



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0135/19
2	Advertiser	Thorne Harbour Health
3	Product	Community Awareness
4	Type of Advertisement / media	App
5	Date of Determination	22/05/2019
6	DETERMINATION	Dismissed

ISSUES RAISED

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

2.5 - Language Inappropriate language

DESCRIPTION OF THE ADVERTISEMENT

An audio advertisement that was played on the streaming service Spotify regarding an outbreak of hepatitis A and the vaccination that can help prevent it.

THE COMPLAINT

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

During our breakfast with our children listening to Spotify, an ad for Hepatitis A infectious disease and immunization came on. It said that it's caused by men who have sex with men. Not appropriate at any time with young children listening.

THE ADVERTISER'S RESPONSE

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



I am writing in response to your email received on 9 May 2019 which included a complaint received by Ad Standards.

The complaint referred to an audio advertisement from a Vaccination Program campaign that was implemented by Thorne Harbour Health at the behest of the Department of Health and Human Services (DHHS). The audio advertisement was played on the music streaming service, Spotify. The audio advertisement has been provided as part of Thorne Harbour's formal response and the audio script has been listed below:

"Victoria has seen an outbreak of hepatitis A amongst men who have sex with men. Have you gotten your free vaccine yet? This will help stop the current outbreak. If you've already had a shot, a second shot 6 months later will give you life-long protection. The free hepatitis A vaccine for men who have sex with men is only available till the 30th of June this year through your GP. Visit Better Health Channel dot vic dot gov dot au forward slash Time To Immunise. Thorne Harbour Health."

From the complaint you received on the 28 March 2019 it is asserted that our advertisement is in breach of section 2.4 of the AANA Advertiser Code of Ethics ("the code") – Sex/sexuality/Nudity S/S/N – general, and 2.5 of the code – Inappropriate Language

In the complaint, the individual refers to the advertisement explicitly stating that the outbreak of hepatitis A "is caused by men who have sex with men" and that it's "not appropriate at any time with young children listening."

Firstly, as can be seen from the audio script and the attached audio, at no point does the advertisement state that the outbreak of hepatitis A is caused by men who have sex with men, but rather it highlights that there is an outbreak amongst this population and that there is action that can be taken to help prevent the acquisition of the virus. A serious public health issue needed to be addressed, furthermore, undiagnosed and untreated cases of hepatitis A can be severe for some people with other health issues, such as HIV.

To put the campaign and Vaccination Program into context it is important to understand the epidemiological background. In 2017, DHHS noticed an increase in hepatitis A diagnoses. Towards the latter half of 2017 an outbreak cluster of linked cases was identified. These biologically linked cases were primarily among people who listed male to male sex and/or injecting drug use as their risk factor along with some who had attended a sex on premises venue. In response to the increasing notifications DHHS implemented a Vaccination Program which provided the free two-dose hepatitis A vaccination to all men who have sex with men (regardless of sexual orientation) and people who inject drugs. Men who have sex with men were listed as a target population because that population included men who identify as heterosexual but



engaged in sexual activity with other men, and those men who may not be open about their sexuality and may therefore be accessing sex on premises venues. This descriptive category would allow for a wider array of eligible and/or at risk people to access the free Vaccination Program and not be limited solely to gay men or those who are injecting drug users.

DHHS then approached Thorne Harbour Health to develop a campaign which aimed to:

- Maximise uptake of time-limited free vaccines for hepatitis A following an outbreak among MSM and PWID;*
- Increase education and awareness of both the disease and of the vaccinations available for hepatitis A amongst men who have sex with men and PWID;*
- Reduce the number of new hepatitis A infections and reduce the burden and impact on the health system.*

Between 2016 and 2018, cases of hepatitis A rose by over 400% and through the implementation of the campaign cases in 2019 have decreased by nearly 70% in comparison to this time last year.

Further, the Vaccination Program extended beyond hepatitis A and included free vaccinations for meningococcal C, hepatitis B and the human-papilloma-virus (but only for men who have sex with men up to the age of 26).

Advertisements were created for all of the viruses and their associated vaccinations, and implemented across audio, print, digital and outdoor media starting in January 2018. All of the advertisements referred people to the Better Health Channel website, run by DHHS, which contained more detailed information about the outbreak and the benefits of vaccination and how to access the free Vaccination Program to prevent any further acquisition and/or transmission of the viruses. All copy associated with the ads was pre-approved by DHHS.

In relation to the complaint, whilst the advertisement does mention men who have sex with men, it does not mention a sexual act, sexuality or nudity directly, it does so in an indirect manner, and only to the point that it delivers health promotion messages regarding sexual health. With this justification Thorne Harbour Health feels that the advertisement does not breach 2.4 of the code.

With regard to inappropriate language, the complaint does not specify exactly what term was inappropriate. The complaint does suggest that it is not appropriate for children to hear. In response to this component of the complaint, Spotify allows for an audience to be selected as part of the advertising purchase. The audience selected by Thorne Harbour as part of this campaign was males aged 18-65+ who reside in Victoria and applicable to all music genres and devices. The attached Spotify



advertising report illustrates that these were the parameters placed upon the campaign's implementation. The various playlists that Spotify then determines fits this criteria are determined in-house. Further, the advertisement did not contravene the advertising standards set by Spotify, specifically with regard to sexually explicit content or sexual orientation.

