



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0309-20
2. Advertiser :	Chubby Buns Burgers
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	Outdoor
5. Date of Determination	21-Oct-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.2 Exploitative or Degrading

DESCRIPTION OF ADVERTISEMENT

This advertisement is the company logo displayed outdoors and features a stylised and exaggerated cartoon image of a woman sitting, shown from behind as she turns towards the viewer holding a burger.

THE COMPLAINT

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

Using part of a girl's body to advertise food product and appealing to a market of men the sends a message that somehow it is ok to objectify a woman's body and depict it in this way. The large number of cars that pass this spot daily means it will be seen by many. My 11 year old daughter noticed this and commented about how that was not nice to use girls in this way.

THE ADVERTISER'S RESPONSE

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



We refer to our email dated 6 October 2020 and your reply agreeing to provide until 16 October 2020 to allow our client to prepare his substantive and considered response. Our client's replies contained in this letter are made as well on behalf of interested parties in the Chubby Buns Burgers business and the Advertising and Marketing Communication (Advertisement) which is the subject of the complaint and this letter. We confirm that the letter addresses those matters raised in your letter of 28 September 2020 addressed to our client.

Your letter has principally drawn attention to section 2 of the AANA Advertiser Code of Ethics (Ethics Code) and the following points:

- 2.1 Discrimination or vilification*
- 2.2 Exploitative or Degrading (women)*
- 2.3 Violence*
- 2.4 Sex. Sexuality and nudity*
- 2.5 Language*
- 2.6 Health and Safety*
- 2.7 Distinguishable as advertising*

The letter also draws attention to the following:

*AANA Code for Advertising and Marketing Communications to Children (Children's Code);
AANA Food and Beverages (Food and Beverages Code);
Marketing and Communications Code (Marketing Code); and
AANA Wagering and Advertising and Marketing Communications Code (Wagering Code).*

We understand that the Marketing Code and the Food and Beverages Code are one and the same thing and if our understanding is incorrect, please let us know by reply.

We have also reviewed the AANA Industry Practice Note entitled "Managing the Portrayal of People".

The relevant Advertisement

We attach a copy of the Advertisement that pertains to the business and which is no doubt what is the subject of the complaint received by your office. The attached copy of the Advertisement is provided without any consent or licence for its use or disclosure by your office externally unless consent is specifically given in writing on a future occasion. It is merely provided for now for your consideration of this response letter.

The Ethics Code

The complaint seems to chiefly relate to sections 2.1, 2.2 and 2.4 of the Ethics Code. The other sections appear to be completely irrelevant and as such we do not address



them in this letter and if you disagree with this viewpoint, please confirm the same and we will take further instructions.

We are instructed, and with respect it would seem obvious to most members of the public, that a female approximating to 18 years of age is depicted in the picture. Without admissions by our client, if it is considered to be ambiguous in suggesting the depiction of a Minor (defined in the Ethics Code as someone under 18 years of age) our client maintains that it would be unreasonable to suggest that it depicts someone under the age of 16 and moreover, it would be unreasonable to suggest that it uses sex appeal or is otherwise sexually exploitative or degrading as the complaint seems to imply. This same response applies even if it was to be accepted by your community panel that an adult female is depicted in the Advertisement.

In our client's opinion, and in the apparent opinion of the thousands of customers who frequently buy the products sold by the business in person, the Advertisement is not only not worthy of complaint or offence, especially in the nature of alleged exploitation, degradation, discrimination or vilification, but it happens to be something they are happy to be associated with personally and with their families and children of all ages.

Our client accepts the obvious that some people, though potentially a minority section of the community may find the Advertisement, subjectively speaking, patently distasteful, unappealing or even silly or offensive to virtue, particularly some very religious persons or the very conservative – but even in that our client notes that many of his valued customers include these types of persons and they are equally positively enthusiastic about the business and the Advertisement. In our client's estimation, that is perhaps because it is arguably not sex appeal (extrinsically or implicitly and meaningfully) that is being utilised in the Advertisement but rather a sense of the ridiculous or silly humour that many people find unoffensive. Some sections of the community may deride the potentially obvious humour variety but our client considers that it would perhaps not be the prevailing community viewpoint or standard, and moreover, he considers that if it is, then it might be unduly oppressive of minority attitudes and depict low levels of tolerance if it be accepted for argument sake that the thousands of customers he caters for is in the minority (in terms of community standards).

