



Case Report

1	Case Number	0159/16
2	Advertiser	FOXTEL Management Pty Ltd
3	Product	Entertainment
4	Type of Advertisement / media	Cinema
5	Date of Determination	27/04/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.3 - Violence Violence
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

This cinema advertisement shows a woman asking a man if he would like to come over to her place and watch the new episode of "Game of Thrones". The man agrees that he would like to and the voiceover states: "Oh no, you haven't seen it have you?"

The next scenes show the man catching up on previous series of the show. The man is shown watching at home and at work, and we see some clips of Game of Thrones episodes along with the man's reactions.

The final scene shows the man arriving at the door and greeting the woman in a language from the series.

THE COMPLAINT

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

I object to the placement of this ad showing sex, violence and blood before Kung Foo Panda (PG). I notified the cinema and their head office. Apparently all Foxtel content ads are rated PG regardless of the show they are promoting (in this case, R rated)

THE ADVERTISER'S RESPONSE

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

Complaint Reference No 0159/16 ('Complaint')

We refer to the Complaint made against Foxtel Management Pty Limited ('Foxtel') which was received from the Advertising Standards Bureau ('ASB').

The Complaint

The basis of the Complaint is the placement of a Foxtel advertisement before 'Kung Fu Panda (PG)' because it showed 'sex, violence and blood'.

The complainant also mentions that they were advised by the cinema staff that 'all Foxtel ads are rated PG regardless of the show they are promoting (in this case R rated)'.

The Advertisement

The Complaint relates to a 60 second advertisement promoting the streaming of every episode of the television series 'Game of Thrones' on Foxtel as part of its 'Make It Yours' campaign, which we understand was shown prior to the film 'Kung Fu Panda 3' ('Film') at Eastland Hoyts Cinema on 26 March 2016 ('Advertisement').

The Film was classified 'PG-Parental Guidance' by the Classification Board with the consumer advice of 'mild animated fantasy violence'. Accordingly, we contend that the relevant audience of the Film would likely include adults and older children who are accompanied by adults ('Relevant Audience').

The Advertisement was given a classification of 'PG – Parental Guidance' by CAD (the body that provides classification services for television commercials under the Commercial Television Industry Code of Practice). Although CAD does not classify advertisements for cinema, the classification was used in this instance as a guide to determine the appropriate placement of the Advertisement.

For the ASB's information, there is another version of the advertisement that was classified 'M' by CAD but we confirm that it has never been screened during any film classified 'PG' and is not the version the subject of this Complaint.

Applicable Sections of the AANA Code of Ethics

The Complaint relates to Section 2 of the Australian Association of National Advertisers (AANA) Code of Ethics ('Code').

Section 2.4

The ASB has to date raised Section 2.4 of the Code ('Section 2.4') in relation to the Complaint:

'Advertising or Marketing Communications shall portray sex, sexuality and nudity with sensitivity to the relevant audience'.

The AANA Code of Ethics Practice Note ('Practice Note') explains that images that are not permitted are those which are 'highly sexually suggestive and inappropriate for the relevant audience'.

We contend that the Advertisement is not 'highly sexually suggestive' and is appropriate for the Relevant Audience of the Film because:

- 1. The on-screen relationship between the characters 'Ian' and 'Sarah', throughout the Advertisement, is non-sexual and nothing more than an implied mutual attraction for each other is portrayed;*
- 2. The Advertisement does not include any depictions of sex, nudity or people in sexual poses;*

3. The 3 second scene from an episode of 'Games of Thrones' (starting at 19 seconds in to the Advertisement) in which a clothed man (the character of Jamie Lannister) clasps a clothed woman (the character of Cersei Lannister) to his chest is passionate but does not meet the threshold of being 'highly sexualised'.

4. The audio of a woman groaning that starts immediately before and continues into the Cersei and Jamie Lannister scene that is referenced in paragraph 3 above, could be interpreted as being discreetly sexually suggestive but the inclusion is very brief and we contend that it does not meet the threshold of being 'highly sexualised'.

Therefore we maintain that the Advertisement does not breach Section 2.4.

Section 2.3

Although not raised by the ASB to date, we note that Section 2.3 of the Code ('Section 2.3') may relate to the Complaint because of the mention of 'violence'. Section 2.3 requires that: 'Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product of service advertised'.

