



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

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| 1. Case Number : | 0274-20 |
| 2. Advertiser : | Bayer Australia |
| 3. Product : | Other |
| 4. Type of Advertisement/Media : | Internet - Social - Other |
| 5. Date of Determination | 23-Sep-2020 |
| 6. DETERMINATION : | Dismissed |

ISSUES RAISED

AANA Code of Ethics\2.2 Exploitative or Degrading
AANA Code of Ethics\2.3 Violence
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This YouTube advertisement features a father changing his baby's nappy on a change table and applying nappy rash cream to the baby's bottom. A voice over explains features of Bepanthen Nappy Rash Ointment and how the product works to protect a baby's skin. The mother walks into the room and is very happy to see the father taking care of the baby. The final shot is of the product Bepanthen Nappy Rash Ointment.

THE COMPLAINT

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

Baby's genitals , exposed to the world . Breach of human rights, child's' privacy, innocence , being victimised is unable to give informed consent, exploitation, child sexual abuse . (child sexual abuse is, constituted indecent exposure of children naked, body as a result of their age, unable to be consciously aware what is being done to the child's body.

Bayer company using perpetrator behaviour by seeking and selecting a baby for the aim to expose her genitals to be video and display it to the public, it is hidden from television advertisement. Failure protection from exploitation, abuse and degrading and imoral treatment to the child.The baby's genitals is being exposed to the public including, by video from multiple video production agents.This type of behavior would



not be done and tolerated with a teenager girl or a adult women advertising similar ointment for other health reason; So why this is acceptable with a baby? it is because the "exploitation of child" 'awareness' What is the motive of Bayer company to subject this baby to sexual exploitation removal of clothing to expose her genitals to the world? . Violating Human rights privacy and baby's innocence .This video should be removed!!!!!!

THE ADVERTISER'S RESPONSE

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

We are writing in response to your letter dated 08 September 2020 regarding a consumer complaint relating to an online video advertisement for Bepanthen Nappy Rash Ointment.

Background

We note that the complaint was initiated and submitted online to the Advertising Standards Bureau.

Your letter states that in addition to considering the specific issues raised by the complainant, the Advertising Standards Board will review the advertisement against Section 2 of the AANA Code of Ethics (Code). In this regard, you have asked us to consider whether any issues within the advertisement fall within Section 2 of the Code.

In our view, the section of the Code that is potentially relevant to the complaint is Section 2.2 and 2.4, which provides that Advertising or Marketing Communication shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

For the purposes of our response, we note that the Code for Advertising & Marketing Communications to Children does not apply because the advertisement, having regard to the theme, visuals and language use, is not directed primarily to children.

Bayer's response to the complaint

The following issues were raised by the complainant:

Ad description:

Baby's genitals , exposed to the world. Breach of human rights, child's' privacy, innocence, being victimised is unable to give informed consent, exploitation, child sexual abuse. (child sexual abuse is, constituted indecent exposure of children naked, body as a result of their age, unable to be consciously aware what is being done to the child's body.

Reason for concern:

Bayer company using perpetrator behaviour by seeking and selecting a baby for the aim to expose her genitals to be video and display it to the public, it is hidden from



television advertisement. Failure protection from exploitation, abuse and degrading and imoral treatment to the child. The baby's genitals is being exposed to the public including, by video from multiple video production agents. This type of behavior would not be done and tolerated with a teenager girl or a adult women advertising similar ointment for other health reason; So why this is acceptable with a baby? it is because the "exploitation of child" 'awareness' What is the motive of Bayer company to subject this baby to sexual exploitation removal of clothing to expose her genitals to the world? Violating Human rights privacy and baby's innocence. This video should be removed!!!!!!"

Bayer is extremely mindful of its responsibility to develop communications that do not raise concern amongst the community. Bayer has run this advertisement for the past 12 months in Australia and utilised the same creative concept in multiple markets around the world, including the UK, where the advertisement was positively received by consumers and the media. Additionally, we have received feedback locally expressing appreciation to Bayer for the inclusion of a father parenting and changing a nappy in promotional advertising.

Bayer has stringent internal procedures to ensure that advertising material is compliant with relevant legislative requirements. The advertisement features a father playfully and happily interacting with his baby whilst changing the baby's nappy on a change table and applying nappy rash cream to baby's bottom. A voice over explains features of Bepanthen Nappy Rash Ointment and how the product works to protect baby's skin. The mother walks into the room and is very happy to see the father taking care of the baby. The final shot is of the product Bepanthen ointment.

