



Ad Standards Community Panel
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Case Report

1. Case Number :	0300-21
2. Advertiser :	NightPlan
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	27-Oct-2021
6. DETERMINATION :	Upheld – Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification
AANA Code of Ethics\2.4 Sex/sexuality/nudity
AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

This advertisement features eleven images posted as Instagram stories.

Story 1 - Instagram story included the text, "Confession Monday", "It's that time of the week again", "Send through your confessions and we'll post them up anonymously", "swear words will not be posted" and "Best confession gets \$50".

Story 2 - Instagram story included the text, "Confession Monday" and "doing caps on the weekend and had a chick shelve one into my ass with her tongue." With the peach, pill and tongue emojis.

Story 3 - Instagram story included the text, "Confession Monday", "I know someone that pisses and cums on random peoples carpet when inside doing jobs" and "Went from cookies & cream to carpet & cream real quick".

Story 4 - Instagram story included the text, "Confession Monday" and "I slept with one of my close girlfriends mums whilst interstate on footy trip, was stoked with it because she was hot as. Got voted worst on by my virgin team mates because it's "footy trip" not "sex trip" Found out a few days later I caught Chlamydia off her, came home & couldn't sleep with a girl I really liked because I had the clap. She then



dropped me because I was weird for not banging her on the first date. Give me a break."

Story 5 - Instagram story included the text, "Confession Monday" and "I walked in on my sister giving my cousin a blowjob". The backing music to this story is a song titled "Yung gag" by Nice Cock featuring saladwitsauce

Story 6 - Instagram story included the text, "Confession Monday", "Me and a mate took acid for the first time on our year 10 camp at night and we tripped balls for hours. Eventually we found our way back to the camp site because we were literally in the forest somewhere. And my mate wouldn't stop scratching his neck. He had a tick on his neck and we both started freaking out and screaming. So we called the camp leader over while still on acid. And she pulled out tweezers to rip the tick out and my mate started screaming "she is gonna stab me" so I started freaking out. She eventually took it out and left in a hurry and called our teacher. We both somehow didn't get caught.", and "camping wasn't a bad enough trip already"

Story 7 - Instagram story included the text, "Confession Monday", "Catfished my friends mum and got her to send me nudes. Neither of them ever found out!" and "Cougars gonna couggggg".

Story 8 - Instagram story included the text, "Stitch-up Wednesdays", "Tell us your biggest stitch up stories and we'll post them up anonymously", "swear words will not be posted" and "Best story gets \$50".

Story 9 - Instagram story included the text, "Stitch-up Wednesdays", "Had a go of a blokes vape at the casino on the weekend, found out after it had meth in it", "This whole situation reminds me of when the nightclub lights turn on".

Story 10 - Instagram story included the text, "Stitch-up Wednesdays", "My mate had it in a girls booty hole, ripped her, she needed stitches", and "She got stitched up".

Story 11 - Instagram story which included the text, "Me and the boys were on our mad Monday sesh at one of the locals, me and my mate managed to get up on the roof overseeing the town quite a lovely view. Any way I cracked open a bag and poured out 2 lines. I didn't tell him I had 2 bags, 1 of code and 1 of ket....20 minutes later he couldn't speak or stand at the bar so he got taken home by a girl and she had to pat his head while he was in the recovery position on his bed in a towel and couldn't sleep while I was having a great time. Still reminds me I own him 16 hours of his life every time I mention ket." and "Night started on the roof the ended in the hole".

THE COMPLAINT

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



'Nightplan' is a new online platform that aims to promote alcohol and food venues, alcohol products, events, and food and drink deals directly to consumers. See the Nightplan website at <https://www.nightplan.com>.

The aim of Nightplan is to connect consumers to the 'best' events, venues and deals in capital cities across Australia. Nightplan encourages businesses to register for Nightplan to promote alcohol and food venues, events, alcohol products, and alcohol and food deals directly to consumers.

Nightplan's advertising occurs on social media platforms, including Nightplan's Instagram account (73,000+ followers), Facebook account (22,000+ followers) and TikTok account (11,000+ followers).

Nightplan advertises alcohol and food businesses, products and offers directly to consumers under commercial arrangements with those businesses.

Nightplan also advertises its own business, brand, advertising platform and app.