In relation to the use of particular words that were suggested as inappropriate for children to hear, it can only be assumed that the complaint refers to the use of the word "sex". Whilst this word could potentially be used in an overtly sexualised circumstance or in an inappropriate and salacious way, it was used in the context of a health promotion message regarding a serious public health concern, and in this context the word would not be considered gratuitous. It would be considered relevant to the audience, the medium and appropriate in this circumstance. In addition, over the time period that the hepatitis A advertisement was live and in market, (between March 22nd 2019 and April 13th 2019), there were over 70,000 listens across the selected audience. Additionally, previous advertisements regarding sexual health have been implemented by Thorne Harbour Health through Spotify, again at the behest of DHHS for sexual health testing week in 2018. This campaign used relatively similar words in a similar context and with over 490,000 listens it did not result in a single complaint.

Due to the parameters put on the Spotify audience, the advertisement not contravening Spotify's advertising standards, the contextualised use of the assumed inappropriate language, previous advertising using similar language and with only a single complaint being received, Thorne Harbour Health asserts that the advertisement does not breach 2.5 of the code.

With regard to the relevant sections of the code the Board has requested responses to, due to this complaint, we contend that:

2.1 - The campaign audio does not portray people or depict material in a way that discriminates 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.

2.2 - The campaign audio does not employ sexual appeal where a) children are depicted or b) in a manner that is exploitative or degrading of any individual or group of people

2.3 - The campaign audio does not include violent elements nor portray violent situations.

2.4 - As illustrated by the information above, the script does treat sex, sexuality and nudity with sensitivity to the relevant audience. It only deals with sex in an indirect



manner through a descriptive characteristic.

2.5 - As illustrated by the information above, the script only uses language which is appropriate in the circumstances as it pertains to a serious public health issue regarding sexual health, and through the advertiser was limited to the appropriate audience and medium. No strong or obscene language was used.

2.6 - The campaign audio does not depict material contrary to the Prevailing Community Standards on health and safety.

2.7 - The campaign audio listed in the complaint is clearly distinguishable as advertising and marketing communication.

In conclusion, Thorne Harbour Health feels that despite the complaint received by the Ad Standard, the Vaccination Program campaign does not breach the AANA code of ethics for the following reasons:

The audio does not state that men who have sex with men caused the outbreak and therefore the complaint is incorrect in what it contends;

The advertisement does not directly deal with a sexual act, sexuality or nudity. It does so in an indirect manner, and only to the extent that it delivers health promotion messages regarding sexual health to a specific population;

The parameters put in place by the advertiser were preventative in nature from allowing children to hear it and it did not contravene their own advertising standards;

The language used within a particular context was not gratuitously explicit;

The campaign dealt with a serious public health concern and was supported by DHHS.

Thank you for considering our response and I look forward to hearing from the Panel in due course.

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's message is not appropriate for a time when young children would be listening.

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



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 noted that the Spotify advertisement states that Victoria has seen an outbreak of Hepatitis A amongst men who have sex with men and provides information about the free vaccine available.

The Panel considered whether the advertisement treated the issue of sex, sexuality and nudity 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 noted that the requirement to consider whether sexual references are ‘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 suggestions is or might be is relevant to the Panel considering how children, and other sections of the community, might feel about the advertisement.

The Panel noted that the complainant heard this advertisement at 7am in the morning while their children were listening to Spotify.

The Panel noted the advertiser’s response that the advertisement was directly targeted at males aged over 18 who lived in Melbourne and that the advertisement was only played to this target audience.

The Panel acknowledged that an adult may log into their Spotify to allow their children to listen to music, however considered that the advertiser had taken reasonable steps to ensure that the advertisement was only served to adult males. The Panel considered that it was outside of the control of advertisers if children were listening using an adult’s account. The Panel therefore considered that the relevant audience for this advertisement was adult males living in Victoria.

The Panel considered that the advertisement uses the term sex in a factual and straight forward manner in the context of an important community health message. The Panel considered that there was no suggestive or sexualised language in the advertisement or detailed description of sex or sexual activity. The Panel considered that this is an audio only advertisement and that it did not contain nudity.

The Panel acknowledged that some members of the audience would be uncomfortable with the phrase ‘men who have sex with men’ due to the activity associated with the words, however considered that most members of the



community would recognise this as a factual phrase identifying a section of the community at higher risk of contracting Hepatitis A.

The Panel considered the phrase 'men who have sex with men' is relevant to the important health message conveyed by the advertisement and that this message was especially relevant to adult males. The Panel considered that the factual, non-emotive and non-explicit wording of the advertisement treats an important health message with sensitivity to the relevant audience.

In the Panel's view the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant adult audience and that the advertisement did not breach Section 2.4 of the Code.

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

