



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0141-22</b>
<b>2. Advertiser :</b>	<b>Pernod-Ricard</b>
<b>3. Product :</b>	<b>Alcohol</b>
<b>4. Type of Advertisement/Media :</b>	<b>Outdoor</b>
<b>5. Date of Determination</b>	<b>13-Jul-2022</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification  
AANA Code of Ethics\2.2 Exploitative or Degrading  
AANA Code of Ethics\2.4 Sex/sexuality/nudity

### DESCRIPTION OF ADVERTISEMENT

This outdoor advertisement features an image of a woman in a long dress holding a drink. The caption says, "A man's drink? Whisky doesn't care what's between your legs. Obey the rules. Miss the fun".

### THE COMPLAINT

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

*Sexual references inappropriate for public place where children catch buses*

*I found this ad sexist, demeaning to women and in poor taste. There is more to a woman than her genitals.*

### THE ADVERTISER'S RESPONSE



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

*We refer to the above case and your letter dated 4 July 2022. Thank you for the opportunity to respond. Pernod Ricard Winemakers Pty Ltd takes compliance with the AANA Code of Ethics (AANA Code) very seriously. As a responsible advertiser, we value the rigour of the AANA Code. As a member of the Pernod Ricard Group, we are committed to the responsible marketing and consumption of our products and endeavour to abide by the AANA Code as well as other applicable codes and laws. We are proud to note that, despite our significant advertising investment, since the establishment of Ad Standards in 1998, we have only had one complaint to Ad Standards in 2001 and that complaint was dismissed.*

*As an advertiser we go to considerable lengths to ensure our beverages and their marketing do not appeal to minors. We strictly evaluate all our marketing for youth appeal, target audience, types of media, age of models, and placement.*

*The complaints relate to two 'out of home' digital advertisements for The Glenlivet Scotch Whisky located at a bus stop at 153 Miller Street, North Sydney NSW 2060 (NSW Site) and a billboard at 491 Main North Road, Enfield SA 5085 (Cnr Main North Road and Grand Junction Road) (SA Site).*

*For the reasons set out below, we submit that there has not been a breach of the AANA Code. A detailed response to the information requested by Ad Standards, as well as further information which may assist the Ad Standards Community Panel in considering the complaint, is set out below.*

#### **INFORMATION AND RESPONSES REQUESTED BY AD STANDARDS**

##### *Description of the advertisements*

*NSW Site: Actress Anna Paquin is seated with legs crossed, wearing an evening dress and holding a tropical whisky cocktail in a whisky glass with ice and pineapple garnish. Copy says, "A man's drink? Whisky doesn't care what's between your legs." Tagline reads, "Obey the Rules. Miss the Fun." A bottle of The Glenlivet Single Malt Scotch Whisky is shown. Further copy says, "Enjoy Responsibly" and "Get the facts DrinkWise.org.au".*

*SA Site: Actress Anna Paquin is seated, wearing an evening dress and holding a tropical whisky cocktail in a whisky glass with ice and pineapple garnish. Copy says, "A man's drink? Whisky doesn't care what's between your legs." Tagline reads, "Obey the Rules. Miss the Fun." Further copy says, "Enjoy Responsibly" and "Get the facts DrinkWise.org.au". A bottle of The Glenlivet Single Malt Scotch Whisky is shown.*

*We note the two advertisements are similar in substance and so will be referred to interchangeably as relevant.*



## *Compliance with Section 2 of the AANA Code and response to the complaints*

*2.1: Advertising 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 gender or sexual orientation.*

*Our campaign objective was to broaden representation of whisky drinkers to make it more inclusive. Our reference to “A man’s drink? Whisky doesn’t care what’s between your legs” was to challenge an outdated stereotype that whisky is a man’s drink, and to highlight that it is for every adult regardless of your sex or gender identity.*

*“Obey the Rules. Miss the Fun.” was a campaign tagline referring to the unwritten rules of traditional scotch whisky consumption – how to prepare it and who should typically drink it, for example, instead of drinking scotch whisky ‘neat’, one serving suggestion is to have it mixed in a cocktail instead, as depicted in the advertisements by the actress Anna Paquin holding a cocktail drink in a whisky glass with ice and fruit garnish.*

*With respect to the SA Site complainant, we therefore submit that our advertisements in no way discriminate or vilify a person or section of the community due to gender or sexual orientation, as this would be the complete opposite of our campaign objective, which is to target adults, regardless of their gender identity.*

*2.2: Advertising shall not employ sexual appeal:  
(b) in a manner which is exploitative or degrading of any individual or group of people.*

*The advertisements do not employ sexual appeal in an exploitative or degrading manner. Ms Paquin is wearing a relatively modest evening dress, is depicted in a respectful manner, and the campaign taglines are respectively about whisky can be consumed by any adult regardless of gender identity and alternative serving suggestions to traditionally drinking scotch whisky ‘neat’.*

