



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0156-22
2. Advertiser :	The Iconic
3. Product :	Lingerie
4. Type of Advertisement/Media :	Internet - Social - Facebook
5. Date of Determination	27-Jul-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This sponsored Facebook advertisement features two images of women in lingerie. The first image is a close up of a woman wearing the product called 'Cherry Pie Thong'. The second image features a woman wearing matching tan lace underwear and the product called 'La Donna Lace Bra'.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

You can see the clitoral hood of the underwear model, pretty sure this should be the case in an Ad.

THE ADVERTISER'S RESPONSE

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

We refer to your letter dated 14 July 2022 in relation to a complaint made against THE ICONIC (Complaint) which raises issues under Section 2 of the AANA Advertiser Code of Ethics (AANA Code), specifically that Section 2.4 as the section of the AANA Code that may have been breached. A copy of the Complaint is appended to this Response for reference (Appendix 1).



Whilst the Complaint did not include an image of the advertisement in question, we note that Ad Standards subsequently sent the imagery contained in Appendix 1 in response to our request to supply the subject image (Advertisement), which we note appeared on Facebook's Dynamic Ads for a limited period of time from 21 June 2022 to 4 July 2022.

THE ICONIC takes compliance with all laws, regulations and community standards seriously including those consumer standards enshrined in of the AANA Code. We note that the issues raised in the Complaint were promptly addressed in line with THE ICONIC's robust internal processes and upon further investigation into this Complaint, we confirm that we have complied with all relevant sections of the AANA Code and proactively taken steps to address these concerns in a timely manner.

We deal with all elements of the Complaint in our Response contained within this letter, and draw to your attention, that THE ICONIC proactively took action to ensure the photographic images depicted in the Advertisement, and photographic images of THE ICONIC's entire lingerie product category, no longer appear on Facebook's Dynamic Ads.

We trust the Ad Standards Community Panel will consider the points raised in this Response in determining whether the Advertisement breached Section 2 of the AANA Code, and for the reasons set out in this Response we respectfully submit THE ICONIC is not in breach of Section 2.4 or any other provisions under Section 2 of the AANA Code. In turn, the Complaint should be dismissed.

BACKGROUND

THE ICONIC is a leading digital fashion and lifestyle platform that trades online in Australia and New Zealand (the Territories) via its websites <https://www.theiconic.com.au/> and <https://www.theiconic.com.nz/> (collectively, THE ICONIC's Websites).

THE ICONIC operates various commercial trading models including selling products directly to consumers. It also operates a marketplace platform that allows third party sellers to list and sell their products to consumers on THE ICONIC's websites. In any of THE ICONIC's commercial trading models, THE ICONIC takes utmost care in ensuring the copy and imagery in its advertisements, including advertisements published on social media channels such as Facebook, comply with the AANA Code, and all applicable laws and regulations.

COMPLAINT AND INVESTIGATION

On 14 July 2022, THE ICONIC received notice of the Complaint and promptly took steps to investigate this matter including liaising with members of THE ICONIC's Category Management, Marketing and Customer Service teams.



Internal investigations have revealed that the imagery which is subject to the Complaint, is in relation to production and publication of imagery provided by one of THE ICONIC's marketplace sellers whereby third-party sellers use THE ICONIC'S Websites to sell their products to consumers pursuant to the terms of an agreement between THE ICONIC and the respective seller (Marketplace Platform). In these circumstances, sellers have the option of supplying their own images to THE ICONIC for use on the Marketplace Platform or alternatively requesting THE ICONIC to produce images of their products for a fee.

2.1 Production and Publication of Images on THE ICONIC's Marketplace

With regard to the images portrayed the ad subject of the Complaint, the images were sold by the sellers via THE ICONIC's Marketplace Platform, Saturday the Label Pty Ltd (ABN 17 644002497) and LP Elizabeth Pty Ltd trading as Sotto Brand (ABN 52 624 051 912) (see also website links: <https://saturdaythelabel.com/> and <https://sottobrand.com/>).

Before product images are published on THE ICONIC's Websites, THE ICONIC requires all product images go through a quality control (QC) internal review process whether the images were supplied by the seller or created by THE ICONIC at the request of the seller. THE ICONIC's QC Team reviews the background colour and overall depiction of the product (and model if applicable) to ensure the product image is not in breach of THE ICONIC's QC standards. In addition, THE ICONIC's QC team also assesses imagery, product descriptions, and categories to ensure compliance with THE ICONIC's QC standards together with THE ICONIC's internal product imagery guidelines and principles on responsible marketing.

For context, THE ICONIC's QC team reviews anywhere between 6,000-9,000 products per week and it is general practice that if a breach is identified that the product copy and/or image would be rejected and the seller would be advised to supply alternate material for review and publication.

