



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0239-19
2. Advertiser :	Honey Birdette
3. Product :	Lingerie
4. Type of Advertisement/Media :	TV - Out of Home
5. Date of Determination	24-Jul-2019
6. DETERMINATION :	Upheld - Not Modified or Discontinued

ISSUES RAISED

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

DESCRIPTION OF ADVERTISEMENT

TV OOH advertisement which features a fast moving video montage of still images of a woman in lingerie. The lingerie is an Alina body suit which has sheer fabric between leather straps.

The still images are:

An image of the woman standing with one arm across her body touching the other looking at the camera.

An image of the woman in the same pose looking to her left.

An image of the woman looking at the camera with her right hand raised and resting on the right side of her face.

An image of the woman in the same pose looking to her left.

An image of the woman looking at the screen with her left arm bent to touch her left shoulder.



An image of the woman with her left arm resting against her forehead. Over the top of the image are the words 'RED ALERT' and the text 'Alina' appears.

THE COMPLAINT

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

Red Alert campaign: series of still images, all with red background featuring woman in various black lingerie pieces. Some feature text “censorship” across woman’s breasts. Displayed on digital screens and played on rotation at various speeds.

Several of the images feature completely sheer bras/tops/bodysuits so breasts are on full display. Fabric is also completely sheer in pubic area. The image resembles those that would be seen in porn publications. The woman is sexually objectified. Her body is clearly the subject of the images- not the pieces she is wearing. Bear in mind these are larger than life (at lakeside) and floor to ceiling (Forrest chase) images on display in high traffic areas frequented by children.

THE ADVERTISER’S RESPONSE

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

Her breasts are not “fully on display” they are actually covered in lingerie, lace, and detail, with an underwire and pattern.

The fabric is not sheer in the pubic region – the pubic region has been photoshopped out.

She is not sexually objectified. The model’s name is Jennifer Berg and she is from the high profile agency Elite LA and has previously modelled for many lingerie companies world-wide in similar products. She is also a model that is empowered by the product that she is wearing and that we sell in-store. In order to sell it (like any other retailer) we need to show it.

If a model in an advertisement is confident it doesn’t automatically mean that she is “porn” or “sexually objectified”. It means that she is simply a model advertising lingerie for a lingerie store and is not ashamed to be confident or empowered. Referring to her as porn is highly offensive to the model, to women, and to 2019. You would see more skin at the beach.

We have taken more than twenty images around the centre with male nipples on display.

Can the customer please explain the difference? Why is the female nipple the sexualised one when the male nipple is not? In this case the nipple was actually covered with a Censorship sign which makes the complaint even more ridiculous.



Why are we teaching young girls and women to be ashamed of their bodies? The female form not a matter of vulgarity or indecency.

We are here to empower women and we are going to continue to do that.

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:

- features sheer material so that the woman's breasts are on full display
- resembles images that would be seen in porn publications
- sexually objectifies the woman and depicts the woman's body as the subject of the images not the product
- is inappropriate to be seen in full view of children

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

The Panel noted that the television out-of-home advertisement was in the windows of Honey Birdette stores, facing out into the public in shopping centres and on the street. The advertisement featured a quick succession edit of six images of a woman wearing a mesh bodysuit with leather straps. The first image features the woman standing with one arm across her body touching the other looking at the camera. The second image features the woman in the same pose looking to her left. The third image features woman looking at the camera with her right hand raised and resting on the right side of her face. The fourth image is similar but the woman is gazing to her left. In the fifth image the woman looking at the screen with her left arm bent to touch her left shoulder.. And in the sixth image the woman has her left arm resting against her forehead. The words "RED ALERT" appear on the screen and the word 'Alina!' is written across the screen.

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 communications should not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people."

The Panel noted the complainant's concern that the advertisement depicts the woman's body as the subject of the advertisement, rather than the product.

The Panel noted the advertiser's response that the woman is not sexually objectified, she is a lingerie model who is confident and empowered.

The Panel noted that the advertised product is lingerie and the advertiser is justified in showing the product and how it would be worn provided that in doing so it meets the provisions of the Code.



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 first considered whether the advertisement used sexual appeal.

The Panel considered that the depiction of a women in sheer lingerie is a depiction which most people would consider to contain sexual appeal.

The Panel then considered whether the advertisement used sexual appeal in a manner that was exploitative of an individual or group of people.

The Panel considered that the woman was depicted in a confident and controlled manner and that her depiction in lingerie was relevant to the product being sold. The Panel considered that the woman was not depicted in a vulnerable position and was not depicted as an object or commodity. The Panel considered that there was no focus on a part of the woman’s body that was not directly relevant to the product being promoted.

The Panel then considered whether the advertisement used sexual appeal in a manner that was degrading of an individual or group of people.

The Panel considered that the depiction of the model and the accompanying text did not lower the character or quality of the model and did not use sexual appeal in a manner that was degrading of the model.

On that basis, the Panel determined that the advertisement did not employ sexual appeal in a manner which is exploitative or degrading of an individual and 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 considered whether the advertisement contained sex, sexuality or nudity.

The Panel noted the Practice Note for the Code states:

“Images 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.”



The Panel noted the complainants' concerns that the advertisement featured highly sexually suggestive images which resemble porn and which were inappropriate to be seen by children.

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 depiction of a woman in revealing lingerie is not of itself a depiction of sexual intercourse, sexual stimulation or suggestive behaviour and that the advertisement as a whole did not contain sex.

The Panel considered whether the advertisement treated the issue of sexuality with sensitivity to the relevant audience.

