



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0103-20
2. Advertiser :	Koala Sleep
3. Product :	House Goods Services
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	25-Mar-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification
AANA Code of Ethics\2.4 Sex/sexuality/nudity
AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

This television advertisement depicts a man in a green shirt with question-marks on it sleeping in a bed. A toothbrush is shown on his nightstand. Halfway through the advertisement the camera zooms out to show the whole bed, and a woman and another man are shown kissing. The voiceover states "Say g'day to Koala, Australia's highest rated mattress brand. It's got zero-disturbance technology which means you can get a perfect night's sleep without getting disturbed by your partner, no matter what they get up to, even if they are an absolute cheating pile of trash. Koala, Australian made, free four hour delivery and a risk-free 120 night trial. Koala, comfy at first sight."

THE COMPLAINT

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

The ad clearly is referencing an incident in Married at First Sight in which Hayley cheated on her partner David. In the ad, they say something along the lines of the koala mattress being so comfortable that you can sleep when your partner is a "cheating piece of trash." I couldn't believe they were calling this woman out. They



referenced an incident where her toothbrush was put in a dirty toilet without her knowledge. They make light of this in the ad. Australia has a massive issue with violence against women and to refer to her actions as those of a "cheating piece of trash" is so offensive. It felt like watching national bullying occurring on my TV. I have never before lodged a complaint but I have never been so so so shocked by an ad. How could this be allowed?

The advertising shows 2 people in the bed passionately kissing and fondolling one another, insinuating sex. This is not appropriate at that time of tv. It made me feel uncomfortable in front of my family.

Koala showed a guy laying in bed who was clearly dressed to look like a guy from Married at first sight that had rubbed his 'wife's' toothbrush in the toilet bowl. And then the voiceover processed to take a jab at his 'wife' who they called a "cheating pile of trash". This was incredibly poor taste and extremely disrespectful to someone who would already be dealing with a lot of backlash from the show.

The ad suggests that you can have a good night's sleep even if your partner is a "cheating piece of trash". It is not okay ever to refer to a human, regardless of their behaviour, as a "piece of trash". They are clearly directly talking about one of the contestants and I don't believe it is okay to treat anyone this way. Their wording is offensive and promotes name calling.

THE ADVERTISER'S RESPONSE

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

Advertiser did not provide a response.

THE DETERMINATION

The Ad Standards Community Panel (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:

- Refers to the woman in the advertisement as 'a cheating piece of trash' which is offensive
- Shows two people kissing each other, insinuating sex, which is not appropriate on TV
- Is disrespectful and bullying towards the woman on Married at First Sight who is being represented

The Panel viewed the advertisement and noted the advertiser had not provided a response.



The Panel considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray 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 Practice Note to Section 2.1 provides the following definitions:

“Discrimination – unfair or less favourable treatment.

Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.”

The Panel noted the complainant’s concerns that the woman in the advertisement is being referred to as a ‘cheating piece of trash’.

The Panel noted that this was a reference to an incident on a television show ‘Married at First Sight’ (MAFS). The Panel noted that this advertisement was broadcast during this reality television programme.

The Panel noted that the incident from MAFS referenced in the advertisement was one in which one of the contestants was found to be cheating on their partner. The partner was seen to call her trash and had put her toothbrush in the toilet.

The Panel considered that anybody unfamiliar with the show who had viewed the advertisement would not know if the man’s partner was the man or the woman on the other side of the bed. The Panel considered the reference to a ‘piece of trash’ was in reference to the person’s actions of cheating, not their gender.

The Panel considered that the advertisement did not depict anyone receiving unfair or less favourable treatment because of their gender, and the advertisement did not humiliate, intimidate or incite hatred, contempt or ridicule of anyone on account of their gender.

The Panel considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did not breach Section 2.1 of the Code

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 considered whether the advertisement 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 couple on the other side of the bed were kissing passionately and that this is sexually stimulating or suggestive behaviour. The Panel considered that the advertisement did contain sex.

The Panel considered whether the advertisement contained 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 the two people kissing and the reference to kissing was a recognition or emphasis of sexual matters. The Panel considered that advertisement contained 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 Code is intended for the Panel to consider the concept of nudity, and that partial nudity is factor when considering whether an advertisement contains nudity.

The Panel noted the first man in the advertisement, and the woman are wearing shirts. The Panel noted that all three people could only be seen from the waist up. The Panel noted that the second man in the advertisement was not wearing a shirt, and that some members of the community would consider a shirtless man whose lower half was not visible to be a suggestion of nudity.

The Panel then considered whether the advertisement treated the issues of sex, sexuality and nudity 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 the advertiser had not provided a response and that the rating and placement of the advertisement was not known. The Panel considered that all the complainants had indicated they had seen this advertisement during the television show *Married at First Sight*. The Panel noted that the television show *Married at First Sight* is rated 'M' and is recommended for audiences aged 15 and over.

The Panel considered that the relevant audience for this advertisement were people aged over 15, or families where the parent or carer had determined the content to be suitable for their children.

The Panel considered that the television show *Married at First Sight* contained a high level of sexual references, and that the suggestive behaviour between two of the characters would be consistent with the themes of the programme. The Panel considered that the characters were depicted kissing and there was no depiction of other sexual activity.

The Panel considered that the issues of sex, sexuality and nudity were treated with sensitivity to the relevant audience of *Married at First Sight* viewers. The Panel determined that the advertisement did not breach Section 2.4 of the Code.

The Panel considered whether the advertisement complied with Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Panel noted the complainant's concern that the reference to the toothbrush and the woman being called a 'piece of trash' was bullying towards the woman on the show.

The Panel considered that the advertisement in itself did not name the woman, rather it contained a reference to an incident that occurred during MAFs.

The Panel noted that "*The concept of repeatedly behaving unreasonably refers to the existence of persistent unreasonable behaviour, and may include a range of behaviours over time*" (<https://www.fwc.gov.au/anti-bullying-benchbook/when-worker-bullied-at-work>)

The Panel considered that the use of the phrase, 'cheating piece of trash' whilst unpleasant in the context of the advertisement is a reference to a type of behaviour (infidelity) and is not gender specific.

The Panel noted the reference to the toothbrush, however considered that this would only be noticed by viewers already familiar with the plot of the show. The Panel



considered that the behaviour in the show may constitute bullying, however noted that its role was only to consider the content of the advertisement.

The Panel considered that the advertisement could be seen by viewers as condoning the behaviour depicted in the referenced programme. The Panel considered that, while the references in this particular advertisement were obscure enough not to amount to a depiction of material that would breach community standards on safety, advertisers should take care to ensure that material in an advertisement meets community standards for advertising and that this can differ from the content that is acceptable in a programme.

The Panel considered that the content of the advertisement did not depict any person being bullied or treated in a manner which would be contrary to Prevailing Community Standards on health and Safety.

The Panel determined that the advertisement did not breach Section 2.6 of the Code.

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