In circumstances where the seller supplies their own images, as is the case with regard to the images in the Advertisement subject of the Complaint, the seller is provided with the guidelines including those pertaining to E-Commerce Image Briefs document (see link <https://marketplace.zendesk.com/hc/en-us/articles/360003020876-Image-Briefs>) which are contractually incorporated by reference to the Marketplace Platform agreement with THE ICONIC.

Although sellers have control over what product images they can upload and remove from their designated product webpage on THE ICONIC's Websites, ultimately, THE ICONIC has the absolute discretion to reject any product copy and/or image that does not (i) meet applicable laws and regulations; (ii) match the specifications and guidelines provided; or (iii) is otherwise assessed by THE ICONIC to not be of a suitable standard.

2.2 Digital Marketing of Products



THE ICONIC primarily markets to consumers on digital and social media platforms. With regard to the Advertisement subject of the Complaint, the Advertisement was published on the social media platform, Facebook, which is owned by the company, Meta.

THE ICONIC employed Facebook's digital advertising product called 'dynamic ads' (Dynamic Ads). It is understood that Dynamic Ads uses machine learning to scale a businesses' ads. This feature is particularly beneficial for businesses that have a broad range and large volume of products such as THE ICONIC. The ads automatically deliver relevant products to people based on their interests, intent and actions using personalised, user-level recommendations based on everything in our catalogue. Whenever a shopper expresses interest in an item from THE ICONIC's Websites, Facebook will dynamically generate an ad using images pulled directly from THE ICONIC's Websites for that shopper and deliver it automatically on mobile, tablet and desktop. For more information on Dynamic Ads, please refer to Meta's website (via the following link:

<https://www.facebook.com/business/help/397103717129942?id=1913105122334058>).

Given the targeted nature of digital marketing on Facebook's Dynamic Ads, it is understood that the broad audience would have been confined to males and females aged 18 and over in line with the core demographic of THE ICONIC. The broad audience would not have included minors or children.

Our investigation indicates that the Advertisement subject of the Complaint was published on Facebook's Dynamic Ads for a limited period of time from 21 June 2022 to 4 July 2022, after which the Advertisement no longer ran as an ad on Facebook's social media platform.

Please note, on or around 4 July 2022, all products in the lingerie category published on THE ICONIC's Websites, including the products displayed in the ad subject of the Complaint, have been blocked from being 'pulled' into Facebook's Dynamic Ads.

2.3 Message to THE ICONIC's Customer Service Team

We acknowledge the Complainant stated in their submission to Ad Standards, "I've raised this to the ICONIC and they continue to use the photo."

Pursuant to an internal investigation following the receipt of the Complaint, we can confirm that our Customer Service Team received an online message via the Customer Service submission form on THE ICONIC's website from a member of the public expressing their concern over an "fb ad" that they presumably concluded to be posted by THE ICONIC (see attached Customer Service Zendesk Ticket marked as Appendix 2). The person included a jpeg. file and URL link to show the ad referred to in their message to THE ICONIC's Customer Service Team. Please refer to Appendix 2 for the referenced link and image.



THE ICONIC's Customer Service Team escalated the matter in accordance with its internal processes. Given the nature of the message received from the individual, the escalation resulted in the swift action of THE ICONIC removing all lingerie products published on THE ICONIC's Websites, effective 4 July 2022. In addition, this has included the blocking of products displayed in the ad subject of the Complaint from being 'pulled' into Facebook's Dynamic Ads.

DESCRIPTION OF ADVERTISEMENT

The Advertisement provided by Ad Standards on 15 July 2022 which is subject of the Complaint (see Appendix 1) appears to be a sponsored advertisement post on Facebook made by THE ICONIC. The headline copy states, "Make it official with \$20 OFF your first purchase over \$100. Use the code HEYICONIC20 at checkout." The Advertisement contains two photographs that appear in 'carousel sequence' as per Facebook's Dynamic Ads format framed side-by-side with accompanying black text that are positioned framed underneath the head copy as follows:*

Ad Image 1. The image on the left half of the framed post features the torso of a female model wearing the brand, Saturday the Label's, lingerie product named "Cherry Pie Thong". The lingerie product appears to be made of red lace and beige fabric with embroidered shares on the latter part of the garment. The photograph of the model is bordered by THE ICONIC's logo and product price on the left, the product name and text "Free delivery over \$50" positioned next to a "Shop now" click-through button beneath the bottom border of the photograph. The model's pose appears to be uncontroversial and non-sexual.

Ad Image 2. The next image in the 'carousel' to the right of Ad Image 1 features a ¾ body shot of a female model wearing another brand, Sotto Brand's, lingerie product named "La Donna Lace Bra" and a matching underwear lingerie product that is not named in the Ad Image. The lingerie products appear to be made of a beige fabric trimmed with scalloped lace. The photograph of the model is bordered by THE ICONIC's logo and product price on the left, the product name and text "Free delivery over \$50" positioned next to a "Shop now" click-through button beneath the bottom border of the photograph. The model's pose appears to be uncontroversial and non-sexual.

