



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0199/15</b>
<b>2</b>	<b>Advertiser</b>	<b>Tom Ford Beauty</b>
<b>3</b>	<b>Product</b>	<b>Toiletries</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Print</b>
<b>5</b>	<b>Date of Determination</b>	<b>27/05/2015</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

This print advertisement for Tom Ford's Black Orchid perfume features a model, Cara Delevingne, lying naked in a pool of reflective black water surrounded by floating orchid flowers. Her arm is covering most of her right breast and nipple and we can see all of her right buttock and part of her left. She holds a bottle of Tom Ford Black Orchid women's fragrance.

The name of the product appears in plain white capitals: TOM FORD BLACK ORCHID.

### THE COMPLAINT

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

*It is offensive and disgusting, and disappointing makes the publication unsuitable to leave around the family home. AFR should not include material such as this in this type of newspaper or magazine.*

### THE ADVERTISER'S RESPONSE

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

*The complainant alleges that the Advertisement is pornographic, offensive and disgusting; that it has no place in a mainstream magazine/newspaper; and that it is unsuitable to leave*

*around the family home.*

*The ASB has suggested that the complaint relates to a possible breach of section 2.4 of the AANA Code of Ethics (Code).*

*Section 2.4 of the Code provides that "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".*

#### *Response to specific allegations*

*The use of the word "pornographic" suggests that the complaint has been made because the model in the Advertisement is nude. Nudity does not equate to pornography. The nudity in the Advertisement is subtle, sensual, sculptural and sensitive, reflecting an artistic and promotional effect. The model is lying still, much of her body is concealed by the equally sensual water, and there is nothing explicitly sexual in the image. The use of the word "pornographic" by the complainant is plainly misconceived, as is the notion that the Advertisement is in some way offensive or disgusting.*

*Fragrance is an intimate personal product that is worn on the skin. The sophisticated nudity of Ms Delevingne in the Advertisement is designed to capture that aspect of the Tom Ford Black Orchid fragrance, in a manner that appeals to a sophisticated female consumer. The focus of the Advertisement is on the right-hand side and particularly on the model's eyes, which express calm, reflective confidence, on the product held in the model's hand and emerging from the surface of the pool, and also on the product name which appears in big, bold letters. The arabesque body line contributes to this focus. The Advertisement speaks not of nudity, but of the experience and desirability of wearing the particular fragrance.*

*Perhaps the complainant is concerned that if you look carefully and in detail at the model, you can see not just her right upper thigh and buttock, but also a small part of her left upper thigh and buttock. This is less exposure than is commonly seen on family beaches: it accords with prevailing community standards in Australia and it would be extreme and unjustified to characterise it as pornographic, offensive and disgusting.*

*Far from having no place in the AFR Magazine, the Advertisement is entirely appropriate for it and ideally placed, being consistent with high fashion images used to promote perfumes and other luxury products in magazines. The placement reflects the product's target audience of a sophisticated, adult, female consumer. Such readers are familiar with advertisements for perfume and personal care products which frequently depict glamorous models in stylised, elegant poses, including nudity.*

*The AFR Magazine is a monthly insert of the Australian Financial Review newspaper. It cannot be purchased separately, and consumers will only see it once they have bought the newspaper. The AFR Magazine targets a sophisticated and mature audience, including features on the luxury sector in Australia and covering a wide variety of topics including business, politics, travel, fashion, design, food, wine, sports and the arts.*

*The AFR Magazine aims to cover matters of style with substance, and issues of substance with style. It has a limited readership that is sophisticated, style-conscious, mature, investment-savvy and professional. According to a Business Elite Australia Survey in 2014, the average personal income of AFR Magazine readership was \$236,000. It is not designed*

*to be attractive to children, nor does it include any content which would be relevant or appealing to children. There is more detail about the AFR Magazine's style and core readership at <http://adcentre.com.au/wp-content/uploads/AFR-Magazine-Media-Kit.pdf>.*

*It is of course a matter of personal choice whether particular AFR Magazine readers leave it around the family home.*

*The Advertisement has also featured in several other publications which target mature sophisticated women readers, including Vogue, Harper's Bazaar, Sunday Style and Russh Magazine. We have received no complaints regarding the placement of the Advertisement in these publications.*

#### *Section 2.4 of the Code*

*The Practice Note provides important guidance regarding section 2.4 of the Code. It is readily apparent that the Advertisement falls well within the guidelines.*

*In particular, taking into account the points made above as to the use of nudity in the Advertisement being discreet and apt, contributing to the overall artistic and promotional effect, the image is not highly sexually suggestive or inappropriate for the relevant audience; it is not an explicit sexual depiction; there is no full frontal nudity; there is no image of genitalia or nipples; there is no suggestively sexual pose; there is no clear sexual innuendo; the model is not depicted as a sexual object; and the image is not highly sexualised.*

*The use of nudity in the Advertisement is consistent with high fashion images used to promote perfumes. In this regard, we refer the Board to its decisions regarding a L'Oreal advertisement for Bonbon perfume by Viktor & Rolf which depicted a naked woman in a red ribbon and bows sitting cross legged (see ASB case report 0175/14). In that case the Board ruled that the advertisement did not breach the Code.*

*There is no breach of the Code in this case: the Advertisement treats sexuality and nudity with sensitivity to the relevant audience, having regard to the publication and prevailing community standards in Australia.*

#### *Other sections of the Code*

*Section 2.1 of the Code, provides that "Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender..."*

