



Case Report

1	Case Number	0210/11
2	Advertiser	Channel Seven (NSW)
3	Product	Entertainment
4	Type of Advertisement / media	Poster
5	Date of Determination	13/07/2011
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.3 - Sex/sexuality/nudity Treat with sensitivity to relevant audience
- 2.1 - Discrimination or Vilification Sex

DESCRIPTION OF THE ADVERTISEMENT

Image of a woman's torso in a bikini holding the bikini up by the strings and the text "100% guidette". Also an image of a man's torso in only shorts with some tattooing on his arms and chest and the text "100% Guido".

THE COMPLAINT

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

*"SOFT PORNOGRAPHY" IN THE PUBLIC DOMAIN WITH NO FILTER - DISTURBING AND UNECESSARY IMAGE FOR OUR COMMUNITY
WARINGAH COUNCIL HAVE REMOVED THEM ALL FROM THEIR BUS SHELTERS - ADSHEL SHOULD BE URGED NOT TO PUBLISH SUCH MATERIAL FOR GENERAL CONSUMPTION THROUGHOUT AUSTRALIA NOT JUST ONE CARING COUNCIL SUCH AS WARINGAH.*

This bus stop is frequently used by students and the elderly. I find it offensive that my community is subjected to such filth. They do not need to be exposed to such smut at such a young and tender age. This makes it harder for us to raise our kids in an environment which is clean and child friendly. It is hard enough already to try and keep them safe. This is the last thing our community needs.

I don't see it necessary to portray such an advertisement in an area which is mainly young families and elderly. I speak on behalf of many people who live in the area and I'm sure they all have the same sentiment towards this.

What are we trying to promote in our communities. This is the first complaint I have ever made in my life showing how appalled I am.

People complain about woman's rights and the ability to dress how they like but what message are we sending our kids when they are portrayed as sex symbols? I feel that woman's rights have been violated and I don't want the kids of today growing up thinking that woman are seen and deemed to be something they are not.

I hope that this matter is dealt with swiftly and positively. Can you please ensure that in the future this kind of advertising is regulated properly and away from child friendly areas. This kind of smut belongs where smut is appreciated Far away from our community.

THE ADVERTISER'S RESPONSE

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

The Advertisement referred to by the complainants depicts an image of the torso of a tanned woman with large breasts wearing a black bikini with an Italian flag label on the side. Relevantly, the text "100% Guidette" is also displayed in the Advertisement as a quoted phrase.

By way of background, the programme Jersey Shore is an American reality television series which follows the lives of eight housemates spending their summer at the Jersey Shore. The programme includes portrayals of Italian-American stereotypes and in this context the term "guido" or "guidettes" is often used by the cast to describe themselves.

Although the term is recognised in America as a slang term for lower-class or working-class urban Italian-Americans, the term is not common to the Australian vernacular and is not regarded as offensive in the context it is used in the programme or, in our view, in promotions for the programme.

Seven's submissions in relation to its compliance with section 2.3 and 2.1 of the AANA Advertiser Code of Ethics are set out below.

Section 2.3

Section 2.3 of the AANA Advertiser Code of Ethics provides that:

"Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone."

The Code does not define the phrase "treat sex, sexuality and nudity with sensitivity" beyond its ordinary meaning and we have therefore relied on several past case studies considered by the ASB for our submissions, including:

1) Case Report 0167/11 concerning a Sexpo billboard which included an image of a woman in a lacy bra was deemed by the ASB to be "only mildly sexually suggestive". The ASB also noted that the image depicted sexuality "with sensitivity to the relevant audience".