THE AANA CODE

THE ICONIC takes compliance with all applicable laws and regulations, including the AANA Code seriously. We deal with the alleged breach of Section 2.4 of the AANA Code which was specifically raised in the Complaint, and the remainder of the AANA Code per below.

4.1 Sex, Sexuality and Nudity - AANA Code Section 2.4

We refer to Section 2.4 of the AANA Code which states: "Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience." THE ICONIC understands that this section requires that advertising shall treat sex, sexuality and



nudity with sensitivity to the relevant audience, which we submit we have complied with as follows:

4.1.1 Relevant Audience

As mentioned in the section 2.2 of this Response marked “Digital Marketing of Products”, THE ICONIC’s core customer demographic are males and females aged 18 and over. In the context of the Advertisement’s publication on Facebook’s Dynamic Ads, it is understood that the broad audience would have been confined to males and females aged 18 and over in line with the core demographic of THE ICONIC. The broad audience would not have included minors or children.

4.1.2 Sex or Sexuality

The Advertisement does not portray sex or sexuality, including overt sexuality that could be deemed inappropriate when considering the relevant audience as noted above. Notwithstanding the Advertisement contains imagery of a models wearing lingerie products, we assert the model in the Advertisement is not employed in sexual or sexually compromising poses.

4.1.3 Nudity

The Complainant alleges “You can see the clitoral hood of the underwear model...” THE ICONIC presumes this is in reference to Ad Image 1 of the Advertisement. Relevantly, the AANA Practice Note, which provides guidance on Section 2.4 of the AANA Code, states that “images of genitalia are not acceptable”.

Our research indicates that in the female human body, the clitoral hood (also called preputium clitoridis and clitoral prepuce) is a fold of skin that surrounds and protects the glans of the clitoris. It also covers the external shaft of the clitoris, develops as part of the labia minora and is homologous with the foreskin (also called the prepuce) in the male reproductive system.

In viewing the Advertisement coupled with the definition of “clitoral hood” in the preceding paragraph, we respectfully submit that the allegations made by the Complainant cannot be established. This is because the beige fabric of the lingerie product appropriately covers the model’s genitalia, including the clitoral hood.

Alternatively, what may have been deemed by the Complainant as the model’s genitalia, is actually the lines and shadows on the photographic image created by the natural draping of the lingerie product on the model’s body.

With regard to Ad Image 2, although the Complainant did not address any concerns with the depiction of the model or the lingerie product(s), we acknowledge the requirement to contemplate whether the photographic image complies with Section 2.4 of the AANA Code. THE ICONIC respectfully submits that Ad Image 2 is also not in breach of the Section 2.4 of AANA Code. We maintain the photographic image does not involve the depiction of a person without clothing or covering pursuant to the applicable AANA Practice Note.



It follows that the Advertisement as a whole is not in breach of Section 2.4 of the AANA Code in treating sex, sexuality and nudity with sensitivity to the relevant audience.

4.2 Other Sections of the AANA Code

We also deal with the alleged breaches of other sections of the AANA Code per below:

4.2.1 Discrimination or Vilification - AANA Code Section 2.1

We note Section 2.1 of the AANA Code prohibits the discrimination or vilification of any individual or group of people on the basis of certain defined attributes – i.e. race, ethnicity, nationality, gender, age, sexual orientation, religion, disability, political belief. Furthermore, The AANA Practice Note for Section 2.1 defines “discrimination” as “unfair or less favourable treatment”. “Vilification” is taken to mean “humiliates, intimidates, incites hatred, contempt or ridicule”.

The Advertisement does not depict the model in a way that is unfair or would be likely to humiliate or incite contempt or ridicule based on defined attributes that may be visibly apparent to a reasonable consumer. The models are seen in a standard pose. Furthermore, the Advertisement does not contain any language or imagery to indicate that the model is represented in a manner the prompts discrimination or vilification in line with the requirements of Section 2.1 of the AANA Code.

4.2.2 Sexual Appeal - AANA Code Section 2.2

THE ICONIC understands that advertising shall not employ “sexual appeal” (a) where images of “minors”, or people who appear to be minors are used; or (b) in a manner which is “exploitative or degrading” of any individual or group of people.

We refer to section 2.2 of the Code, which states that in order to breach this section the Advertisement must contain sexual appeal. Whilst the AANA Code and its Practice Notes fall short in defining the term, we confirm that we submit that the Advertisement does not depict sexual appeal, rather it is product imagery of models wearing lingerie products. Additionally, we can confirm the model depicted in the Advertisement is not a minor aged under 18 years of age, nor does the Advertisement appear to depict any images of minors.

