



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0151/10</b>
<b>2</b>	<b>Advertiser</b>	<b>ACON Inc.</b>
<b>3</b>	<b>Product</b>	<b>Community Awareness</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Print</b>
<b>5</b>	<b>Date of Determination</b>	<b>28/04/2010</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

- 2.3 - Sex/sexuality/nudity Treat with sensitivity to relevant audience
- 2.1 - Discrimination or Vilification Gender
- 2.3 - Sex/sexuality/nudity Treat with sensitivity to relevant audience

### DESCRIPTION OF THE ADVERTISEMENT

The print advertisement is a black and white photographic image of three men who appear to be naked. The image is overlaid by large block text in white and blue, which reads 'BEFOREPLAY', supported by accompanying text. The material features a SLIP IT ON campaign logo as well as the ACON organisational logo.

### THE COMPLAINT

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

*I would like to object very strongly that such an advert appeared in a newspaper which is distributed free in the Sydney and is available to be seen by not only the public but by children. I object to pornography being seen in such a publication. His sataement that it was put in by the aids Council is no excuse.*

*This is a free magazine which is delivered to homes and units.*

*While i can appreciate the concern for safe sex practices this graphic illustration is totally unwarranted in what most people would regard as a family friendly magazine.*

### THE ADVERTISER'S RESPONSE

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

### *CONTEXT*

*Established in 1985, ACON is Australia's largest community-based gay, lesbian, bisexual and transgender (GLBT) health and HIV/AIDS organisation. ACON works to improve the health and wellbeing of the GLBT community and people with HIV, and reduce HIV transmission.*

*ACON has traditionally developed a social marketing campaign for release during the Sydney Gay and Lesbian Mardi Gras (the largest GLBT event in the Southern hemisphere) to address the health and wellbeing issues created by the substantial increase in the numbers of gay men and lesbians engaging in social and sexual activities, including a large influx of visitors from outside of Sydney and Australia. This allows us to coordinate and promote our health messages to maximum effect.*

*A greater number of gay men and lesbians in Sydney participating in Mardi Gras festivities potentially increases the risk of HIV other sexually transmissible infections being transmitted through unprotected sex, including in contexts where alcohol and other drugs are used.*

### *THE ADVERTISEMENT*

*The advertisement in question is part of a wider health promotion campaign produced by ACON that helps gay men and lesbians reduce their chances transmitting HIV and other sexually transmissible infections (STIs) by thinking ahead and being prepared before sex, setting boundaries around drug use, and engaging in effective communication with sexual partners.*

*The campaign is firmly grounded in epidemiological and behavioural research which acknowledges that the use of drugs and involvement of more than one sexual partner are both behaviours which are associated with HIV transmission. In the context of this campaign, the advertisement in question aims to improve the sexual negotiating skills of men who have sex with men by encouraging them to:*

- Think ahead and be prepared to have safe sex (i.e. to use of condoms and lube)*
- Set boundaries around sexual practices as well as the use of alcohol and other drugs*
- Engage in effective communication with sexual partners*

### *THE COMPLAINT*

*The specific reasons for concern cited in the two complains are:*

- 1) The content of the advertisement being "a graphic illustration" and "pornography"; and*
- 2) The placement of the advertisement in a "family friendly magazine" which is "delivered to homes" and which can be "seen by children"*

*As such, we understand the complaints will be considered by the ASB in relation to:*

- 1) Section 2.3 of the AANA Code of Ethics:*

*"Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone."*

2) Section 2.4 of the AANA Code of Ethics:

*“Advertising or Marketing Communications to Children shall comply with the AANA’s Code of Advertising & Marketing to Children and section 2.6 of this Code shall not apply to advertisements to which AANA’s Code of Advertising & Marketing to Children applies.”*

#### **RESPONSE**

1) *The content of the advertisement being a “graphic illustration” and “pornography” Education and prevention measures continue to be the most appropriate and effective public health response to HIV/AIDS in Australia. To be effective, such measures need to be in the form of clear and concise health messages that are accessible and culturally appropriate to their target audience.*

*As nearly 80% of new HIV infections in Australia are amongst homosexually active men, it is important that information is made available to these men to help them look after their health and avoid HIV transmission.*

*As previously stated, the aim of the BEFOREPLAY campaign is to help people in the GLBT community understand that what one does ‘before’ one ‘plays’ is an important part of sex because it helps look after the health and wellbeing of oneself and others. In the context of the BEFOREPLAY campaign, this message was communicated in many ways and through a variety of channels.*

*However, relevant demographic research indicates that some gay men do not engage with conventional approaches to health promotion. The available research also indicates that the use of realistic imagery is highly effective in getting these men to engage with relevant health promotion messages.*

*For these reasons, the advertisement in question uses a striking but artistic black and white image to help the target audience engage with the safe sex message. Importantly, the image is designed not only to be noticeable but also to reinforce the idea that safe sex is attractive and enjoyable.*

*The image is the work of celebrated Australian photographer Paul Freeman. Mr Freeman’s work has included portraits of leading Australian Olympians, sportspersons and actors and has appeared in widely distributed publications such as *The Sydney Dream* (2000), *The Athen’s Dream* (2004), and *Sportbook* (2003).*