*In regards to the SA Site complainant, we therefore respectfully disagree that the advertisements are demeaning to women, as this would go against our campaign objective.*

*2.3: Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised.*

*The advertisements do not present or portray violence.*

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

*In regards to the NSW Site, the complainant has interpreted “A man’s drink? Whisky doesn’t care what’s between your legs” to be a sexual reference, however, our*



*advertisement was not intended to be sexually suggestive or allude to sex. Instead, the intent was to convey that it does not matter what your gender identity is.*

*The advertisements do not contain any sexual or inappropriate images, and there is no nudity in the advertisements. In any case, for the reasons above, we submit that the advertisements treat sex and sexuality with sensitivity to the relevant audience.*

*While we acknowledge it is possible some minors may have seen the advertisement at the NSW Site, our target audience for the advertising campaign was adults aged 25-45 years old and the NSW Site and SA Site comply with the Outdoor Media Association Placement Policy (OMA Placement Policy) and the ABAC Responsible Alcohol Marketing Code (ABAC Code) by not being within a 150 metre sightline from the boundary of any schools. Further, we note that in regards to the OMA Placement Policy, the Outdoor Media Association (OMA) website states:*

*The OMA and its members recognise that Out of Home (OOH) advertising is visible to a broad audience and as such, the placement of advertising must be taken into account when considering compliance with the self regulatory codes. This is particularly important when advertising certain products that are illegal for sale to minors. The OMA has developed the following policy to ensure that all members are aware of and comply with community expectations in relation to the placement of OOH advertising.*

*2.5: Advertising shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium).*

*For the reasons above, we submit that the advertisements do not use inappropriate language for the relevant audience and medium. The advertisements do not contain any swear words or obscene language.*

*2.6: Advertising shall not depict material contrary to Prevailing Community Standards on health and safety.*

*The advertisements do not encourage or condone any unsafe practices. We include a responsible drinking message and the DrinkWise.org.au website in all our advertising wherever possible to help promote a responsible drinking culture in Australia.*

*2.7: Advertising shall be clearly distinguishable as such.*

*It is clear that the advertisements are advertising The Glenlivet Scotch Whisky.*

#### **ADDITIONAL INFORMATION**

##### ***Pre-vetting approval***

*In addition to our comprehensive internal review processes, to ensure compliance with the ABAC Code, we had completed the pre-vetting process through ABAC, obtaining approval for the campaign, including the out of home advertisements. The*



advertisements were submitted for pre-vetting on 19 May 2022 (Application No. 62-2022) and received ABAC pre-vetting approval on 20 May 2022 (Approval No. 2350).

#### *Placement of the advertisements*

*We had worked with our retained media buying agency, Initiative, to procure media placements. We had briefed Initiative that the target audience for this advertising campaign was adults aged 25-45 years old. In this case the end provider of the advertising spaces was JCDecaux. Initiative had instructed JCDecaux of the target audience and to only advertise at sites appropriate for alcohol advertising which includes compliance with the OMA Placement Policy. Under the terms of our contract with Initiative, they are required to comply with all relevant codes and laws, including the AANA Code, OMA Placement Policy and ABAC Code specifically.*

*JCDecaux has advised it follows a rigorous process to approve the placement of alcohol advertising, which involves assessing it internally including compliance with the OMA Placement Policy as detailed below and then ensuring external approvals have been obtained if required – in this case, ABAC pre-vetting approval given the presence of alcohol in the advertisements.*

*As stated in the OMA Placement Policy:*

*The OMA has developed a tool within its audience measurement system, MOVE, using PSMA Australia's government data which maps all schools in the five key Australian markets (Adelaide, Brisbane, Melbourne, Perth, and Sydney). This ensures that members can appropriately plan the location of any advertising that may be captured by this policy.*

*To ensure compliance with the OMA Placement Policy, before the advertisements were placed, JCDecaux used MOVE to ensure the NSW Site and SA Site were not within a 150 metre sightline from the boundary of any schools.*

*JCDecaux has advised that it has not been contacted by the OMA or any other parties about complaints relating to these advertisements.*

#### *Action taken after complaint*

*Prior to receiving the complaints via your letter, the advertising campaign had already concluded and so the advertisements were not live as of 4 July 2022. The advertisement at the NSW Site appeared during 24 May 2022 to 30 May 2022, and 14 June 2022 to 20 June 2022. The advertisement at the SA Site appeared during 13 June 2022 to 19 June 2022.*

*On receiving your letter, we conducted a review with our media buying agency and inventory suppliers of the process for selecting locations and ensuring their suitability for alcohol advertising placement. We are satisfied that the rigorous processes outlined above have been followed, and JCDecaux has assured us that it takes all*



*complaints on board and into consideration when reviewing future advertisements and their placements.*

*We wish to reiterate that Pernod Ricard Winemakers is committed to the responsible marketing of its products and upholding compliance with the AANA Code, OMA Placement Policy and ABAC Code. Pernod Ricard Winemakers maintains strict internal and external processes to help ensure compliance, including contractual terms with our agencies requiring them to comply with these codes.*

*We thank you for your consideration of this matter.*

## **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 sexist, demeaning to women and uses an inappropriate sexual reference in a place that children can view it.

