



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0311-19
2. Advertiser :	SOJO Pty Ltd
3. Product :	Clothing
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	25-Sep-2019
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity
AANA Code of Ethics\2.5 Language

DESCRIPTION OF ADVERTISEMENT

This television advertisement has two versions which both feature Nick Cummins talking about Tradies underwear.

30second version

This version features Nick Cummins in underwear and saying: "G'day. If your front end swings like the back end of a goanna, the tribe can get a little off-centre. That's why the nuts over at Tradies HQ have developed a nifty no-bounce pouch, to keep your meat and veg secure. If you're all swing and no ding, keep your coconuts classy. Tradie. The Aussiest undies ever". The advertisement also features a close up scene of the underwear and Nick Cummins' hands covering in groin in line with the "meat and veg secure" line. The sound effects in this scene are indicative of a gate closing. The advertisement ends with Nick Cummins cracking a whip and sipping on a coconut drink.

15 second version.

This version features Nick Cummins in underwear and saying: "If your front end swings like the back end of a goanna, the tribe can get a little off-centre. The nuts over at Tradies HQ have developed a nifty no-bounce pouch, to keep your meat and



veg secure. Tradie. The Ausiest undies ever". The advertisement also features a close up scene of the underwear and Nick Cummins' hands covering in groin in line with the "meat and veg secure" line. The sound effects in this scene are indicative of a gate closing.

THE COMPLAINT

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

The terms used and reference to genitalia.

Offensive reference to male genitalia and visually

THE ADVERTISER'S RESPONSE

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

Thank you for your correspondence dated 11th September 2019.

As an advertiser we have no intention of offending the viewing public. In fact our aim is to entertain and leave the viewer with a smile using Australian humour and the "larrikinisms" which our ambassador Nick 'Honey Badger' Cummins in particular is well known and loved for by Australians. In saying this we will never make every member of the general public happy or comfortable with his persona and profile.

For the general information of the standards board our target audience is:

Primary: Mum's who do the underwear purchasing for their families. We want them to see the brand as a great Australian brand for their families which is comfortable, good quality and fun.

Secondary; Australian families – in particular the Dad's and teenagers of Aussie families who need to relate to the brand as something they would wear.

Please note we've made the same type of humorous adverts for the past 4 years and we have had no issues. Past adverts include;

Year 1 Advert

<https://www.youtube.com/watch?v=TZJU1YfLthI>

Year 2 Advert

https://www.youtube.com/watch?v=_le7yQ5I8UI

Year 3 Advert

<https://www.youtube.com/watch?v=zsfxk-XeBWQ>

<https://www.youtube.com/watch?v=fN7S4PLQZC0>



Year 4 Advert

<https://www.youtube.com/watch?v=qEK4v18EfUM>

<https://www.youtube.com/watch?v=29ocHal4CjQ>

<https://www.youtube.com/watch?v=8YLuj8auKIA>

Our advertising script go through testing with target audience as part of our script writing process. Once produced to ensure that our TVCs hit the mark our advertising agency holds qualitative research to get feedback on the response of the ads. In fact in a recent research group in Sydney several attendees discussed the likability of the ads and demonstrated that they were wearing the underwear during the session - as an advertiser this was extremely pleasing to see how we were positively penetrating the market. We have received virtually hundreds of posts and feedback on the likability of our ads and the character of Nick Cummins, Danielle Scott and Charlotte Caslick.

I hope the Ad Standard review finds in the positive for our advertising and I look forward to your correspondence.

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 contains inappropriate references to genitalia and a depiction of a man in underwear.

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

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 is sexually driven by depicting a man in underwear and contains a sexual innuendo.

The Panel considered whether the advertisement 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 man in underwear 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 underwear being promoted was not inherently sexualised, but considered that some members of the community may consider any advertisement featuring people in underwear to be sexualised.

The Panel considered that the depiction of the man wearing this style of underwear 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 is relevant to the Panel considering how children, and other sections of the community, might consider the advertisement.

The Panel noted that the advertisement received a W rating by ClearAds and was aired at a time appropriate to the rating (<https://www.clearads.com.au/storage/final-clearads-handbook-version-ca12.pdf>). The Panel considered that the relevant audience for this advertisement would likely be broad and include children.

The Panel considered that there was no focus on nudity or the man’s body and the overall impression of the advertisement was not strongly sexualised. The Panel



considered that the man in the advertisement were not posed in a sexualised manner. The Panel considered that while the advertisement may be viewed by a broad audience including children, the images themselves were not overtly sexual. The Panel considered that the advertisement did treat the issue of sexuality in regard to the imagery of the advertisement with sensitivity to the relevant audience.

The Panel considered that some colloquial references to body parts are made in the advertisement such as 'meat and veg' and 'coconuts', and references to genitalia moving in underwear, such as 'all swing and no ding' and 'front end swings like the back end of a goanna', and considered that these phrases are humorous and not used in a sexually suggestive manner but in a matter-of-fact colloquial manner.

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 factor when considering whether an advertisement firstly contains nudity and secondly treats that nudity with sensitivity to the relevant audience.

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 considered that the main character in the advertisement is only wearing underwear however there are no in appropriate images of genitalia. The Panel noted that the man in the advertisement is shirtless, however considered that most members of the community would not consider a shirtless man to be a depiction of nudity. The Panel considered that the advertisement did not depict nudity.

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

The Panel considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: "Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided".

The Panel noted the complainants' concerns that the advertisement featured inappropriate references to genitalia.

The Panel noted that they had previously considered a similar advertisement for the same advertiser, in case 0374/15, in which:



“The Board noted the reference to ‘meat and two veg’ and considered that whilst this colloquial reference to a man’s penis and testicles may be found offensive to some members of the community the Board considered that it is not strong, obscene or sexualised language.

The Board noted that Nick is known for using this type of Australian vernacular when interviewed as part of his duties as a sportsman and considered that even if you were not familiar with this Wallabies player and his style of speak in the Board’s view the language used in the advertisement is not strong, obscene or inappropriate in the circumstances.”

In the current advertisement the Panel considered the Australian vernacular used by Nick Cummins was humorous and light hearted, and consistent with the previous determination in 0374/15, the Panel considered that the colloquial references and descriptive language in the advertisement was not obscene or inappropriate in the circumstances.

The Panel considered that the language was not strong or obscene or inappropriate in the circumstances and did not breach Section 2.5 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaint.