



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0106-22
2. Advertiser :	Stan
3. Product :	Entertainment
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Determination	25-May-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This TV On Demand advertisement promoting the program "Billy The Kid" contains a scene showing an apparently naked woman on top of a man in a bed.

THE COMPLAINT

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

The ad includes an image of a naked woman on top of a man

THE ADVERTISER'S RESPONSE

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

We refer to your letter dated 16 May 2022 regarding the abovementioned complaint (Complaint) in respect of the relevant Stan advertisement (Advertisement). Thank you for the extension of time granted for Stan to respond to the Complaint.

1. *Facts relating to the Advertisement*



- *Stan ran the Advertisement between 25 April 2022 and 15 May 2022 on broadcaster video on demand (BVOD) services including 9Now, 7PLUS, TenPlay, SBS On Demand, as well as on YouTube. The Advertisement was not flagged by the publishers. TV commercials on BVOD services are not required to be CAD rated.*
- *The Advertisement was booked on BVOD services, including 9Now, during programs streamed by viewers with a target age range of 25 years and older. For the individual to have seen the Advertisement, they must have registered a 9Now account (including by providing their personal details such as name, age, email address etc.), confirmed that they were over the age of 25, and have watched the relevant program whilst logged in via the registered account.*
- *The Advertisement is for the TV series 'Billy the Kid', which is a cowboy/Western style show. It contains footage from Billy the Kid and is designed to showcase the series.*
- *A digital copy of the Advertisement has been submitted along with this letter.*
- *The media buying and creative work for the Advertisement was undertaken in-house at Stan.*

2. AANA Advertiser Code of Ethics (Code)

We have reviewed the relevant sections of the AANA Code of Ethics (Code) and the AANA Code of Ethics Practice Note (Practice Note), as well as the information and guidance provided on adstandards.com.au in relation to responding to complaints. In our view, the Advertisement complies in all relevant respects with the Code, and is in step with Prevailing Community Standards. We address each element of section 2 of the Code below.

Discrimination or vilification (s2.1)

The Advertisement does 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 preference, religion, disability, mental illness or political belief.

Discrimination or vilification issues were not issues raised in the Complaint.

Sexual appeal (s2.2)

The Advertisement does not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people, or in relation to Minors.

Exploitative or degrading use of sexual appeal was not an issue raised in the Complaint.

Violence (s2.3)



The Advertisement does not present or portray violence in a manner which is not justifiable in the context of the product being advertised, given the genre of the TV series that the Advertisement is showcasing.

The Advertisement shows no explicit scenes of gore, or scenes of a highly graphic nature, and the Advertisement is not likely to encourage others to engage in similar behaviour in real life. Although there is some suggestion of violence in the Advertisement, the overriding tone of the Advertisement is not one of graphic violence, but of drama.

Taking into account the Practice Note, we are strongly of the view that the Advertisement's fleeting, non-graphic suggestions of violence are justifiable in the context of the TV show being advertised, and consistent with Prevailing Community Standards of acceptable levels of violence.

Issues of violence were not raised in the Complaint.

Sex, sexuality and nudity (s2.4)

The issue of sex, sexuality and nudity was specifically raised in the Complaint.

The Advertisement contains a fleeting visual of a woman on top of a man with their lips almost touching. They are both in silhouette, and no particular parts of their bodies are discernible. Therefore, it is not overtly sexual.

Having reviewed the Practice Note, we are strongly of the view that this discreet portrayal of nudity and sexuality does not offend Prevailing Community Standards.

Obscene language (s2.5)

The Advertisement does not include strong or obscene language or language which is not appropriate in the circumstances.

Obscene language was not an issue raised in the Complaint.

Health and Safety (s2.6)

The Advertisement contains scenes of horseback riding without a helmet. However, given the highly dramatised and historical setting that is depicted, these scenes are unlikely to be perceived as realistic by audiences. Since mimicry is unlikely to occur, the risk of any negative consequences is negligible. For these reasons, we are of the view that these scenes are not contrary to Prevailing Community Standards on health and safety.

Health and safety issues were not raised in the Complaint.

3. *Stan comments in relation to the Complaint*



For the reasons set out above, we strongly believe that the Advertisement complies in all relevant respects with the Code, and that it does not offend Prevailing Community Standards. Further, Stan considers that the content of the Advertisement is not directed to children, that the placement of the Advertisement is not directed to children, and that Stan is not targeting children to view the TV series Billy the Kid.

The Advertisement was appropriately placed for BVOD services, including 9Now, to be booked against users aged 25 and over.

Please let us know if you require any further information.

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 complainant's concern that the advertisement features a naked woman on top of a man.

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

Section 2.4: Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel noted the Practice Note for the Code 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.

“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 naked couples embracing when viewed in a public space, has been found to be inappropriate and 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 noted that the advertisement features a woman who appears to be naked and kneeling above a shirtless man whose bottom half is under blankets, and acknowledged that the behaviour did imply a prelude to sexual activity. However the Panel considered that there is no indication that they are moving or currently engaged in sexual intercourse or 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 considered that the advertisement featured two people in bed together embracing and that the advertisement did contain 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 noted that the scene is very dark and while it is apparent that the woman is not clothed, her breasts and genitals are not visible. The Panel noted that the man is shirtless. The Panel considered that the advertisement did depict nudity.

Are the issues 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.

The Panel noted that this advertisement was viewed during Lego Masters. The Panel noted that majority of viewers of Lego Master are adult, but considered that a significant portion of the audience would be children.

The Panel considered that the man in the advertisement was appropriately covered by the sheets, and considered that while it is apparent that the woman is unclothed, there is no clear depiction of her body – ie light lands on her back in a way that makes it clear she is unclothed, but her body parts are not visible. The Panel considered that the level of nudity was mild and not inappropriate for broad audiences.

The Panel noted that the scene was very brief, approximately one second long, and considered that while the couple's embrace was intimate it was not overt.

The Panel considered that the advertisement was not overtly sexual or inappropriate for a broad audience.

Section 2.4 Conclusion

The Panel determined 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.