2) Case Report 60/10 concerning an outdoor Sex po advertisement which features a woman wearing a blue bikini-like outfit positioned on her hands and knees and

arching her back was deemed by the ASS to be "relatively discreet" and only "mildly suggestive", notwithstanding the sex related products to which the images were related. 3) Case Report 0153/11 concerned an advertisement which featured an image of a topless female model with her arms raised and a large censored sticker positioned over her chest. The advertisement also displayed the word SEX in prominent text above the model. After considering the complaint and the depictions in the advertisement, the ASS stated that "although suggestive of nudity and containing the word 'sex', [the Advertisement] did treat nudity and sexuality with sensitivity to the relevant broad audience".

It is Seven's view that the aforementioned examples should be referred to when assessing the suitability of the Advertisement, as each advertisement considered by the ASS includes images of women wearing similar, if not more revealing, attire than the Advertisement. Moreover, each of the above examples also includes direct references to sex or sex products, which the Advertisement does not. Accordingly, Seven believes the ASB should come to a similar conclusion with regard to the image depicted in the Advertisement. In addition to the parallels drawn between the Advertisement and the past Case Reports above, Seven submits the following in relation to the material's compliance with section 2.3 of the AANA Code of Ethics

- 1) the image of the woman is entirely relevant to the program which is being promoted as it illustrates the artificial and stereotyped characters that feature in the program;
- 2) the image in the Advertisement is set in a beach context which reflects the location of the program, namely Jersey Shore;
- 3) the image does not depict any nudity or partial nudity and the female's attire is no more revealing than one would see at a public beach or if they passed a surf or swimwear shop; and
- 4) the images of a woman in a bikini are not generally considered to be offensive to the community
- 5) individuals who are familiar with the program would immediately recognise the association between the woman and the program and not associate the image with any sexual behaviour or activity.

In light of the foregoing, Seven submits that the Advertisement is only mildly sexually suggestive and presented in accordance with section 2.3 of the AANA Code of Ethics.

Clause 2.1

Section 2.1 of the AANA Code of Ethics 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 race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief."

Seven submits that the material was appropriately presented in accordance with section 2.1 of the AANA Code of Ethics as it did not include any material suggesting negative, unfavourable or discriminatory views towards the woman in the Advertisement or women generally.

Additionally, the advertising campaign included similarly presented images of a man's torso with the text "100% guido". We believe this mirrored example elucidates the purpose of the Advertisement was to merely promote the television program, rather than focus on any sexual innuendo that may be drawn from the image, or discriminate or vilify anyone on the grounds of gender. We have attached an image of the male version of the advertisement for your reference.

Additionally, the ASB has in past investigations determined similar images of women in revealing clothing not to be discriminatory against women. These examples are as follows:

1) In Case Report 60/10, the ASB considered that an advertisement which depicted a woman wearing a blue bikini-like outfit positioned on her hands and knees and arching her back objectified the woman, but "was relevant to the product and did not amount to discrimination or vilification of women".

2) In Case Report 0153/11, the ASB considered an image of a topless woman with a large censored sign placed over her chest and the word SEX prominently positioned at the top of the advertisement was "not demeaning and did not amount to discrimination against women".

Seven is of the view that the Advertisement, which is for a reality television program, showed more discreet depictions than those considered in Case Reports 60/10 and 0153/11.

Therefore, Seven submits that the Advertisement also complied with section 2.1 of the AANA Code of Ethics.

Although we believe the Advertisement complied with sections 2.1 and 2.3 of the AANA Advertiser Code of Ethics, we wish to advise that the Advertisements are no longer being displayed in any media as the programme is not currently being broadcast.

THE DETERMINATION

The Advertising Standard Board ('the Board') considered whether the advertisement complied with the AANA Code of Ethics ('the Code').

The Board noted the complainants' concerns that this advertisement is offensive in its portrayal of women and that the image is objectifying and sexualised.

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

The Board first considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.'

The Board noted that the advertisement features the torso of a woman in a bikini holding on to the neck ties of the bikini to hold it up. The woman's face is visible only from the mouth down.

The Board noted the complainants' concerns that the advertisement objectifies women. The Board noted that the advertisement depicts the woman without a head and that this can be an indication that the image is objectifying. In addition, the Board noted that the advertisement is predominantly the image of a woman's breasts and torso.

