



## Case Report

1	Case Number	0160/16
2	Advertiser	FOXTEL Management Pty Ltd
3	Product	Entertainment
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	27/04/2016
6	DETERMINATION	Dismissed

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

This television advertisement for the Foxtel 'Make It Yours' campaign, promoting the streaming of programs 'anytime anywhere', depicts a man on a bus watching the television program 'Girls' on his tablet. Other passengers can see what he is watching and the man looks uncomfortable.

### THE COMPLAINT

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

*The ad very badly promotes inappropriate content. Myself along with a majority of people believe porn is wrong and to promote it and in public is wrong on so many levels. How would you like your child watching porn because a man is watching on public transport for all to see? There are enough men who cause women to feel uncomfortable without promoting what is clearly wrong and immoral.*

*You don't need to use sex to sell a product - naked women on a tablet on full bus if that happen in real life I'd be screaming to get the pervert off the bus and I am sure the man would get bashed if in real life.*

*This is a sexually graphic and explicit advertisement.*

## THE ADVERTISER'S RESPONSE

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

*RE: Complaint Reference No 0160/16 ('Complaint')*

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

### *The Advertisement*

*The Complaint relates to a 30 second advertisement promoting the streaming of programs, including the series 'Girls' ('Series'), on Foxtel as part of its 'Make It Yours' campaign. The advertisement has been broadcast on various channels on the Foxtel platform since 20 March 2016, including the date referenced in the Complaint (21 March 2016) ('Advertisement').*

*The Advertisement has only been broadcast on the Foxtel platform and only during programs classified 'M' and above. The "M" classification recommends viewing only by persons aged 15 years or over. Therefore, for the purposes of the AANA Code of Ethics and in the context of this Advertisement, the 'relevant audience' is a mature audience ('Relevant Audience').*

### *The Complaint*

*The Complaint includes the allegations that the Advertisement is 'sexually graphic and explicit', that it contains 'porn' and images of a 'naked woman' and that the Advertisement is not suitable to be shown in the day.*

### *Applicable Sections of the AANA Code of Ethics*

*The Complaint relates to Section 2 ('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'.*

*In our opinion there are only two scenes which could be relevant to the Complaint, both of which relate to clips taken from the television comedy-drama Series:*

*1. At 00:08 seconds, there is a brief 1 second scene in which a man with no shirt on starts to*

*lift the top of a woman he is kissing. There is no full frontal nudity and the woman's breasts are not visible.*

*2. At 00:14 seconds, there is a brief scene of a close-up of a woman's head and shoulders. The woman is lying down and moving as if engaged in sexual activity. There is no nudity, nor is her partner shown in shot. The image is small, framed within a handheld screen. The impact is further mitigated by the man's hurried attempts to lower the volume of his tablet, and a volume display appearing over the image.*

*3. Through both of these scenes, audio of a sexual nature from the program is slightly audible, which provides additional context to the predicament of the main character in the Advertisement watching the 'Girls' program.*

*Overall, the tone of the Advertisement, including the reference to 'naughty time' and the clips shown, are intended to be humorous. It highlights the sometimes unintended consequences of watching adult themed content in a public space.*

*The Series itself is a comedy about a groups of girls, set around the protagonist 'Hannah' (played by Lena Dunham, who features in both of the clips) and which is well-known for its scenes involving nudity and sex. The Series, from which the above clips were taken, has to date been classified 'MA15+' on the Foxtel platform.*

*We contend that the Advertisement is appropriate for the Relevant Audience as the Advertisement has only been broadcast on Foxtel during programs classified 'M' and above. Foxtel also provides subscribers with a parental lock facility which enables them to block programs based on their classification with a personal PIN and which limits the chances of younger viewers having viewed this Advertisement.*

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

## *Section 2.2*

*Section 2.2 of the Code ('Section 2.2') has not been raised to date by the ASB but in the event that it is, we would like to address the reasons why we think the Advertisement does not breach Section 2.2.*

*This section requires that: 'Advertising or marketing communications should not employ sex appeal in a manner which is exploitative and degrading of any individual or group of people'.*

*The Practice Note defines 'exploitative' and 'degrading' as follows:*

- 'Exploitative means clearly appearing to purposefully debase or abuse a person, or group of persons, for the enjoyment of others, and lacking moral, artistic or other values'.*
- 'Degrading means lowering in character or quality a person or group of persons'.*

*As raised above, the scenes which we believe may relate to the Complaint are those which contain clips from the Series and the protagonist 'Hannah' played by Lena Dunham. The character of Hannah is portrayed in the series as a complex character who is uninhibited and somewhat irreverent and therefore nudity and sex scenes are common. Lena Dunham is a*

*writer, actress, director and producer on the series and, as such, the scenes of her that are used in the Advertisement are created by her. Therefore it follows that the scenes do not exploit or degrade her as a person.*

*Furthermore, the 'joke' in the Advertisement is on the main character that happens to be viewing the series on his tablet on a bus. As mentioned above, he faces the unintended embarrassment that other people on the bus may think he is viewing the content because of the sex scenes rather than him being a real fan of the program and the Foxtel service.*

*Therefore we maintain that the Advertisement does not breach Section 2.2.*

## *Section 2 - other*

*We submit that no other sub-section of Section 2 has been breached because it does not: vilify or discriminate against a person or group of persons; contain strong or obscene language; present or portray violence, nor depict material contrary to prevailing standards on health and safety.*

*Foxtel also notes the concerns of one complainant about the time of day that the Advertisement was broadcast. Unlike free-to-air television broadcasting time zones do not apply to subscription television. To account for this, Foxtel provides subscribers with a greater degree of control over their viewing experience by using the parental lock system as described above.*

*Foxtel takes the Complaint very seriously and did not intend to cause any offence to the complainants.*

## **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 complainants' concerns that the advertisement is sexually graphic and explicit.

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

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 the advertisement shows a man watching a clip of a show whilst sitting on a bus surrounded by people.

The Board noted that the voiceover identifies the program the man is watching at the start of the advertisement (Girls) and considered that the imagery he is watching on his tablet is given context by the voiceover's information about this program and its star, Lena Dunham. The Board noted that the program, Girls, is aimed at a mature audience and that the voiceover points out that the content of the program, as watched by the man on his tablet, may be

viewed by other passenger as 'naughty time'. The Board noted that the voiceover makes it clear that the man is catching up on his favourite program and considered that there is no suggestion that the man is watching pornography.

The Board noted that CAD ratings do not apply to Pay TV and that whilst the complainants had not specified the programs they viewed the advertisement in, the advertiser had responded to say that the advertisement was only aired during programs rated 'M' and above.

The Board noted the ASTRA Code provides, "The Licensee must take into account the intellectual and emotional maturity of the intended audience of the channel when scheduling advertisements..." (Astra Code, Section 6.5) and considered that 'M' rated programs are recommended for viewers aged 15 years or older.

The Board noted that the depictions of the content of the man's tablet are very brief and considered that whilst the scene depicting a woman making horizontal movements, and the accompanying audio, is a suggestion of sexual activity in the Board's view it is not explicit and the level of nudity is very mild as only the woman's bare shoulders and head are shown.

The Board noted that fellow passengers are able to see what the man is viewing. The Board noted the complainant's concern that there are children on the bus and expressed concern that some of the passengers appeared to be teenagers. The Board considered that the voiceover and the man's reaction to being watched over his shoulder indicated that he is aware that the material he is viewing is not appropriate for a public place where the context of the material is not able to be explained or understood. The Board noted that it would have been preferable if only adults had been used in the advertisement but considered that the use of teenagers was not of itself a breach of the Code.

Overall the Board considered that the level of sexual suggestion in the advertisement was not explicit and the content of the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience of an 'M' program aimed at a mature audience.

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 complaints.