



Ad Standards Community Panel  
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Advertising Standards Bureau Limited  
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# Case Report

1	Case Number	0150/19
2	Advertiser	Honey Birdette
3	Product	Lingerie
4	Type of Advertisement / media	Poster
5	Date of Determination	12/06/2019
6	DETERMINATION	Upheld - Not Modified or Discontinued

## ISSUES RAISED

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

## DESCRIPTION OF THE ADVERTISEMENT

This poster advertisement depicts a woman in black hot pants suit with sheer black top and pasties covering her nipples. The woman is posed with her hands on her hips. The lingerie style is titled Fonda.

## THE COMPLAINT

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

*Image is sexualised and resembles porn. It does not belong on public display. It is illegal to display this type imagery in all other avenues of public life (as per the Sex Discrimination Act) because it verifiably causes harm. Placing a product name on the image and calling it an ad cannot stop the harm.*

## THE ADVERTISER'S RESPONSE



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

*Advertiser did not provide a response.*

## 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 is highly sexualised, resembles porn and is inappropriate for public viewing.

The Panel viewed the advertisement and noted the advertiser did not respond.

The Panel noted that the advertisement featured an image of a woman in black hot pants suit with sheer black top and pasties covering her nipples. The woman is posed with her hands on her hips.

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 the complainant's concerns that the advertisement is highly sexualised and inappropriate for a broad audience.

The Panel considered whether the advertisement contained sex, sexuality or nudity.

The Panel noted the image depicts a woman in black hot pants suit with sheer black top and pasties covering her nipples. The woman is posed with her hands on her hips. The lingerie style is titled Fonda.

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 image 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 a woman in revealing lingerie is not a depiction of sexual intercourse, sexual stimulation or suggestive behaviour. The Panel considered that the advertisement did not feature or allude to sex.

The Panel considered whether the advertisement treated the issue of sexuality with sensitivity to the relevant audience.

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 depiction of the woman wearing this style of lingerie was relevant to the product being promoted. The Panel considered that although it is reasonable for an advertiser to depict the product being promoted, the depiction must not be not gratuitous and should be 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 suggestions 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 that this image appears in store windows and considered that the relevant audience includes retail workers, people shopping in the Honey Birdette store and people who are not shopping at Honey Birdette but who are walking past the store, and that this last group would include children.

The minority of the Panel considered that while the style of the lingerie is sexualised, the woman's pose is confident and not inherently sexually suggestive. The minority considered that the woman's nipples are covered by the pasties, and that there is no sexualised wording on the advertisement.



The minority of the Panel noted it had previously considered an advertisement with a woman in a similar pose in case 0505/15, in which:

"...in the Board's view the level of nudity is relatively mild, the woman is posing in a strong and confident manner and is not sexualised and overall the image is consistent with similar advertisements in shopping malls for similar products...In the Board's view there advertisement is only mildly sexualised and would not be understood by children to have any sexualised impact."

The minority of the Panel acknowledged that the sexualised nature of the product itself may not be considered appropriate by people shopping in the centre, especially those with young children, however in this instance the minority considered that there was no sexual messaging or themes in the advertisement which would make it confronting for these audiences. The Panel considered that young children would be unlikely to view this advertisement as sexually suggestive, and the most likely interpretation by this audience would be of a woman standing in lingerie.

However, the majority of the Panel considered that the black pasties on the woman's nipples drew attention to her breasts and that therefore the image is highly sexually suggestive. The majority considered that although the woman's nipples are technically covered, the shape of the pasties is the same as nipples and the remainder of the woman's breasts are still clearly visible through the sheer fabric. The majority of the Panel noted that the pasties and the bodysuit are both products available for purchase at Honey Birdette, however considered that products must still be advertised in a manner that is suitable for advertising on the front window of a store that is located in a shopping centre.

The majority of the Panel noted it had previously considered an advertisement with a woman in a shelf bra and pasties covering her nipples in case 0095/12, in which:

"The Board noted that the bra does not fully cover the woman's breasts and that the coverings placed over the nipples are clearly visible. The Board considered that the combination of the low cut bra and the 'opaque pasties' drew the viewer's attention to the breasts and nipples of the woman in a manner which is not appropriate for a broad audience including children."

The majority of the Panel considered that many people in the community, including those who would view this advertisement, would find it confronting for an advertisement to feature images which focus on a woman's breasts in advertising, even when these depictions are obscured by sheer fabric or other products. The majority of the Panel considered that the advertisement did not treat the issue of sexuality with sensitivity to the relevant audience.

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 treats nudity with sensitivity to the relevant audience.

The Panel noted that the woman is not nude, but considered that the depiction of women in lingerie can be considered by some members of the community to be partial nudity.

The Panel considered the Practice Note for the Code which provides:

“Full frontal nudity and explicit pornographic language is not permitted. Images of genitalia are not acceptable. Images of nipples may be acceptable in advertisements for plastic surgery or art exhibits for example.”

The Panel noted that the top half of bodysuit worn by the woman in the advertisement was sheer and that although her nipples are covered, the remainder of her breasts are still clearly visible.

The Panel noted that they have previously considered a similar advertisement for the same advertiser in case 0543/18, in which:

“The Panel noted that the outline of one of the woman’s nipples is visible through the lace underwear. The Panel considered that the woman’s nipple was visible due to the style of the lingerie, but was mostly covered by the lace feature and was not a significant focus of the advertisement. The Panel considered that the woman’s breasts are not fully exposed and that the visible outline of a nipple was not inappropriate in the context of the product being advertised.”

Similar to case 0543/18, the Panel considered that in this instance the woman’s breasts were not fully exposed and that the woman’s nipples were covered. The Panel considered that the neckline on the body suit worn by the woman was low cut and sheer, and as such a large amount of the woman’s breasts were visible. The Panel considered the level of cleavage on display would be considered by most members of the community to be consistent with fashion trends.

The Panel considered that the women’s genitals were not visible and that the women’s nipples were obscured. The Panel considered that there was no overt nudity at a level that most members of the community would find unacceptable.

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



Finding that the advertisement breached 2.4 of the Code, the Panel upheld the complaint.

#### **THE ADVERTISER'S RESPONSE TO DETERMINATION**

The advertiser has not provided a response to the Panel's determination. Ad Standards will continue to work with the advertiser and other industry bodies regarding this issue of non-compliance.