



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0349-21</b>
<b>2. Advertiser :</b>	<b>Daily Jocks</b>
<b>3. Product :</b>	<b>Lingerie</b>
<b>4. Type of Advertisement/Media :</b>	<b>Poster</b>
<b>5. Date of Determination</b>	<b>8-Dec-2021</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

### DESCRIPTION OF ADVERTISEMENT

This poster advertisement is larger than life size and placed on a store front window. It features a shirtless man holding a balloon that is twisted into the shape of male genitalia.

### THE COMPLAINT

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

*Unsolicited graphic mature content showcasing naked genitalia in a family/school neighbourhood. Highly distressing for children and sexual abuse victims.*

### THE ADVERTISER'S RESPONSE

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

*Complaint states*



*"A man grasping a visceral and graphic representation of another man's penis in his hand"*

*Response*

*No 'penis' is shown - Model is holding a balloon.*

*Complaint*

*"Unsolicited graphic mature content showcasing naked genitalia in a family/school neighbourhood. Highly distressing for children and sexual abuse victims."*

*Response*

*No nudity is shown in this advertisement - male in shorts holding a balloon.*

*Response to code 2.4*

*"Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience."*

*We acknowledge there is a school nearby however, this area is a hub of activity for the LGBTQI+ community who make up the large majority of our customer base and employees.*

*Prahran has a long history with supporting the LGBTQI+ community and is home to many LGBTQI+ owned and operated businesses such as ours.*

*The audience for this advertisement is furthermore defined with the text on the image 'Can't host' which is a popular saying within our community.*

*The demographic of this area is showcased by tourism Australia - <https://www.australia.com/en/things-to-do/arts-and-culture/lgbtqi-suburbs-in-australia.html>*

## **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 unsolicited graphic mature content in an inappropriate location

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:

*“Overtly sexual depictions where the depiction is not relevant to the product or service being advertised are likely to offend Prevailing Community Standards and be unacceptable.*

*“Overtly sexual images are not appropriate in outdoor advertising or shop front windows. Although not exhaustive, the following may be considered to be overtly sexual:*

- *Poses suggestive of sexual position: parting of legs, hand placed on or near genitals in a manner which draws attention to the region;*
- *People depicted in sheer lingerie or clothing where a large amount of buttocks, female breasts, pubic mound or genital regions can be seen; The use of paraphernalia such as whips and handcuffs, particularly in combination with images of people in lingerie, undressed or in poses suggestive of sexual position;*
- *Suggestive undressing, such as pulling down a bra strap or underpants; or*
- *Interaction between two or more people which is highly suggestive of sexualised activity.*

*“Discreet portrayal of nudity and sexuality in an appropriate context (eg advertisements for toiletries and underwear) is generally permitted but note the application of the relevant audience. More care should be taken in outdoor media than magazines, for example.”*

### **Does the advertisement contain sex?**

The Panel considered whether the advertisement contained sex. The Panel noted the definition of sex in the Practice Note is “sexual intercourse; person or persons engaged in sexually stimulating behaviour”.

The Panel noted that the advertisement does depict a man holding a phallic shaped balloon however considered that there is no depiction of sexual behaviour. The Panel considered that the advertisement did not contain sex.

### **Does the advertisement contain sexuality?**

The Panel noted the definition of sexuality in the Practice Note is “the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters”.

The Panel considered that an image of a phallic shaped balloon would be considered by most members of the community to refer to sexual matters.

### **Does the advertisement contain nudity?**



The Panel noted that the definition of nudity in the Practice Note is “the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity”.

The Panel noted that the man is shirtless but wearing pants and considered that the advertisement does contain partial nudity.

**Are the issues of sexuality and nudity treated with sensitivity to the relevant audience?**

The Panel noted that the definition of sensitivity in the Practice Note is “understanding and awareness to the needs and emotions of others”.

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 Panel noted that this advertisement is in a store window facing a public street and considered that the audience viewing the advertisement would be broad and would include children. The Panel noted that the advertisement is larger than life size.

The Panel considered that the advertiser’s response that a penis is not depicted is disingenuous and considered that while not a real penis, most members of the community would view the balloon as depicting a penis.

The Panel noted that the advertiser does sell adult toys and fetish items and considered that the representation of a penis is consistent with their product range.

The Panel noted it had considered a similar issue in case 0270-19 which featured balls that looked like breasts. In that case:

*“The Panel considered that the advertisement used balls which look like breasts as a visual analogy for the movement of breasts while playing sport and considered that this was not a depiction which was sexually suggestive. The Panel considered that while breasts are a female feature, the depiction of breast-like objects in itself was not a depiction of sexuality.”*

In the current case, the Panel acknowledged that the sexualised nature of the imagery itself may not be considered appropriate by people viewing the advertisement, however in this instance the Panel considered that the imagery depicted in the advertisement is representative of products available for purchase in the store.

The Panel considered that the advertisement was sexually suggestive, but not highly sexually suggestive and not explicit and that the advertisement was not inappropriate for a broad audience.



### **Section 2.4 Conclusion**

The Panel determined the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant 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 complaint.