*The Advertisement complies with this section which restricts depictions of certain types of behaviour against people within certain groups. The relevant group in this instance is women. The relevant types of behaviour are "discrimination" and "vilification". The Practice Note provides some guidance on these terms. "Discrimination" means "unfair, or less favourable treatment" and "vilification" means "humiliates, intimidates, incites hatred, contempt or ridicule".*

*The Advertisement does not in any way discriminate against or vilify Ms Delevingne or women generally. Rather, Ms Delevingne is depicted in a highly stylised, tasteful and confident pose. She appears content and reflective. The use of the nudity is discreet and apt,*

*fitting the artistic and promotional purposes, as discussed above, and is consistent with sophisticated images used to promote high end perfumes.*

*Section 2.2 of the Code provides that "Advertising or Marketing Communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people."*

*The Advertisement complies with this section. The Practice Note provides some guidance on the terms "exploitative" and "degrading". "Exploitative" means "clearly appearing to purposefully debase or abuse a person, or group of person, for the enjoyment of others, and lacking moral, artistic or other values". The term "degrading" means "lowering in character or quality a person or group of persons".*

*The Advertisement features a well-known, high profile model, who is artistically and tastefully positioned. She appears reclining in a dark pool of water while holding a bottle of the Black Orchid perfume. Her mood, as depicted in her gaze, is relaxed, yet confident. The Advertisement embodies a modern version of classically sensual femininity. This is consistent with the image of the Tom Ford brand, which is known for marrying modern sensibility with art and high fashion.*

*The overall creative treatment is artistic and sensual, not sexual and certainly not exploitative or degrading to the model or women generally. This is in distinct contrast with advertisements for which complaints have been upheld by the ASB for breaches of section 2.2 of the Code (see ASB case reports 0032/14, 0030/13, 0104/13).*

*The remainder of Section 2 of the Code does not apply to the Advertisement.*

*It is not violent (2.3), does not feature obscene language (2.5) and is not contrary to prevailing community standards on health and safety (2.6).*

## *2.6 Other complaints*

*Relevantly, the Advertising Standards Authority (ASA) in the UK recently considered the image used in the Advertisement in respect of a complaint made pursuant to the CAP Code. In that case the Advertisement took the form of an outdoor poster on display in a high traffic area of London. The ASA dismissed the complaint and concluded that "the pose was sensual and sexually suggestive but it was not sexually explicit" and instead was "stylised and artistic and in-keeping with ads for beauty products such as perfumes where depictions of feminine beauty and the female body were commonly used".*

*The regulatory frameworks regarding these matters in Australia and the UK are not identical and the ASB is in no way bound by decisions of the ASA. However, the ASB decision concerned the same image, and a similar review process. It indicates that the image in the Advertisement falls well short of the boundary that would need to be overstepped according to the guidelines regarding section 2.4. "Sexually suggestive" does not equate to highly sexualised. The ASA's final determination can be viewed online at [http://asa.org.uk/Rulings/Adjudications/2015/4/Tom-Ford-Beauty/SHP\\_ADJ\\_288599.aspx#.VUFD6iFVhBc](http://asa.org.uk/Rulings/Adjudications/2015/4/Tom-Ford-Beauty/SHP_ADJ_288599.aspx#.VUFD6iFVhBc). A copy of the relevant outdoor poster is also attached for your consideration.*

*We are also aware that the ASB recently issued a draft case report regarding a complaint against Myer Pty Ltd concerning a different crop of the image in the Advertisement in the form of a large light box poster in the fragrance department of the Bourke Street Myer department store (refer Case Number 0158/15). The ASB upheld the complaint under section 2.4 only, on the basis that the relevant audience was "broad" and included both "adults and children". The ASB noted that "the exposure of the woman's buttocks in the manner depicted is very sexualised and in the context of a fragrance advertisement in a department store in full visibility of children does not treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience". We respectfully disagree with the ASB's conclusions, particularly as to the image being "very sexualised", but also note that the report related to a different crop of the image which, with the product name positioned over the upper leg and buttocks and less water surface to give context, may have created a different impression as compared with the AFR Magazine image. In any event, the Advertisement in the AFR Magazine is not in full visibility of children but has a much more limited mature and sophisticated audience.*

*In all the circumstances, for the reasons we have provided, we submit that the complaint should be dismissed.*

## **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 concern that the advertisement features an image which is pornographic, offensive and inappropriate for publication in a mainstream newspaper magazine where children could view it.

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 it had recently upheld the same image when it was used on an in-store poster at Myer. In that case, 0158/15, the Board:

*"... noted the placement and size of this advertisement and noted that the image is within a department store and is positioned high above product lines and fragrance counters. The Board noted that the audience will be broad and will include adults and children.*

The Board noted that the woman is lying in a pool of water or what may be interpreted as a pool of the fragrance being advertised but agreed that the use of a completely naked woman in a promotion of a fragrance has little relevance.

The Board noted that the exposure of the woman's buttocks in the manner depicted is very sexualised and in the context of a fragrance advertisement in a department store in full visibility of children does not treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience."

In the current advertisement the Board noted its placement in the magazine pull-out of the Australian Financial Review newspaper. The Board noted the target audience for that newspaper is adults and considered that in the context of a limited adult audience the use of an image consistent with high-fashion imagery is not inappropriate. The Board noted the complainant's concerns that children could view the advertisement but considered the Financial Review magazine is unlikely to be of appeal to children.

Overall the Board considered that in light of the limited audience the use of this advertisement in a publication directed at adults does treat the issue of sex, sexuality and nudity with sensitivity to the relevant adult 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 complaint.