



**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>0146-20</b>
<b>2. Advertiser :</b>	<b>The Oodie</b>
<b>3. Product :</b>	<b>Clothing</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Other</b>
<b>5. Date of Determination</b>	<b>13-May-2020</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

### DESCRIPTION OF ADVERTISEMENT

This YouTube advertisement begins with a shot of high heels discarded across a bedroom floor. The camera then pans up to an image of a bed, on top of which pieces of underwear/clothing appear to have been left. Whilst this occurs, a female voiceover is played against an audio track of jazz music where the voiceover states "It's been on your mind, all day long. You couldn't wait to get home and slip into something warm all over".

The camera then settles on a man lying stomach down on the bed while dressed in an Oodie. The Oodie is oversized, covered in cartoon pandas, and covers the entirety of the man's body except for his legs.

The music changes and the remainder of the advertisement depicts the man wearing an Oodie in various settings, such as the bathroom, walking down the stairs, eating strawberries on front of a fire and drinking champagne on a balcony.

Other scenes show the various men and women giving a review of the product, which is voiced by the main man rather than themselves.

There are two instances of the voiceover of the advertisement being beeped out.

0.28 minutes – the main man states "Finally, a piece of clothing that doesn't ride up our \*beep\*."

1.28 minutes – a woman states "I get so much \*2 second beep\*."

### THE COMPLAINT

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



*Highly sexualised, moaning and dirty talk. There are children in the house and I was attached to the speakers. It's happened more than once.*

## **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 20 April 2020 addressed to [the advertiser] regarding a complaint received by Ad Standards on 11 April 2020 (Complaint) in respect of an advertisement appearing on YouTube for a product known as "The Oodie" (Advertisement), which is sold through [the advertiser's] company Davie Clothing Pty Ltd.*

*On instructions from [the advertiser], we provide this response to the matters raised in your letter.*

### *Background*

*The product known as the "Oodie", and which forms the subject of the Advertisement, was first developed by [the advertiser] in or around 2018 and is best described as a wearable blanket with a hood. The Oodie is available in a series of colourful prints, and is marketed as a quality product that does not take itself too seriously. Accordingly, advertisements for the Oodie regularly utilise humour. Notwithstanding this, [the advertiser] takes his legal and governance obligations extremely seriously and believes that all of his activities, including the advertising of the Oodie, comply with all relevant standards.*

### *The Advertisement*

*The Advertisement is a short video posted to YouTube entitled "Comfortable is The New Sexy" which lasts for 1 minute and 54 seconds.*

*The Advertisement is one of a series of short video advertisements posted to YouTube for the purpose of highlighting how comfortable an "Oodie" is to wear. The Advertisement is targeted at adults, not children.*

### *Response to Complaint*

*The Complaint lodged in respect of the Advertisement appears to primarily relate to the opening scene of the Advertisement, which begins with shot of high heels discarded across a bedroom floor. The camera then pans up to an image of a bed, on top of which pieces of underwear/clothing appear to have been left. Whilst this occurs, a female voiceover is played against an audio track of jazz music where the following words are stated:*



*"It's been on your mind, all day long.*

*You couldn't wait to get home and slip into something warm all over".*

*The camera then settles on a man lying stomach down on the bed while dressed in an Oodie. The Oodie is oversized, covered in cartoon pandas, and covers the entirety of the man's body except for his legs. The man is the only person present in the shot (collectively the Opening Scene).*

*The Opening Scene lasts for 11 seconds in an Advertisement that otherwise lasts for a total of 1 minute and 54 seconds. Accordingly, it is very quick and does not receive more prominence over any other scene.*

*Neither the Opening Scene nor any other part of the Advertisement contain offensive or inappropriate material.*

*AANA Code of Ethics*

*We have had regard to all of the relevant advertising standards and, in particular, the AANA Code of Ethics (Code). It is respectfully submitted that the Advertisement does not breach any of the relevant standards.*

*As you have identified specific provisions of the Code as having relevance to the complaints, we deal with each of those provisions in turn.*

*Section 2.1 - Discrimination or Vilification*

*This section prohibits advertising from portraying people or depicting 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 Advertisement (and, in particular, the Opening Scene) does not contain any material which could be said to constitute discrimination or vilification. The Advertisement is fully compliant with this section.*

*Section 2.2- Exploitative or Degrading*

*This section prohibits advertising from employing sexual appeal where images of minors are used, or in a manner which is exploitative or degrading of any individual or group of people.*

*In this respect, the AANA Practice Note states that:*

*(a) exploitative means clearly appearing to purposefully debase or abuse a person, or group of persons, for the enjoyment of others, and lacking moral, artistic or other values; and*



*(b) degrading means lowering in character or quality a person or group of persons.*

*The Advertisement is not exploitative or degrading in any sense, and does not depict any minors at all, and so is fully compliant with this section.*

#### *Section 2.3- Violence*

*This section prohibits advertising from presenting or portraying violence unless it is justifiable in the context of the product or service advertised.*

*The Advertisement does not contain any violence or menace of any kind and so is fully compliant with this section.*

#### *Section 2.4- Sex, sexuality and nudity*

*This section requires advertising to treat sex, sexuality and nudity with sensitivity to the relevant audience. As foreshadowed above, the Advertisement is directed at adults, not children.*

*We understand that a reason for concern identified in the complaint was that the Advertisement included "highly sexualised" content, moaning and dirty talk. This is inaccurate. The Advertisement does not include any elements or depictions of a "highly sexualised nature" in that it:*