Having said the above, our client confirms that while the author of the Advertisement was an independent business who delivered services over the internet, our client purchased and adopted it without intending to offend the community. Our client has invested significant sums of money and time in the business including with respect to its promotion and would not have proceeded down that track with some sort of malicious intention regarding sections of the community and their valid if divergent attitudes and philosophies.

Our client significantly draws on the experience of the many thousands of customers who have enjoyed the Advertisement and even taken "selfies" (self-photographs by phone camera) and associated themselves expressly and proudly with the business in



social media posts which have gone “viral” (speedily shared amongst the community) to some extent. Apart from the complaint your office has apparently received there is not one other single instance of a complaint that has been brought to our clients’ attention. The overwhelming and completeness of the response received, except for the case at hand, has been encouragement or neutral at most in terms of outward signs people have demonstrated to our client.

The Advertisement is potentially seen by all members of the community who pass it and notice it. The media (medium) used in this case makes it something seen by most members of the community within the proximate geographical location and its environs and appears to be designed at some level to attract business from persons of all walks of life and in that sense does not discriminate . In fact a great diversity exists in terms of the persons who are customers – but we reiterate the vast majority are adults who appear to be diverse in terms of cultural background and gender. The business is also supported by loyal customers who are locals and those who visit from all around Sydney and beyond.

The emphasis on the word “buns” in the Advertisement, or colloquially the buttocks, would it is accepted be obvious to any person familiar with the traditional use of the word but perhaps not to others. To the extent that a person does not appreciate the colloquial usage, the representation of the female form as it appears would be devoid of such meaningful association it is submitted. In other words, the use of the colloquialism reduces the potential scope of the audience.

The relevance and impact of the Advertisement might also be reduced because of its depiction of the female form in a manner that appears to be popular amongst young adults in recent years – as can be gathered from Television and social media representations that inundate community perceptions - including a certain, it seems, North American derived reality TV sub-culture. True it is that some may find this representation and perhaps fashion distasteful, irrelevant or silly – but that is an opinion or argument they are entitled to hold. To the extent that there is objection to the female form in and of itself being the subject of an advertisement whenever food and services are advertised, that could not be sustained by any reasonable person it is respectfully put as it overstates the acceptable range and would not constitute a useful frame of reference.

It seems the only or main and potential objection that falls within the ambit of Advertising Standards’ work is the colloquial usage combined with the particular image as some may ascribe a negative innuendo relevantly. Our client considers that such an objection might conceivably be validly (sincerely) made by some persons in the community and those persons may be genuinely subjectively offended. Our client considers that those persons are likely to be rare as he has received only compliments and the only known complaint is the one the subject of this letter. In saying this, our client does not dispute or ridicule the view of the complainant who may indeed have interpreted the image and words represented as patently offensive or even as scandalous. But our client considers such a view to be an exceptional response and moreover, it would be rather unusual and unexpected for a person to interpret the



advertisement in the context in which it appears as somehow vilifying or degrading of women. Our client estimates that half of his customers are women and they range from women who patently appear to be religiously conservative (wearing burqas and the like) to cosmopolitan western dressed women. Customers also include members of both sexes and all age groups and families, including young families, and never previously has there even been a concern expressed to our client.

The prevailing and contemporary community standard, which is a factual element sought to be identified as a benchmark by the community panel, is obviously a moving object and not easily discernible. However, our client does not accept that the Advertisement seen in context is patently or implicitly degrading or offensive to reasonable community members judging it fairly for what it is – so it would be inappropriate in our view to frame the analysis in terms of an assumed problem and to test whether contemporary community standards would tolerate such a breach. Rather, that contemporary community standards is the foundation upon which the particular representation should be interpreted – and it is in our client's view, and it would seem a reasonable conclusion, that it would be exploiting the image to take it out of its context completely to label it in turn as degrading and objectifying - and thus leading to damage of our client's business and brand and detracting from the interests of our client's customers in supporting the business as it has operated and is framed in terms of advertising.

We will here resist the urge here to further make a legal and objective standpoint in terms of arguments and evaluation on behalf of our client, because it is clear (on the express terms of the Codes) that your office is moved by and guided to different considerations and impulses - whether the values that underpin those standards are premised to some varying extent in religion, social conservatism, protection of gender issues (the rights and interests of women) or minors, or even the personal idiosyncratic feelings and thoughts of individual and group community members. Our client's experience with customers and members of the public has been singularly and overwhelmingly supportive and this fact should also assist, it is respectfully put, the community panel in its designated function.

