



Case Report

1	Case Number	0189/14
2	Advertiser	Kinki Gerlinki
3	Product	Clothing
4	Type of Advertisement / media	Internet
5	Date of Determination	11/06/2014
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.4 - Sex/sexuality/nudity S/S/N - nudity
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

The advertisement was for a 3 day online flash sale. It had an image of the 1950s cartoon character 'The Flash' holding open his raincoat to flash a woman who has her hands covering her face. The text reads, "Flash Sale! 25% off all dresses! 3 days only! kinkigerlinki.com.au".

THE COMPLAINT

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

This advertisement is offensive as it trivialises the sexual offense of indecent exposure as a means to promote the sale of women's clothing. Specifically this behaviour is an offense under the Sexual Offenses Act and it is not appropriate to link a sexual offense through the depiction of a 'flasher' to a quick three day 'flash sale'. Furthermore it is highly inappropriate, offensive and insensitive to women who may have had an experience of this type of behaviour. It is also extremely sexist as this crime is predominately perpetrated by men against women and such a depiction reinforces men's dominance and abuse of power over women. I can forward you the email I received if you require.

THE ADVERTISER'S RESPONSE

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

The advertisement was for a 3 day sale and was only emailed to our in house mailing list and advertised through our facebook subscribers and on our website. It was put up on the 8th May 2014 and removed 12th May 2014 after the sale had ended. We often use references from vintage popular culture for our advertising as it is in sync with our overall aesthetic. As a company that consists of 16 female staff members and only one male (our director) we have always taken pride in empowering our female clientele and would never have intentionally trivialised something as serious as sexual assault.

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 depicts an image of a man from the back that suggests he is exposing himself which is an offense and trivialises the act of indecent exposure.

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

The Board 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 advertisement was a promotion sent to email addresses of people who have chosen to subscribe. The promotion is for a “Flash Sale” and features a figure with a mask on of the superhero “the flash” and standing with a coat held open facing a woman. The woman has her hands over her face. The text around the image includes web details of the business place and details of the sale.

The Board noted that it is not possible to see what the man is wearing under his coat and considered that whilst the combination of the style of coat and the man’s bare legs do amount to a commonly held perception of what a “flasher” looks like there is no detail.

In the Board’s view the image did suggest nudity and the suggestion of nudity in connection with the text “flash sale ” amounts to a depiction that would bring the idea of nudity and inappropriate exposure to the minds of children. The Board considered however, that the email promotion is directed to a very limited audience and that shoppers who had subscribed to the distribution list for the store are likely to be adults. The Board considered that an adult audience would easily identify with the superhero character the flash and draw the association with the flash sale.

The Board determined that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and did not breach Section 2.4 of the Code.

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted that it had previously upheld a complaint where the use of a similar image was used (Boettcher Realty 0145/14). The Board noted that in that case “the use of the words “expose yourself” and the image of the man are consistent with a depiction of “flashing?”. The Board noted that this is a depiction of behaviour which is illegal and that the text “expose yourself?” was condoning if not encouraging such behaviour. The Board considered that the suggestion of “flashing?” is clearly intended, in the context of the real estate signage, to relate to the property and its marketing. However the Board considered that the depiction and

suggestion of condoning “flashing? is a depiction of material that is contrary to prevailing community standards on health and safety.”

Consistent with the decision above, the Board noted that the intention of the advertisement is to draw the viewer to the promotion by shocking them and that in doing so they may look to take advantage of the sale being offered. The Board considered that the depiction of the superhero ‘the flash’ is meant to be humorous but in the context of this promotion is clearly not a reference to speed but is a reference to a man exposing himself. The Board considered that this is an image that suggests behaviour that is contrary to prevailing community standards on health and safety and that it did breach Section 2.6 of the Code.

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

THE ADVERTISER'S RESPONSE TO DETERMINATION

We confirm that we have received the Advertising Standards Board's report regarding our Flash Sale advertisement. The ad was only up on our social media network for 3 days, it is now discontinued and it will not be used again. We wish to reiterate again that the ad was never intended as a shock tactic or to trivialise the very serious matter of sexual assault.