



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

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| 1. Case Number : | 0359-19 |
| 2. Advertiser : | The Firm Gentlemens Club |
| 3. Product : | Sex Industry |
| 4. Type of Advertisement/Media : | TV - Out of Home |
| 5. Date of Determination | 13-Nov-2019 |
| 6. DETERMINATION : | Dismissed |

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification
AANA Code of Ethics\2.2 Exploitative or Degrading
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This TV Out of Home advertisement depicts 8 still images that rotate.

Image 1 – Brunette woman in red bra, suspender belt and stockings. Text states the business name.

Image 2 – Blonde topless woman wearing red underpants and a Santa hat holding a Christmas present in front of her breasts. Text states “Kiss me under the mistletoe. December 19 to 22, 2019”.

Image 3 - Brunette woman in black stocking, underpants and long lingerie-style top kneeling on a bed. Text states the business hours.

Image 4 - Two woman in black lingerie on a lounge. One woman in sitting and the other is half straddling her. Text states “Gentlemens Wednesday. Top shelf spirits \$10”.

Image 5 - Blonde woman in a black bra and large black witches hat on a red chair. Text states “Trick or Treat. October 31 2019 to November 2 2019”.



Image 6 - a woman in a white shirt standing in front of a blackboard with the words "Hot for teachers. November 28 to 30, 2019".

Image 7 - Man in suit depicted sitting with a lamp behind him. Text states "Wednesday \$10.00 back bar".

Image 8 - Phone screen depicted with images of two women and the text "Swipe right Wednesday". Image 1 shows a brunette woman in a black bodysuit. Image 2 shows a blonde woman in white lingerie".

THE COMPLAINT

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

I object to turning women's bodies into a commodity to be sold. I object to the message that a sexually empowered woman is white, young and undressed whereas the man is presented as clothed, seated and middle aged. I object to the inference that it takes multiple women to please one man. I object to the blatantly sexual nature of these images on display along Adelaide's cultural precinct. I object to the use of Christmas (a religious occasion, a family celebration and something that gets the attention of kids) as a vehicle to display a woman who is topless, with unrealistically large breasts protruding over and around a present. I object to the use of Halloween (again, something that gets the attention of kids) to promote the services of a strip joint. I object to the depiction of two women engaging in sexual foreplay - not because it is two women, but because the advertisement is clearly directed at men - inviting them to be the third member. How to explain that one to my daughters!? who, despite no school or childcare nearby, I would still have occasion to bring past this venue so that I can use the train station. I recently travel to Adelaide railway station with the entire year 2 class of my daughter's primary school... but most of all I object to ineffective self regulation, ridiculous delays and the dismissal of my previous complaint when this stuff can just keep rolling on for months after the original ruling by Ad Standards was upheld.

THE ADVERTISER'S RESPONSE

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

Image 1 -

Image of women in red lingerie which promotes our brand

Image was purchased from shutterstock.com (Image number 1216556293)

Image 2 -

Image of women in Christmas clothes which promotes our Christmas themed event

Image was purchased from shutterstock.com (Image number 536536942)



Image 3 -

*Image of women in black lingerie which promotes our brand and opening hours
Image was purchased from shutterstock.com (Image number 529295986)*

Image 4 -

*Image of 2 women in black lingerie which promotes our Gentlemens Wednesday
campaign
Image was purchased from shutterstock.com (Image number 1258628959)*

Image 5 -

*Image of women wearing black hat which promotes our Halloween themed event
Image was purchased from shutterstock.com (Image number 725836030)*

Image 6 -

*Image of women wearing stockings and skirt which promotes our Teachers themed
event
Image was purchased from shutterstock.com (Image number 777721921)*

Image 7 -

*Image of man sitting down which promotes our Gentlemens Wednesday campaign
Image was purchased from adobestock.com (Image number 246174114)*

Image 8 -

*Image of phone with 2 pictures which promotes our swipe right Wednesday campaign
Images was purchased from shutterstock.com (Image number 535151278)
and adobestock.com (Image number 168612913)*

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 concerns that the advertisements:

- Treats women's bodies as a commodity to be sold
- is blatantly sexual where children could see them
- uses Christmas and Halloween themes which would attract the attention of children
- depicts two women engaged in foreplay in a way which is blatantly targeting men
- presents an image of a fully clothed man, contrasting with the images of undressed women

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



The Panel noted that this out of home TV advertisement featured 12 still images which are viewed on a television screen at the front of the venue, and are visible to people on the street. The Panel noted that of these 12 images, four had been considered as part of previous cases 0185-19 and 0282-19 and would not be reconsidered as part of this case, as these images were not found to breach the Code. The Panel noted that there were eight separate images to be considered as part of this case.

The Panel considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray 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 Practice Note to Section 2.1 provides the following definitions:

“Discrimination – unfair or less favourable treatment.

Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.”

The Panel noted the complainant’s concern that the advertisement portrays women as young and undressed in contrast with the image of the clothed, middle-aged man.

The Panel considered that the image of the man was separated from the image of the women, and the man was not depicted interacting with the women in any way.

The Panel noted that the advertised business is a gentleman’s club, and the depiction of the women in lingerie is a reflection of the advertised business.

The Panel considered that the women in the advertisement are not shown to receive unfair or less favourable treatment because of their gender, rather they are shown in clothing and poses that are reflective of the nature of the business and that those poses are not inappropriately depicting the women.

The Panel considered that the women were not shown in a manner which humiliates, intimidates, incites hatred, contempt or ridicule.

The Panel considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did not breach Section 2.1 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: “Advertising or Marketing Communication shall not employ sexual appeal... in a manner which is exploitative or degrading of any individual or group of people.”



The Panel noted the complainant's concern that the advertisement represents women's bodies as commodities.

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.

The Panel first considered whether the advertisement used sexual appeal.

The Panel considered that the depiction of attractive women in connection to a gentleman's club is one which most people would consider to contain sexual appeal. The Panel considered that the seven images which featured women would be considered to use sexual appeal. The Panel considered that image seven depicting the fully clothed man in a seated position did not use sexual appeal.

The Panel then considered whether the advertisement used sexual appeal in a manner that was exploitative of an individual or group of people.

The Panel noted that this is a legal business and although people may dislike the fact that women in the business are paid for adult entertainment services, this does not mean that the advertisement is exploitative.

The Panel considered the woman in image five was depicted as being dressed as a witch for Halloween, and that there is no focus on the woman's body.

The Panel considered the woman in image six and noted that she was dressed in a white shirt with the top three buttons undone to expose her cleavage. The Panel considered that the woman was dressed in the theme of an attractive teacher to promote a 'hot for teachers' event and the depiction of the woman with her shirt unbuttoned was relevant to this theme.

The Panel considered that images one, three, and eight featured women in lingerie. The Panel considered that there was a focus on the women's bodies in the advertisement, however noted that the advertised product is a gentleman's club which features scantily clad women as part of its service. The Panel considered that the images used in the advertisement are clearly related to the product being advertised.

The Panel considered that the woman in image two was depicted as topless, however considered that she is holding a large present which is covering her nipples and lower breasts. The Panel considered that the focus on the woman's body was clearly related to the venue being advertised.



The Panel noted that the women in image four were depicted in an intimate pose and noted the complainant's concern that the depiction of two women engaging in sexual foreplay is clearly directed at men, inviting them to be the third member.

The Panel noted the advertisement included the caption, "Gentlemens Wednesday" and considered that the impression of the advertisement was that this was the kind of activity which may be featured in the venue on this night.

The Panel considered that the women were posed intimately, but not as though they were engaged in sexual activity, and considered that the advertisement depicted the women as undertaking activities in the course of their employment, and did not otherwise suggest the women were objects.

The Panel considered that images one, two, three, four, five, six and eight did not use sexual appeal in a manner that was exploitative of an individual or group of people.

The Panel then considered whether the advertisement used sexual appeal in a degrading manner.

The Panel considered that the women in the images were depicted as confident and considered that the advertisement did not depict the women in a way which lowered them in character or quality.

The Panel considered that the advertisement did not use sexual appeal in a degrading manner.

The Panel determined that images one, two, three, four, five, six and eight advertisement did not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people.

The Panel determined that that the advertisement 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 noted the complainant's concern that the advertisement was confronting, offensive and inappropriate for a location with a broad audience including children.

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 considered whether the image 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 images five and seven do not contain sexual intercourse, sexually stimulating or suggestive behaviour and do not contain sex.

The Panel considered that the depiction a woman in revealing lingerie is not a depiction of sexual intercourse, sexual stimulation or suggestive behaviour. The Panel considered that images one, two, six and eight do not contain sex.

The Panel considered that image three featured a woman in lingerie, kneeling on a bed with her legs apart pulling up her camisole and that this could be considered suggestive behaviour.

The Panel considered that image four featured two woman in lingerie in an intimate pose and that this could be considered sexually stimulating or suggestive behaviour.

The Panel considered that images three and four did depict sex.

The Panel considered whether the advertisement contained 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 depiction of the man in image seven was highlighting a drink special and not the sexual nature of the business. The Panel considered that image seven did not depict sexuality.

The Panel considered that images of attractive women in conjunction with promotions for events at a gentleman’s club would amount to the recognition or emphasising of sexual matters. The Panel considered that images one, two, three, four, five, six and eight did depict sexuality.

The Panel considered whether the advertisement contained 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 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 treats nudity with sensitivity to the relevant audience.



The Panel considered that image one featured a woman from the side wearing a g-string with a large amount of her buttocks visible and that this would constitute nudity.