Nightplan's Instagram advertisements have included the following:

- Advertisements for alcohol and food venues, and alcohol and food deals*
- Alcohol product giveaways (e.g. a year's supply of alcohol)*
- Events, including raves and parties at unidentified locations.*
- Nightplan business and brand advertisements, including Nightplan branded drinking games and Nightplan reels re-publishing user content.*

The 'For business' section of Nightplan's website sets out the following information:

"ALWAYS BE AT CAPACITY

We want you to be at capacity, no matter the location, no matter the time. We allow you to showcase your drink deals, food deals, events, bookings, live music acts and much more to the right people at the right time. Whether you're a bar, musician, café or event manager, it is time to keep the down times and the busy times at capacity.

RETAIN CUSTOMERS WITH N-REWARDS

Having loyal customers is what really makes or breaks a business. We all know it. Imagine for every customer that walked through the door, you could have them stay an hour longer or come back 2-3 times more. This is all done through our proven N-rewards system. Reward and impulse regular customers so they never want to leave without having to lift a finger.

GROW & EXPAND

Nightplans analytics give you powerful insights. Not just your regular insights. Imagine if we could show you exactly what people want to see, buy and enjoy before they even walk through the door. If you know, you can grow. We will hand you everything on a silver platter that will allow you to grow and expand your business."



Nightplan is a platform for advertising direct to consumers. All of its Instagram Posts are calculated to promote a product, service, organisation or line of conduct according to the definition of Advertising in the AANA Code of Ethics.

Nightplan's Instagram advertisements fall into two categories of Advertising:

1. Nightplan posts and reels advertising alcohol and food venues, events offers and products on behalf of businesses.

2. Nightplan posts and reels that advertise the Nightplan brand and business, and aim to attract followers and encourage user engagement.

The second category includes reels entitled 'Confession Monday' and 'Stitch Up Wednesdays' with re-posts of anonymous stories from Nightplan users, often describing illicit drug use or involving highly offensive and sexually degrading content. Nightplan encourages users to participate in these promotions by offering \$50 for the best confession or story.

The reels include content that is contrary to Prevailing Community Standards under the AANA Code of Ethics for the following broad reasons:

- It describes illicit drug use, which encourages or condones unhealthy or unsafe behaviour. This is clearly contrary to Prevailing Community Standards on health and safety (clause 2.6).*
- It treats sex and sexuality without sensitivity (clause 2.4).*

THE ADVERTISER'S RESPONSE

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

Advertiser did not provide a response.

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 concern that the advertisement describes illicit drug use and treat sex and sexuality without sensitivity.

The Panel viewed the advertisement and noted the advertiser did not respond.

The Panel first considered whether this advertisement met the definition of advertising. The Panel noted that the advertisement is promoting a chance to win \$50, and then sharing user submissions to the competition. The Panel considered this is promoting a line of conduct and does meet the definition of advertising in the Code.



Section 2.1: 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.

The Panel noted the AANA Practice Note which provides guidance on the meaning of:
Discrimination - unfair or less favourable treatment
Vilification - humiliates, intimidates, incites hatred, contempt or ridicule
Religious views - a person's belief or non-belief in a faith or system of worship

Does the advertisement portray material in a way which discriminates against or vilifies a person on account of religion?

The Panel noted that Stories 1-7 were posted under the banner "Confession Monday" and featured an image of Jesus Christ.

The Panel noted that in order to find a breach of Section 2.1 it would need to determine that the advertisement depicted material in a manner that was unfair or less favourable or humiliating or inciting ridicule of a person or section of the community, because of, in this case, religion.

The Panel considered that the use of Jesus in an advertisement is not of itself a breach of Section 2.1 (see also cases numbered 0448/07, 0079/12, 0178/14) and that it has previously considered advertisements which make light of religious concepts. In those other cases the Panel has considered that irreverent, light-hearted use of religious concepts is generally not in breach of the Code - even though the Panel accepts that some members of the public are likely to be offended. Rather the Panel has generally found humorous representations of Christian beliefs not to breach Section 2.1 (for example, a depiction of a Christ-like figure surfing, 0159/11; Jesus walking on water, 0079/12; the Last Supper, 0178/14) unless such depictions are undermining of central tenets of a particular faith.

The Panel noted that the advertisement uses the concept of confession, an important matter for some Christians, and uses an image of Jesus Christ. The Panel noted that the "confessions" posted by the advertiser refer to explicit sexual activity, drug taking, or both. The Panel considered that this advertisement's interpretation and publication of these matters amounted to contempt for and ridicule of Jesus and by extension some followers of the Christian faith.

In this instance the Panel considered that the demeaning representation of an important Christian practice did amount to vilification of Christians and the Christian religion.

