



Ad Standards Community Panel  
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## Case Report

1. Case Number :	0312-19
2. Advertiser :	LifeStyles Healthcare
3. Product :	Health Products
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Determination	25-Sep-2019
6. DETERMINATION :	Dismissed

### ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

### DESCRIPTION OF ADVERTISEMENT

This TV on demand advertisement depicts various individuals' hands caressing flowers, while the voice overs describe what they are looking for from their partners regarding their intimacy.

### THE COMPLAINT

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

*My eight-year-old daughter was watching the program Dogs Behaving Very Badly (rated PG) and then this advertisement came up. there were also advertisements for sexual lubricants (Sylk), which is hard to explain to an eight year old who is watching a-program about naughty dogs that chew slippers. I'm really annoyed as this isn't' the first time Channel 7+ has done this. I can't afford to let my chid watch Ch7 programming as I no longer trust the advertisements that will be shown ('Bride of Chucky' shown during My Kitchen Rules for example). I'll be using only streaming services with no advertising until Channel 7 makes a commitment to show appropriate advertising around on-demand streaming. I will not be watching free to air, nor will anyone in my family ( I'm the main grocery buyer, 200K income, you bulls eye 'target' audience).*



*The visuals that go with the ad towards the end with the fondling of flowers and the product are way too suggestive and explicit for this time of the night. Surprisingly the ad has stopped now but it was played every ad break for 30 mins during this show. ( I am watching on replay but the show was on earlier which makes it even more unacceptable )*

*Very inappropriate, suggestive and degrading.*

*It is run during the day when my children watch the program on catch-up. It is run on a program that is targeted towards family viewing. Should be run when there is not a possibility that children are watching TV. ie late at night.*

## **THE ADVERTISER'S RESPONSE**

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

*Thank you for giving LifeStyles the opportunity to respond to the three community complaints regarding our SKYN® Lubricants advertisement (the Advertisement) which is currently screening on 7Plus, 9Now and 10Play and to provide our comment as to whether the Advertisement breaches the AANA Advertiser Code of Ethics (the Code).*

*LifeStyles considers that the Advertisement meets the rigorous criteria prescribed by the Code as the content does not:*

- 1. Discriminate or vilify any section of the community*
- 2. Portray minors or any other individuals in any sexual way and nor does it contain any exploitative or degrading material*
- 3. Contain any violence*
- 4. Portray sex, sexuality and nudity insensitively to the relevant audience (more about this below)*
- 5. Use obscene or vulgar language*
- 6. Depict material contrary to health and safety standards*
- 7. Try to be anything other than advertising of our SKYN® lubricant range*

*As a brand we always ensure that we do our due diligence in ensuring that the content of our advertising is appropriate for the audiences to which we are targeting. Specifically, prior to campaign commencement, our media agency shared the proposed Advertisement with all networks and gained their approval to use the video across their on-demand platforms. 7Plus and TenPlay approved the creative and did not place any additional restrictions on the usage of the video, outside of the audience targeting restriction we had set. 9Now requested that the Advertisement only run between 9pm to 3am and this has been adhered throughout the entire campaign.*



*The products advertised by the Advertisement have been openly displayed on supermarket shelves such as Coles, Woolworths and all major pharmacies for over 2 years.*

*These third-party, experienced approvals provided us with further confidence that the content of the advertisements were in no way insensitive regarding sex and sexuality, exploitative, violent nor degrading in contravention of the Code.*

*Additionally, as all catch-up tv channels require a login, our advertising has only been served to accounts linked to the details of those who are between the ages of 21 and 49.*

*Nonetheless, to illustrate our commitment to the community and to take extra care in avoiding insulting or offending our unintended audience, we have arranged for the Advertisement to only screen between 9pm to 4am on all on-demand networks.*

*We believe that the information set out herein will illustrate LifeStyles' commitment to the Code in our advertising however if AANA has any further questions or requires any additional information, please do not hesitate to contact me.*

## **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 is inappropriate for children.

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 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 this advertisement is for a sexual lubricant and features various scenes of people touching flowers. The Panel considered that the people depicted in the advertisement did not appear to be engaged in sexual activity of any kind. The Panel considered that the advertisement did not contain 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 for the application of the term in the Code, the use of male or female actors in an advertisement is not of itself a depiction of sexuality.

The Panel considered that the product depicted in the advertisement is used for sexual purposes. The Panel considered that the depiction of the people touching the flowers in conjunction with the voiceover was sexual. The Panel considered that the advertisement did depict 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 considered that the Code is intended for the Panel to consider the concept of nudity, and that partial nudity is a factor when considering whether an advertisement treats nudity with sensitivity to the relevant audience.

The Panel considered that there is no depiction of nudity in the advertisement, as the only imagery is flowers and people's hands.

The Panel considered whether the advertisement treated the issue of sexuality with sensitivity to the relevant audience.

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 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 sexuality and nudity 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 the nudity 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 this advertisement appeared on On-Demand television during various programs, and that complainant's specifically identified Dogs Behaving Very Badly (rated PG), Home and Away (rated PG) and Timeless (rated M). The Panel noted the advertiser's response that the ad was only served to account holders who are between the ages of 21 and 49. The Panel further noted that TV-On-Demand does not have the same rules as Free-to-Air TV in regard to advertisement classification, but considered that the Code still requires the Panel to consider the audience to which the advertisement is broadcast or published.

The Panel considered that the advertisement is not overly explicit. The Panel noted that the advertisement depicts hands caressing and touching flowers, and considered that an adult may infer a sexual reference to this action. However the Panel considered that children are unlikely to understand the discreet reference.

The Panel considered that the language of the advertisement does not reference sex, or any other explicit sexual phrasing. The Panel considered that an adult would be likely to infer a sexual reference from the language, but considered that the language is adult in tone and context, is spoken in a quiet and slow manner and is unlikely to both draw the attention of children, and be understood by children to be sexually suggestive.

The Panel considered that the advertisement did treat the issue of sexuality and nudity with sensitivity to the relevant audience.

The Panel noted the advertiser's response that they had requested the advertisement only air between 9pm-4am onwards in future.

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.

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