



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
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Case Report

1	Case Number	0189/19
2	Advertiser	Adam & Eve
3	Product	Sex Industry
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	26/06/2019
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features images of women in lingerie and various sex products including vibrators and lubricant. A man's hands holding a glass is shown followed by a woman licking a chocolate icecream while the voice over says 'Adam and Eve, for this and more visit our Canberra store or shop online'.

THE COMPLAINT

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

On receiving a response to my original complaint about the content of this television advertisement, I sent a reply but have been advised to resubmit that reply as a new complaint. This is what I wrote:

Thank you for your prompt attention to my complaint. I should explain that I don't have an issue with the availability of adult sex toys being advertised in a more generic sense; my complaint was the way it was advertised. I'm wondering how it is that an





erect penis could not be shown on tv without a warning of sexual content but that a plastic dildo or vibrator or other is considered an acceptable thing to show as part of a general broadcast. To my mind there isn't much difference but as a viewer I did not have the option to change the channel as the advertisement was part of a string of ads and appeared without warning. How would I know as a viewer that I could be subjected to content that I may not wish to see especially as it was shown in an ad break for a crime drama that is incredibly benign, non-violent, non-graphic.

Does that provide enough clarification of my concerns? As I previously stated, I don't have a problem with Adam and Eve advertising that they sell adult products; but I don't believe it is reasonable to have products appear that simulate something that is not itself allowed to be shown. If it is considered OK, it would be an interesting discussion as to which sex toys could and could not be shown given that some look exactly like what they are supposed to replicate.

THE ADVERTISER'S RESPONSE

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

This 30 seconds commercial has been compiled to give an indication of products available from the Adam&Eve store via purchase at store level or online. Target group is 25-40 years old, both male and female. We have selected the product for the commercial in a subtle and discrete manner and in no way is the product displayed to represent phallic objects or ideals. The products feature a design to assist the user in pleasurable activities. The products on view in our commercial are on display in store in a professional manner and are also available in other non-adult restricted outlets throughout shopping malls in Australia.

In addition to the description of advertisement please consider the below.

After many years of advertising in the free to air media space we have always been mindful of how our products and services are viewed. The selection of product for the commercial takes into account non-phallic and non-offensive products in conjunction with advice from professionals in the media field. In many cases we have worked with CAD prior to approval to ensure the products contained in, and the tone of the commercial meet with community 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 complainant's concerns that the advertisement depicted sexualised content and did not contain a warning.

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

The Panel noted that this television advertisement features a series of scenes depicting women in lingerie and various sex products including vibrators and lubricant.

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 considered whether the advertisement contained sex, sexuality or nudity.

The Panel considered whether the advertisement contained 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 noted that this television advertisement is for a store which sells sexual products. The advertisement depicts various women in lingerie and various sex products. The Panel considered that the people depicted in the advertisement did not appear to be engaged in sexual activity of any kind. The Panel considered that the advertisement did not contain sex.

The Panel considered whether the advertisement depicted 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 for the application of the term in the Code, the use of male or female actors in an advertisement is not of itself a depiction of sexuality.

The Panel considered that the advertisement depicts various sex products including vibrators and lubricant. The Panel considered this did emphasise sexual matters and does depict 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 a factor when considering whether an advertisement treats nudity with sensitivity to the relevant audience.

The Panel noted that the people in the advertisement are not nude, however several are depicted in underwear or lingerie. The Panel considered that the depiction of people in underwear can be considered by some members of the community to be partial nudity.

The Panel then considered whether the advertisement depicted sex, 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 the requirement to consider whether a depiction of sexuality is 'sensitive to the relevant audience' is a concept requiring them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement – the concept of how subtle sexual references is or might be is relevant to the Panel considering how children, and other sections of the community, might consider the advertisement.

The Panel first considered the depiction of women in lingerie in the advertisement.

The Panel noted that the women depicted in the advertisement are all wearing lingerie which covers their nipples and genitals. The Panel considered that the images appear in an advertisement which was broadcast on late night television and that the relevant audience would be predominately adult.

The Panel considered that while the style of the lingerie is sexualised, the women's poses are relaxed and not inherently sexually suggestive. The Panel acknowledged that the sexualised nature of the products themselves may not be considered appropriate by people viewing the advertisement, however in this instance the Panel considered that there was no sexual messaging or themes in the advertisement which would make it confronting for these audiences.

The Panel considered the final scene of the advertisement which depicts a woman eating an ice cream. The Panel noted that the woman is shown with her eyes closed and mouth open, and considered that the scene implies a level of pleasure or sexuality. However, the Panel considered that this scene is very brief and is not the focus of the advertisement.



The Panel considered that the advertisement did treat the issue of sexuality and nudity with sensitivity to the relevant audience.

The Panel then considered the depiction of sex products in the advertisement.

The Panel noted the complainant's concern that an erect penis could not be shown on television without a warning of sexual content but a plastic dildo or vibrator is considered acceptable.

The Panel noted that the advertisement received an 'M' classification from FreeTV and therefore may be broadcast in the evenings between 7.30pm and 6.00am on any day, and between 12.00pm and 3.00pm on school days. In addition to the time restrictions, a Commercial classified "M" must NOT be shown: Between 5.00 am – 6.00 am and 7.30 pm - 8.30 pm during a Sports Program, or a Program classified G or PG; and before 9.30 pm during Sports Programs and Films classified G or PG which commence before 8.30 pm and continue after 8.30 pm (unless it is a Film which is neither promoted to Children nor likely to attract a substantial Child audience).

The Panel noted that the complainant had viewed the advertisement at 11.30pm. The Panel considered that although the classification received by FreeTV would allow the advertisement to be broadcast earlier in the evening, traditionally advertisements for sex related services receive an 'S' rating and are unable to be broadcast prior to 11.00pm. The Panel considered that it was highly likely that programming was selected based on an 11.00pm starting time. The Panel considered that the likelihood of children viewing the advertisement was low.

The Panel again acknowledged that the sexualised nature of the products themselves may not be considered appropriate by people viewing the advertisement, however in this instance the Panel considered that the products depicted in the advertisement are products available for purchase in the store. The Panel noted that some members of the community would prefer that these types of products are not advertised, however legally they are able to do so and a depiction of those products is not of itself a breach of the Code.

The Panel considered that in the instance a child viewed the advertisement, they would be unlikely to understand the sexual nature of the products themselves, as there is no text or voiceover describing the products or their intended use. The Panel considered that children may understand the overall concept of the advertisement, however considered that given the timeslot in which the advertisement aired that the primary audience of the advertisement would be adult and children would be supervised.

The Panel considered that the advertisement was sexually suggestive, but not highly



sexually suggestive and that the advertisement did treat the issue of sexuality with sensitivity to the relevant audience.

The Panel considered that this advertisement did treat the issue of 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 any other section of the Code the Panel dismissed the complaint.