The advertisement strives to breakdown gender stereotypes in relation to infant care and promotes gender equality. This is in line with the code Section 2.1 stating "advertising or marketing communication 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, gender, age, sexual preference, religion, disability, mental illness or political belief."

Bayer believes the commercial is compliant with code Section 2.2 and 2.4, and the advertisement is sensitive and respectful to relevant audiences. We believe that it is acceptable for an advertiser of baby nappy rash cream to show the application of the product in an appropriate way. The footage was filmed to show only a fleeting shot of the product application to the baby's bottom, with full care being taken to protect the baby's genitals being in view. It is reasonable that a certain level of "nudity" is acceptable to the community in this instance where a caring father applies cream to the baby's bottom for purpose of assisting with nappy rash.

The advertisement does not depict inappropriate nudity or sexual appeal nor does it exploit or degrade any individual or group of people and hence Bayer believes the advertisement does not breach section 2.2 or 2.4 of the Code.



We also note the same Bepanthen Nappy Rash Ointment Advertisement relates to an “Already Considered” advertisement (TV - On Demand, case reference number: 0400-19). The Ad Standard’s Community Panel concluded the advertisement “did not contain sexual appeal and did not breach Section 2.2(a) of the Code” and “did not contain sex, sexuality or nudity and did not breach Section 2.4 of the Code” and dismissed the complaint on the 11th December 2019. Whilst the following complaint relates to the same advertisement shown on a different media, Bayer believes the advertisement does not breach Section 2 of the Code based on the above-mentioned justifications.

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:

- is exploitative of the baby by showing her genitals to the world
- is abuse of the child in the advertisement
- depicts the child’s genitals which would not be appropriate in an adult, and therefore should not be for a child.

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

The Panel noted the complainant’s concern that the child in the advertisement is unable to give informed consent and that her use in the advertisement is a breach of human rights.

The Panel considered that it can only consider the content of the advertisement against the Code and that issues relating to the employment or use of children in the media are best directed to the relevant state or territory department.

The Panel noted that Section 2.2 of the Code states:

“2.2 Advertising or Marketing Communication shall not employ sexual appeal:
(a) where images of Minors, or people who appear to be Minors, are used; or
(b) in a manner which is exploitative or degrading of any individual or group of people.”

The Panel first considered whether the advertisement contained sexual appeal.

The Panel noted that it had previously considered this advertisement on TV-on-Demand in case 0400-20 in which:

“The Panel considered that it is acceptable for an advertiser of baby nappy rash cream to show the application of the cream or the cream being used. The Panel noted that there is a fleeting glimpse of the baby’s genital region and that there is a direct relevance to the product. The Panel agreed that in general, the use of a baby’s naked



behind can be considered appropriate in certain situations when the product is relevant. The Panel considered that there is a certain level of nudity that is accepted by the community in relation to young babies and that in this instance where the advertisement shows a caring father applying cream to the babies naked bottom for the purposes of assisting with nappy rash and is extremely fleeting.”

Consistent with the determination in case 0400-20, the Panel considered that the nudity in the current advertisement is relevant to the product being promoted, is fleeting and is not sexualised.

In the Panel’s view the advertisement did not contain sexual appeal and did not breach Section 2.2 (a) of the Code.

The Panel considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 states: "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The Panel noted the complainant’s concerns that the depiction of the child’s genitals in the advertisement constitutes child abuse.

The Panel again noted that it can only consider the content of the advertisement itself, and not the use of the child actor.

The Panel acknowledged that some people would be uncomfortable with the portrayal of a naked child in the company of an adult, however in this advertisement the Panel considered that the depiction of the man in the advertisement applying the cream to the baby was appropriate in the context and a depiction of an everyday household occurrence.

In the Panel’s view the advertisement did not present or portray violence and therefore did not breach Section 2.3 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 noted that the advertisement was shown on YouTube which requires users to be over 13. The Panel considered that the relevant audience would likely be adults, teenagers and children watching videos on a parent’s account.

Similar to the comments above, the Panel considered that the depiction of the child was not sexualised.

The Panel considered that there was no sexual imagery or themes in the advertisement and the baby was not depicted as a sexual being.



The Panel noted the complainant's concern that the advertisement depicts the child's genitals which would not be appropriate in an adult, and therefore should not be for a child.

The Panel considered that the advertisement featured a depiction of a common household occurrence and that most people viewing the advertisement would consider the fleeting nudity to be appropriate in the context of advertising the product.

The Panel considered that the 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 the Code on any other grounds, the Panel dismissed the complaint.