



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0155-20
2. Advertiser :	Apple Pty Limited
3. Product :	Entertainment
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Determination	13-May-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This TV on Demand advertisement is promoting the Apple TV show 'Trying' and features the following scenes:

- A woman holding a baby asks a man, "you don't have kids?", the man responds, "we have actually been trying for kids for a while now." Another man says, "It gets much harder to have a baby in your 30's" and another woman says, "Oh, does it Freddie?"
- A woman and a man are sitting on a bed, the woman says, "I think I'm ready to talk about adopting".
- A couple sits on a couch and another woman says, "It is not a test, I am on your side. This is about preparing you for panel. So, how often would you say you have sex?" The couple looks startled by the question.
- A woman in an office says, "So I think it can't be that hard if Madonna did it." and another woman responds, "No I, I don't think she went through the council."

THE COMPLAINT

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

A conversation about frequency of sexual activity is completely inappropriate for young children and this is a show specifically aimed at families with children. I was really disappointed by this.



The question in ad says how many times do you have sex? The complaint is due to this ad being shown during mid afternoon whilst watching Lego masters with children. Inappropriate. I need to ad this is my second ime complaining about a sexualized ad during a program children can watch.. and there is no option to fast forward ads.

THE ADVERTISER'S RESPONSE

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

Although Apple considers both the content and placement of the advertisement to be compliant with the AANA Advertiser Code of Ethics (Code), Apple has voluntarily taken action to cease the advertisement appearing during the Lego Masters program. Apple takes community standards seriously in preparing and publishing all of its advertising materials and other communications in Australia, and appreciates the views of the complainants.

In addressing each of part of section 2 of the Code, Apple responds as follows:

Section 2.1: The advertisement does not depict any material that could be described as discriminating against or vilifying any particular section of the community;

Section 2.2: The advertisement does not contain any material that could be described as exploitative or degrading of any individual or group of people;

Section 2.3: The advertisement does not contain any violent material in any context;

Section 2.4: The advertisement does not portray any nudity. The advertisement does contain a specific reference to sex, which is addressed in further detail below

Section 2.5: The advertisement does not contain any strong or obscene language;

Section 2.6: The advertisement does not contain any material that could be considered contrary to prevailing community standards on health and safety; and

Section 2.7: The advertisement is clearly distinguishable as advertising.

The complainants generally raise concerns with the reference to 'sex' being made in the advertisement, and more specially the timing of the advertisement's placement.

The reference to sex is in the form of a question posed to the characters 'So, how often would you say you have sex?' That question is made in the context of the subject of the series, namely, a couple deciding that they wish to start the adoption process and preparing for that process. The reference is not salacious or in any way graphic, and Apple considers such a reference is not inconsistent with community standards.



In terms of the placement of the advertisement:

(a) the advertisement was reviewed by ClearAds, and given a 'G' rating;

(b) the advertisement appeared during a program which is not targeted at children. Although Apple appreciates that children do form part of the audience of Lego Masters, in light of the 'G' rating given to the advertisement, Apple did not consider it inappropriate for the advertisement to run during the program. Notwithstanding this, as stated above, Apple has voluntarily ceased placement of the advertisement in question during Lego Masters.

I trust that this information will assist the Community Panel in its consideration of the complaints.

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 complainants' concerns that the advertisement features inappropriate sexualised content which was inappropriate during the family show Lego Masters.

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 noted that the advertisement features a woman asking a couple, "how often would you say you have sex?". The Panel noted that the advertisement featured a direct reference to 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 there was no sexual imagery or behaviour depicted in the advertisement. The Panel considered that the question with a direct reference to sex was a recognition of sexual matters and 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 noted that all people in the advertisement were fully clothed. The Panel considered that the advertisement did not contain nudity.

The Panel then considered whether the advertisement treated the issues of sex and 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 that the advertisement was played whilst complainants were streaming the television show *Lego Masters*.

The Panel acknowledged some viewers, particularly those with young children would find the reference to sex inappropriate and confronting.

The Panel noted the advertiser's response that they have voluntarily withdrawn this advertisement from playing during the show *Lego Masters*.

The Panel considered that the reference to sex was not used in an offensive or aggressive way, and there was no other sexual imagery or activity in the advertisement.

The Panel considered that the overall advertisement featured adult themes and content which would be specifically attractive to children. The Panel considered that



the reference to sex was brief, not the focus of the advertisement and was used in an appropriate and inoffensive manner.

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.

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