Furthermore, we submit that the Advertisement does not employ sexual appeal that is exploitative or degrading of the models portrayed in line with Section 2.2 of the AANA Code and its Practice Notes. We submit that the Advertisement does not depict the models as objects or commodities available for sale, rather the Advertisement featured models wearing lingerie products that were available for sale.

4.2.3 Violence - AANA Code Section 2.3

The Advertisement does not contain any copy or imagery that could be considered by the reasonable consumer to represent or portray violence.



4.2.4 Language - AANA Code Section 2.5

The Advertisement does not include strong or obscene language as set out in section 3 of this Response marked "Description of Advertisement" above.

4.2.5 Health and Safety - AANA Code Section 2.6

The Advertisement contains no material contrary to "Prevailing Community Standards" as defined by the AANA Code on health and safety.

4.2.6 Distinguishable as Advertising - AANA Code Section 2.7

The Advertisement is clearly distinguishable as advertising given the application of THE ICONIC's logo on the Advertisement and its placement on Facebook's Dynamic Ads.

CONCLUSION

We trust the points detailed in this Response to the Complaint will provide the Ad Standards Community Panel the information they need to make a considered determination consistent with the application of the AANA Code and precedent set by the body of Ad Standards determination summaries.

In closing, we respectfully submit that the Advertisement is not in breach of Section 2 of the AANA Code and that the Complaint should, therefore, be dismissed.

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' concern that the advertisement featured nudity that was inappropriate.

The Panel viewed the advertisement and noted the advertiser's response.

Section 2.4: Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel noted the Practice Note for the Code includes:

"Overtly sexual depictions where the depiction is not relevant to the product or service being advertised are likely to offend Prevailing Community Standards and be unacceptable. Full frontal nudity and explicit pornographic language are not permitted. Images of genitalia are not acceptable. Images of nipples may be acceptable in advertisements for plastic surgery or art exhibits for example.

Discreet portrayal of nudity and sexuality in an appropriate context (eg advertisements for toiletries and underwear) is generally permitted but note the



application of the relevant audience. More care should be taken in outdoor media than magazines, for example.

Images of models in bikinis or underwear are permitted, however, unacceptable images could include those where a model is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person), or where there is clear sexual innuendo from the ad (e.g. depicting women as sexual objects).

Images of naked people when viewed in a public space, where the nudity is evident and the focus of the advertisement, have been found not to treat the issue of nudity with sensitivity to the relevant audience, even when the image is not sexual in nature.”

Does the advertisement contain sex?

The Panel considered whether the advertisement contained sex. The Panel noted the definition of sex in the Practice Note is “sexual intercourse; person or persons engaged in sexually stimulating behaviour”.

The Panel noted that the women is not engaging in sexual intercourse and considered that the advertisement did not contain sex.

Does the advertisement contain sexuality?

The Panel noted the definition of sexuality in the Practice Note is “the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters”.

The Panel considered that the women is wearing lingerie and considered that there was a sexual element to the advertisement.

Does the advertisement contain nudity?

The Panel noted that the definition of nudity in the Practice Note is “the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity”.

The Panel noted that the women in the advertisement is wearing a lingerie with see-through mesh. The Panel considered there was a suggestion that you could see the outline of the first woman’s vulva. The Panel considered that the second woman’s nipples could clearly be seen through the fabric of the bra. The Panel considered that this is a depiction of partial nudity.

Are the issues of sexuality and nudity treated with sensitivity to the relevant audience?

The Panel noted that the definition of sensitivity in the Practice Note is “understanding and awareness to the needs and emotions of others”.



The Panel considered that the requirement to consider whether sexual suggestion is 'sensitive to the relevant audience' requires them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement.

In assessing the relevant audience, the Panel considered the placement of the advertisement. The Panel noted that this advertisement was a sponsored advertisement on Facebook and noted the advertiser's response that it was targeted to people over 18 who had previously searched similar products or terms.

The Panel noted that the relevant audience for this advertisement would be predominately adults who have shown interest in lingerie or fashion.

The Panel considered that while the advertisement did depict partial nudity in a way that may make some viewers uncomfortable, the women were not posed in a sexualised manner and the products were depicted in a factual manner without sensationalising or focussing on the nudity.

Regarding the first picture, the Panel considered that, while there was a suggestion that the general shape of part of the first woman's vulva was discernible, the obvious presence of the fabric and the general focus on the product meant that the sexuality and nudity present in the picture was not inappropriate for a broad, predominately adult audience.

Regarding the second picture, the Panel considered that, to the extent the second woman's nipples were discernible through the fabric of the bra, they were not highlighted or otherwise featured in an overly obvious manner and the sexuality and nudity present in the picture was similarly not inappropriate for a broad, predominately adult audience.

Section 2.4 Conclusion

The Panel 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.

Conclusion

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.