



## THE ADVERTISER'S RESPONSE

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

*2.1 Discrimination or vilification*

*2.2 Exploitative or degrading*

*2.3 Violence*

*Our tag line "Australia can be a dangerous place" and the use of the rubber snake toys was used in the manner of self-deprecating humour. Australia has many wild dangers such as snakes, crocodiles, sharks, and spiders and the ad plays on this, with a touch of tongue-in-cheek, by using the fake snakes that are clearly harmless. The product we are advertising is from nature, is from Australian plants, is used in its purest form and can help protect, heal and has been used for centuries as a natural remedy.*

*Both models in this image, Billie and Robbie, are consenting adults, and gave their permission for us to use these photographs. As professional models, they were paid accordingly for their work with rates set by them. They are also in a relationship and were comfortable to be photographed together. The image is in no way exploitative. We don't believe the image is degrading. Comments on social media from their friends and family when they (and others including the photographer) shared the campaign have been positive, congratulatory, and complimentary, with many commenting on how beautiful and stunning they both look. Even one of their Mums wrote us a note to say how much she loved the images.*

*2.4 Sex, sexuality, and nudity*

*The photograph was taken by one of Australia's leading fashion and lifestyle photographers. Neither model is naked, they are both wearing underwear (similar to swimwear worn at a public beach) and no private parts of their bodies are visible. We don't sell clothes. Instead, the ads are depicting the natural state of the body to emphasise the natural, pure state of our products grown in nature.*

*The body is treated by the photographer with reverence and sensitivity. We don't believe, and there was no intention, that this photo is sexual in nature. We see in this image a protectiveness by the male, empowerment of the woman and an element of tenderness and trust. We fail to see how the female and male forms in their natural state, modestly and thoughtfully covered, need to be seen as sexual, provocative, or pornographic. Is Botticelli's Birth of Venus offensive? Or just a beautiful description of the female body? Is the statue of David offensive? Or an admired depiction of the male body? We had one reader who saw the ad and likened it to a depiction of Adam and Eve.*

*2.5 Language*

*There was no strong or obscene language in this advertisement.*

## *2.6 Health and safety*

*The ad doesn't promote anything unsafe. It is two consenting models sitting with a harmless toy.*

## *2.7 Distinguishable as advertising*

*The ad is clearly distinguishable as such by its layout, its bold positioning of a logo, promotion of a product with a product shot, and link to a webstore.*

## **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 concerns that the advertisement is too sexualised.

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

**Section 2.2: Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people.**

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

Exploitative - (a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or (b) focussing on their body parts where this bears no direct relevance to the product or service being advertised. Degrading – lowering in character or quality a person or group of people.

### **Does the advertisement use sexual appeal?**

The Panel noted that this advertisement depicts an image of a naked woman and man and considered that this does contain sexual appeal.

### **Does the advertisement use sexual appeal in a manner that is exploitative?**

The Panel considered that the two people appear comfortable with each other and their posing, and there is no suggestion that they are objects or commodities.

The Panel considered that while the man and woman are both naked, much of their bodies are covered by the image text and by their own hands and arms, and their nakedness is not explicit. The Panel considered that there is no particular focus on their body parts.

The Panel considered that the advertisement was not exploitative of the woman or man, or women or men in general.

**Does the advertisement use sexual appeal in a manner that is degrading?**

The Panel considered that the two people in the advertisement appear comfortable with each other, and there is no language or text which lowers them in character or quality.

The Panel considered that the advertisement was not degrading of the woman or man, or women or men in general.

**Section 2.2 conclusion**

Finding that the advertisement did not employ sexual appeal in a manner which is exploitative or degrading of an individual or group of people (women), the Panel determined that the advertisement did not breach Section 2.2 of the Code.

**Section 2.4: Advertising 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 noted that the woman is depicted sitting on the lap of the man, and considered that the advertisement did not 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 scene depicted a naked woman and man and considered that the advertisement did contain sexuality.

### **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 and man in the advertisement are unclothed and considered that the advertisement did contain 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.

The Panel noted that this image appeared in a newspaper and the considered that the relevant audience would be broad and predominately adult.

The Panel noted that it is clear that the woman is naked and strongly implied that the man is as well, however noted that the woman's breasts are not visible, nor are either of their genitals.

A minority of the Panel considered that although some viewers may consider the image to be strongly sexualised, the only sexual element is their modest nakedness. The minority considered that this mild sexual innuendo is not inappropriate for a predominately adult audience.

However the majority of the Panel noted that the man appears to be grasping the woman's breast with one hand, and his other hand is placed near her genitals with his fingers touching her upper inner thigh. The majority considered that the woman is not simply sitting on the man's lap, but their interaction has a strong sexual theme suggestive of a prelude to sexual activity. The majority of the Panel considered that such sexualised imagery is not appropriate for an audience of newspapers readers who would not expect to see such sexual imagery.

#### **Section 2.4 Conclusion**

The Panel determined the advertisement did not treat sex, sexuality and nudity with sensitivity to the relevant audience and did breach Section 2.4 of the Code.

#### **Conclusion**

Finding that the advertisement did breach Section 2.4 of the Code, the Panel upheld the complaint.

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

While we strongly disagree and are disappointed with the decision the Panel has reached on this ad, we do accept it and confirm that we have discontinued the advertisement in The Good Weekend.