The Board noted that the woman is wearing a bikini and that the setting of the advertisement is at the beach and relates to a program which is set at the beach. The Board considered that the image of the woman was relevant to the program advertised and was clearly linked to that program. On this basis the Board determined that, while some people would consider the image objectifying of women, the Board considered that most members of the public would consider that the advertisement does not depict material that discriminates against or vilifies a

section of society. The Board determined that the advertisement did not breach Section 2.1 of the Code.

The Board then considered whether the advertisement complied with Section 2.3 of the Code. Section 2.3 states that 'advertising or marketing communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone'.

The Board noted a number of earlier cases referred to by the advertiser. The Board noted that the complaints were dismissed for 0153/11 (General Pants Co) on the basis that the advertisement did not breach section 2.1 or section 2.3 and for the two Sexpo advertisements 0167/11 and 60/10 that the advertisements did not breach section 2.3. The Board noted that in these cases it had determined that the particular images of the women were not sexualized to the point that they were inappropriate for a broad audience to view.

The Board then considered the present advertisement. The Board noted that the woman in the advertisement is wearing a bikini and considered that this would be appropriate attire for a beach setting. However, the Board noted that the focus of the advertisement is on the chest and torso of the woman and the woman's breasts are the focus of the advertisement and comprise the majority of the image in the advertisement.

The Board noted that the advertisement appears in bus shelters and has a broad audience which includes children and that in this context noting the size of the advertisement, the unavoidable focus for the viewing audience is the woman's breasts. The Board considered that this level of nudity is confronting in the context.

The Board noted that the woman's top is not done up (although there is no indication of whether she is putting her top on or taking it off) and that the undone top does provide a sexually suggestive element to the advertisement.

The Board noted again the cases referred to by the advertiser. The Board considered that these images were less confronting (in terms of nudity) than the present advertisement. Overall the Board considered that the close up image of the woman's breasts, with her top being undone, did amount to an advertisement that does not treat sex, sexuality and nudity with sensitivity to the relevant broad audience and that it did breach Section 2.3 of the Code.

Finding that the advertisement breached Section 2.3 of the Code, the Board upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

Seven is disappointed with the ASB's determination as we felt that the Advertisement was either at a similar level or less offensive than other advertisements the ASB has previously held to be not in breach of section 2.3 of the AANA Code of Ethics ("Code").

The ASB's report did not provide much detail on the Board's reasoning for taking a different view and we would very much welcome an opportunity to meet with ASB staff to discuss the details of the decision in this case.

We understand that the ASB may have changed its approach in relation to matters of this kind following the recent Parliamentary Inquiry into the regulation of billboard and outdoor advertising. Seven was not aware of any development in the ASB's approach to the application of the Code for outdoor advertising and reasonably relied on existing precedent to assess the suitability of its advertisements.

If the ASB has adopted a new interpretive approach we believe it would be reasonable for the ASB to make prospective advertisers aware of any change in policy so that advertisers could take any new position into account in developing advertising strategies.

In the absence of having communicated any changed approach, Seven is of the view that the ASB should refrain from making a breach finding in this instance but should rather take the opportunity to publicly communicate its new policy. This would be consistent with the approach taken by the Australian Communications and Media Authority where it may be bringing changed considerations to bear on a decision. This approach provides greater regulatory certainty in the industry as the industry can be assured they will receive adequate notification of any deviation from existing precedent, without the imposition of a penalty prior to this notification occurring.

Although we are disappointed with the finding we accept the ASB's decision and can also confirm that the advertisement was only displayed from 9 May to 21 May 2011 and that we have no plans to reissue the billboards.

Finally we would like to note that although the ASB's Case Report refers to separate advertisements featuring images of a man and a woman respectively in its definition of Advertisement, no complaints were received in relation to the advertisement which depicted the male torso.