



Case Report

1	Case Number	0158/15
2	Advertiser	Tom Ford Beauty
3	Product	Toiletries
4	Type of Advertisement / media	Poster
5	Date of Determination	13/05/2015
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.2 - Objectification Exploitative and degrading - women
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement is for Tom Ford Beauty Black Orchid, a women's fragrance. It features the high-fashion, high-society model, Cara Delevingne reclining nude in a pool of black water. She is holding a bottle of Tom Ford's Black Orchid women's fragrance in her hand. The Advertisement includes the name of the product "Tom Ford Black Orchid".

THE COMPLAINT

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

*There is no relation between the product and the poster.
If it were promoting that "women are strong and sexy and should be" then fine.
It is, however, nominally promoting a perfume product which is itself difficult to locate in the poster. The presentation of the buttocks in particular is sexually explicit. The woman is presented in a vulnerable position, presented neither as the wearer or purchaser of the product but merely gratuitously displayed alongside it.*

THE ADVERTISER'S RESPONSE

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

The complainant alleges that the Advertisement is inappropriate because there is no connection between the product being sold and the Advertisement, the product is difficult to locate in the Advertisement, the model is presented in a vulnerable position, the presentation of her buttocks is sexually explicit, and she is presented as neither the wearer or purchaser of the product but merely gratuitously displayed alongside it.

The ASB has suggested that this complaint may be an alleged breach of sections 2.1, 2.2 and 2.4 of the AANA Code of Ethics (Code).

Section 2.1 of the Code provides that "Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender..."

Section 2.2 of the Code provides that "Advertising or Marketing Communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people."

Section 2.4 of the Code provides that "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

(b) Response to specific complaint allegations

The Advertiser submits that the Advertisement is highly stylised and elegant. It is designed to capture the luxurious and sensual nature of the Tom Ford Black Orchid fragrance and appeal to a sophisticated female consumer. The depiction of a naked Ms Delevingne in the Advertisement is designed to reflect the fact that fragrance is something which is intimate, personal and something which one wears on the skin.

With regard to the complainant's concerns, the Advertiser submits that the imagery in the Advertisement clearly relates to the product being sold and the depiction of Ms Delevingne is intimately connected with the product being sold rather than being gratuitously displayed alongside it. The imagery is designed to evoke the name of the product by depicting Ms Delevingne holding a bottle of the Black Orchid fragrance while reclining in a pool of black water intended to depict that Ms Delevingne is bathing in the fragrance. The name of the product is also clearly featured in large text on the Advertisement. The imagery further relates to the product being sold by capturing the romantically sensual mood created by fragrance for the woman who wears it.

With regard to Ms Delevingne's pose in the Advertisement, the Advertiser submits that she is not depicted in a vulnerable position, but rather is positioned in a relaxed and reflective pose as she reclines in a pool designed to represent the Black Orchid essence. Further while her buttocks are visible, they are featured almost sculpturally, and not in a sexual way. They are shown in profile to create a sensuous arabesque line across the top of her back and shoulder.

They are not the focus of the Advertisement and no undue or sexual attention is drawn to them. The real focus of the Advertisement is on Ms Delevingne's sensual, reflective mood as

she holds and experiences the fragrance. the Advertiser submits that whilst she is nude, most of her body is underwater and obscured, with her private areas covered, and her profile is sensuous rather than sexualised or sexually explicit.

ALLEGED BREACHES OF THE CODE

Section 2.1

With regard to section 2.1 of the Code, the AANA Code of Ethics Practice Note (Practice Note) states that this section restricts depictions of certain types of behaviour against people within certain groups. The relevant group in this instance is gender. The relevant types of behaviour are "discrimination" and "vilification". The Practice Note provides some guidance on these terms. "Discrimination" means "unfair or less favourable treatment" and "vilification" means "humiliates, intimidates, incites hatred, contempt or ridicule." The Advertiser submits that the Advertisement does not discriminate or vilify Ms Delevingne or women in general. Rather, Ms Delevingne is depicted in a highly stylised and tasteful pose. She appears content and reflective. The use of the nudity is modest, with no depiction of cleavage, nipples or private areas and is consistent with high fashion images used to promote perfumes. In this regard we refer the Board to its decisions regarding a L'Oréal advertisement for Bonbon perfume by Viktor & Rolf which depicted a naked woman in a red ribbon and bows sitting cross legged (see ASB case report 0175/14). In that case, the Board ruled that the advertisement did not breach the Code.