Finally, however, we appreciate and emphasise for the consideration of the community panel that the views of a minority section of the community can be, theoretically speaking, offensive in some cases to the ethics of the majority or prevailing standard(s). But in the case at hand it seems that: the prevailing standards and community views are overwhelmingly in favour of the Advertisement being used and promoted and as such the Advertisement should not be considered a breach of the standards set in the Ethics Code; and If it be accepted that the customers are a minority within the prevailing community standard, that would be against the available evidence and also against a reasonable evaluation of the Advertisement.

Accordingly, the use and promotion of the Advertisement appears to be, and our client is firmly of the view that it is consistent with socially responsible commercial conduct within the bounds of prevailing community standards and reasonable conduct



identified as a guide and benchmark as opposed to a legal standard or rule (legalism) being the method of analysis.

Wagering Code

We note that the reference in your letter to the Wagering Code seems to be a mistake and is not relevant.

Food and Beverages Code

The Food and Beverages Code does not seem to be particularly relevant to the complaint at hand except that it cross-references the application of the Ethics Code and the Children's Code (and applies the same or similar definitions - see below). Our client's product(s) cannot reasonably be considered to be Children's Food or Beverage Product as defined, even though it has a menu for Children as do many restaurants, take-away shops and similar eateries. If there is a particular section or aspect of the Food and Beverages Code which you will request our client further or specifically address, please confirm the same by reply. Our client reiterates that many families and children count as customers and while it is not possible to know the thinking of each and every adult and child, the average customer and child, insofar as our client has reasonably understood from existing customers, do not take offence and or find ambiguities and evaluate the Advertisement to construct inappropriate meaning.

The Children's Code

The Children's Code again seems to not be relevant and or applicable as:

*the definition of Children there provided is "persons 14 years or younger and Child means a person 14 years or younger";
the Advertisement used by our client is not Advertising or Marketing Communication to Children as defined; and
Product is also limited by definition to "goods, services and/or facilities which are targeted and have principal appeal to Children".*

While the Advertisement does use an animation image, that alone could not reasonably suggest that it is principally or primarily directed or appeals to Children. Indeed, the vast majority of our client's customers in fact are not Children and we are instructed that it has never been the intention of our client that Children be the primary or principal focus of business and marketing.

The supporting Practice Note to the Children's Code on our review does not appear to change the inapplicability of the Children's Code on the facts and the guidelines provided in the Practice Note. The Practice Note relevantly states: "It is not the intent of the AANA for this Code to apply to advertising or marketing communication which is directed at adults or older children, or advertising or marketing communication that may be seen by children, but is not 'directed primarily to children'". This statement does appear to be apposite and our client relies on it to aid the interpretation of the



Children's Code. The nature of the product or service offered by our client is also not in any sense a Child's item or service such as toys or child entertainment. Finally, the Practice Note fairly acknowledges that an animation is not necessarily indicative of a marketing communication directed primarily to Children.

Reply

We kindly request that no defamatory publications be placed on your websites or otherwise published in relation to our clients, their business and products. If there are further matters for our client to address, then we suggest that they be set out in a reply letter rather than adverse publicity being the first resort of reply by your office to this letter – if indeed that will be the decision of the Community Panel in its next meeting when this letter is considered.

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 objectifies women.

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

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 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 image of the woman is prominent in the advertisement. The Panel considered that while the image is a cartoon, it is clearly identifiable as an attractive woman and her figure is exaggerated. The Panel considered that the woman is depicted sitting wearing a pink t-shirt and shorts/pants and that the skin of her waist was exposed. The Panel considered that there is a double entendre associated with the business name and the woman, in that her



clothed buttocks are shown and the business name references “buns” which is a colloquialism for buttocks.

The Panel considered that some members of the community may consider the advertisement 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 in the advertisement was depicted as eating a burger, and that this was an action that could be undertaken at the location. The Panel considered the woman appeared confident and capable, and that the advertisement did not suggest that the woman was an object or commodity.

The Panel considered that whilst the image of the woman was prominent in the advertisement, her depiction was to highlight the product of a burger restaurant and the use of the image was relevant to the service being advertised. The Panel considered that the advertisement did not use sexual appeal in a manner that was exploitative of the woman in the advertisement.

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 cartoon woman in the advertisement was depicted eating a burger, and that although an exaggerated cartoon figure, the woman was not lowered in character or quality in this depiction. The Panel considered that the advertisement did not use sexual appeal in a manner that was degrading of the woman in the advertisement.

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.

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.