



Case Report

1	Case Number	0106/15
2	Advertiser	Ashley Madison - Avid Life
3	Product	Professional Service
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	15/04/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

- Other Social Values
- 2.1 - Discrimination or Vilification Gender
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

The advertisement opens on a woman sitting on a bed in front of a laptop and singing that she is looking for someone "other than my guy". We then see another woman holding a tablet, also singing the song, and scrolling through images of men. Some of the images are partially blacked out, others just show head shots of various men. The screen then becomes a montage of images of different women singing the song, including the first two women.

THE COMPLAINT

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

I am highly offended that a TV station would be running an advert to promote and encourage an illegal act of cheating on your spouse. The advertisement demeans the sanctity of marriage, family and society morals.

Simply no need if people are going to have affairs it doesn't need to be advertised. I find it to be offensive.

I believe that the ad is highly inappropriate as it promotes infidelity. I am well aware that it is something that is omnipresent within our society. However, I don't feel that we should

condone such behaviour by advertising services that enable this to occur.

Cheating is not acceptable and NOT OKAY. It shouldn't be condoned by society or advertised in any way shape or form at any time of the day or night. It is DISGUSTING. Families are broken up, hearts broken, people shattered because of lowlife scum like this, please don't advertise for them to do so!

I'm offended by this advertisement and I'm sick of seeing it, it would tear/ break up marriages up.

THE ADVERTISER'S RESPONSE

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

Avid Dating Life ("Avid") is in receipt of a letter from the Advertising Standards Bureau ("ASB"), regarding a complaint received by the ASB, concerning Ashley Madison's "AMGUYFORMAL" commercial (the "AM Advertisement").

Please note, that we are very familiar with the AANA Code of Ethics, and understand the parameters that advertisers need to operate within. Moreover, we have had several correspondences with the ASB's Case Manager relating to previous advertisements submitted in Australia and have taken advice as to modifying our advertisements to be in line with the Boards' decisions. In fact, we have reviewed the Board's recent determination regarding Case Number 0036/15, and feel that the concerns upheld by the Board have been satisfactorily addressed in this current AM Advertisement. In this regard, and for the reasons set out below, Avid respectfully requests the Board dismiss the current complaints.

The ASB has received two complaints to date with respect to the current AM Advertisement. Both complaints focus on the fact that that cheating is not acceptable and shouldn't be condoned. The complaints state that cheating breaks up marriages and therefore the advertisement should not run.

The current AM Advertisement is compliant with both the Code and the applicable laws in Australia. Moreover, the Board has said several times in the past that it does not adjudicate the morality of the legal Ashley Madison service. Specifically, in its recent determination of Case Number 0036/15, the Board noted when discussing the marketing of Ashley Madison's service, "that there is no restriction on such a service being available or on it being promoted..... The Board considered that the promotion of a service promoting affairs or infidelity is not of itself a matter that can be addressed by applying the Code." In this regard, since the Board has determined that promotion of infidelity and of Ashley Madison by itself should not be addressed by the Code, and since the service that Ashley Madison provides is compliant with all applicable Australian laws, the Board should not uphold the current complaints, which focus solely on the concept of infidelity.

Similarly, in its decision of Case Number 0292/10, the Board determined, "that the Ashley Madison advertisement does not demean married people simply by suggesting that it is appropriate to have an extra-marital relationship."

Please also be advised that Avid has complied with the latest decision rendered by the Board. In fact, we have voluntarily removed the previous advertisement from circulation, and addressed the Board's concern in this current replacement AM Advertisement. In its determination of Case Number 0036/15, the majority of the Board "considered that 'other than my wife' is a statement which singles out wives as a group of people and implies that wives are not important within a marriage... and the emphasis on the term 'wife' gave a strong message that 'wives' are inadequate or somehow lacking and that this suggestion is degrading to wives and does amount to material that demeans or makes people think less of wives". Hence Avid addressed this issue, and removed the 'other than my wife' wording. The current AM Advertisement, in fact, does not even mention or visualize the words 'marriage', 'wife', or 'husband' in any manner whatsoever. It is not inferring or suggesting that "you should outsource your sexual relationship with your wife", as was problematic for the Board previously.

In this regard, as per section 2.1 of the Code, the current AM Advertisement does not discriminate or vilify any particular group, nor does it exploit, condone or elicit unlawful behaviour, or degrade a gender.

The Board has already established that the previous AM Advertisement does not contravene other parts of Section 2 of the Code, therefore the modified version should not breach these subsections as well:

- Section 2.3 – There is absolutely no violence, gratuitous or otherwise, whatsoever in the AM Advertisement.*
- Section 2.4 - This section states that Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience. Due to the "S" rating received by CAD, the spot only runs on television screens after 11:00 pm. This commercial is in line with, and in fact substantially less provocative, than other Australian spots that contain an "S" rating. The Board previously decided that a similar Ashley Madison commercial did, in fact, "treat sex/sexuality and nudity, with sensitivity to the likely adult audience at that time of night", and therefore did not breach section 2.4 of the Code.*
- Section 2.6 –The AM Advertisement also does not use any obscene language or anything that can be depicted as unsafe. In fact, Avid wholeheartedly agrees with the Board's comment that even if the advertisement is promoting a service which a member of the community would find to be morally questionable, in the Board's view there is no obligation on the viewer to take up the advertiser's services.*

While the number of complaints for the current AM Advertisement have been extremely low (only two to date), a substantially higher number of Australians support our business. Avid currently has over 1,000,000 total members in Australia.