Section 2.1 conclusion



Finding that the advertisement did portray material in a way which discriminates against or vilifies a person or section of the community on account of religion, the Panel determined that the advertisement did breach Section 2.1 of the Code.

Section 2.4: Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

Does the advertisement contain sex?

The Panel considered whether the advertisement contained sex. The Panel noted the definition of sex in the Practice Note is “sexual intercourse; person or persons engaged in sexually stimulating behaviour”.

The Panel considered that as the advertisement is stories submitted by users, the posts themselves contain a recollection of sexual contact rather than sex.

Does the advertisement contain sexuality?

The Panel noted the definition of sexuality in the Practice Note is “the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters”.

The Panel considered that Stories 1, 6, 8, 9, and 11 did not contain a sexual reference.

The Panel considered that Stories 2, 3, 4, 5, 7, and 10 did contain a sexual reference.

Does the advertisement contain nudity?

The Panel noted that the definition of nudity in the Practice Note is “the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity”.

The Panel noted that the advertisement is a series of stories featuring only text. The Panel considered that the advertisement did not contain nudity.

Is the issue of sexuality treated with sensitivity to the relevant audience?

The Panel noted that the definition of sensitivity in the Practice Note is “understanding and awareness to the needs and emotions of others”.

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 Panel noted that this advertisement is a series of stories available on an Instagram account which are only available for 24 hours after posting. The Panel noted that there is no age gate on the account and so any Instagram user could follow



the account. The Panel also noted that people without an Instagram account can view a limited amount of the page and can watch stories.

The Panel noted that Instagram requires users to be over 13 and considered that while there is a chance that some viewers of this advertisement may be under 18, the relevant audience for this advertisement would be predominately adults who have chosen to follow the advertiser's account.

The Panel considered that explicit and highly sexual material is inappropriate on a public Instagram page which can be viewed by anyone.

The Panel considered that Stories 1, 6, 8, 9, and 11 did not contain sex, sexuality or nudity and did not breach Section 2.4 of the Code.

Story 2 – The Panel considered that an explicit reference to oral sex is highly sexualized and inappropriate for publication where it can be viewed by anyone. The Panel considered that Story 2 did breach the Code.

Story 3 – The Panel considered that a reference to a person ejaculating on strangers' carpets is highly sexualized and inappropriate for publication where it can be viewed by anyone. The Panel considered that Story 3 did breach the Code.

Story 4 – The Panel considered that the reference to having sex with a person and a sexually transmitted infection was not explicit. The Panel considered that while the story refers to sex, it is mild and is not inappropriate for a broad audience. The Panel considered that Story 4 did not breach the Code.

Story 5 – The Panel considered that the reference to oral sex is not highly explicit but is highly sexual and does not treat a sexual reference with sensitivity to a broad audience.. The Panel considered that Story 5 did breach the Code.

Story 7 – The Panel considered that the reference to nude pictures was sexualized but was not explicit. The Panel considered that while the story refers to sexuality, it is mild and is not inappropriate for a broad audience. The Panel considered that Story 7 did not breach the Code.

Story 10 – The Panel considered that the explicit reference to anal sex is highly sexualized and inappropriate for publication where it can be viewed by anyone. The Panel considered that Story 10 did breach the Code.

Section 2.4 Conclusion

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.

Section 2.6: Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.



The Panel noted the complainant's concern that the advertisement featured drug references.

The Panel noted that it had previously upheld complaints about advertisements showing the use or promotion of drugs in cases 0074-21, 0205-20, 0164-21, 0077-20.

The Panel noted that this advertisement does not contain imagery, only refers to drug taking, however considered that as the submitters are relating their stories in order to possibly win money, and the stories are published to a wide audience, most members of the community would consider this to be a promotion of such behaviour. The Panel considered that many members of the community would consider a clear reference to the consumption of an illegal substance contrary to Prevailing Community Standards on health.

The Panel considered that Stories 1, 3, 4, 5, 7, 8 and 10 did not contain a reference to drugs and did not breach the Code.

The Panel considered that Stories 2, 6, 9 and 11 did contain a reference to drugs and did breach the Code.

Section 2.6 conclusion

The Panel considered that the advertisement did contain material contrary to Prevailing Community Standards on health and safety and determined that it did breach Section 2.6 of the Code.

Conclusion

Finding that the advertisement breached Sections 2.1, 2.4 and 2.6 of the Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We do not post Monday confessions or Stitch-up Wednesdays anymore.