



**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>0103-21</b>
<b>2. Advertiser :</b>	<b>eHarmony</b>
<b>3. Product :</b>	<b>Professional Service</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>28-Apr-2021</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity  
AANA Code of Ethics\2.6 Health and Safety

### DESCRIPTION OF ADVERTISEMENT

This television advertisement has four versions featuring various couples.

Version 1: A couple enter a room in a domestic setting, the man's hands covering the woman's eyes from behind. The room is illuminated by several lamps in the style of Chinese lanterns. The man removes his hands and the camera tracks around the woman's face as she observes the scene in delight. The couple embrace. The man lifts her at the waist and they spin around; they kiss passionately. Hands intertwined, the couple dance slowly to music from a shared pair of earphones.

Version 2: A woman sits in the passenger seat of a moving car, looking at first out the window and then towards her male partner, who is driving. Camera pans back from the front of the car to show both through the windscreen. They leave the now-parked car at the side of a rural road and run into a field, where they embrace passionately and are then shown lying together in the grass. The scene switches to ambient darkness, they kiss. They dance in the middle of the road, illuminated by the car's rear lights.

Version 3: A young couple lie on a bed in a loft-style apartment as early-morning sunshine streams through a window directly behind them. A close-up of the woman's face as she wakes up, bleary eyed. He runs his fingers slowly up her bare calf. She



drinks from a cup of coffee while embracing him from behind. They roll around on the bed, embracing and holding hands

Version 4: A woman is cooking in a dimly lit apartment kitchen. She is joined by her partner, who kisses her briefly on the lips. Camera pans back to a wider view of the kitchen. The first woman offers her partner a taste of the food on a wooden spoon. Her partner grimaces. The second woman produces a tub of ice cream and they share a spoonful. They eat ice cream, sharing a spoonful on a couch.

### **THE COMPLAINT**

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

*The advertisements are too graphic with the promotion of sex. E Harmony can advertise the product without the explicit scenes.*

*Market the product to be inclusive of all people wanting to meet and leave it there. These commercials were on whilst the family was watching the pro surfing Saturday morning. The commercial appeared and two people are in bed etc etc.*

*I don't like the raunchy adds with same sex kissing moments etc. It's just too graphic for me to watch men kissing or females kissing in erotic scenes*

*Too much kissing..sloppy lips..revolting..and with covid such an issue I was particularly concerned by the ad.*

*e harmony's portrayal of "Real Love?" was viewed at 3pm in the afternoon!! when my children are watching TV. The shifting scenes and angles used were sexually suggestive. if this was a TV program, it would have been accompanied by a " Parental Guidance " warning. However, parents should not have to fear what their children may be exposed to at 3pm in TV advertising. E harmony has reached new lows.*

*The advertisements are being shown during prime time viewing, and are similar in content to others advertisements I have seen advertising "adult products" late at night. I feel that advertisements like this should not be shown at times when children or teens could be watching. I considered the content of the advertisements to be inappropriate.*

### **THE ADVERTISER'S RESPONSE**

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

*We are in receipt of your letter dated 16 April 2021 relating to complaints sent to Ad Standards in connection with eharmony advertisement(s) on Australian television.*



*Whilst it is unclear which eharmony advertisements are the subject of this claim, for your review, we listed the four advertisements that eharmony has broadcast during the claim period on 9Rush (the "Ads").*

*eharmony is committed to ensuring that its advertisements are compliant with the AANA Code of Ethics (the "Code") and we will be happy to provide any information necessary to Ad Standards to assist in this inquiry. After a review of the 3 viewer complaints and the Code sections that your letter referenced, it is eharmony's position that none of the Ads violate the Code sections raised in the complaint. Each Ad's content has been reviewed and provided with a CAD rating.*

*eharmony has confirmed with our media buying agency that each Ad was broadcast only during programs which permit content with the CAD rating that such Ad received.*

*Pursuant to the instructions in your letter, we addressed (below) the referenced Code sections and their applicability to the Ads and the viewer complaints:*

*Section 2.1 of the Code states:*

*"Advertising 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 orientation, religion, disability, mental illness or political belief."*