*While the image is striking, we do not believe it is pornographic. The image carefully uses shadows and positioning to ensure there is no full frontal nudity, and the composition and framing is only vaguely suggestive of sexual activity rather than being a direct simulation. Furthermore, in the context of the advertisement, the purpose of the image is clearly to communicate an important community health message. As such we believe the advertisement strikes an appropriate balance between being sensitive to a general readership but effective in engaging the target audience and therefore does not breach Section 2.3 of the AANA Code of Ethics.*

2) *The placement of the advertisement in a “family friendly magazine” which is “delivered to homes” and which can be “seen by children.”*

*The decision to place the advertisement in question in the 4 March 2010 edition of *The City News* was made with the aim of ensuring our health promotion messages were disseminated amongst a highly targeted population in the inner city area during the final week of the Mardi Gras festivities.*

*As previously stated, the target audience for the advertisement was homosexually active men - gay men, bisexual men and other men who have sex with men - both residents of Sydney and*

*men visiting Sydney for Mardi Gras. Relevant demographic research suggests that a substantial number of these men live and stay in the inner-city suburbs of Sydney. The publisher of The City News, the Alternative Media Group, provides the following information on the distribution of The City News:*

*“The City News is distributed in and around the CBD to some of Australia’s most popular shopping and night time precincts including Darlinghurst, Kings Cross, Surry Hills and Newtown. The City News is delivered to the City’s diverse fringe suburbs from Glebe to Rushcutters Bay including Pyrmont, Ultimo, Forest Lodge, Newtown, Camperdown, Darlington, Chippendale, Haymarket, Surry Hills, Darlinghurst, Kings Cross and Potts Point.”*

*These are all inner-city suburbs of Sydney which, as previously stated, are all high priority areas in terms of communicating with the target audience during one of largest annual gatherings of such men in the world.*

*Furthermore, the media kit for the Alternative Media Group provides the following information on the readership of The City News:*

#### **HOUSEHOLD TYPE**

*Single Person Household 35%*

*Double Income No Kids 60%*

*This would indicate that the overwhelming majority of households to which The City News is delivered – 95% in fact – do not have children. This would suggest that while the publication is indeed distributed to people’s homes, the publication is not targeted to children in any way and is unlikely to be seen by children.*

*On this basis, and given that the advertisement is not directed primarily to or is not for goods, services and/or facilities which are targeted toward and have principal appeal to children 14 years old or younger, we do not believe that the advertisement either comes within the scope of or breaches the AANA Code for Advertising and Marketing Communications to Children. However, we do acknowledge that the two complainants found the advertisement to be inappropriate in relation to its placement in a free community publication delivered to homes of inner-city residents. We regret any offence that the placement of this advertisement may have caused these two readers and will endeavour to be even more cautious and sensitive in relation to placing advertisements in The City News, as well as other mainstream community publications, in the future.*

## **THE DETERMINATION**

The Advertising Standards Board ('the Board') was required to consider whether the advertisement complied with the requirements of the AANA Code of Ethics ('the Code').

The Board noted the complainants' concerns that the print advertisement is graphic and inappropriate in a family friendly magazine.

The Board viewed the advertisement and noted the advertiser's response. The Board agreed that messages aimed at reducing the risk of HIV and other sexually transmissible infections are important.

The Board considered that the images of the men in this advertisement are sexualised and sexually suggestive. The Board also considered that the primary focus of the advertisement for most consumers will be on the image of the people.

The Board noted that this image is predominantly targeted towards gay, lesbian, bisexual and transgender audiences and that the particular publication from which complaints were generated is a free community publication delivered to homes of inner-city residents. The Board noted that 8% of the readership of the publication, according to statistics on the publisher's website, is under 18.

The Board noted that education on safe sex, regardless of sexual orientation, is a message that should be available to the general community and that, in the Board's view, this particular advertisement is compelling and effective.

The Board noted that this image is similar in style to an earlier case (34/09). In that case the image was on the advertiser's own website (a winery). In that case the Board noted that the images are contained on a product specific internet site that a person must actively seek out - and is not an advertisement that will be seen while the person is looking at other things on the internet. The Board noted also that the website is a site for alcoholic beverages (namely wine) and is therefore not designed for or targeted to children or indeed persons under the age of 18. The Board concluded that the relevant audience for the advertising material on this internet site is a mature audience. The Board considered the images on the website and noted that the images are of naked people but that the images are very stylised, in a classic style, and that it is difficult to ascertain particular people. Although touching each other the people in the depictions are not depicted in a sexual manner and the nudity is discrete. The Board determined that the images on the internet site treated sexuality and nudity with sensitivity to the relevant audience and did not breach section 2.3 of the Code.'

The Board considered that the content of this advertisement, taking into account the relevant audience following publication in the free community paper, does not treat sex, sexuality and nudity with sensitivity. The Board determined that this advertisement breached section 2.3 of the Code by its inclusion in the particular publication referred to in the complaints.

The Board noted that the advertised service is not directed to children and considered that, although viewable by children in the community publication, the publication is not directed to children. The Board determined that the AANA Code for Advertising and Marketing to Children does not apply to this advertisement.

Finding that the advertisement breached section 2.3 of the Code the Board upheld complaints.

## **ADVERTISER RESPONSE TO DETERMINATION**

Please be advised that in line with the Board's determination, ACON has discontinued use of the advertisement in question.

In addition, ACON accepts the finding of the Board in its entirety and will not be seeking a review of the Board's decision.

