



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0273-20
2. Advertiser :	Bergamet
3. Product :	Sex Industry
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	23-Sep-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This television advertisement is for the product Bergamale Natural performance Plus and begins with a scene showing a man and woman in a bedroom in dressing gowns. The scene then changes to one of the product, and then to the same couple in a bed smiling and laughing to camera. A computer image is shown with an image of a man being scanned and a list of product benefits. The following scenes shows a different couple walking in the waves on the beach; another couple kissing, and then the product again.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

Free to air GO Chanel 16/8/20 6.30pm

During a kids movie an ad for performance erectile function and sexualising enhancing bergermeds. Extremely inappropriate for young children to see during a kids movie

My 8 year old sister was watching tv, as this is the time we watch tv and then the news. I would not be opposed to this showing later on at night, but definitely not when most families watch tv together. Especially with the multiple times they said "sex, male performance, etc."



THE ADVERTISER'S RESPONSE

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

I followed up on Monday with our media buyer, who assured me the spot 16/8/2020 6.30pm (Go Channel) and 22/8/2020 5.30pm (9 Rush), was in fact put to air as "filler" by Channel Nine. This would have happened as CAD (Oasis- ClearAds) gave the TVC a "G" classification. As of Monday 31st 9.38am the TVC has been re-classified as a PG. I'm assuming this will prevent spots going to air in children's movies, as paid schedule is predominantly in Sunrise. The current classification of the TVC Key Number BGM20050130 is P896OASA.

We first sent the concept to Oasis- ClearAds for an assessment of classification on the 20th May, 2020. This is a transcript of my posted question to their online interface: "[me] I'm aware we need to go to CHP before we can get specific clearance for air, but we want to know your position on the male sexual health angle of this TVC. What classification would it likely receive?". Response "[ClearAds] Hi, If you have getting CHP for this they will likely follow up on the claims for the TVC, I will look at your original classification which was in regard to male sexual health. Thanks". Nothing happened after this (apart from receiving a bill of course) so I followed them up with a call. The advice given was the TVC would be classified as PG.

We applied to CHP 26th May, 2020 and the concept/creative was granted approval 9th June, 2020 CHPAUS 31667-0620. We then went back to ClearAds with the approved script, which was approved 12th June, 2020 under the complimentary health banner, with clearance G896OASA.

I have attached ClearAds approval along with CHP approval to the same email containing this letter as attachment. I have also attached a copy of the advertisement. In relation to Section 2 of the AANA Code of Ethics, which states "Advertising or Marketing Communication shall treat sex, sexuality and nudity with sensitivity to the relevant audience", there is no sex in the ad at all. We show a couple kissing, displays of affection: quite a conservative display compared with what you would see at most beaches. Our language is deliberately respectful to sufferers (one in five men over 40 suffer from erectile dysfunction) and restricted to permitted indications by TGA, namely "male enhancement, support healthy libido, support healthy sexual function".

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 complainants' concerns that the advertisement featured sexualised themes which were inappropriate to be shown during children's programming.



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

The Panel 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, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Panel noted the Practice Note to Section 2.1 provides the following definitions:

"Discrimination – unfair or less favourable treatment.

Vilification – humiliates, intimidates, incites hatred, contempt or ridicule."

The Panel noted that the advertisement twice references the phrase 'man up' in relation to using the product. The Panel considered that this may be interpreted as indicating that masculinity is directly linked to sexual performance, and this may be disparaging to males experiencing problems with sexual performance by indicating they are less of a man.

The Panel noted that it had previously considered the phrase 'man up' in relation to an advertisement for shoes designed to make men taller in case 0361-17, in which:

"The Board acknowledged that some members of the community are sensitive about their height and could find the use of phrase 'man up' to suggest that you are not a real man unless you are tall. The Board noted that the phrase 'man up' can mean to act more like a man, or be strong, or face responsibilities (<http://www.urbandictionary.com/define.php?term=Man%20Up>) and considered that in this instance the phrase is being used literally to mean a man can go up in height. The Board noted the complainant's concern that the woman in the advertisement is smirking but considered that the woman is smiling and there is no suggestion that she thinks less of the man because of his height and the advertisement does not make fun of short men or suggest that they should be thought less of. Overall the Board considered that the use of the phrase 'Man up' in an advertisement for shoes that make men taller is factual, relevant to the product, and in the Board's view does not suggest that a man is not a real man unless he is tall."

In the current advertisement, the Panel considered that the phrase 'man up' was used as an innuendo for sexual performance and was not a phrase indicating that men who are experiencing problems with sexual performance should be thought less of, or are deserving of less favourable treatment. The Panel considered that the advertisement did not directly reference men who are experiencing problems with sexual performance, and as such did not humiliate or ridicule this group of men.

The Panel considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and did not breach Section 2.1 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 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 the advertisement features two people in a bed together, couples kissing and references to ‘male enhancement’, ‘healthy libido’ and ‘healthy sexual function’ and considered that the advertisement did contain sexually suggestive behaviour and references to 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 the use of male or female actors in an advertisement is not by itself a depiction of sexuality.

The Panel noted that the advertisement contained references to the product increasing sexual function and depicted images of couples. The Panel considered that the advertisement did contain a recognition and emphasis of sexual matters, and the advertisement did contain 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 noted that all the people depicted in the advertisement were fully clothed and the advertisement did not contain nudity.

The Panel then considered whether the issues of sex and sexuality were treated 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 considered that the requirement to consider whether sexual suggestion is 'sensitive to the relevant audience' requires 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 is relevant to the Panel considering how some sections of the community, such as children, might perceive the advertisement.

The Panel noted that advertisement had received a G rating from CAD meaning the advertisement "may be broadcast at any time of day, except during P and C programs or adjacent to P or C periods". The Panel considered that the relevant audience would likely be broad and would include children.

The Panel noted the advertiser's response that the advertisement had been played in children's programming in error, and that the advertisement has since been reclassified to PG.

The Panel acknowledged that some people viewing the advertisement with young children would be uncomfortable with the reference to sexual health and the depiction of men and women kissing. However, the Panel considered that the advertisement did not contain explicit sexual references, explained the benefits of the product in a straightforward manner and that the interaction between the couples was only mildly sexual. Overall the Panel considered that the mild sexual references in the advertisement were not inappropriate for the relevant broad audience.

The Panel determined the advertisement did treat 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 complaints.