



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0085-22
2. Advertiser :	Kogan Technologies
3. Product :	Entertainment
4. Type of Advertisement/Media :	Email
5. Date of Determination	27-Apr-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This email advertisement featured the subject line "PRICE DROP: Power of Pussy & More".

The email featured the header, "Now available at a lower price for a limited time". It included an image of the book cover which featured an image of a person reclining with their stockings legs bent, and crossed at the ankles. The words "Power of Pussy" appear on the cover and under the image.

THE COMPLAINT

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

I don't appreciate porn being advertised and graphically shown in my email marketing. Copy of marketing email available.

THE ADVERTISER'S RESPONSE



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

Kogan.com received correspondence from Ad Standards regarding a complaint made in April in relation to a product sold on the Dick Smith Marketplace platform. The complainant raised concerns over this specific product being displayed in the email advertising from Kogan.com. This has been assessed as in violation of Section 2 of the AANA Advertiser Code of Ethics (clause 2.4).

Once the nature of the complaint was revealed through the formal letter submitted, the product was immediately removed from the Dick Smith and Kogan.com platforms. Please note that the seller of the product has the responsibility to ensure the content of the listing details is appropriate, not considered offensive in any way and in line with the policies for listing on the Kogan.com & DickSmith.com platforms.

*Kogan.com Marketplace seller policies
The mandatory requirements for Kogan.com marketplace sellers are listed in the "Requirements and Policies" section of the website.*

Products offered for sale on Kogan.com Marketplace must comply with all applicable Australian laws and regulations and with Kogan.com Marketplace policies.

If the seller supplies a product in violation of any applicable law or Kogan Marketplace policy, Kogan.com will take appropriate corrective actions, including but not limited to, immediately suspending or terminating seller listings and/or account suspension or cancellation. The Marketplace team also takes into consideration repeated violations by individual sellers. Kogan.com has appropriate measures in place to ensure any listings related to clause 2.4, or those considered to be inappropriate, do not appear in the standard marketing emails.

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 was pornographic.

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:

"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 woman is not engaging in sexual activity 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 woman was in a reclining position with her legs raised and was wearing fishnet stockings. The Panel noted the text in the subject line of the email and on the image stating “Power of Pussy”. 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 fishnet stocking and no other clothing is visible due to her position. The Panel considered that some viewers may consider the advertisement to contain partial 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.



The Panel noted that this was an email that was sent to people who subscribed to the advertiser's email database. The Panel noted that the relevant audience is the audience who is likely to see the advertisement, and in this instance it would be predominantly adults who had subscribed to receive emails.

The Panel noted that the advertiser was best known for selling a large variety of products including technology, clothing, media/entertainment and home goods. The Panel noted that the product is a book titled "Power of Pussy" and that the image of the woman and the title are on the cover of the book, which is shown in the email. The Panel noted that the email also included products such as a vacuum cleaner, jewellery cleaner and television wall mount.

The Panel considered that people who subscribed to the emails may not expect the advertiser to send an image of a woman in such a position and the accompanying text, and might find the image confronting, particularly if they opened it in public or in a workplace.

However, the Panel also considered that many people would not be concerned or upset by the depiction of a woman in a reclining pose and which did not contain nudity.

Overall, the Panel considered that the relevant audience of adults and older teenagers would not be shocked or offended by the use of the image, in the context of a book, or the use of the book's title in the email subject line.

Section 2.4 Conclusion

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

Conclusion

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