



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 :	0325-19
2. Advertiser :	Seafolly
3. Product :	Clothing
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	9-Oct-2019
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.2 Exploitative or Degrading
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

In the advertisement we see different women each owning their folly in their own individual way. We see the first woman confidently walking down the street in her sneakers walking her three dogs. She loses control of the dogs, but just laughs and keeps marching along. We see a 40-year-old woman mowing the front lawn in her swimwear. We see a group of friends having fun sneaking into the neighbour's pool, with one running and cannonballing into the pool. We see the group of friends having a late-night dip in the ocean. The TVC ends with the voice over encouraging all women to own their folly.

THE COMPLAINT

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

Girls in bikinis and bathers running around in skimpy clothes and almost always not advertised for real women. Sexist and improper for young girls to assume that this is how they have to be



This ad portrays young women in skimpy bikinis in a sexualised manner. One close up shot is of a woman's bottom, pulling down her bikini bottom as it has ridden up over her bum cheek -another shot is a women throwing off her bikini top before running into the ocean with her friends. I was confused as to what the advertisement was for until I googled the name of the company.

In a society where sexual violence against women is prevalent, I feel as a woman and a trained counsellor that this type of material can have a significantly detrimental effect on the public especially young women, many of whom struggle with self image issues which can lead to eating disorders and a sense of low self worth and self esteem. I have already emailed the PR contact at SeaFolly Australia but want to make an official complaint.

THE ADVERTISER'S RESPONSE

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

The advertisement was a 30" TV commercial (TVC) which was broadcast on Channel 9 and 10 for two weeks between 15 September to 28 September 2019. The TVC media buy is now ended. The media buy was 70% prime time and included some mainstream programming.

The TVC is targeting women age 25 – 34 years and was cast with diverse talent for body shape, skin colour, age and ethnicity. The advertisement encourages all women to have fun in their swimwear and makes a point to say that you don't need to look a certain way to do that.

The advertisement launched Seafolly's new brand platform, Own Your Folly.

These comments relate to all aspects of the AANA Code of Ethics, Section 2. The two complaints received 17/9/19 and 19/9/19 related to 2.2 and 2.4.

2.1

There is no discrimination depicted in the ad. Everyone is depicted equally and inclusively in carefree, confident moments. No one is treated less favourably or vilified on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

2.2

There is no exploitative or degrading treatment of women in the ad. Seafolly is swimwear that fits well and this product benefit is illustrated by the confident feeling the fit gives the women. Women are not depicted as commodities in the ad and no one is depicted in a way that suggests sex or in a sexual pose. There are also no minors or children in the advertising.



Seafolly swimwear has a category reputation for moderate to high coverage, specialised support for D/DD/F cups and is not “skimpy.” The Seafolly swimwear which appears in the ad includes two one-pieces and four bikinis; all of which the community would perceive as proper attire and coverage if worn to the beach or a public pool.

There is one point where a woman is climbing out of the pool and pulls her bikini bottom back into place. This is a common occurrence in the real world and was included as a way to connect with women with a known insight. Pulling her bikini bottom back into place was a way to demonstrate Seafolly’s high quality fabric and fit and how it doesn’t stretch or sag.

2.3

There is no violence depicted in the ad. The women are having fun expressing the freedom and confidence that comes from swimwear that really fits well.

2.4

Inherently, swimwear has only moderate coverage so there is skin shown in the ad. We treated the depiction of the swimwear with sensitivity. The Seafolly swimwear which appears in the ad includes two one-pieces and four bikinis; all of which the community would perceive as proper attire and coverage if worn to the beach or a public pool.

There is a part of the ad in which one woman reaches over unclips the back of another woman’s bikini top. The woman rejoices, throws her hands into the air and continues to run towards the water. This is a folly – a moment of spontaneous fun that comes from feeling confident. The woman’s bare back is shown but there is no frontal nudity.

2.5

There are no mentions of bad language in the ad. At the beginning of the ad, the voice over (VO) says “If you’ve got it, own it. And if you don’t got it, pfft, own it anyway.” This section of VO was placed over the point when the woman momentarily loses control of the dogs and she is pulled forward. The “if you don’t got it” refers to the dogs getting away. She is then shown regaining control and laughing it off.

2.6

The production of the TVC was conducted under the supervision of a safety officer and trained lifeguard. There are no violations of the Prevailing Community Standards for health and safety depicted in the ad.

- *The woman walking down the street with dogs is wearing sneakers as footwear.*
- *The woman mowing the lawn is wearing work boots that cover her ankles and work socks.*
- *The woman who jumps in the pool lands where water depth is safe for her to jump into.*
- *The four women who run towards the ocean are only in the water to ankle-deep.*



2.7

The advertisement was clearly distinguishable as advertising and contained the logo of the company at the end of the TVC. The media placement was on TV during an ad break.