We contend that the Advertisement does not breach Section 2.3 because it does not portray actual violence and the very discreet depictions implying off-screen violence are justifiable in the context of the product being advertised. The Advertisement is promoting the streaming on Foxtel of every episode of the fantasy drama series 'Game of Thrones', which is well known for its confronting scenes, some of which contain sex and violence.

In that context, we provide the following analysis of some of the scenes that may be deemed relevant:

1. the 3 second scene from an episode of 'Games of Thrones' (starting at 19 seconds in to the Advertisement) in which a man and a woman (the characters of Cersei and Jaime Lannister) are shown in an apparent embrace. This appears to depict a scene of passion (in the series the characters are forbidden lovers) and is not a depiction of violence.

2. The 1 second scene from an episode of 'Games of Thrones' (starting at 34 seconds in to the Advertisement) in which a dragon blows fire does not depict any person or animal being harmed and the image is small on a TV screen within the frame.

3. the 2 second scene from an episode of 'Games of Thrones' (starting at 41 seconds in to the Advertisement) in which a man wearing a crown (King Joffrey) holds his hand to his throat and appears to gasp for breath is not a depiction of overt violence although it is implied that something bad (whether caused naturally or by another person it is not known) is happening to him.

4. the 2 second scene from an episode of 'Games of Thrones' (starting at 42 seconds in to the Advertisement) in which a girl is being seized by soldiers and is heard to scream is, we contend, suspenseful and only suggestive of violence.

5. The 1 second scene from an episode of 'Games of Thrones' (starting at 42 seconds in to the Advertisement) in which a man lies motionless in the snow with what appears to be blood flowing from his right side is only suggestive of previous harm and is not a portrayal of actual and overt violence.

Section 2 - other

We submit that no other sub-section of Section 2 has been breached because it does not vilify, discriminate against, exploit or degrade a person or group of persons or contain strong or obscene language or depict material contrary to prevailing standards on health and safety. Finally, for the sake of clarification, Foxtel does not apply blanket classifications to its advertisements and therefore it is not correct that all Foxtel advertisements are classified 'PG'. In addition, none of the episodes of 'Game of Thrones' that were used in the Advertisement or that have been shown on Foxtel to date have been classified as 'R' (ie R18+).

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 shows images of sex, violence and blood and is not appropriate for children to view.

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

The Board then considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 states: "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The Board noted that this cinema advertisement depicts a man accepting a date with a woman to watch Game of Thrones with her and then spending all his time catching up on previous episodes as he has never watched it before. The Board noted that some content from various Game of Thrones episodes is shown.

The Board noted the complainant’s concerns that Game of Thrones is rated R and it is not appropriate for this advertisement to be aired prior to a PG-rated movie.

The Board noted the advertiser’s response that whilst cinema advertisements do not require CAD ratings, in this instance the advertisement had received a PG rating from CAD and was aired in cinemas in accordance with this rating which means it would only air prior to movies rated PG or above. The Board also noted the advertiser’s response that Game of Thrones episodes aired to date on Foxtel have not been rated R.

The Board noted the scenes from Game of Thrones that are included in the advertisement and considered that the scenes are all very fleeting and the level of detail is not graphic. The Board noted the scene which depicts a character lying in the snow with liquid pooling underneath his head and considered that although this liquid is intended to be blood there is no obvious sign of injury and the scene is very brief. The Board noted that Game of Thrones has a reputation for graphic content and acknowledged that parents would be concerned over this type of product being advertised prior to a movie with strong appeal to children. The Board considered however that the actual scenes used in this advertisement are relatively mild in comparison to the full content of the Game of Thrones program and the violence portrayed in this advertisement is not graphic or likely to cause alarm.

Overall the Board considered that the violence portrayed in the advertisement is justifiable in the context of the product or service being advertised.

The Board determined that the advertisement did not breach Section 2.3 of the Code.

The Board then 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 there is no nudity in the scenes depicted from the Game of Thrones program and considered that whilst we do hear some groaning in one scene we do not see the visuals therefore the level of sexual suggestion is reduced. The Board noted that the main theme of the advertisement is a man trying to watch all five of the previous seasons of Game of Thrones prior to a date where he will watch the latest episode. The Board considered that the scenes showing the man attempting to watch all these seasons are humorous and in the Board's view lighten the tone. The Board acknowledged that some members of the community would prefer that this type of program not be advertised when children can view it but considered that the actual content of the advertisement does treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience which would include children.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.