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 style of lingerie being promoted was sexualised and that this did add an element of sexuality to the advertisement. The Panel considered that the depiction of the woman wearing this style of lingerie was relevant to the product being promoted. The Panel considered that although it is reasonable for an advertiser to depict the product being promoted, the depiction should be treated with sensitivity to the relevant audience. The Panel determined that the advertisement did contain sexuality

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 considered that the requirement to consider whether sexual suggestion 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 suggestion is or might be relevant to the Panel considering how children, and other sections of the community, might consider the advertisement.

The Panel noted that this image appears in store windows and considered that the relevant audience includes retail and service workers, people shopping in the Honey



Birdette store and people who are not shopping at Honey Birdette but who are walking past the store, and that this last group would be broad and would include children.

The Panel considered that in the first image in the sequence the woman is shown with one arm across her body staring at the camera in a confident manner. The Panel considered that the woman was not depicted in a sexualised pose.

The Panel considered that in the second image the woman is depicted in a similar pose, gazing downwards towards her hand. The Panel considered that the woman was not depicted in a sexualised pose.

The Panel considered that in the third, fourth and fifth images the woman is posed with her arms by her sides or on her hips in a confident manner. The Panel considered the depiction of the woman with her finger in her mouth was a sexually suggestive pose, combined with partial nudity and sexualised lingerie.

The Panel considered the final image of the woman features her with one hand on her forehead and the other by her side, and that this was not a sexualised pose. The Panel considered that the text that appears over this image did not make a sexual reference.

The Panel noted that the entire advertisement lasted for less than five seconds, and the middle four images appeared only briefly. The Panel considered that the six images would not be seen in isolation, but in the context that they appear to people walking past the store.

The Panel considered that the flashing nature of the images gave the impression of a peep-show and added to the sexualised feel of the advertisement.

The Panel noted the complainants' concern that the woman's nipples are visible and that this is a level of nudity which is inappropriate for a public space where children could view the advertisement.

The Panel noted the advertiser's response questioning why the female nipple is sexualised when the male nipple is not.

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 firstly contains nudity and secondly treats that nudity with sensitivity to the relevant audience.

The Panel noted that the bodysuit worn by the model in the advertisement was sheer and that her nipples are clearly visible through the fabric in some of the images. The



Panel noted that the lingerie worn in the advertisement is available for purchase at Honey Birdette, however considered that products must still be advertised in a manner that is suitable for advertising on the front window of a store that is located in a shopping centre.

The Panel considered the Practice Note for the Code which provides:

“Full frontal nudity and explicit pornographic language is not permitted. Images of genitalia are not acceptable. Images of nipples may be acceptable in advertisements for plastic surgery or art exhibits for example.”

The Panel noted that although the material was sheer, the woman’s genitals were not visible and there was no focus on her pubic region in the advertisement.

The Panel considered that in the first, second, third, fourth and fifth images the woman’s breasts and nipples can clearly be seen through the sheer fabric of her lingerie.

The Panel considered the final image the text over the image covers the woman’s breasts so that her nipples cannot be seen.

The Panel noted that the entire advertisement lasted for less than five seconds, and the first five images appeared only briefly. The Panel considered that the six images would not be seen in isolation, but in the context that they appear to people walking past the store.

The Panel considered that although the first five images were fleeting in nature the woman’s nipples were visible and would likely be noticed by members of the community passing the store. Further the Panel considered that the flickering images on the bright coloured background would be more likely to attract the attention of people passing the store than still images.

The Panel noted that the woman was depicted from the thighs to her forehead and that the woman’s breasts were at the centre of the advertisement. The Panel considered that the framing of the advertisement meant that the woman’s breast area is emphasised and that it is the focus point of the advertisement.

The Panel considered that the depiction of women’s nipples does not in itself amount to an unacceptable level of nudity. The Panel noted that it had previously determined that advertisements which featured female nipples in a way which is discreet and not the focus of the advertisement (0543/18, 0134/19, 0157/19, 0174/19), when advertising to a restricted audience (0097/17, 0086/15, 0145/17) or when advertising a non-sexualised product (0290/14, 0103/12, 0276/10) and therefore did treat the issue of nudity with sensitivity to the relevant audience.

In this instance, the Panel considered that the series of fleeting images, and the part of the woman’s body depicted draws the viewer’s eye to the woman’s breasts.



The Panel then considered whether the advertisement treated the sexualised images and nudity with sensitivity to the relevant audience.

The Panel noted that recent research into community perceptions found that the general community were more conservative than the Panel's determinations relating to sexual imagery and nudity in advertising, and that the level of concern over nudity and sexualised content in advertising has been increasing over the last 10 years (https://adstandards.com.au/sites/default/files/2007-2017_community_perceptions_web.pdf).

The Panel acknowledged the advertiser's viewpoint that woman's nipples should not of themselves be sexualised and agreed that the manner in which breasts are depicted can give different impact to the level of sexualisation. The Panel considered that most members of the community would still be of the opinion that a woman's breasts and prominent nipples depicted in a sexualised context and clearly visible through sexualised lingerie in a large advertisement seen by a broad audience is a depiction that does not treat sexuality and nudity with sensitivity to a broad audience. The Panel noted that its role is to reflect community standards, not to set them and that in this instance the prominent focus on the woman's breasts in a sexualised context did not treat the issue of nudity with sensitivity to the relevant broad audience.

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

Finding that the advertisement breached 2.4 of the Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

The advertiser has not provided a response to the Panel's determination. Ad Standards will continue to work with the advertiser and other industry bodies regarding this issue of non-compliance.