'Own Your Folly' Campaign Context

The campaign's purpose is to remind women what the benefit of great fit can do for their inner confidence. It is not about standing around posing in swimwear. It's about women embracing everything about themselves and feeling good. It's about the mischief and freedom that comes from our Australian attitude. Something we share in common, inclusively.

The campaign will continue to represent a variety of women owning their folly, in a multitude of ways. We will do this through social media content, influencer marketing, consumer competitions, events and a new fit styling service model rolling out to our stores.

'Own Your Folly' Campaign Testing

The storyboard and concept for the TVC was tested in Focus Groups in Melbourne in June 2019 prior to production. At that time, the agency, Thinkerbell ran two focus groups and used visual stimulus and descriptions of the TVC to understand how women would receive the message. The conclusions were that women understood the sentiment and confidence of OWN YOUR FOLLY, it was empowering and unoffensive.

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 depicts women in bathers and skimpy attire in a sexualised manner, and that such imagery indicates to young women that this is how they should dress and can be detrimental to their mental health.

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

The Panel noted that Section 2.2 of the Code states: "Advertising or marketing communications should not employ sexual appeal: (a) where images of Minors, or people who appear to be Minors, are used; or (b) 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 - means (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 noted that the advertised product is swimwear and the advertiser is justified in showing the product and how it would be worn provided that in doing so it meets the provisions of the Code.

The Panel first considered whether the advertisement used sexual appeal.

The Panel considered that the style of the swimwear the women were wearing in combination with the women’s poses did constitute sexual appeal.

The Panel noted that the advertisement features both wider shots and close-ups of the models. The Panel noted that the close up scenes of the models are focussed on the product being advertised and are not specifically directed at the models’ bodies.

The Panel considered a specific scene in which a woman is depicted moving her swim bottoms after climbing out of a pool and noted that there was a focus on her buttocks. The Panel considered that the scene shows a common action upon climbing out of a pool and does not focus unnecessarily on the woman’s buttocks .

The Panel also noted a specific scene in which a woman is depicted running without a swim top on. The Panel considered that the woman is only shown from behind and her breasts are not visible.

The Panel noted that the tagline of the advertisement is “own your folly” and noted the advertiser’s response that the message of the advertisement is to have fun in their swimwear and that you don’t need to look a certain way to do that.

The Panel considered that the women in the advertisement appeared happy and having fun with other women and comfortable in the clothing they are shown in. The Panel considered that there was no suggestion of their character being exploited or degraded.

The Panel determined that the advertisement did not employ sexual appeal that was exploitative or degrading of any person or group of people and therefore did not breach Section 2.2 of the Code.

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 women are depicted in bathers and skimpy attire in a sexualised manner, and that such imagery indicates to young women that this is how they should dress and can be detrimental to their mental health.

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 women in swimwear 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 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 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 swimwear being promoted was not inherently sexualised, but considered that some members of the community may consider any advertisement featuring people in swimwear to be sexualised.

The Panel considered that the depiction of the women wearing this style of swimwear 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 then considered whether the advertisement depicted sexuality with sensitivity to the relevant audience. 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 G rating by ClearAds (not in children’s programs) 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 undue focus on nudity or the women’s bodies and the overall impression of the advertisement was not strongly sexualised. The Panel considered that the women 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 regards to the imagery of the advertisement with sensitivity to the relevant audience.

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.

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 noted a scene in the advertisement which depicted a topless woman shown from behind. The Panel considered that her breasts are not visible at any point in the advertisement, and considered most members of the community would not consider a bare back to be a depiction of nudity.

Overall, the Panel considered that the advertisement did not depict nudity.



The Panel determined the advertisement did not contain sex or nudity and treated sexuality 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 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Panel considered a scene in which a group of women appear to be about to go swimming in the ocean at night.

The Panel noted that the women are shown to frolick at the waters edge, but considered that there is no indication that they intend to proceed any further into the water. The Panel considered that this depiction, of itself, was not a depiction of unsafe behaviour.

The Panel considered a scene in which a woman jumps into a pool in a style known as a “bomb”, in which a person pulls their knees into their chest and makes a ball before hitting the water. The Panel considered that this can be unsafe if a person does not know how deep the water is.

The Panel noted that the scene shows other women already in the pool, and that the pool is at someone’s house. The Panel considered it highly likely that in an environment such as this, most members of the community would infer that the woman was already aware of the depth of the water.

The Panel noted that the next scene depicts the woman underwater and it is clear it was safe. The Panel considered that this depiction, of itself, was not a depiction of unsafe behaviour.

The Panel considered that the advertisement did not breach Section 2.6 of the Code.

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