



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0331-19
2. Advertiser :	Lack of Color
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet
5. Date of Determination	9-Oct-2019
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

This internet advertisement is a product listing for a hat and depicts a woman next to a pool with a cigarette in her mouth.

THE COMPLAINT

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

They are selling a hat - but the women is wearing underwear, clearly and unhealthy weight and smoking cigarettes in the ad.

THE ADVERTISER'S RESPONSE

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

Advertiser did not provide a response.



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 complainant's concern that the advertisement depicts a woman standing in underwear, smoking, and appearing to be of an unhealthy weight.

The Panel viewed the advertisement and noted the advertiser did not respond.

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 first considered the complainant's concern that the woman depicted appears to be an unhealthy weight.

The Panel noted that the woman's right arm does appear to be very thin, and her thighs appear to be thin.

The Panel considered that the woman's pose appears contorted and unnatural. The Panel considered it likely the image had been edited, however considered that a strange pose was not of itself a breach of the Code.

The Panel noted that the advertisement did not show the woman's ribcage, stomach, or back and considered that it was difficult to determine whether the woman was malnourished or unhealthily thin.

The Panel considered that although the woman depicted did appear slim, the Panel considered that without further imagery, her frame could not be considered to be contrary to Prevailing Community Standards on health and safety in relation to body weight.

The Panel then considered the complainant's concern that the advertisement depicts smoking.

The Panel noted it had previously upheld a similar image which showed a man holding a pipe in case 0410/12 where:

"The Board noted the advertisement features an image of a man with a pipe being held in his mouth.

The Board noted that its role is not to determine whether an advertisement complies with the provisions of relevant legislation related to advertising cigarettes or tobacco products.



In relation to the advertisement's compliance with the Code of Ethics the Board considered whether the depiction of a person who appears to be smoking a pipe was a depiction of material that contravened prevailing community standards on health and safety. The Board noted that government policy is to reduce the exposure of the public to messages and images that may persuade them to start or continue smoking or use tobacco products. The Board considered that while the community tolerates a level of smoking it does not tolerate images which promote smoking as glamorous or fashionable.

The Board noted the advertiser's response that the man in the image is a picture of the designer of the product. The Board noted that the man is presented in a manner that is sophisticated and formal. He is seated on a formal chair and is wearing a business style shirt.

The Board affirmed its strong view that images glamorising smoking should not be permitted and amounts to a depiction of material contrary to prevailing standards on community health and safety and contravene section 2.6 of the Code. Consistent with previous decisions (521/10, 131/11 and 140/12) the Board considered that the depiction of the gentleman of smoking did glamorize smoking and is contrary to community standards on health and safety regarding smoking."

The Panel noted that the current advertisement had a 1970's theme, by the depiction of a rotary phone and the architecture of the house.

In the current advertisement the Panel noted that the woman is depicted standing by a pool and that the house in the background is quite large. The Panel considered that the overall impression of the advertisement was aspirational. The Panel considered that fashion/glamour style of the advertisement amounted to a suggestion that smoking is a sophisticated activity.

Consistent with its previous determination the Panel considered that presenting smoking in a positive or aspirational manner is contrary to Prevailing Community Standards on health and safety and determined that the advertisement did breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.6 of the Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We write with reference to your letter dated 17 October 2019 regarding the Ad Standards Community Panel's determination for Case reference number: 0331-19.

Black Montana Pty Ltd trading as Lack of Color (Lack of Color) has considered the Panel's determination and appreciates the opportunity to provide an 'Advertiser's Statement' in response.



At this point the decision has been made to take the corrective action to discontinue the use of the image in line with the Community Panel's determination. In the future Lack of Color may modify the image for use, however, for now the image has been removed. Lack of Color is now more conscious of the influence and impression its images may have on its customers and the broader community and as such additional care will be taken in the future to consider whether its digital marketing complies with the AANA Code of Ethics.

Notwithstanding our acceptance of the Community Panel's determination, Lack of Color also wishes to make the Community Panel aware that although no response was given, this was primarily due to extenuating personal circumstances for the individual directors at the time the original complaint was received. In the absence of those circumstances Lack of Color would likely have taken the corrective action to remove the image before requiring the determination.

If you have any further queries regarding this matter, please do not hesitate to contact us.