



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0076-20
2. Advertiser :	ContextLogic
3. Product :	Retail
4. Type of Advertisement/Media :	Internet
5. Date of Determination	11-Mar-2020
6. DETERMINATION :	Upheld - Not Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This internet advertisement features four images.

- Image 1 is a person wearing a mask which covers their full head and looks like a penis.
- Image 2 is a women wearing a blue leotard with a white lace-up back laying on her stomach.
- Image 3 features images of portable bottles used for urination, including a small image of a woman with her legs apart holding the bottle between them.
- Image 4 is a woman in a sheer bodysuit with a rose design.

THE COMPLAINT

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

The site news.com.au is a news site that is visited by my whole family and I believe this is not acceptable and more care should be taken to ensure kids are not exposed to this kind of material.

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 not appropriate for the medium.

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 the four images in the advertisement.

The Panel noted that the first image looks like a part of a man's genitalia. The Panel noted however that a close look reveals that the image is a person in a full head covering mask which is designed to look like the head of a penis. The Panel considered that the suggestion of a depiction of a sexual organ in itself is not a depiction of sex. The Panel considered that image one did not contain sex.

The Panel noted the second image depicted a woman in blue clothing lying on her stomach. The Panel considered that the woman was not seen interacting with anyone or engaging in sexually stimulating or suggestive behaviour, and that this image did not contain sex.

The Panel considered the third image. The Panel noted that the product depicted in this image was a portable bottle used for urination, however considered that this is



not clear in the context of the advertisement, as there was no product description or explanation. The Panel considered that the product is phallic shaped and in one image the woman is depicted holding it between her legs with the caption, 'Portable. Easy to Use'. The Panel considered that some members of the community would interpret this to be a masturbatory device and considered that the depiction of someone using this object could be seen to be sexually stimulating or suggestive behaviour. The Panel considered that image three did contain sex.

The Panel then considered image four which depicted a woman in a sheer body suit with a rose pattern. The Panel considered that the woman was not seen engaging in sexually stimulating or suggestive behaviour and that image four 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 the first image. The Panel considered that some members of the community would consider that the depiction of a realistic looking, uncovered penis with no context is sexualised. The Panel considered that the first image did contain sexuality.

The Panel considered the second image depicted a woman lying on her stomach wearing a blue leotard with puffy sleeve and a white lace-up back. The Panel considered that some members of the community would consider the woman's pose in combination with the amount of her buttocks which is showing to be a depiction which contains sexuality.

The Panel considered that the third image was not of a sexualised product, however this would not be immediately recognisable by many members of the community. The Panel considered that the depiction of a product being used in a way which could be mistaken for a masturbatory device is a depiction which contained sexuality.

The Panel then considered the fourth image. The Panel considered that the woman was posed in a strong and confident manner and not in a sexualised way. The Panel considered the body suit was artistic rather than sexualised and that overall there was nothing in the advertisement which recognised or emphasised sexual matters. The Panel considered that the advertisement did not 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 factor when considering whether an advertisement contains nudity.

The Panel considered that the first image featured what at first glance looks like a realistic image of a penis. The Panel noted that it is clear upon a closer look that the image is a a mask and not a depiction of a real penis. The Panel considered that those unfamiliar with the product may not immediately recognise this as a costume and could consider it to be an image of a real penis. The Panel considered that a depiction of a realistic penis was a depiction which contained nudity.

The Panel then considered the second image. The Panel noted that the woman was lying face down and that much of her upper body was covered by her clothing. The Panel considered that the design of the clothing meant that a large amount of her buttocks was exposed. The Panel considered that the bottom of the leotard has ridden up between her legs. The Panel considered that the woman's exposed buttocks and the crease between the woman's legs could be considered to be a depiction of partial nudity.

The Panel then considered the third image. The Panel considered that the depictions of the product did not contain nudity. The Panel considered the small image of the woman holding the product between her parted legs. The Panel considered that the woman's dress was pulled up to expose her entire legs, and that her hand and the product being used obscured any view of the woman's genital region. The Panel considered that while most members of the community would not consider exposed legs to be nudity.

The Panel then considered the fourth image. The Panel considered that the woman's breasts and genitals were fully covered by the design of the body suit. The Panel considered that whilst some parts of the body suit were sheer, the woman's full breasts were covered and there was no emphasis on the woman's body parts. The Panel considered that image four did not contain nudity.

The Panel considered that image four did not contain sex, sexuality or nudity and did not breach Section 2.4 of the Code.

The Panel then considered whether image one 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.

The Panel noted that this advertisement was seen on a news website. The Panel noted that the primary audience for this website would be adults, although it may also be visited by some older children and teenagers.

The Panel noted that this advertisement would not be visible to everyone visiting the website, and would have been served to the complainant based on browser history. The Panel considered however that the products themselves would not have had to be searched for this advertisement to be served, and that search terms like ‘costume’ or ‘travel’ may have been enough for this advertisement to be served.

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 the product in the advertisement is not immediately identifiable as a mask, and that it may be mistaken as an image of a real penis by those unfamiliar with the product. The Panel considered that there is no captioning or information on the image to provide any context of what the product advertised is. The Panel considered that most people looking at articles on a news website would not be expecting to see an image of a penis and would find it inappropriate and confronting. The Panel considered that image one did not treat the issues of sex, sexuality and nudity with sensitivity to the relevant audience, and that this image did breach the Code.

The Panel then considered whether image two treated the issue of sexuality and nudity with sensitivity to the relevant audience.

The Panel considered that whilst the image did expose some of the woman’s buttocks, and that there was a noticeable crease in the fabric between her legs, this was consistent with the design of the clothing being promoted. The Panel considered that the pose of the woman was slightly sexualised, however it also highlighted the lace-up design on the back of the clothing. Overall, the Panel considered that the image was highlighting the detail of the product available and was not overly sexualised. The Panel considered that image two did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel then considered whether image three treated the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel noted that the product itself was a female urination device and was not sexualised in nature, however considered that there was no writing or information



evident on the image to provide this context to people unfamiliar with the product. The Panel considered that the depiction of a woman with her legs apart holding a phallic shaped object between her legs was a depiction which most members of the community unfamiliar with the product would find confronting and overly sexualised. The Panel considered that this image seen in combination with the large penis in image one added to the impression of sexuality in the advertisement. The Panel considered that people browsing a news website would not expect to see an image of a woman who could be interpreted as using a masturbatory device, and that most members of the community would find this confronting and inappropriate. The Panel considered that image three did not treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

Overall, the Panel determined that images two and four did treat sexuality and nudity with sensitivity to the relevant audience.

Overall the Panel determined that images one and three 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