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

**Section 2.1: Advertising or Marketing Communication 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, gender, age, sexual preference, religion, disability, mental illness or political belief.**

The Panel noted the AANA Practice Note which provides guidance on the meaning of:  
Discrimination - unfair or less favourable treatment  
Vilification - humiliates, intimidates, incites hatred, contempt or ridicule  
Gender - male, female or trans-gender characteristics.

**Does the advertisement portray material in a way which discriminates against or vilifies a person on account of gender or age?**

The Panel noted the concern that there is more to a woman than her genitals, suggesting that the advertisement reduces women to their genitalia or suggests that women are their genitalia.

The Panel considered that the advertisement refers to a stereotype that whiskey is a man's drink (noted in text on the advertisement) and further that women won't like it, can't stomach it, or it is inappropriate for them to consume.

The Panel noted other common tropes relating to whiskey, for example that it is consumed in dim rooms with leather lounges, or that ice should not be added. The



Panel considered that the image contrasts with those stereotypes as well, by showing a well-lit red and green room and a drink with ice and a garnish.

The Panel considered that the advertisement highlights that whiskey is for everybody – and therefore doesn't care what gender the drinker is. The Panel considered that the reference to whiskey not caring "what's between your legs" is inclusive, as it encompasses all gender identities.

The Panel considered that the advertisement contains no reference to women only being useful or wanted for their anatomy, nor is there a suggestion that women have no identity outside their genitals.

The Panel considered that the advertisement did not depict the woman, or women in general, as deserving of unfair or less favourable treatment or in a way which humiliates, intimidates, incites hatred, contempt or ridicule on the basis of gender.

### **Section 2.1 conclusion**

Finding that the advertisement did not portray material in a way which discriminates against or vilifies a person or section of the community on account of gender, the Panel determined that the advertisement did not breach Section 2.1 of the Code.

### **Section 2.2: Advertising 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.

#### **Does the advertisement use sexual appeal?**

The Panel noted that the advertisement depicts a seated woman in a dress holding a glass. The Panel noted that the text on the advertisement states "Whiskey doesn't care what's between your legs".

The Panel considered that while there was a reference to genitalia/anatomy, its use in this context did not amount to a depiction of sexual appeal. The Panel determined that the advertisement did not contain sexual appeal.

### **Section 2.2 conclusion**

Finding that the advertisement did not employ sexual appeal, the Panel determined that the advertisement did not breach Section 2.2 of the Code.



## **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 images are not appropriate in outdoor advertising or shop front windows.*

*“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 models in bikinis or underwear are permitted, however, unacceptable images could include those where a model is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person), or where there is clear sexual innuendo from the ad (e.g. depicting women as sexual objects).”*

### **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 is fully dressed and seated on a chair alone. 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 noted that the text on the advertisement states “Whiskey doesn’t care what’s between your legs”. The Panel considered that a reference to genitalia was a sexual reference and considered 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 woman in the advertisement is fully dressed and considered that the advertisement did not contain nudity.

### **Is the issue of sexuality 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 image appeared in outdoor spaces and the relevant audience would be broad and would include children.

The Panel considered that the reference to whiskey not caring “what’s between your legs” was a sexual reference in the sense that it relates to gender identity, but is not a reference to sex or sexuality in an intimate or sensual context.

The Panel considered that even if children were to understand the meaning of the advertisement, the simple translation is that a drink doesn’t care if you’re a boy or girl, and the Panel considered that this concept is not inappropriate for children.

Overall the Panel considered that the advertisement is mildly sexualised or vulgar but is not inappropriate for a broad audience that would include children.

### **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 complaints.



## **ABAC**

The Panel noted that advertisements about alcohol products may be considered against the provisions of the AANA Advertiser Code of Ethics as well as the Alcohol Beverages Advertising Code Scheme (ABAC). The Panel noted that complaint/s in this case were referred to ABAC for assessment. The Panel noted that the ABAC Responsible Alcohol Marketing Code (ABAC Code) is an alcohol specific code of good marketing practice and has specific standards which apply to the promotion of alcohol products. The Panel further noted that it can only consider complaints about alcohol advertising under the concept of prevailing community standards as set out by the AANA Code of Ethics. The Panel noted that the advertisement may be considered by the ABAC Chief Adjudicator or the ABAC Adjudication Panel applying the ABAC Code, as well as this determination under the Code of Ethics