Avid has listened to and complied with the decisions of the Board, and the advice of the ASB. We have replaced the previous advertisement with one that has taken into account the decision and recommendation of the ASB. Moreover, we have always operated in good faith with the ASB, and continue to cooperate with the advertising industry's self-regulatory system.

Avid respectfully submits that the ASB should continue to allow Avid to broadcast the

replacement AM Advertisement during the post-11:00 pm timeslot. The current AM Advertisement is compliant with the Code and there is no regulatory or legal basis for the Board to decide otherwise.

We would like to thank the ASB, in advance, for its consideration of our response. We look forward to hearing from you and continuing to work co-operatively with the ASB and its Board.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement promotes infidelity and is not appropriate for airing on television.

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

The Board noted that the majority of complaints were about the service and the fact that the service can be advertised. The Board noted that there is no restriction on such a service being available or on it being promoted, rather only on how it is promoted.

The Board 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 Board noted that this advertisement features women singing that they are looking for someone other than their guy.

The Board noted it had previously upheld a different version of the advertisement that featured men singing that they wanted someone other than their wife (0036/15) where:

“The majority of the Board however considered that ‘other than my wife’ is a statement which singles out wives as a group of people and implies that wives are not important within a marriage, can be replaced and to a degree normalises seeking someone other than your wife. The Board noted the advertiser’s response that the tone of the advertisement is intended to be funny.

The majority of the Board however considered that the emphasis on the term ‘wife’ gave a strong message that ‘wives’ are inadequate or somehow lacking and that this suggestion is degrading to wives and does amount to material that demeans or makes people think less of wives. The majority of the Board considered that this element of the advertisement breached section 2.1 of the Code.”

In the current advertisement the Board noted that there is no suggestion that any of these

women are married and that their wedding ring fingers are not visible.

The Board noted the Macquarie Dictionary definition of guy:

1. n. Colloq. a fellow or man;
2. a boyfriend;
3. (pl.) people of either sex.

The Board considered that whilst the reference to a guy could refer to a boyfriend this relationship could be casual or long-term. The Board considered that unlike in case 0036/15 there is no strong suggestion of a marital relationship in this version of the advertisement and it is not clearly advocating cheating on a spouse or suggesting that married people should have an affair.

The Board noted the scene where a woman looks at a laptop and another woman scrolls through images of men on a tablet. The Board noted that unlike in case 0036/15 where the men scrolled through images of women who were displaying their cleavage and were depicted in various poses, the current advertisement depicts images of both men and women. The Board noted that the laptop shows an image of a woman in a pink bra, and the tablet shows images of men's faces. The Board considered that overall there is a balance of genders on display via the computer screens and these images reflect people who have voluntarily signed up to a service which will involve their images being selected based on their appearance. The Board considered that these images and the suggestion that you scroll through to seek a suitable partner are not in this instance discriminatory or vilifying towards men or women.

The Board also noted that the advertisement could potentially be discriminatory against women by suggesting that all women seek relationships online. The Board considered that this advertisement did not present women in a demeaning manner as, despite the montage of women at the conclusion of the advertisement, the strong suggestion is still that the advertised service is for those women who choose to participate and that, while this is presented as being a lot of women, there is not a strong suggestion that all women choose to do this.

The Board 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.

The Board determined that the advertisement did not breach Section 2.1 of the Code.

The Board 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 Board noted that the advertisement shows women scrolling through images of men on a laptop and a tablet and considered that the men are all clothed and the advertisement does not depict any contact between the women and the men.

The Board noted the advertised product is a dating website and that the advertisement had been rated 'S' by CAD which means it can be aired between 11pm and 5am. The Board considered that the advertisement did treat sex/sexuality and nudity – in particular the images and the intimation of seeking a sexual relationship via online dating – with sensitivity to the likely adult audience at that time of night.

The Board acknowledged that most of the complaints are related to a moral objection to the product itself but considered that the actual content of the advertisement does treat the issue of sex, sexuality and nudity with sensitivity to the relevant adult audience.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

The Board considered 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 Board noted the complainants' concerns about the consequences of affairs which can include violence and breakdowns of family units.

The Board noted that whilst the advertisement is promoting a service which many members of the community would find to be morally questionable, other members of the community would find it to be acceptable or useful. In considering complainants' concerns that viewers may be encouraged to take up the advertiser's services, the Board noted that there is no obligation on the viewer to take up the advertiser's services. The Board noted the advertiser's response regarding the high number of subscribers to their website in Australia. The Board considered that there was nothing in the advertisement itself which would breach Prevailing Community Standards on health and safety under the Code.

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

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaints.