



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0170-20</b>
<b>2. Advertiser :</b>	<b>Jimmy Brings</b>
<b>3. Product :</b>	<b>Alcohol</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>27-May-2020</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.2 Exploitative or Degrading  
AANA Code of Ethics\2.4 Sex/sexuality/nudity

### DESCRIPTION OF ADVERTISEMENT

This television advertisement features Sophie Monk sitting on a couch ordering wine through an app whilst a voice over states, "Jimmy Brings delivers cold drinks in 30 minutes. Faster than you can master the classic yoga pose the Aussie pretzel". Sophie Monk is then depicted in a back yard on a Yoga mat repositioning her legs into a crossed position in front of her face. She says, "I am pretzel, I am pretzel". A doorbell rings and she attempts to get out of the pose but is stuck. A delivery driver is shown at the door looking surprised as he looks down at the ground to see Sophie Monk still in her Yoga pose, holding her driver's licence with her toes.

The voice over says, "Jimmy Brings what you seek."

Sophie Monk is then seen still in the yoga position on her couch drinking wine. She says, "mmm complex".

### THE COMPLAINT

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

*This is a deliberate portrayal of female sex/sexuality to attract the male audience. The portrayal of a female exposing herself to a delivery man and a Sydney audience pushes the boundaries of decency. Linking a provocative pose showing intimate parts of her body to alcohol delivery is also sub standard. Her breasts are also exposed in multiple scenes. If Monk wants to go to a gym or in the privacy of her home to do yoga*



*exercises that her right. but children and impressionable girls should not be exposed to this as normal, acceptable and proper behaviour. This is a poor and offensive example to children and young women. It creates a dangerous precedent.*

*I will never use this advertiser. Highly offensive and unnecessary.*

*Disgusting position has nothing to do with getting anything at all delivered but alcohol and exercise especially yoga are not something normal people do . It's gross and leaves nothing to the imagination . She may as well be nude it's that revealing .*

*Sophie Monk's pose with legs fully open, full frontal, I believe, is totally offensive and inappropriate.*

*It's overly suggestive and provocative and borders on soft porn since the form of her genitalia is seen.*

*I believe it does nothing towards protecting women.*

#### **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 18 May 2020 in relation to two complaints received by Ad Standards (together, the Complaints) regarding the Jimmy Brings video titled "Jimmy Brings 'While you Wait' – Yoga with Sophie Monk", which was aired on free-to-air television in Sydney on 16 and 17 May 2020 (the Advertisement).*

*Endeavour Drinks (a subsidiary of Woolworths Group), which includes Jimmy Brings, thanks Ad Standards for the opportunity to respond to the Complaints.*

*From the outset, Endeavour Drinks would like to acknowledge that it takes its advertising obligations very seriously.*

*AANA Code of Ethics – Sex, Sexuality and Nudity (Section 2.4)*

*In response to Section 2.4 of the AANA Code of Ethics, we submit the following:*

*1) Section 2.4 of the AANA Code of Ethics states that '[a]dvertising or Marketing Communication shall treat sex, sexuality and nudity with sensitivity to the relevant audience'.*

*2) The Complaints variously allege that the Advertisement is "a deliberate portrayal of female sex/sexuality to attract the male audience", and is "gross and leaves nothing to the imagination". On this basis, we understand that the Complaints are suggesting a breach of Section 2.4 of the AANA Code of Ethics.*



3) *Implicit in the Complaints is a suggestion that the Advertisement depicts its female protagonist, Sophie Monk, in a sexual way. We reject this suggestion on the following bases:*

*(a) Ms Monk is depicted doing yoga; an enormously popular form of exercise in Australia practiced by millions of people across Australia (the relevant audience), and predominantly by women [Footnote: Roy Morgan research, as at December 2017, indicated that approximately 2.1m Australians participated in yoga, approximately 78% of whom were women. See link: <http://www.roymorgan.com/findings/7544-yoga-pilates-participation-december-2017-201803290641>]. Ms Monk is depicted performing a yoga position, colloquially referred to as a “pretzel” because the shape in which the body is positioned somewhat resembles a pretzel. The position requires a high degree of flexibility but as with all yoga positions, is designed to benefit the body of the person performing it. This is reflective of the popularity (and rising popularity) of yoga and the more recent trend of more Australians practicing yoga at home due to Covid-19, and is intended to be lightly humorous. It does not carry any sexual connotation.*

*(b) Ms Monk is depicted wearing “activewear” (commonly referred to as “athleisure wear”); a style of clothing which, again, is enormously popular in Australian society (the relevant audience), and which can readily be observed in many public places (even beyond places of physical activity) [Footnote: See link: <https://www.bandt.com.au/study-athleisure-wear-worth-1-5-billion-australia-apparently-sport/>]. Activewear by design is intended to be tight-fitting, in order to facilitate the physical activity which it is intended for. In the Advertisement, Ms Monk’s activewear is conservative relative to some other varieties of activewear (her leggings, for example, are full-length, rather than short). For completeness, we note that activewear is the commonly worn attire whilst practicing yoga so it is quite reasonable that Ms Monk would be wearing this whilst she is performing yoga positions.*

*(c) Ms Monk’s genitalia are completely concealed by her clothes, and to the extent that the genital region is visible within the shot, it is never subject to a close-up or framed in any way which is otherwise sexual or suggestive. Likewise, Ms Monk’s breasts are never exposed beyond what would be socially acceptable in yoga or a public place, and to the extent that they are visible within the frame, they are for the most part obscured by her feet [Footnote: See Coca-Cola Amatil - 0014/17, where, in dismissing the complaint, it was noted that the female protagonist in a swimsuit was a “traditional [outfit] that covers her whole torso and .her private areas are completely covered and the level of nudity is consistent with what you would see at any beach in Australia.”].*

4) *For completeness, we also note that there are no references to or suggestions of sex or explicit nudity in the Advertisement.*

5) *The AANA Code of Ethics Practice Note for Section 2.4 (the Practice Note) states that “[i]mages which are not permitted are those which are highly sexually suggestive*



*and inappropriate for the relevant audience. Explicit sexual depictions in marcomms, particularly where the depiction is not relevant to the product or service being advertised, are generally objectionable to the community and will offend prevailing community standards’.*

*6) In response to (5) above, as the Advertisement simply depicts the commonplace scenario of a person (who happens to be a female) performing yoga in her backyard, wearing inoffensive clothing which it would be socially acceptable to wear in public, it can hardly be said that the Advertisement is “highly sexually suggestive”. Accordingly, we struggle to see how the Advertisement could possibly be found to “offend prevailing community standards”.*

*7) The Complaints variously allege that Ms Monk is “deliberately exposing her genital region ... as though this is acceptable behaviour for a woman”, that “children and impressionable girls should not be exposed to this as normal, acceptable and proper behaviour”, and that “[t]his is a poor and offensive example to children and young women”. We submit that if the Complaints were to be upheld by Ad Standards, this would send a message which would be in direct opposition to the prevailing community standards by suggesting that: a) women’s bodies – even when fully clad in activewear – are somehow offensive; and b) for a woman to attempt a complex yoga pose is somehow unacceptable behaviour.*

*8) The Practice Note further provides that “[a]dvertisements which depict women or men scantily clad are generally acceptable, if relevant to the product’. Whilst we do not agree that Ms Monk could be properly described as “scantily clad”, it is clear that Ms Monk’s casual, comfortable clothing (which is entirely appropriate for the activity of yoga) is intended to promote the convenience of Jimmy Brings’ home delivery service (which, indeed, is clearly the service being advertised in the Advertisement).*

*9) We also note previous decisions of the Community Panel where it has (as described on the Ad Standards website) “consistently dismissed complaints about women and men in swimwear [which is typically more revealing than activewear], where poses are not sexualised, especially in conjunction with beach, pool or fitness activities” [Footnote: Vitaco Health Australia – 0441/15, 0442/15 and 0223/16; and, Jetstar – 0390/16].*

*10) It is also worth noting that, in accordance with the ‘Commercial Television Industry Code of Practice’, the Advertisement was only aired after 8.30pm when the relevant audience is less likely to include children. The Advertisement was rated L by ClearAds (reference number 2868409).*

*11) For the reasons stated above, we do not believe that the Advertisement depicts material which treats sex, sexuality and/or nudity in an insensitive way, and we are confident that the vast majority of relevant audience would agree with this.*

*AANA Code of Ethics – Other Standards in Section 2*



*We submit that the Advertisement does not contravene any other subsection of Section 2 of the AANA Code of Ethics given that the Advertisement:*

- *does not portray or depict material which discriminates against or vilifies a particular section of the community (Section 2.1);*
- *does not employ sexual appeal (Section 2.2) (in relation to this section, see our responses at (3)(a)-(c) above);*
- *does not present or portray violence (Section 2.3);*
- *does not include any inappropriate language (Section 2.5);*
- *does not depict material contrary to prevailing community standards on health and safety (Section 2.6) - it is clear that Ms Monk is comfortably able to maintain the yoga position, at no point is at serious risk of harm and yoga, and the yoga position itself, are not unsafe practices [Footnote: Health Direct Australia states that “most studies suggest that yoga is a safe and effective way to increase physical activity, especially strength, flexibility and balance” - see <https://www.healthdirect.gov.au/yoga-guide>]; and*
- *is clearly distinguishable as advertising to the relevant audience (Section 2.7).*

*AANA Code for Advertising and Marketing Communications to Children*

*We have considered the applicability of the AANA Code for Advertising and Marketing Communications to Children. We submit that this Code is not applicable because the Advertisement’s themes, visuals and language used are not directed to children.*

*AANA Food and Beverages Marketing and Communications Code*

*We likewise submit that this Code is not applicable to the Advertisement as it does not apply to alcoholic beverages.*

*Related Codes - ABAC Responsible Alcohol Marketing Code (ABAC Code)*

*We note that the Advertisement is also being reviewed by ABAC for an alleged breach of Part 3(d) of the ABAC Code. In this regard Endeavour Drinks likewise denies any breach of the relevant code, and we confirm that we intend to respond to this complaint in due course.*

*For the reasons outlined earlier in this letter, we submit that the Complaints should be dismissed by Ad Standards on the basis that they do not breach any of the Codes administered by Ad Standards.*

*Additional response*

*We also refer to the subsequent complaint received by Ad Standards and provided to us on 25 May 2020 (the Additional Complaint). The purpose of this letter is to provide our response to the Additional Complaint - we kindly request the Panel to consider this response alongside our Initial Response in determining this matter.*



*The gist of the Additional Complaint is that the Advertisement is offensive, inappropriate and employs sexual appeal which is degrading towards women. In response to this and specifically Section 2.2 of the AANA Code of Ethics, we submit the following:*

*as discussed in our Initial Response, there is nothing sexual about the Advertisement - yoga, a female wearing activewear, Ms Monk as the protagonist, online ordering and receiving an alcoholic beverage, the words stated by Ms Monk and the voiceover - none of these elements individually, nor as a whole, would be viewed by the relevant audience as sexual or employing sexual appeal. We would like to reiterate that there is nothing, in itself, sexual about a woman wearing activewear - we believe the relevant audience, being 21st century Australian society, would agree.*

2) *The AANA Code of Ethics Practice Note for Section 2.2 provides the below guidance on the terms 'exploitative' and 'degrading' - we do not believe that the Advertisement fits either of these terms. The choice of Ms Monk as the protagonist was very much for her strongest quality - her personality (which is publicly known) - confident, humorous, straight-shooting, self-aware and occasionally cheeky - and this personality comes through in the Advertisement, as indeed the intended focus of it. Yes, Ms Monk's largely-clothed body does appear in the Advertisement but this is not the focus of the Advertisement and as stated in our Initial Response, Ms Monk's genital region and breasts are never in particular focus and in the case of the latter, never exposed beyond what would be socially acceptable in yoga or a public place for that matter. Nothing about the Advertisement lowers Ms Monk's character or quality as a person or as a female, and we are sure Ms Monk agrees.*

*"EXPLOITATIVE: (a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or (b) focusing on their body parts where this bears no direct relevance to the product or service being advertised. DEGRADING: lowering in character or quality a person or group of persons."*

3) *The Advertisement is in stark contrast to the advertisements which were the subject of the following decisions of the Panel where the Panel concluded that focussing on a body part that bears no relevance to the product or service provided is exploitative - Moranbah Dental 0213/18, Windsor Smith 0237/18 and Sydney Forklift Trucks 0369/18 - these advertisements clearly and deliberately brought attention and focus to female body parts, and involved sexual appeal - this is not applicable to the Advertisement. We also note the decision of the Panel in Yum Restaurants Internationals 0001-20 where, in dismissing the complaint, the Panel noted that "the woman was dressed in an outfit consistent with what many young women wear to festivals, and that her outfit was appropriate to the situation" and that "the depiction of an attractive young woman with some cleavage showing was not in itself a depiction which contained sexual appeal" - Ms Monk's choice of outfit was perfectly appropriate for someone doing yoga in their home and the very limited visual airtime (a few seconds at most) of cleavage did not contain sexual appeal.*



4) *Finally, it is fairly well accepted public opinion in 21st century, democratic, largely-secular Australia (the relevant audience) that a woman can choose to wear what she wants and as is increasingly the trend, that extends to the choice of wearing activewear. Whilst we respect the opinions of all members of society, we do not agree with opinions raised in the initial Complaints or the Additional Complaint, and with all due respect, believe these opinions are not shared by the majority of the relevant audience.*

*For the reasons outlined above and in our Initial Response, we submit that the initial Complaints and the Additional Complaint should be dismissed by the Panel on the basis that the Advertisement does not breach any of the Codes administered by Ad Standards.*

## **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:

- Uses female sexuality to attract a male audience
- Depicts the female in a sexualised way that has nothing to do with the product
- Depicts a female exposing herself to a delivery man
- Depicts the female in a way which highlights her cleavage
- Depict the woman in a pose with her legs fully open and her genitalia is visible
- Borders on soft porn
- Is inappropriate to be seen by children and young women,

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

The Panel considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: “

Advertising or Marketing Communication 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.”

The Panel noted the AANA Practice Note which provides guidance on the meaning of the terms exploitative and degrading:

Exploitative - (a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or (b) focussing on their body parts where this bears no direct relevance to the product or service being advertised.  
Degrading – lowering in character or quality a person or group of people.

The Panel noted the complainants' concerns that the advertisement:

- Uses female sexuality to attract a male audience



- Depicts the female in a sexualised way that has nothing to do with the product.

The Panel first considered whether the advertisement used sexual appeal.

The Panel considered that the use of an attractive and well-known figure depicted doing yoga in tight-fitting clothing was a depiction which some members of the community would consider to contain sexual appeal.

The Panel then considered whether the advertisement employed sexual appeal in a manner which is exploitative.

The Panel considered that Sophie Monk was shown as an active participant in the advertisement, and was shown to purchase alcohol through the advertised service. The Panel considered that there was no suggestion that she was an object or a commodity.

The Panel noted that Sophie Monk was shown stuck in the 'Aussie pretzel' yoga pose, and that this involved her legs being open and her genital region being displayed to the camera. The Panel considered that the focus of the advertisement was on the awkward and humorous pose, and was not on the woman's body parts and that she was depicted wearing appropriate yoga clothing.

The Panel considered that the advertisement did not use sexual appeal in a manner which was exploitative.

The Panel then considered whether the advertisement employed sexual appeal in a manner which is degrading.

The Panel considered that the advertisement depicted Sophie Monk attempting to learn a new yoga pose as she waited for her delivery. The Panel considered that the advertisement was humorous, and did not depict her in a way which lowered her in character or quality. The Panel considered the advertisement did not employ sexual appeal in a manner which is degrading.

The Panel determined that the advertisement did not employ sexual appeal in an exploitative or degrading manner and therefore did not breach Section 2.2 of the Code.

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 noted the complainants' concerns that:

- Depicts a female exposing herself to a delivery man
- Depicts the female in a way which highlights her cleavage
- Depict the woman in a pose with her legs fully open and her genitalia is visible





- Borders on soft porn
- Is inappropriate to be seen by children and young women.

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 considered that the advertisement depicted Ms Monk attempting a new yoga pose, and that while some members of the community may see this as containing sexual appeal, yoga in itself is not sexually stimulating or suggestive behaviour. The Panel considered that the advertisement does not contain 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 the advertisement does not contain any sexual references or interactions. The Panel considered that Ms Monk is depicted in the 'Aussie Pretzel' yoga pose, but considered that the use of this pose is humorous rather than sexualised. The Panel acknowledged that some members of the community may find the depiction of a woman in a pose with her legs spread and her covered genital region visible to the viewer to be a depiction which is sexualised. The Panel considered that the advertisement 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 considered that Ms Monk was depicted dressed in appropriate exercise clothing for participating in yoga. The Panel considered that her genitals were not visible through her yoga pants and considered that whilst some members of the community would be uncomfortable with the depiction of a woman in leggings with her legs open, this does not constitute nudity. The Panel considered that the style of the active wear worn by Ms Monk meant that a large amount of her cleavage is visible. The Panel considered that some members of the community would consider the advertisement to contain partial nudity.



The Panel then considered whether the advertisement treated the issues of sexuality and nudity 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 noted that this television advertisement had been given an 'L' rating by ClearAds as:

" A Commercial for Alcoholic Drinks may be broadcast only during the following periods:

- Between 8.30pm and 5.00am on any day
- Between 12 noon and 3.00pm on school days
- On weekends and public holidays during a Sports Program – includes live sports, delayed telecasts, analysis, commentary and awards programs but does not include sports themed light entertainment/variety programs."

(<https://www.clearads.com.au/wp-content/uploads/2020/01/ClearAds-Handbook-Edition-8.pdf>)

The Panel considered that the audience for this advertisement would be mostly adults, teenagers and older children, however acknowledged that some younger children may be watching television at these times.

The Panel noted the advertiser's response that Ms Monk is depicted in causal, comfortable clothing and that her pose is not sexualised.

The Panel considered that Ms Monk is depicted in clothing that is appropriate to the activity she is undertaking, and that although her cleavage is visible this is not the focus of the advertisement and the top she is wearing is consistent with everyday women's fashion.

The Panel acknowledged that some members of the community would be uncomfortable with a depiction of a woman with her legs spread, however considered that in this instance the focus of the advertisement was on the humour and the awkwardness of the pose, and was not sexualised nor was there a particular focus on this part of her body.

The Panel considered that the overall advertisement was not sexualised and that most members of the community would not consider this offensive or inappropriate for the broad audience.

The Panel considered 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.