*eharmony response: The theme of the Ads is people falling in love. The models who feature in the Ads are very diverse, including individuals from different racial and ethnic groups as well as sexual orientations. Additionally, the three complaints included in the letter did not allege discrimination as one of the concerns about the Ads.*

*Section 2.2 of the Code States:*

*"Advertising shall not employ sexual appeal: (a) where images of Minors, or people who appear to be Minors, are used; or (b) in a manner which is exploitative or degrading of any individual or group of people."*

*eharmony response: No Minors or people who appear to be Minors feature in the Ads. The Ads are romantic in nature and show different types of couples in loving and equal relationships. The viewer complaints do not raise any issues that are the subject of Section 2.2 of the Code.*

*Section 2.3 of the Code states:*

*"Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised."*



*eharmony response: No violence is portrayed in the Ads, and none of the viewer complaints raised this concern."*

*Section 2.4 of the Code states:*

*"Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience."*

*eharmony response: This appears to be the only section of the Code which applies to the viewer complaints. As mentioned above, eharmony received CAD ratings for each of its Ads, and we can confirm that no Ads ran on programs for which they were deemed unsuitable based on their CAD ratings. It is eharmony's policy to ensure that its Ads are only broadcast on programs for which they are appropriate. There is no nudity in any of the Ads. Whilst there is a clip in one Ad ("Good Morning") of a couple in bed, it is not an explicitly sexual clip. Two of the three viewers complained about kissing scenes in Ads without any additional reference to explicit sexual situations, and one of those viewers objected to an Ad merely because it showed a same-sex couple kissing. eharmony is proud of being an inclusive service and believes that it is important to be representative of all Australians in its Ads.*

*Section 2.5 of the Code states:*

*"Advertising 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."*

*eharmony response: There is no strong or obscene language in the Ads, and the viewer complaints did not raise such concerns.*

*Section 2.6 of the Code states:*

*"Advertising shall not depict material contrary to Prevailing Community Standards on health and safety."*

*eharmony response: There is no material contrary to Prevailing Community Standards on health and safety in the Ads, and the viewer complaints did not raise such concerns.*

*Section 2.7 of the Code states:*

*"Advertising shall be clearly distinguishable as such."*

*eharmony response: The Ads are clearly distinguishable as such, and the viewer complaints did not raise such concerns.*

*eharmony looks forward to Ad Standards' review of the Ads. I hope the information provided is sufficient to complete your review, and I would be happy to answer any other questions.*



## 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 is overly sexualised and potentially unsafe given COVID-19 guidelines.

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:

*"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 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 noted that the people in the advertisement are not engaging in sexual intercourse and considered that all versions of 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 advertisement does contain sexuality as each version features a couple kissing.

#### **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 all the couples in the advertisement are fully dressed and considered that all versions of the advertisement did not contain nudity. .

#### **Is the issue of sexuality 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 considered that the advertisement was mildly sexualised and that the only intimate behaviour between the couples in the advertisement is kissing. The Panel noted that one version featured a couple in a bedroom scene however noted that both people were fully dressed and did not engage in sexual activity.

The Panel noted that the complainants had viewed the advertisement at various times of the day and noted that the placement of the versions of the advertisement was appropriate for the FreeTV classification.

The Panel acknowledged that some members of the community may prefer not to see intimate scenes however considered that the sexuality in the advertisement was very mild and not inappropriate for viewing by a general audience which may include children.

#### **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.

**Section 2.6: Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.**

The Panel considered that advertisements, which are not clearly set during the pandemic, which show people interacting in a manner which indicates that they know each other, and which do not contain a call-to-action which is against current health recommendations, would be unlikely to be seen by most members of the community to be against prevailing community standards on health and safety.

The Panel considered that the advertisement did not contain any messaging or call to action which would encourage people to behave in a manner contrary to current health and safety recommendations.

**Section 2.6 conclusion**

The Panel considered that the advertisement did not contain material contrary to Prevailing Community Standards on health and safety and determined that it did not breach Section 2.6 of the Code.

**Conclusion**

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