



## Case Report

1	Case Number	0121/12
2	Advertiser	Sealy
3	Product	House goods/services
4	Type of Advertisement / media	TV
5	Date of Determination	11/04/2012
6	DETERMINATION	Dismissed

### ISSUES RAISED

2.4 - Sex/sexuality/nudity S/S/N - general

### DESCRIPTION OF THE ADVERTISEMENT

The TVC is called 'Apartment': the camera pans through the floors of an apartment building and we see people engaged in various activities centred around their bed and bedroom. The text on screen asks, "What do we do in bed?" and we see a man playing a guitar, a woman using the bed to store guests' coats, children playing and a man and woman starting to kiss before switching out the light.

### THE COMPLAINT

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

*This was shown a number of times yesterday and the day before during the program of "My Kitchen Rules". I was watching the program with my children aged 6 and 9.*

*The commercial goes on about different aspects of life with the bed as the main focus.*

*However in the last frame it shows two adults who appear to be naked hugging and stroking each other in the bed with the female half on top of the male. The bed covers are down at least 1/3 - 1/2 of the female's back.*

*Is this time frame still considered "family" viewing time? In a film or television program this would be considered a sex scene.*

*I am offended by the final scene which is 'we love' which then shows a man and woman in bed the woman on top of the man and she is clearly topless. I object to this being shown because it is way too graphic to be shown at 7.50pm when my 6 year old has just barely gone to bed and may have seen it! Way too much information and beyond suggestive.*

*As one of the "ways Sealy supports you" shows the final frame with a male and female in bed partly clothed and in an amorous situation. Obviously the ad is aimed to describe the act of coitus being supported by Sealy mattress. In the short ad obviously this frame is the last seen by the viewer to enhance the titillation aspect of the ad.*

*I find this ad very offensive in that it is unnecessary for an advertiser of bed mattresses to depict the act which everyone knows takes place in the bedroom.*

*It is pure sensationalism and lacking in a genuine reason to buy a mattress. Hence I consider this of poor taste and unsuitable for television or cinema viewing; I assume the latter media may also be targeted.*

*Further that younger viewers will see this within the 2130 timeslot.*

*I have formally advised Sealy of my intent to report this to the TV Advertising Standards Authority.*

## **THE ADVERTISER'S RESPONSE**

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

*Madad Pty Ltd trading as Sealy of Australia ("Sealy") acknowledges receipt of your letter dated 16 March 2012 containing two complaints.*

*Sealy notes that your correspondence advised us to provide comprehensive comments in relation to the complaints, taking into account the need to address all aspects of section 2 of the advertising codes for the Board to consider.*

*Sealy confirms that it has reviewed the issues raised under Section 2 of the AANA Advertisers Code of Ethics. In order to address all relevant advertising codes, Sealy will specify which specific subsections are applicable to our circumstances.*

*As each complaint is similar in nature, Sealy wishes to firstly address the broader issues of the Codes of Ethics relating to Children and Food and Beverages Marketing. Sealy will then address each subsection of Section 2 of the Code and, where relevant, will respond to each complaint within that section.*

### *A. Codes of Ethics – Children and Food & Beverages Marketing*

*Although not specifically cited, we believe the complaints could suggest that subsection 2.4 of the Code applies to Sealy's advertisement.*

*We understand that subsection 2.4 of the Code incorporates:*

- the AANA Code for Advertising and Marketing Communications to Children; and*
- the AANA Food and Beverages Marketing and Communications Code.*

*The Advertising and Marketing Communications to Children requirements are noted in the AANA Code as "having regard to the theme, visuals and language used, and directed primarily to Children and are for Product".*

*Sealy's advertisement and product is not directed to Children, nor is it for food or beverages.*

*We therefore consider that we are not required to address issues raised under the AANA Code for Advertising and Marketing Communications to Children and the AANA Food and Beverages Marketing and Communications Code.*

### *B. Section 2 of the Advertisers Code of Ethics – Detailed Response*

*Sealy will refer to each subsection of section 2 of the Code and provide its response:*

(a) 2.1- Advertising or Marketing Communications 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, sex, age, sexual preference, religion, disability or political belief.

*This subsection is not applicable, to Sealy's advertisement, as it does not portray people or depict material in a way which discriminates or vilifies them on account of any issues set out in section 2.1.*

(b) 2.2 - Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

*This subsection is not applicable to Sealy's advertisement as it does not present or portray violence.*

(c) 2.3 - Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.

*This subsection will be addressed in detail below.*

(d) 2.4 - Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising & Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising & Marketing Communications to Children applies.

*This subsection is not applicable to Sealy's advertisement as it was earlier noted that neither the product nor the advertisement are directed to Children.*

(e) 2.5 - Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.

*This subsection is not applicable to Sealy's advertisement as the advertisement does not use language which is inappropriate or obscene.*

(f) 2.6 - Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

*This subsection is not applicable as Sealy's advertisement does not depict any material contrary to prevailing community standards on health and safety.*

(g) 2.7 - Advertising or Marketing Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles and section 2.6 of this Code shall not apply to advertising or marketing communications to which the Federal Chamber of Automotive Industries Code of Practice applies.

