



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0080-22</b>
<b>2. Advertiser :</b>	<b>Museum of Old and New Art</b>
<b>3. Product :</b>	<b>Food/Bev Groceries</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Facebook</b>
<b>5. Date of Determination</b>	<b>27-Apr-2022</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification  
AANA Code of Ethics\2.2 Exploitative or Degrading  
AANA Code of Ethics\2.4 Sex/sexuality/nudity  
AANA Code of Ethics\2.5 Language

### DESCRIPTION OF ADVERTISEMENT

This Facebook post features an image of rows of chocolates shaped like vulvas. The caption states, "We're doing chocolates now. Inspired by Cunts... and other conversations by Greg Taylor and friends, from the Mona collection. Now available in the Mona Shop".

### THE COMPLAINT

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

*The whole concept is degrading to woman and the use of the word to market them is totally degrading and disgusting*

### THE ADVERTISER'S RESPONSE

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



*Some background on this case for you:*

*- The product was developed in collaboration with Greg Taylor, the artist behind *Cunts... and other conversations* (2008) which is an artwork in our permanent collection. The product directly reference the artwork in its name.*

*- Packaging copy for your reference:*

*Greg Taylor created the artwork *Cunts... and other conversations* hoping to return the cunt to its proper status as ‘the face of God’—the place, he says, ‘where we all start’.*

*Consider that as you consume this recreation of one of the lovely cunts from teh Mona collection, rendered here in the finest milk chocolate from our goof friends (and expert chocolatiers) at nearby Coal River Farm.*

*- We haven’t actually run any advertising with this product and have only made social media posts in our organic channels - none of which have been rejected or flagged by Facebook.*

## **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 degrading to women and the use of an obscenity was inappropriate.

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

**Section 2.1: Advertising or Marketing Communication 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, gender, age, sexual preference, religion, disability, mental illness or political belief.**

The Panel noted the AANA Practice Note which provides guidance on the meaning of: Discrimination - unfair or less favourable treatment

Vilification - humiliates, intimidates, incites hatred, contempt or ridicule

Gender - refer to the attributes, roles, behaviours, activities, opportunities or restrictions that society considers appropriate for girls or boys, women or men.

Gender is distinct from ‘sex’, which refers to biological differences.

**Does the advertisement portray material in a way which discriminates against or vilifies a person on account of gender?**

The Panel noted the complainant’s concern that the advertisement is degrading towards women.



The Panel noted that the exhibition upon which the chocolate product is based is titled “Cunts... and other conversations” and that the use of the word is directly relevant to the product advertised. The Panel considered that the advertisement for the chocolate product is not calling women the offensive term, or using it aggressively or to describe any person, but rather is describing the exhibition that the product is based on. The Panel considered that the name of the exhibition itself was not the subject of the advertisement and it was not within the purview of the Panel to assess the name of an exhibition against the Code.

The Panel acknowledged that some members of the community would find the product itself to be degrading or offensive. The Panel noted however, that this type of product is legally allowed to be sold and that it could consider only the advertising or promotion of the product that is visible to the broader community, and not the appropriateness of the product itself. The Panel considered that it was not unreasonable for the product to be depicted (and named) in advertising.

Overall the Panel considered that there is no material in the advertisement, other than the product image and the name of the exhibition, that gives rise to concerns that the advertisement is discriminatory or vilifying towards women.

### **Section 2.1 conclusion**

Finding that the advertisement did portray material in a way which discriminates against or vilifies a person or section of the community on account of gender, the Panel determined that the advertisement did breach Section 2.1 of the Code.

### **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 features an edible product in the shape of women’s genitals, and considered that the advertisement did contain sexual appeal.

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

The Panel acknowledged that some members of the community would find the type of product advertised to be exploitative. The Panel noted however, that this type of



product is legally allowed to be sold and that it could consider only the advertising or promotion of the product that is visible to the broader community not the appropriateness of the product itself.

