecting material for broadcast, having particular*



*regard to the likely audience of the program and any identifiable public interest reason for presenting the selected material. In this, the TV Code recognises that news and current affairs content, is, by its very nature, directed at an adult audience.*

*In line with the approach in the TV Code, Nine would submit the relevant audience for the purpose of content on the 60 Minutes Facebook page would be an adult audience, and thus the sensitivities of an adult audience would be relevant for the purpose of assessing the Post's compliance with section 2.4 of the Code.*

*Additionally, it is also important to consider the context of the subject matter being reported on. As a current affairs program, 60 Minutes keeps the public informed about developments in current affairs and matters of public interest – a role that it takes extremely seriously. Fulfilling this function can at times involve important reporting on and discussion about issues which inherently involve adult-oriented material, as in this instance.*

*While the subject matter of the report being referred to in the Post did involve discussion of some sexual themes, this material was presented in the context of a report into the public interest issue of the increasing use of pay-per-view adult websites. Importantly, neither the 60 Minutes report, nor the Post were promotions for these websites, but rather served to inform the public about an upcoming report into the various public interest issues surrounding these websites.*

#### *Sensitivity in respect of Sex, Sexuality and Nudity*

*Viewing the Post within the context articulated above, it is also important to note that clause 2.4 of the Code does not operate as a blanket prohibition on content which may involve sex, sexuality and/or nudity, but rather it requires that 'sensitivity' be exercised in relation to same having regard to the likely adult audience of the Post. Nine makes the following observations in this regard.*

*The Post did not depict any full-frontal or graphic nudity. There was also no depiction of sexual intercourse or graphic 'sexual activity'. Indeed, having regard to the subject matter being reported on, Nine submits it did exercise care and sensitivity in the material which was included in the Post such that it would be considered restrained or of low impact overall to a likely adult audience. Relevantly, Nine notes that the image in the Post clearly depicted Sierra wearing visible black underwear and a strap over her left shoulder indicating she was also wearing presumably some form of bra or bikini. The posing and activity in the image was also of low impact as it did not involve any inappropriate nudity or close-up graphic depiction of sexual activity (eg. no depiction of male or female genitalia, breasts, or sexual acts involving same).*

*The limited and restrained 'sexual' content included in the Post was further contextualised by the fact it made clear the 60 Minutes report would involve an examination of the spectrum of views about adult websites, most plainly evidenced in the reference to Sierra's opinion that they were financially lucrative, juxtaposed with the tagline that use of these websites 'has a dark side too'. As such, Nine submits the*



*Post was not glorifying 'sexual' content, but rather simply informing viewers that the report would be exploring the important public interest issues raised by such websites. Having regard to the considerations identified above, Nine considers that sensitivity was indeed exercised in relation to the material contained in the Post and the material which was included was consistent with the obligations under with section 2.4 noting the likely adult audience. Nine therefore submits there has been no breach of section 2.4 in this instance.*

*We confirm that the relevant image contained in the Post was sourced from Instagram and is still currently available on that platform (see attached). Accordingly, we note that this image would thereby be compliant with Instagram's terms of service – particularly with respect to nudity and adult-oriented material.*

## **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 shows an image of a sex act between a couple which is inappropriate on a Facebook page for a news program which may be viewed by children.

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

### **Section 2.4: Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.**

The Panel noted the Practice Note for the Code states:

*"Overtly sexual images are not appropriate in outdoor advertising or shop front windows.*

*"Although not exhaustive, the following may be considered to be overtly sexual:*

- Poses suggestive of sexual position: parting of legs, hand placed on or near genitals in a manner which draws attention to the region;*
- People depicted in sheer lingerie or clothing where a large amount of buttocks, female breasts, pubic mound or genital regions can be seen; The use of paraphernalia such as whips and handcuffs, particularly in combination with images of people in lingerie, undressed or in poses suggestive of sexual position;*
- Suggestive undressing, such as pulling down a bra strap or underpants; or*
- Interaction between two or more people which is highly suggestive of sexualised activity.*



*“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 models in bikinis or underwear are permitted, however, unacceptable images could include those where a model is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person), or where there is clear sexual innuendo from the ad (e.g. depicting women as sexual objects).”*

### **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 considered that the depiction of the man biting the woman’s buttocks is suggestive of sexually stimulating behaviour and considered that the advertisement did contain 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 couple are partly dressed, in bed together and that the man is biting the woman’s buttocks. The Panel considered that there was a sexual element to the advertisement.

### **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 woman in the advertisement is depicted in lingerie, though the coverage of that lingerie is unclear, and that the man is shirtless and it is unclear if he is wearing underpants. The Panel considered that this is a depiction of partial nudity.

### **Is the issue of sexuality 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.

In assessing the relevant audience, the Panel considered that the placement of the advertisement limited its reach. The Panel considered that the placement of the advertisement on the 60 Minutes Facebook page meant that it was a message by invitation rather than intrusion, as it is only visible to people who visit the 60 Minutes Facebook page or who follow the page. The Panel noted that the fact the Advertiser appeared not to have boosted the advertisement was an important consideration as this meant that the advertisement was not pushed beyond the Facebook page of the advertiser and into a broader Facebook audience.

The Panel noted that although Facebook requires users to be over 13 and there is a chance that some followers of the 60 Minutes Facebook page may be under 18, the relevant audience for this advertisement would be predominately adults who have exercised the choice to follow the advertiser via its online presence or visit their page and who are familiar with the advertiser's posts.

#### **Section 2.4 Conclusion**

Based on the consideration of the relevant Facebook audience of this advertisement, the Panel determined the advertisement did treat sex, sexuality and nudity with sensitivity to that audience and did not breach Section 2.4 of the Code.

#### **Conclusion**

Finding that the advertisement did not breach Section 2.4 of the Code, the Panel dismissed the complaint.