



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 :	0129-20
2. Advertiser :	Chemist Warehouse
3. Product :	Health Products
4. Type of Advertisement/Media :	TV - Pay
5. Date of Determination	8-Apr-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.2 Exploitative or Degrading
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This Pay TV advertisement features four women in swimwear on the beach and surrounds exercising and playing games on the beach as well as dancing and drinking the advertised product. The words New Me, New You appear on screen with the final shot of the product and the Chemist Warehouse logo at the end. The product depicted is protein powder by Protein World titled The Slender Blend.

THE COMPLAINT

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

Sexualisation of women and partial nudity. To me, this advert negates all the work that has been done for equality and to be showing on a channel which supports women playing sport at a high level is disgusting.

Women being portrayed as sex objects in order to sell a product. If a KFC add needs to be taken down for inappropriate sexual content then this add should be too. I thought we were way past this type of advertising.

Objectifies women as sexual objects.



THE ADVERTISER'S RESPONSE

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

The complainant appears to be suggesting the advertisement breaches section 2 of the Code specifically that the advertisement is in some way sexually explicit or contains sex and/or nudity.

In direct response to the complainants deemed breach of Section 2 of the code, Chemist Warehouse respond as follows;

- *There is nothing in the advertisement that is sexually explicit whilst the advertisement shows women in swimwear it is not sexually explicit in nature.*
- *There is no nudity nor sex in the advertisement whilst the advertisement shows women in swimwear it does not contain nudity.*
- *Nothing in the advertisement is exploitative nor degrading.*
- *The advertisement is not discriminatory nor vilifying of any member of the community .*
- *None of the language could be deemed offensive.*
- *Nothing in the advertisement could be seen to be contrary to prevailing health and safety practices and standards.*

In short Chemist Warehouse contend that any reasonable person could not infer that the advertisement is in any way discriminatory nor in any other way in breach of Section 2 of the Code.

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 sexualising of women and depicts partial nudity.

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

The Panel considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: "Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people."

The Panel noted the AANA Practice Note which provides guidance on the meaning of the terms exploitative and degrading:



Exploitative - (a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or (b) focussing on their body parts where this bears no direct relevance to the product or service being advertised. Degrading – lowering in character or quality a person or group of people.

The Panel first considered whether the advertisement used sexual appeal.

The Panel considered that the depiction of women in swimwear is one which some members of the community would consider to contain sexual appeal.

The Panel then considered whether the advertisement used sexual appeal in a manner that was exploitative of an individual or group of people.

The Panel noted that the women are exercising and training in their swimwear and that a significant amount of their bodies are shown, however considered that there are no close-ups or lingering scenes of particular parts of their bodies with the overall impression being women at the beach exercising. The Panel considered that this depiction was related to the storyline of the advertisement, being a focus on fit and active women. The Panel considered that it was clear from the advertisement that the product for sale was not the women, and that the women were not depicted as an object or commodity. The Panel considered that the advertisement did not employ sexual appeal in a manner which is exploitative of the women.

The Panel then considered whether the advertisement used sexual appeal in a manner that was degrading to an individual or group of people.

The Panel considered that the overall impression of these women is that they are active, fit and healthy and that their clothing is typical of the type of swimwear seen at the beach and that it is not inappropriate to present the women in swimwear for the activity they are undertaking. The Panel considered that the women were not presented in a manner that was degrading.

On that basis, the Panel determined that the advertisement did not employ sexual appeal in a manner which is exploitative or degrading of an individual and did not breach Section 2.2 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 noted the Practice Note for the Code states:

“Images which are not permitted are those which are highly sexually suggestive and inappropriate for the relevant audience. Explicit sexual depictions in marcomms, particularly where the depiction is not relevant to the product or service being



advertised, are generally objectionable to the community and will offend Prevailing Community Standards.”

The Panel considered whether the images 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 depiction of women in swimwear is not of itself a depiction of sexual intercourse, sexual stimulation or suggestive behaviour. The Panel considered that the advertisement as a whole did not contain sex.

The Panel considered whether the advertisement depicted 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 women were depicted wearing swimwear and that there were close-ups of some of the women’s bodies. The Panel considered that some members of the community would consider this to be a recognition or emphasis of sexual matters. The Panel considered that the 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 considered that one scene in the advertisement depicts a woman wearing g-string style bikini bottoms and a large amount of her buttocks is visible. The Panel noted that the woman’s full body is visible in this scene and she is wearing a swim top. The Panel considered that the woman was not naked, but the design of the swimsuit may be seen by some members of the community to constitute partial nudity.

The Panel then considered whether the issues of sexuality and nudity were treated 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 relevant to the Panel considering how children, and other sections of the community, might consider the advertisement.

The Panel noted it had previously considered this advertisement on free to air television in case 0425-17 in which:

“The Board noted that the product being advertised is a slimming product and that the women are wearing swimwear. The Board noted that there is one scene of a woman in a g-string. The Board considered that the outfits of the women were appropriate to the beach setting and that it is reasonable for an advertiser to highlight the women’s bodies in the promotion of a slimming product.

“The Board noted that the women were not moving or posing in a provocative manner and that the bright colours and music added a playful feel to the advertisement rather than a sexual tone.”

Consistent with the previous case, the Panel considered that although there is a focus on the women’s bodies, the product advertised is a weight loss product, the image of the women was not overtly sexualised and in the Panel’s view the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and did not breach section 2.4 of the Code.

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