Section 2.2

With regard to section 2.2 of the Code, the Practice Note provides some guidance on the terms "exploitative" and "degrading". "Exploitative" means "clearly appearing to purposefully debase or abuse a person, or group of person, for the enjoyment of others, and lacking moral, artistic or other values". Whereas the term "degrading" means "lowering in character or quality a person or group of persons".

The Advertiser submits that the Advertisement features a well-known, high profile model, who is artistically and tastefully positioned; she appears reclining in a dark pool of water while holding a bottle of the Black Orchid perfume. The Advertisement embodies a modern version of classically sensual femininity which is consistent with the image of the Tom Ford brand, which is known for marrying modern sensuality with art and high fashion.

Ms Delevingne is not depicted in any overtly sexual pose, which could be viewed as either degrading or exploitative. Moreover, whilst her buttocks are visible, they are not the focus of the Advertisement and no undue or sexual attention is drawn to them. In sum, the overall creative treatment is artistic and sensual, not sexual. This is in distinct contrast with advertisements for which complaints have been upheld by the ASB for breaches of section 2.2 of the Code (see ASB case reports 0032/14, 0030/13, 0104/13).

Section 2.4

With regard to section 2.4 of the Code, the Practice Note provides some guidance and notes that images which are not permitted are those which are highly sexually suggestive and inappropriate for the relevant audience. As discussed above, the Advertiser submits that the use of nudity in the Advertisement is tasteful and discreet and reflects the fact that fragrance

is something which is intimate, personal and is worn on the skin. She is not depicted in a sexual pose, but rather a tasteful pose on her side, with only her buttocks appearing in virtual profile. Moreover, there is no other person appearing in the Advertisement or text which could be viewed as sexually suggestive or inappropriate.

With regard to the placement of the Advertisement, we note that the Advertisement is located indoors in the cosmetics/fragrance section of the department store. It appears directly above the shelves where Tom Ford fragrances are displayed for sale. This placement reflects the target audience of a sophisticated, adult, female consumer. The product is not targeted at children. Whilst the Advertisement may be seen by a broader audience, the tasteful pose and modest portrayal of nudity in the Advertisement is indicative that the Advertisement treats nudity with sensitivity to the relevant audience.

(d) Other sections of the Code

We do not believe that the balance of Section 2 of the Code is applicable to this Advertisement. There can be no question that the Advertisement is violent (2.3), features obscene language (2.5) or is contrary to prevailing community standards on health and safety (2.6).

For the above reasons the Advertiser submits that the Advertisement does not contravene the Code and that the complaint should be dismissed.

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 concern that the advertisement has no relevance to the product being advertised and is sexually explicit.

The Board viewed the advertisement and noted the advertiser’s response.

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted that poster advertisement features fashion model, Cara Delevingne reclining nude in a pool of black water. She is holding a bottle of Tom Ford's Black Orchid women's fragrance in her hand. The Advertisement includes the name of the product "Tom Ford Black Orchid".

The Board noted the advertisement is typical of high-end fashion advertising, being stylised and modern, and that the female model is naked.

The Board noted that although the woman is naked she is not portrayed in a way that discriminates or vilifies a person or section of the community on account of their gender and did not breach section 2.1 of the Code.

The Board then considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: “Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.”

The Board noted that the image is consistent with high fashion advertising and that it is not unreasonable for advertisers to use attractive models in the promotion of their products. The Board noted that the model is looking directly at the camera and appears confident and in control.

The Board considered that although the model is naked, the use of nudity in stylised imagery such as this does not necessarily amount to a depiction that is exploitative or degrading and in this case considered that the overall tone is one of sexiness and seductiveness but does not amount to a depiction that is exploitative and degrading and does not breach Section 2.2 of the Code.

The Board finally 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 Board noted that the model is naked and that she is lying on her front. The Board noted that the woman’s breast is covered by her own arm, however her buttocks and inter-gluteal cleavage are clearly visible. The Board noted the woman appears to be bending over in a way that exposes her buttocks.

The Board noted the placement and size of this advertisement and noted that the image is within a department store and is positioned high above product lines and fragrance counters. The Board noted that the audience will be broad and will include adults and children.

The Board noted that the woman is lying in a pool of water or what may be interpreted as a pool of the fragrance being advertised but agreed that the use of a completely naked woman in a promotion of a fragrance has little relevance.

The Board noted that the exposure of the woman’s buttocks in the manner depicted is very sexualised and in the context of a fragrance advertisement in a department store in full visibility of children does not treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Board determined that the advertisement did breach Section 2.4 of the Code.

Finding that the advertisement did breach Section 2.4 of the Code the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We do not agree with the ASB determination, but can confirm that the advertisement in question has been modified using an alternative image.