Ad Standards Community Panel
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AdStandards.com.au

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Case Report

1. Case Number :	**0330-20**
2. Advertiser :	**Amazon Prime Video**
3. Product :	**Entertainment**
4. Type of Advertisement/Media :	**Internet**
5. Date of Determination	**11-Nov-2020**
6. DETERMINATION :	**Dismissed**

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This internet advertisement is a series of images promoting the movie Borat Subsequent Movie Film on a news website.
There are two main images included.
The first image features the actor Sacha Baron Cohen as the character Borat. He is reclining with his right leg out straight and his left leg bent. His left arm is on his left leg, and his right arm is supporting him on the ground, with his hand giving a thumbs up. The character is wearing shoes and socks and a paper mask. The mask is positioned over his genitals with the straps around his shoulders – mankini style. Text with the advertisement includes, “Wear mask. Save Live.” and “Borat Subsequent Movie film”. A label also appears on the image with the words “KCDC Kazakhstan Center Disease Control and Plague Research”.
The second image features the actor Sacha Baron Cohen as the character Borat. He is standing with his arms bent giving two thumbs up. The character is wearing shoes and socks and paper masks. One mask is on his head holding back his hair, and the other mask is positioned over his genitals with the straps around his shoulders – mankini style. Text with the advertisement includes, “Borat Subsequent Movie film”.

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

This indecent and extremely exposed, it is nudity and it's an assault on my right NOT to see that imagery on mainstream newspaper (The Age, or Sydney Morning Herald). It

has been constantly shown on any article I click to read today.There is NOW WAY to switch off this ad or tell the newspaper not to serve me this type of content.

Sexually inappropriate photo's for a main stream news platform. Advertising these images daily is visually offensive on main news website.
Larger scale is displayed after 9pm I think. But what child goes to sleep after 9pm on a weekend.
Smaller image I only seen during daytime hrs. Trying to read news headlines with my children seeing these images. I can't remove unless I leave website or click onto a headline

News.com.au is supposed to be accessed by anyone wanting to check on the news. I am offended to have a almost naked man plastered all over the site when I am checking on the news. There is at times 4 advertisements on the one page. This is unneccesary and inappropriate. Come on - this is just not on.

THE ADVERTISER'S RESPONSE

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

The advertisement is a static digital poster for the film Borat Subsequent Moviefilm on Amazon Prime Video and it is compliant with each element of Section 2 of the Code, as detailed further below. This advertisement was sent in Advance to AANA where it was found to be low risk of violating the code. These digital ads were also pre-approved by each publisher where they ran.

2.1: The advertisement does not discriminate or vilify anyone based on a protected class feature.

2.2: The advertisement is not using any sexual appeal, and certainly not in a way that implicates minors or a specific group of people. The outfit the character is wearing (a "maskini" which is a bikini made out of a facemask, paired with socks and shoes) is a joke. Borat is well known as an outrageous, satirical character. Right above him it says "Wear Mask. Save Lives." which is clearly intended to point out how ridiculous the character is in how he's wearing the mask so incorrectly.

2.3: There is no portrayal of violence in the advertisement.

2.4: There is no depiction of sex, sexuality or nudity in the advertisement. As noted above, the depiction of the character in the "maskini" is a joke and the maskini fully covers the genital area, including any public hair.

2.5: There is no offensive or obscene language used in the advertisement.

2.6: The advertisement is not depicting material contrary to community standards on health and safety as the reference to wearing a mask and how Borat is wearing the

mask is clearly intended to be a joke and the character is well known as an outrageous, satirical character.

2.7: The advertisement is clearly distinguishable as an advertisement for Borat Subsequent Moviefilm as it clearly identifies the film and includes a call to action to viewers that they can watch it on Prime Video.

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 sexually inappropriate contains nudity and is not appropriate for a main stream news site.

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

Section 2.1: Advertising or Marketing Communication shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

The Panel noted the AANA Practice Note which provides guidance on the meaning of:

- Discrimination - unfair or less favourable treatment
- Vilification - humiliates, intimidates, incites hatred, contempt or ridicule
- Religious views - a person's belief or non-belief in a faith or system of worship.

Does the advertisement portray material in a way which discriminates against or vilifies a person on account of religion?
The Panel noted that the advertisement depicts the character wearing a ring which features the Arabic word for God in the Muslim religion.

The Panel noted the advertiser's response that the ring is a small part of the image which would not be noticed by most people viewing the advertisement.

The Panel considered that the man was wearing the jewellery as part of his character and its use would not identify the character as Muslim to most people viewing the advertisement.

The Panel acknowledged that some Muslim people would be uncomfortable with the Arabic word for Allah being depicted in an advertisement which also featured a man wearing only a mask. However, the Panel considered the use of the ring in itself did not amount to a depiction which suggested that Muslim people were deserving of unfair or less favourable treatment, or which humiliates, intimidates, incites hatred, contempt or ridicule of a person on the basis of their religion.

Section 2.1 conclusion
Finding that the advertisement did not portray material in a way which discriminates against or vilifies a person or section of the community on account of religion, the Panel determined that the advertisement did not breach Section 2.1 of the Code.

Section 2.2: 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.

Does the advertisement use sexual appeal?

The Panel noted the advertisement featured one image of a man in a reclining position wearing only a mask. The Panel considered that while the character may have been parodying a sexual pose, the overall advertisement was humorous rather than sexualised.

The Panel considered that the advertisement did not employ sexual appeal.

Section 2.2 conclusion
Finding that the advertisement did not employ sexual appeal the Panel determined that the advertisement did not breach Section 2.2 of the Code.

Section 2.4: Advertising or Marketing Communications shall treat sex, sexuality and nudity 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.”

Does the advertisement contain sex?

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 considered that the man in the advertisement was alone and not interacting with anyone else or engaging in any sexual activity.
The Panel determined that the advertisement did not contain sex.

Does the advertisement contain 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 by itself a depiction of sexuality.

The Panel noted that the advertisement included an image of a man in a reclining position wearing only a mask. The Panel considered that while the character may have been parodying a sexual pose, the overall advertisement was humorous rather than sexualised. The Panel considered that the language in the advertisement was not sexualised and the man's actions weren't sexual. The Panel considered that the advertisement did not contain sexuality.

Does the advertisement contain nudity?

The Panel 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 noted that the man was depicted wearing a mask in the style of a mankini. The Panel considered that although his genitals were covered, the rest of his body was unclothed and the advertisement did contain nudity.

Is the nudity treated 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' requires 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 some sections of the community, such as children, might perceive the advertisement.

The Panel noted that the advertisement was a billboard and the relevant audience was therefore likely to be broad and include children.

The Panel noted that the man in the advertisement was dressed in a manner consistent with his well-known character. The Panel considered that the man's genitals were not visible and there was no suggestion that they could be seen through the fabric of the mask. The Panel considered that the level of nudity was similar to that which would be seen at a beach and was not inappropriate for a broad audience which would include children.

Section 2.4 Conclusion

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

Conclusion

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