The Panel considered that there was a focus on women's body parts in the advertisement, however noted that the advertised product itself is a representation of such body parts and it was not unreasonable for the product to be depicted in advertising. The Panel considered that the images used in the advertisement are clearly related to the product being advertised, being pictures of it.

The Panel considered that the advertisement did not employ sexual appeal in a manner which is exploitative of women.

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

The Panel again noted that while the product itself may be considered to be offensive, the advertisement for the product did not lower women in character or quality.

The Panel considered that the advertisement did not employ sexual appeal in a manner which is degrading to women.

### **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, the Panel determined that the advertisement did not breach Section 2.2 of the Code.

### **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 naked people when viewed in a public space, where the nudity is evident and the focus of the advertisement, have been found not to treat the issue of nudity with sensitivity to the relevant audience, even when the image is not sexual in nature.”*

### **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 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 noted that the advertisement depicted chocolate genitals and that most members of the community would consider this to depict 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 while the product image is not of real genitals, the advertisement did contain images of nudity.

### **Are the issues of sexuality and nudity 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 MONA Facebook page meant that it was a message by invitation rather than intrusion, as it is only visible to people who visit the MONA 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 Instagram page of the advertiser and onto a broader Instagram audience.

The Panel noted that although Facebook requires users to be over 13 and there is a chance that some followers of the MONA 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 its page and who are familiar with the advertiser's posts.

The Panel considered that the audience for this advertisement would be predominately adult and would be people familiar with the themes of MONA, its exhibits and its products. The Panel considered that while the image may be inappropriate for display in a public arena such as a storefront, it was not inappropriate when displayed on the advertiser's own social media channel which has a targeted adult audience of followers interested in sometimes confronting art work.

The Panel acknowledged that the sexualised nature of the product itself may not be considered appropriate by people viewing the advertisement and noted that some members of the community would prefer that these types of products are not advertised, however considered that advertising them is legal and a promotion of such products is not of itself a breach of the Code.

The Panel considered that the advertisement was sexualised, but that the advertisement did treat the issue of sexuality with sensitivity to the relevant, predominately adult audience.

#### **Section 2.4 Conclusion**

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

#### **Section 2.5: Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.**

The Panel noted that the Practice Note for this section of the Code includes:

*“Words and phrases which are innocuous and in widespread and common use in the Australian vernacular are permitted provided they are used in a manner consistent with their colloquial usage, for example with gentle humour, and not used in a demeaning or aggressive manner. The “f” and “c” words are generally viewed as harmful, unacceptable and not permitted. Nonverbal representations of the “f” word are also generally not permitted. Advertisements which use the ‘f’ word in full will be*



*seen to constitute strong and offensive language, even when the audience is restricted. Advertising which uses the ‘f’ word where it has been insufficiently censored so that it can be easily understood by audiences, will be seen to constitute strong language, especially when seen by a broad audience.”*

The Panel noted that this advertisement was placed on the advertiser’s own Facebook page and that the audience would be predominately adult, both due to the medium and the general appeal of the museum.

The Panel noted that the exhibition upon which the chocolate product is based is titled “Cunts... and other conversations” and that the use of the word is therefore directly relevant. However, the Panel considered that the word would be considered strongly offensive and obscene by most members of the community.

The Panel noted that the advertisement did not use quotation marks around the phrase to clearly indicate that it was the name of the exhibit, and considered that this had the effect of suggesting that the body part depicted, or the women themselves, were “cunts”. The advertiser should consider the use of quotation marks in these circumstances.

The Panel noted that in most other circumstance the use of this offensive term would be a clear breach of community standards. However, the Panel considered that the word is not used aggressively or to describe a person. In this particular context the word is used in an advertisement placed on an opt-in medium with a predominately adult audience and refers to the title of an art exhibition, and considered that most members of the public would consider the use of the word in that context to be not inappropriate.

### **Section 2.5 conclusion**

The Panel determined that the advertisement did not breach Section 2.5 of the Code.

### **Conclusion**

Finding that the advertisement did not breach any other section of the Code, the Panel dismissed the complaint.