



**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>0089-20</b>
<b>2. Advertiser :</b>	<b>Beiersdorf Australia Ltd</b>
<b>3. Product :</b>	<b>Toiletries</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>11-Mar-2020</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

### DESCRIPTION OF ADVERTISEMENT

This television advertisement features scenes of the product and lifestyle scenes including two women on a theme park ride, a woman giving birth, a woman smiling in bed with a man, and a close up of a woman's face.

### THE COMPLAINT

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

*Nivea Q10 ad at the end of ad depicts a woman being what appears to be sexually gratified by a male, how inappropriate if kids are watching. (Nivea describing sensations for use).*

*It depicts a woman having an orgasm. Inappropriate while sitting with my tween daughter*

*Sex scene during an ad with no warning, kids still up*

### THE ADVERTISER'S RESPONSE



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

*The complaints have focused on a scene in the 30s variant of our TVC and its alleged breach of the AANA Code of Ethics Part 2.4 on sex, sexuality and nudity.*

*The initial entry scenes of this TVC depicts women in multiple scenarios expressing emotion. They refer to a whole host of emotions matching the voice over, where emotions shape a person, makes one unique and the focus is on the face, consistent with an advertisement for a face care product. The emotions are all expressed on the face, showing anger, pain, happiness, wellbeing and comfort. Conceptually, the TVC conveys emotions make one unique and shape one's personality as well as one's face. Our faces tell the story of emotions over time – it is precious, personal and should always be protected – and because it is unique, it should be protected with our unique NIVEA Q10 product.*

*The key point is that the TV shows different emotions on different faces with nothing visible on screen. The entry scene demonstrates emotions shape us, and we see a range of them that are meant to be very authentic rather than emotions are which simulated or hyped. The frames in question by the complainants show love and connection in a genuine way. There is no intent to push any other meaning.*

*The balance of the TVC – which is largely the majority of the TVC – conveys pack shots and science animation sequences highlighting the skin identical Q10 ingredient and its beneficial protective benefits on skin. It conveys the substantiated statement of being Australia's number one anti age cream.*

*It should be noted that the initial TVCs were pre-checked and the final TVCs were cleared through CAD where nothing was flagged regarding restricted viewing or concerns with appropriateness for children. The TVCs were classified with a G rating through this process.*

*The small number of complaints on these TVCs suggest these complainants are respectively inconsistent with contemporary community standards on sex, sexuality and nudity.*

## **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 complainants' concerns that the advertisement depicts a woman being sexually gratified by a male which is inappropriate for children to see.

The Panel viewed the advertisement and noted the advertiser's 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 that the advertisement contained a variety of different scenes focusing on women’s faces, with the scene of the woman and man in bed together lasting about one second of the thirty second advertisement.

The Panel considered that while the scene was brief, it can be clearly seen that the woman is lying in a bed while a man kissing her neck. The Panel considered that this could be considered sexually stimulating or suggestive behaviour. The Panel considered that the advertisement did contain sex.

The Panel considered whether the advertisement depicted 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 that a depiction of a man and woman together in a bed, with the woman reacting favourably to being kissed on the neck, was a depiction of her capacity to experience and express sexual desire. The Panel determined that the advertisement did 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 majority of the women depicted in the advertisement were clothed, or only their face was visible. The Panel noted that in the scene where the man and women were in bed together, the strap of her top was clearly visible. The Panel considered that the focus of the ad was on the women's faces not their bodies. The Panel considered that the advertisement did not contain nudity.

The Panel then considered whether the issues of sex and sexuality was treated 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 received a G rating from ClearAds which means it may be broadcast at any time of day, except during P and C programs or adjacent to P or C periods (<https://www.clearads.com.au/wp-content/uploads/2019/09/clearads-handbook-version-ca12.pdf>). The Panel noted that the relevant audience would be broad and would include children.

The Panel considered that the depiction of the man and women together was fleeting, and the focus was on the expression on the woman's face, not the activity she was engaged in. The Panel considered that the man was depicted kissing the woman's neck and that he looked to be laying beside the woman, although most of his body was out of the frame of the advertisement.

The Panel considered that there was no clear depiction of the activity the couple were engaged in, and the scene was so fleeting that it was not possible to determine what was happening. The Panel considered that the intention of the advertiser was to depict a woman expressing sexual pleasure, and that this would be clear to most adults, however the Panel considered that young children would not understand the sexual nature of the advertisement and would not find the advertisement explicit or confronting.

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



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