



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0342-20
2. Advertiser :	Sportsbet
3. Product :	Gambling
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	25-Nov-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This television advertisement features an animated horse lying on a bed with a trophy covering its groin and a carrot in its mouth. The voiceover states "Waiting up for something special? Look no further big boy" and details the offer from the advertiser.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

It is sexualization of an animal and it is shown during hours when kids are watching tv, as I was watching the morning news with grand kids, and even if they weren't there, I thought it was disgusting and inappropriate. Why does everyone think the only way they can sell their product is with sex. And I must say the the volume of betting adds lately has been over the top. TV is already poor quality watching

There was an animated horse lying on a bed on its side facing towards the viewer suggestively and bearing naked male body details like a naked chest and a ' Melbourne Cup' style trophy covering the genital parts. My children and I were at the dinner table and were in full view of the sexually explicit suggestive animation.

THE ADVERTISER'S RESPONSE



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

We refer to your letter dated 6 November 2020 and the Complaint mentioned above regarding the Advertisement, a digital file of which is attached.

The Complaint

Ad Standards has identified the following section of the AANA Code of Ethics (Code) which is addressed in the Complaint:

2.4 Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience

Sportsbet strongly rejects that the Advertisement breaches section 2.4 or any other section of the Code for the reasons explained below.

Context for the Advertisement – s 2.4 of the Code: sex/sexuality/nudity

(a) Nudity

The Advertisement shows a cartoon caricature of a horse commentating on Sportsbet's offers during racing carnival. Under the Practice Code, 'nudity' relates to the 'depiction of a person without clothing or covering.(1). It is generally accepted that animals are, by definition, naked and it would be non-sensical to expect an animal such as a racehorse to be clothed. In any event, in the Advertisement there is no nudity to speak of as the cartoon horse has its so-called private parts covered.

(b) Sex/Sexuality

The Advertisement does not reference sexuality or contain any form of sexualization. The current applicable Practice Note is clear that images of men, women or children which are not permitted are those which are highly sexually suggestive. However, even in the AANA's Practice Note due to take effect in 2021, the AANA has cited examples which relate specifically to activities which are overtly sexual and depict a person or people. (2).

The imagery of a fictional horse is coupled with a racing trophy and a carrot – both which are horse-related props and are relevant to the racing promotional offer which is the subject of the Advertisement. There is no explicit pornographic language in the Advertisement.(3) If there is any subtle reference to the horse being in a 'suggestive pose' (i.e. sitting on a bed waiting up at night for a great racing offer), audience sensitivity has been applied as children would very likely be oblivious to such a remote suggestion of sexual innuendo – a principle that was noted by the Panel in the 'Australian Pork' advertisement earlier this year.



Conclusion

The Advertisement does not breach the Code and the Complaint should be dismissed.

(1) AANA, Code of Ethics, section 2.4.

(2) AANA, Code of Ethics Practice Note, p.9 (February 2021)

(3) AANA, Code of Ethics Practice Note, p.4 (26 November 2013)

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 sexualised and sexually explicit in its depiction of a horse.

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

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 horse 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 horse in a reclining position with a trophy covering its genitals, and later with a carrot in its mouth characteristic of a rose. 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 horse'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 horse was depicted with a trophy covering its genitals. The Panel considered that although his genitals were covered, the rest of his body was unclothed. The Panel noted the advertiser's comment that animals were necessarily "naked" but also noted that due to the anthropomorphised nature of the horse some members of the community may consider the advertisement to 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 the treatment of sex, sexuality and nudity 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 broadcast on television and received a 'B' ClearAds rating, meaning that it cannot be broadcast:

- In any Program that is broadcast between 5.00 am and 8.30 pm and is principally directed to Children (aged under 15); and
- In a P, C or G classified Program on any channel:
 - Between 6.00am and 8.30am on any day; and
 - Between 4.00 pm and 7.00 pm on any day.

The Panel considered that the relevant audience was therefore likely to be broad and include children.



The Panel considered that the horse in the advertisement was presented in a humorous and satirical manner. The Panel noted that the horse's genitals were not visible and considered that the level of nudity in the advertisement was mild 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.