



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0096-22
2. Advertiser :	Botanika Blends
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	11-May-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.3 Violence
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement dated 29th April 2022 features a cartoon image of a man in a wizard hat, holding his coat open and 'flashing' the viewer. His genitals are covered by a protein bar.

THE COMPLAINT

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

Flashing is a form of sexual abuse. It should not be used in an entertaining way to promote a product.

THE ADVERTISER'S RESPONSE

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

In relation to the alleged breaches

- *2.1 - Discrimination or vilification*



- 2.2 - Exploitative or degrading
- 2.3 – Violence
- 2.4 - Sex, sexuality and nudity.
- 2.5 – Language
- 2.6 - Health and Safety
- 2.7 - Distinguishable as advertising.

AD DESCRIPTION: Image of a male flashing his naked body.

There is no image of a naked male body nor have we as a company ever used a naked body to promote a product. I can see a cartoon character of a wizard with a hat on, trench coat, displaying products.

The complaint referred to “nudity” however I cannot see a nude man in this post. Nude would mean an image of a human without clothing. There is no exposure of genitals therefore the claim of “flashing” and “sexual abuse” is not relevant either. I cannot identify any breach of advertising laws.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Code of Ethics (the Code).

The Panel noted the complainant’s concern that the advertisement depicts ‘flashing’ which is a form of sexual abuse.

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

Section 2.3: Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised

The Panel noted that the Practice Note to the Code includes:

“Although the depiction of violence in an advertisement may be relevant to the story being told in the advertisement, any violence must also be justifiable in the context of the product being advertised, or else will be in breach of this section of the Code. ...In considering whether the violence or menace depicted in an advertisement is justifiable, the Community Panel may have regard to the audience of the advertisement. Graphic depictions of violence or a strong suggestion of menace have been found to present violence in an unacceptable manner especially when visible to a broad audience which includes children...More leeway is permitted where the depiction is stylised rather than realistic. However, advertisers should exercise caution when using cartoon violence as a cartoon style may be attractive to children.”



Did the advertisement present or portray violence?

The Panel noted it had previously considered a similar issue in case 0276-21, in which a clown opens his trench coat towards children and shows toys inside his coat. In that case:

“The majority of the Panel considered that the starting scene of the advertisement, where the children were cornered in the alley and the clown opens his trench coat was extremely menacing and suggestive of sexualised violence. The Panel considered that even though the moment was resolved as being the clown showing the children toys in his coat, the suggestion of sexual violence at the start of the advertisement was extremely inappropriate in an advertisement for burgers.”

The Panel considered that the advertisement shows a cartoon of a man opening his trench coat towards the viewer, and that to some viewers it could be suggestive of sexualised violence. The Panel noted that sexual violence is a term used to describe any sexual activity or act that happened without consent.

The Panel noted that the advertiser sells food and protein products, and that some followers of the brand may not expect to be confronted with this type of imagery where a protein bar is placed in between the man’s legs.

The Panel noted however that the advertisement image also contained the text “flash sale” and considered that this went some way to conveying the relevance of using an image of a man opening his coat.

The Panel noted case 0276-21 however considered that in that case, the scene showed a dark and dirty alley and a man cornering children, which conveyed a more sinister or menacing theme. Whereas in this case, the man is flashing the audience and it is not depicted in a threatening or aggressive way. The Panel considered that overall the advertisement conveyed a tone that was cheeky, humorous and satirical.

Overall the Panel considered that most members of the community would not consider that the advertisement was violent.

Section 2.3 Conclusion

The Panel determined that the advertisement did not present or portray violence and did not breach Section 2.3 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 to this section of the Code which states:



“Overtly sexual depictions where the depiction is not relevant to the product or service being advertised are likely to offend Prevailing Community Standards and be unacceptable. Full frontal nudity and explicit pornographic language are not permitted. Images of genitalia are not acceptable. Images of nipples may be acceptable in advertisements for plastic surgery or art exhibits for example.

“Sexualised images which include elements which would be attractive to children, such as cartoons or depictions of Santa, when in a medium which can be seen by children have been found to not treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.”

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 image contains a man opening his coat, and that he appears to be naked although his genitals are not visible. The Panel considered that this did constitute 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 considered that the advertisement did contain partial nudity.

Is the issue 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 Botanika Blends Instagram page meant that it was a message delivered by invitation rather than intrusion, as it is only visible to people who visit the Botanika Blends Instagram page or who follow the page.

The Panel noted that 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 Instagram requires users to be over 13 and therefore some followers of the Botanika Blends Instagram 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 while the advertisement was sexualised, it did not contain a high level of male nudity and was not strongly sexualised when noting that the man is a cartoon character.

Overall the Panel considered that the sexual element of the advertisement was moderate and was not inappropriate for a broad 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.

Conclusion

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