*This subsection is not applicable to Sealy's advertisement as it does not advertise motor vehicles.*

(h) 2.8 - Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food & Beverages Advertising & Marketing Communications.

*This subsection is not applicable to Sealy's advertisement - as mentioned above, it does not advertise food or beverage products.*

*Section 2.3:*

*Sealy submits that only section 2.3 needs to be addressed in detail.*

*In addressing this subsection, Sealy has referred to "Determination summary; Portrayal of gender in advertising; Interpretation Guide" ("the Guide") released by the Bureau in November 2011.*

*Further, Sealy has also considered the AANA code of ethics along with recent case reports handed down by the Bureau in relation to complaints of a similar nature.*

- *Section 2.3 of the Code of Ethics:*

*Advertisers or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.*

*- The Complaints:*

*(a) Complaint #1 raises issues relevant to section 2.3 by referring to the woman in the advertisement as being “clearly topless”, as well using the words “too graphic”, “too much information” and “beyond suggestive”.*

*(b) Complaint #2 raises issues relevant to section 2.3 by referring to the woman in the advertisement as “appearing to be naked”. Complain #2 also refers to the actors in the advertisement as “appearing to be naked, hugging and stroking each other, with the female half on top of the male”, “the bed covers are down ½ to 1/3 of the female’s back” and making the comment “this would be considered a sex scene”.*

*- Comments in Relation to the Complaints:*

*Sealy submits that the advertisement is not in breach of section 2.3 for the following reasons:*

*1. There is no nudity in the advertisement. Sealy does acknowledge that some consumers may interpret part of the advertisement as containing an element of sexual innuendo. The Guide refers to the ASB's approach to nudity and sexual innuendo as the following:*

*"Discreet portrayal of nudity and sexuality in an appropriate context e.g. advertisements for toiletries and fashion, is generally accepted by the Board."*

*2. It can therefore be submitted that due to the nature of Sealy’s product, the context in which the portrayal of the male and female is applied in the advertisements is appropriate in the context of the product being advertised.*

*3. The Board in L'Oreal Australia Pty Ltd (case number 0324/11) determined that the advertisement is not sexually suggestive merely by reason of including nudity and that it does treat sex, sexuality and nudity with sensitivity to the product and relevant audience. Hence adopting the Board's approach in relation to Sealy’s advertising, Sealy submits the following:*

*1. The advertisement treats sex, sexuality with sensitivity in a manner that is appropriate, relevant and consistent with the product advertised. No private parts of the actors are visible and the images are appropriate in the context of the advertisement and the product sold.*

*2. An advertisement for Supre, (case number 0145/11) which was brought to the Board's attention, portrayed a female model naked with her hair covering her breasts. The board determined:*

*"The Board considered that while the ad does depict some nakedness, the nudity does not expose any private areas at all. The Board noted that the model's breasts are not visible and her pose is only mildly sexually suggestive."*

*Although this advert was available to a broad audience, the Board determined that the advertisement was not sexualised, did not contain inappropriate nudity and did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach section 2.3 of the Code.*

*3. When considering past determinations handed down by the Board dealing with the same or similar content and issues as Sealy’s advertisement, Sealy submits that its advertisement does not breach the Code, particularly when considering the advertisement’s content and the nature of the product being advertised.*

*4. Sealy submits that the brief element of its advertisement that is the subject of the complaints is mild in tone, subtle, sensitive to the audience, sufficiently obtuse so as not to offend younger viewers and viewed as humorous and appropriate in nature by adult viewers.*

*Conclusion*

*Sealy submits that the advertisement does not contain any overt or ambiguous treatment of sex, sexuality and nudity and does not portray men or women in a discriminatory manner nor do the advertisements objectify the actors.*

*In summary, we submit that given the context of the advertisements they comply with all sections of the Code of Ethics.*

## **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 complainant’s concerns that the advertisement is offensive and contains sexual references which are not appropriate for viewing by children.

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

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 this advertisement is called ‘Apartment’: and the scenes are of different people engaged in various activities around their bed and bedroom. The text on screen asks, “What do we do in bed?” In the final scene a man and woman start to kiss before switching out the light.

The Board considered that while the advertisement does depict some nakedness, it is fleeting and the nudity is very modest and does not expose any of the private areas of the actors. The Board considered that showing examples of activities that may take place in a bed or bedroom (including intimacy between consenting adults) is acceptable and relevant to the product being advertised and that this scene was short and relatively discrete.

The Board noted that the advertisement had been rated W by CAD and considered that the content of the advertisement was not inappropriate for viewing by an audience that included children.

The Board considered that most members of the community would find the content only mildly sexually suggestive and not inappropriate.

The Board determined that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach Section 2.4 of the Code.

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

