



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0150-20
2. Advertiser :	Catch Group
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet
5. Date of Determination	27-May-2020
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This internet advertisement features:

- an image of a woman's lower half in pink underpants
- an image of a woman in a black bodysuit with open criss-cross down the centre of her torso. There is a star over her genitals.
- smaller images of lingerie and footwear products

THE COMPLAINT

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

It shows clearly female body uncensored

THE ADVERTISER'S RESPONSE

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

1. The subject of the complaint is a retargeted ad for women's lingerie that appeared on the customer's mobile device. A copy of the relevant ads were included in the complaint.

2. As you are aware, retargeting is a form of advertising that uses browser cookies to display targeted advertising content to users on other platforms based on their browsing history.



3. When a user browses product on Catch, data about the user's browsing is collected and they are then displayed ads for similar content on sites such as Facebook. This particular user was shopping for the same or similar lingerie products to those seen in the retargeted ads which are the subject of the complaint prior to seeing them on another platform.

4. One of the products shown in the retargeted advertisement is a lingerie set from Catch's adult section. Catch excludes certain products from its retargeting campaigns, including adult products. This is based on certain keywords related to products. This process is manual, and from time to time the exclusions will not capture all products and certain adult and other excluded products can feature in retargeted campaigns.

5. A breach of the Code of Ethics, if any, in this circumstance, was inadvertent as it is Catch's intention that such products do not feature in retargeted advertising.

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 depicts an uncensored female body.

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 two main images in the advertisement featured women in lingerie. The Panel considered that the women were depicted in poses modelling the lingerie and were not depicted engaging in 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 two main images in the advertisement featured women in lingerie. The Panel considered that some members of the community would consider the depiction of women in lingerie to be a recognition of sexual matters, and therefore considered that that 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 considered that the first image in the advertisement featured a woman from the waist down in a pair of light pink underwear. The Panel considered that the underwear is transparent in nature and that the woman's genitals can be seen through the fabric.

The Panel considered that in the second image the style of the lingerie worn by the woman meant that a large amount of the woman's breasts and the woman's genital region was uncovered. The Panel considered that a white star had been edited over the woman's genitals, but that large amount of the woman's genital region was still visible.

The Panel considered that the overall advertisement contained partial nudity.

The Panel then 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 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 this was a retargeted advertisement which would have been generated based on the user having searched for similar lingerie products on the advertiser's website.



The Panel noted that the complainant had not provided detail on where they had viewed the advertisement. The Panel considered that although the complainant may have looked at similar products on a specific website, the exact products depicted in the advertisement may not have been the products searched by the complainant.

The Panel noted the Practice Note for the Code provides:

“Images which are not permitted are those which are highly sexually suggestive and inappropriate for the relevant audience... Full frontal nudity and explicit pornographic language is not permitted. Images of genitalia are not acceptable.”

The Panel considered that the advertisements contained a level of nudity which many members of the community would consider inappropriate and excessive for an advertisement viewed on social media or other website which has been targeted to them without notice.

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

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

THE ADVERTISER’S RESPONSE TO DETERMINATION

Catch acknowledges the panel’s determination and would like the panel to be aware of the following:

1. Catch already excludes offers that contain offensive keywords or imagery and it did not intend that such a product would be included in retargeted advertising. This particular advertisement slipped through those filters. Additional keywords have been added to those filters to prevent further similar occurrences;
2. The advertisement was taken down manually when we became aware of the complaint.