*(a) does not depict any nudity or images of scantily clad persons, but rather depicts images of persons dressed in oversized blankets that cover almost the entirety of their bodies such that any potential sexual appeal they might otherwise have had is eliminated or diminished;*

*(b) does not depict sexual acts of any kind;*

*(c) does not include any "moaning". Whilst the female voice-over does place emphasis on the words "all day long", it is still clearly distinguishable from a moan; and*

*(d) does not include any decipherable "dirty talk" in the ordinary/objective sense of that phrase.*

*Whilst the images of the underwear, the tone of voice adopted by the female voice-over and the jazz music utilised in the Opening Scene might be contended to give rise to very mild sexual connotations, the inclusion of these elements is not gratuitous in any respect. Rather, they were included solely for the purpose of creating a humorous juxtaposition to the remaining elements of the Advertisement that are the antithesis of sexuality (ie, images of people dressed in large oversized blankets featuring colourful childish/cartoon prints). Ultimately, this juxtaposition formed part of the marketing strategy to humorously suggest that, as per the tag-line of the Advertisement, "Comfortable is the New Sexy".*



*For these reasons, the Advertisement is fully compliant with this section.*

#### *Section 2.5- Language*

*This section requires advertising to only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium) and to avoid strong or obscene language.*

*The Advertisement does not contain any inappropriate language. To the extent a suggestion arises that inappropriate language was used at the 1:28 minute mark of the Advertisement (which is a further humorous device used) in the context of the Advertisement, that language is "bleeped-out" and cannot be deciphered.*

*Accordingly, the Complaint does not raise any concerns about language.*

*The Advertisement is fully compliant with this section.*

#### *Section 2.6- Health and Safety*

*This section prohibits advertising from depicting material contrary to Prevailing Community Standards on health and safety.*

*The Advertisement does not contain any unhealthy or unsafe practices, images or themes.*

*The Complaint does not raise any concerns about health and safety.*

*The Advertisement is fully compliant with this section.*

#### *Section 2. 7- Distinguishable as advertising*

*This section requires advertising to be clearly distinguishable as advertising to the relevant audience.*

*The Advertisement is prominently branded as an advertisement for the "Oodie". There is no reasonable prospect of the Advertisement being confused with other content and we note that the complaint does not suggest that any confusion has arisen.*

*The Advertisement is fully compliant with this section.*

*We do not understand there to be any suggestion of concerns arising in respect of any other part of the Code or other applicable standards.*

*Next steps*



*We trust this letter addresses all of the issues which need to be addressed in this matter. If further responses or information would assist the Panel, please let us know.*

*On the grounds outlined in this letter, we respectfully submit the complaint should be dismissed.*

*We look forward to your determination.*

## **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 concerns that the advertisement was highly sexualised and was inappropriate to be heard by children.

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 considered whether the advertisement contained sex, sexuality or nudity.

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 advertisement did not include sexually stimulating or suggestive behaviour. The Panel considered that the advertisement did not contain sex.

The Panel considered whether the advertisement featured 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 first few seconds of the advertisement featured clothing piled on the floor and a woman speaking in a low, moaning tone. The Panel also noted that the advertisement included the man saying 'the no bra, no panties feeling' and a beeped out phrase which suggests a woman is talking about sexual activity. The Panel considered that these scenes were all a suggestion of sexual matters and the advertisement did contain 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 noted that all the people depicted in the advertisement were shown wearing the product. The Panel considered that the advertisement did not contain nudity.

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

The Panel noted the advertiser’s response that does not include moaning, sexual acts or dirty talk, and that the overall context of the advertisement is the humorous juxtaposition between the large, comfortable product and sexuality. The Panel further noted the advertiser’s response that the advertisement was targeted at adults, not children.

The Panel considered that the advertisement was played on YouTube prior to videos. The Panel noted that while the advertisement would have a primarily adult audience, it may also be seen by children.

The Panel considered that the advertisement does commence with a sexually suggestive image of clothes lying on the floor of a bedroom and a sexualised voiceover. The Panel considered that the sexual tone of the very start of the advertisement was quickly resolved to depict the man in the advertised product, and it was clear that there was no sexual activity depicted. The Panel considered that the reference to ‘no bra, no panties feeling’ was more about comfort than a sexual description. The Panel considered that the beeped out language used by one of the women was completely censored, and while some may take it as a sexual suggestion it is not clear or explicit.



Overall, the Panel considered that the advertisement featured mild sexual innuendo but that this was very quickly overcome by the image of the man talking about the advertised product. The Panel considered the sexual innuendo would not be understood by children. The Panel considered that the broad audience would not find the advertisement confronting or overly sexualised and determined that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant broad audience and did not breach Section 2.4 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: “Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided”.

The Panel noted that the advertisement featured a woman speaking a phrase which is beeped out. The Panel considered that there is a suggestion that the woman is swearing, or that she is saying something highly sexualised, but considered that the words were sufficiently beeped out and it was not clear what the woman was saying. The Panel noted that it has previously determined in a number of cases that when a swear word is sufficiently covered, and not used in an aggressive manner, it does not constitute strong or obscene language (0442/18, 0257/18). Consistent with previous determinations, the Panel considered that the language used in the current advertisement was appropriate to the circumstances, and was not strong or obscene.

The Panel determined that the advertisement did not breach Section 2.5 of the Code.

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