



Case Report

1	Case Number	0321/10
2	Advertiser	Crazy Domains
3	Product	Information Technology
4	Type of Advertisement / media	TV
5	Date of Determination	11/08/2010
6	DETERMINATION	Dismissed

ISSUES RAISED

2.3 - Sex/sexuality/nudity Treat with sensitivity to relevant audience

DESCRIPTION OF THE ADVERTISEMENT

The advertisement depicts two women (one being Pamela Anderson) dressed in bikinis. The imagery is heavily pixilated so the two women are not identifiable and their actions cannot be made out. Underneath the pixilated imagery are a series of subtitles (the script of these subtitles is set out below).

THE COMPLAINT

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

*This is totally inappropriate I don't care what time it is played. It has no relevance to what is being advertised - it's appalling and disgusting. It's no wonder we live in a society where women are so preoccupied bordering obsessed with how they look and perform. I don't blame them. When this is what we have to see on TV it seems there is no justice and no end!
I feel that crazy Domain is using sexy to sell a product which has not relation to sex in any way. It is using a semi pixled women clearly showing the breast area and is runing in a time slot which is clearly inappropriate it should be something that is run well after 10.30pm if run at all. The product has not link to the ad at all its purely using sex to capture the male viewer not to sell web hosting.
Soft porn is not appropriate for commercial channels. I find it very offensive when the advertisement is shown during the same time slot as commercials raising awareness for healthy body image. Additionally funding for Self Esteem workshops for Primary schools.*

The advertisement is demeaning to women vulgar and unnecessary. There are other ways to appeal to their target audience.

Pixilation did little to obscure the images that were being shown. There is no link between a web hosting site and sex. The images shown are overly sexual and focused on women with no reason or requirement to do so.

THE ADVERTISER'S RESPONSE

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

Crazy Domains has reviewed the advertisement in light of the complaints set out in your letter to us dated 16 July 2010 and with respect to compliance with section 2 of the Australian Association of National Advertisers Code of Ethics (Code).

Following this review, we do not believe that the advertisement is in breach of any aspect of Section 2 of the Code and, specifically, section 2.3 of the Code.

Section 2.3 of the Code states:

""Advertising or Market Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and where appropriate the relevant programme time zone.""

In light of the ASB's determination in relation to the first version of this advertisement in February 2010, we have gone to great lengths to ensure that the content of the advertisement is sensitive to the relevant audience by heavily pixilating such content. Given the degree of pixilation, neither the characters can be identified nor their actions. On that basis, we cannot understand how this can be said to be ""explicit"" imagery.

We have further limited the possibility of the advertisement being viewed by ""sensitive"" audiences (such as children). Specifically, we have adhered to the requirements associated with the M classification of the advertisement by Commercial Advice Pty Ltd (CAD) and the advertisement has only appeared in M rated time slots (ie the advertisement is shown after 8.30pm). We note that by CAD itself classifying the advertisement as M rather than MA, this indicates that CAD viewed the advertisement as merely implying sexual activity or it being simulated in a restrained way, rather than the advertisement depicting more explicit sexual content.

We trust that the ASB will agree with our views outlined above in light of other determinations that the ASB has made in relation to the interpretation of section 2.3 of the Code. For example:

(a) The ASB has accepted numerous advertisements portraying nude men and women which are far more explicit than our advertisement. For example:

(i) the ASB determined that the Arnott's Tim Tam billboard was acceptable which depicted a woman draped only in a long ribbon/silk-like material that covered her breasts and genitals and which was in full view of the public at large (complaint reference number 98/05). In that case, the Board noted that the ""depiction was not explicit as neither the breast nor genitals were exposed in any way"";

(ii) the Kosciusko Thredbo Pty Ltd print advertisement that featured a photograph of a woman with patches of blue covering her nipples and with her pubic hair visible was held to be acceptable (complaint reference number 196/01); and

(iii) in the Holden Ltd (Astra Coupe & Wagon) case (complaint reference no 242/05), the ASB rejected complaints that the depiction of a nude couple with pixilated breasts and genitalia was offensive.

Given that the two female characters in our advertisement are clothed (ie wearing bikinis), we do not see how our advertisement can be held to be ""explicit"" while these examples were determined by the ASB to be acceptable.

(b) The ASB has previously determined that advertisements depicting sexual activity which is totally unrelated to the product or service being advertised are acceptable. In the Unilever Australasia (Streets Magnum Sixties Nine) case (complaint reference number 71/03), the ASB found that an advertisement showing two females and a male discarding their clothes and romping around on a bed in a department store did not breach section 2.3 of the Code, despite the fact that the product being advertised was ice-cream.

The ASB has also accepted advertisements containing explicit sexual activity. For example, in Jamba! GmbH (Bubble Mob) (complaint reference number 14/08), the ASB accepted an advertisement containing still images of two women in g-strings touching each other, as well as a moving silhouette of a woman with her hands held above her head and breasts bouncing. It seems inconceivable to us that, on the one hand, the ASB could allow advertisements containing explicit sexual activity and, on the other, take issue with our advertisement where there is no explicit imagery.

In our view, if the ASB were to find that our advertisement was in breach of section 2.3 of the Code, this would result in an inconsistent interpretation of section 2.3 by the ASB in light of previously considered cases.

Finally, we note that the ASB has only received four complaints in relation to our advertisement as at the date of your letter to us. Surely, the number of complaints received against an advertisement would be one measure of the extent to which the advertisement breaches the prevailing community standards which the ASB was formed to uphold.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement contained pixilated images which were overly sexual, that the images were soft porn, and that there was no relevance between the product being advertised and the images shown.

The Board reviewed the advertisement and noted the advertiser’s response.

The Board considered whether the advertisement was in breach of section 2.3 of the Code. Section 2.3 of the Code states: “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone”.

The Board noted that this is a modified version of a previously upheld complaint, Case Report 22/10. The Board noted that the images in the advertisement are pixilated and therefore not very clear. The Board noted the complainants’ concerns that the images were

overly sexual and soft porn, however the Board considered that the pixilation meant that you cannot see them clearly and that the sexual aspect is implied rather than explicit.

The Board noted that the advertisement is M rated and that this classification means that the advertisement can be shown after 8.30 at night and in particular times during the day on weekdays.

The Board determined that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach section 2.3 of the Code.

The Board noted that the depictions have no relevance to the product being advertised but that relevance is not a determining factor in deciding whether an advertisement breaches the code or not.

The Board expressed concern that the advertisement directs viewers to a version of the advertisement which was considered unsuitable for an M related audience. Although the Board's decision in Case Report 22/10 does not prevent the advertisement being shown on the internet, the Board considered that encouraging viewers to go to the website was not in the spirit of the self regulation system and asked that the reference to the website be removed.

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