



Case Report

1	Case Number	0155/13
2	Advertiser	Global Herbal Products
3	Product	Food and Beverages
4	Type of Advertisement / media	Transport
5	Date of Determination	22/05/2013
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.5 - Language Inappropriate language

DESCRIPTION OF THE ADVERTISEMENT

Image on the back and sides of a bus of a topless woman embracing a topless man with the text, "Vigor Tea. The Sexy Tea for 2" or the text, "Improve your sex life". There is also an image of the product, tea, and details on how to claim a free sample.

THE COMPLAINT

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

I object and am offended because we see this bus while driving my kids to school. It's wrong that my children are exposed to such disgust and we can't even get away from it because it is stopped at a stop light or we are having to sit behind it. Think about the discussions that we are FORCED to have due to this advertisement. Also if you go to their website, it is soft porn. I can imagine there are children that are interested in finding out what this product is and are exposed to soft porn after searching it on the internet. Just disgusting.

THE ADVERTISER'S RESPONSE

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

This bus promotes the Gold Coast clients lemon flavoured herbal drink 'Vigor Tea' which is a legitimately marketable product sold both on line and in store across Australia. At the time of the complaint a "patch" had been applied to the creative changing the phrasing of the sentence 'The sexy drink for two' to 'Improve your Sex Life'. The change in creative patch was not properly approved by Go Transit who mistook the job as 'Damage Repairs' and subsequently produced the patch and had it installed, unaware that the patch was not just damage repair, but involved a creative change also.

This oversight was identified before the complaint was lodged with ASB and the sign is being reverted back to it's initial wording "The Sexy Drink for Two" on all three sides of the bus. The patch has only been in place for 2-4 weeks, the original sign and wording was installed in November 2012

Firstly I address the nature of the product and relevant audience placement as set out in Section 2 of ANNA 2012 Code of ethics.

Our client's product Vigor Tea is a legitimate product, herbal hot drink marketed at all people 18+, whilst not being restricted for sale to people of any age. The product, which has been on sale for more than 20 years on the Gold Coast, is one on many herbal supplements presently openly marketed to the general public as a herbal enhancement to improve libido. In much the same way as Horny Goad Weed or Ginseng are promoted, often with a tastefully sexualised image appropriate to the context of the product.

Section 2.4 of the code indicates that "Advertisements that depict men or women scantily clad are generally acceptable if relevant to the product", in this case we argue that the image is both tasteful and relevant to the audience and the product.

Whilst the complainant refers to driving children to school, the placement of this product is in our opinion reaching a relevant audience in daily traffic where the majority of cars are single occupancy and driven by people of age 18 years or older, however we are mindful that there is no way to restrict outdoor advertising exposure to any one age demographic and whilst this product is not necessarily restricted for sale to people of any age, it is certainly aimed at the 18+ market. the image used is small in relation to the advertising space accounting for less than 25 % of the space of the back and only around 5% of the size available on the bus sides.

With regard to the specifics of the complaint, and in particular to firstly address the complainants reference to the word "SEX". Whilst use of the word SEX in itself is not a breach of the code, we agree that under section 2.4 of the code "Use of the word SEX should not appear alongside images that are highly sexualised" and in this case there is one single image used on each side of the bus which are lifted directly from the package of the herbal drink.

This image does depict a sexualised embrace of two scantily clad people from a side perspective. With this knowledge Go Transit forbade the use of the word "SEX" in the initially approved display and has insisted the recently applied copy change be reverted back to the original wording "the sexy drink for two" rather than "Improve Your SEX Life". These changes are expected to be executed ASAP and were communicated to the complainant when she called Go Transit before lodging her complaint to ASB. Examples of both designs are attached.

Being an image of a consenting couple sharing mutual affection we do not believe that this image, also used on all of the companies packaging, objectualises either men or women. In summary, it is our argument that once the signage is restored to its intended display standard, the image is relevant to the product, the placement is relevant to the audience, it is generally in keeping with community standards and this full wrap display does not breach

section 2 of the codes guidelines in dealing with products of sexual nature. Further, the complainants suggestion that this legal and legitimate natural product is "disgusting" is subjective and probably not the view point of the wider community to which it is marketed.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement is offensive, sexually suggestive and inappropriate for a broad audience which includes children.

The Board noted that some elements of the complainant's concern related to the nature of the product and noted that it is not the Board's role to determine what material is or is not permitted to be advertised. Rather the Board's role is only to determine whether the manner in which the product is advertised meets the requirements of the Code.

The Board noted that it was considering two images which both included the depiction of a man and woman in an embrace. The Board noted that one image contained the descriptive text 'a sexy tea for two' and the other contained the text 'improve your sex life'.

The Board viewed the advertisements and noted the advertiser's response.

The Board considered whether the advertisements were 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 Board noted that both advertisements feature a man and a woman in an intimate pose on the left of the image and that the couple are not wearing any clothing on the top part of their bodies. The Board noted that there is no inappropriate nudity and that the woman's breasts are not exposed. The Board considered that the image of the man and woman is a sexualized image and the pressing of their naked torsos together is suggestive of an intimate relationship.

The Board considered that the use of the linked gender symbols in the name of the product is not sexualised in nature and would be recognized by an audience of a more mature age group and would not be recognized by children as having any sexual connotation.

The Board noted that the advertised product is being sold as a sex enhancement product and that a degree of sexual reference would be justified by the product. The Board noted that the context of the advertisement is sex related with many components of the advertisement suggesting sexual performance and related issues such as 'libido' and 'aphrodisiac'. The Board considered that the image accompanied by the various words and other components of the advertisement created a more than mildly sexualized image. The Board noted the broad

audience including children who would be exposed to the images on the buses. The Board considered that the advertisement did not treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did breach Section 2.4 of the Code.

The Board then considered whether the advertisements were 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 Board first considered the advertisement with the text ‘sexy tea for two’. The Board noted that the product is one being advertised as being useful for improving intimacy and sexual relations. The Board considered that a degree of sexualized language or a reference to sex was appropriate to advertising this product. The Board considered that the phrase ‘sexy tea for two’ was relevant to the product and that the description of tea as sexy did not amount to a strongly sexualized statement. In the board’s view this statement is not strong or obscene and does not breach Section 2.5 of the Code.

The Board then considered the advertisement with the text ‘improve your sex life’. The Board noted that this text is a strong statement which is explicitly related to sex and would be understood by viewers of the advertisement in that manner. The Board considered that the specific reference to improving your sex life was not appropriate in the context of a large advertisement available to a broad audience and that many people would consider that this is strong language. The Board therefore determined that the use of the phrase ‘improve your sex life’ was not appropriate in the context of the bus medium and that many people would consider this strong language. The Board considered that this phrase did breach Section 2.5 of the Code.

Finding that the advertisement with the wording ‘sexy tea for two’ breached Section 2.4 of the Code and that the advertisement with the wording ‘improve your sex life’ breached section 2.4 and 2.5 of the Code, the Board upheld the complaint against both advertisements.

ADVERTISER RESPONSE TO DETERMINATION

All models involved in the advertising have been replaced with fully clothed models. The text, "Sexy tea for two" be will used instead of "improve your sex life".