The Panel considered that image two featured a woman without a top on and considered that this would constitute nudity.

The Panel considered that images three, four and eight featured images of women in lingerie and whilst their breasts and genitals are covered some members of the community may consider the depiction of women in lingerie to constitute nudity.

The Panel considered the woman in image five was wearing a large witch's hat and what appeared to be a backless dress. The Panel considered that this image did not contain nudity.

The Panel considered that the female in image six is wearing a white button-up shirt with some cleavage exposed. The Panel considered that this image did not contain nudity.

The Panel considered that the man in image seven was fully clothed and did not contain nudity.

The Panel determined that image seven did not contain sex, sexuality or nudity and did not breach Section 2.4 of the Code.

The Panel considered whether the images one, two, three, four, five, six and eight treated the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel considered that the depiction of the women was relevant to the business's services being promoted. The Panel considered that although it is reasonable for an advertiser to depict the services being promoted, the depiction should be 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' 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 suggestions 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 this image appears on an electronic sign on the street and is visible 24 hours a day. The Panel considered that the relevant audience includes workers, people walking to the businesses and people who are not going to the business but who are walking past, and that this last group would include children.

The Panel considered image one. A minority of the Panel felt that the pose and style of the woman's lingerie meant that a large amount of the woman's buttocks was visible, and that this constituted too much nudity for a broad audience. The majority of the Panel considered however that the image was highly stylised and representative of the services offered by the business. The Panel considered that the level of nudity in the advertisement was not excessive and that the woman was not posed in an overtly sexual way. The Panel considered that the image would not attract the attention of young children, and that young children who viewed the advertisement would see a woman in her underwear and would not understand the sexual nature of the business. The Panel determined that image one did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Panel considered image two. The Panel noted the complainant's concern that the image featured a Christmas theme which would be attractive to children. The Panel considered that although the woman is clearly topless, her lower breasts and nipples are covered and there is no explicit nudity in the advertisement. The Panel considered that the wording 'kiss me under the mistletoe' was mildly sexually suggestive, but was not explicit or overly sexual. The Panel noted that Christmas would be attractive to children, however considered the level of nudity and sexuality in the advertisement was mild. The Panel considered that the image was advertising a Christmas themed event at the venue and that it was reasonable for the advertiser to use a Christmas theme in advertising. The Panel determined that image two did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Panel then considered image three. The Panel considered that the woman kneeling on the with her legs slightly apart was a sexualised pose. The Panel considered that the woman's lingerie covered her genitals and her nipples and the level of nudity was mild. The Panel considered that there was no sexually suggestive wording in the advertisement. The Panel considered that the image would not attract the attention of young children, and that young children who viewed the advertisement would see a woman in her underwear and would not understand the sexual nature of the business. The Panel determined that image three did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Panel then considered image four. The Panel noted the complainant's concern that the image depicts two women engaged in foreplay in a way which is blatantly targeting men, inviting a male viewer to be a third party. A minority of the Panel considered that the poses of the women were highly sexually suggestive and that the level of sexuality in the advertisement was not appropriate for a broad audience. The majority of the Panel considered that while the pose of the women is sexual, the image is non-aggressive and gentle in nature and depicts the two women in an equal partnership. The majority of the Panel considered that the depiction of this image



with the description Gentleman's Wednesdays was a reflection of the nature of the business being advertised. The majority of the Panel considered that the women's lingerie was not overly revealing and there was no direct focus on the women's bodies. The Panel determined that image four did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Panel then considered image five. The Panel noted the complainant's concern that the image featured a Halloween theme which would be attractive to children. The Panel considered that the woman in the advertisement was not posed in a sexual manner and was wearing appropriate clothing. The Panel considered that the image was advertising a Halloween themed event at the venue and that it was reasonable for the advertiser to use a Halloween theme in advertising. The Panel determined that image five did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Panel then considered image six. The Panel considered that the woman in the advertisement was not posed in an overly sexual manner, and was not dressed in overly revealing clothing. The Panel considered that the advertisement was suggestive of a sexual fetish towards teachers, however considered that this was directly in relation to the event being advertised. The Panel considered that young children who viewed the advertisement would see an image of a teacher and would not understand the sexual nature of the business. The Panel determined that image six did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Panel then considered image eight. The Panel considered that the images of the two women were shown in a Tinder style app and related to the event being promoted. The Panel considered that the two women were depicted in a sexualised pose, however considered that the depiction of the images as part of an app on a phone meant that the focus of the advertisement was not of the women's bodies. The Panel considered that the women were appropriately covered and there was no sexualised language in the advertisement. The Panel considered that the image would not attract the attention of young children, and that young children who viewed the advertisement would see an app showing two woman in their underwear and would not understand the sexual nature of the business. The Panel determined that image eight did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

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

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