



## Case Report

|   |                               |                                   |
|---|-------------------------------|-----------------------------------|
| 1 | Case Number                   | 0361/15                           |
| 2 | Advertiser                    | Lush Australia                    |
| 3 | Product                       | Toiletries                        |
| 4 | Type of Advertisement / media | Poster                            |
| 5 | Date of Determination         | 23/09/2015                        |
| 6 | DETERMINATION                 | Upheld - Modified or Discontinued |

### ISSUES RAISED

- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.4 - Sex/sexuality/nudity S/S/N - nudity

### DESCRIPTION OF THE ADVERTISEMENT

An image of four women who are naked, standing on a wooden floor and facing a wall. A diverse range of sizes, shapes and skin tones are shown. Written text appears at the top of the image and to the middle right hand side.

### THE COMPLAINT

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

*Because it is pornographic in nature and breaches community and parental standards of what should be involuntarily viewed in public by children and adults.*

*It was placed at a child's eye level in a shopping centre. It shows naked women touching other naked women and it is shown in a public place.*

*I am offended as this is nudity for the sake of causing a stir and is offensive and unnecessary.*

*I was unable to shield my children from exposure to this advert as it was on a poster in the centre aisle of the shopping centre. When I contacted LUSH they said that the women in the photo consented so it was ok- I'm sorry but I never consented for myself or my children to be exposed to nudity on our weekly shopping trip!*

*The nudity is completely inappropriate for the family environment of the shopping centre.*

### THE ADVERTISER'S RESPONSE

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

*In August/September 2015, LUSH Fresh Handmade Cosmetics activated a campaign across Australia, both online and in our 28 retail stores.*

*This campaign and the imagery associated with it was intended to highlight the excessive packaging used for many products, but in particular in the cosmetics industry. We feel that the vast majority of this packaging is unnecessary, both the manufacture and disposal after the product has been used are damaging to our planet.*

*For this reason, more than 100 of our products are 'naked', or unpackaged. The image in the window is a body positive reference to this fact, and is not in any way intended to cause any offense or upset. The women in the images are members of the LUSH team, who felt strongly about this issue and volunteered to be part of our campaign to highlight this important issue. The photos are shot not to titillate, but with the utmost respect for these wonderful human beings and their commitment to this cause. The image is completely untouched, as we feel that we should not be ashamed of our bodies in their natural state, and that every single one of us is beautiful in our diversity, regardless of colour, shape, size, or life choices.*

*The ASB has notified LUSH Fresh Handmade Cosmetics of three complaints received from members of the general public who saw our advertisement in our Marion, Chermside and Carindale stores. We hereby respond to the details of each complaint, addressing all parts of Section 2 of the AANA Code of Ethics.*

*Complaint Reference 0361/15 received 1st September 2015*

*Issues Raised To Date:*

*2.4 - Sex/sexuality/nudity S/S/N - nudity*

*Complaints Received To Date:*

*COMPLAINT RECEIVED ON: 28 Aug 2015*

*MEDIA: Poster*

*PLACE: Lush Cosmetics at Westfield Marion*

*WHEN : 28.08.2015*

*ADVERTISER: Lush Cosmetics*

*AD DESCRIPTION: Full length rear shot of four naked women, with the caption, "We prefer to go naked, like 100s of our products".*

*REASON FOR CONCERN: The nudity is completely inappropriate for the family environment of the shopping centre. 0361/15*

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*Section 2.1 of the Code provides that "Advertising or Marketing Communications 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 complainant has not suggested we have breached this section of the code.*

*Section 2.2 of the Code provides that "Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people." The complainant has not suggested we have breached this section of the code.*

*Section 2.3 of the Code provides that "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised." The complainant has not suggested we have breached this section of the code.*

*Section 2.4 of the Code provides that "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience." The complainant has*

*suggested we have breached this section of the code.*

*Section 2.5 of the Code provides that "Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided." The complainant has not suggested we have breached this section of the code.*

*Section 2.6 of the Code provides that "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety." The complainant has not suggested we have breached this section of the code.*

*Our response to the specific complaint allegations referring to the relevant section of the Code*

*In reference to Section 2.4 of the Code*

- The advertiser has not portrayed an image that is highly sexually suggestive and the depiction of the naked bodies is in line with core business activities, the sale of cosmetics and toiletry products, which are applied to the skin.*
- There is no full frontal nudity and genitalia is not shown.*

*Further comments*

- Prevailing community standards were considered in the creation of this campaign by the diverse members of our business who created the creative concept. Our customer care team and highly trained staff were available to discuss the ethical and body positive messages with anyone that wished to discuss their views, be it in person, telephone, email or social media. Overwhelming, we received thousands of messages of support from the general public and were told by many customers that the use of untouched images made them feel confident and validated. They also applauded our ethical messages of packaging free, "naked" products.*
- This campaign was concluded on the 9th September and had been removed from all of our stores.*

*Complaint Reference 0361/15 received 3rd September 2015*

*Issues Raised To Date:*

*2.4 - Sex/sexuality/nudity S/S/N - general*

*2.4 - Sex/sexuality/nudity S/S/N - nudity*

*Complaints Received To Date:*

*COMPLAINT RECEIVED ON: 03 Sep 2015 MADE BY: \* \* confidentiality requested \* \**

*MEDIA: Poster*

*PLACE: Lush Store, Westfield Shopping Centre, Chermside Qld*

*WHEN : 3/09/2015*

*ADVERTISER: Lush*

*AD DESCRIPTION: It is a picture of 4 naked ladies on a Lush poster, with the words "Go Naked" and the women have their hands on the other's backsides REASON FOR CONCERN: It was placed at a child's eye level in a shopping centre. It shows naked women touching other naked women and it is shown in a public place. 0361/15*

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*Section 2.1 of the Code provides that "Advertising or Marketing Communications 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 complainant has not suggested we have breached this section of the code.*

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*Our response to the specific complaint allegations referring to the relevant section of the Code*

*In reference to Section 2.4 of the Code:*

- The advertiser has not portrayed an image that is highly sexually suggestive as interpreted by the AANA Code of Ethics Practice notes.*
- The depiction of the naked bodies is in line with core business activities, the sale of cosmetics and toiletry products, which are applied to the skin.*
- There is no full frontal nudity and genitalia is not shown.*
- This advertisement is not designed to appeal to young people.*
- The advertisement does not contain images of Children or Young People.*

*Further comments*

- Prevailing community standards were considered in the creation of this campaign by the diverse members of our business who created the creative concept. Our customer care team and highly trained staff were available to discuss the ethical and body positive messages with anyone that wished to discuss their views, be it in person, telephone, email or social media. Overwhelming, we received thousands of messages of support from the general public and were told by many customers that the use of untouched images made them feel confident and validated. They also applauded our ethical messages of packaging free, “naked” products.*
- Relevant audience was considered in relation to this campaign. Our customer base is mainly women aged between 18 and 34 who are often targeted by cosmetic marketing that is not body positive. The position of the women’s hands is designed to indicate “support” for each other in their diversity and help “prop them up”, not in a sexual manner at all.*
- The position of the image is in line with the location of the lightbox in a kiosk store and the same image was shown across all of Australia, whether the image was in a store or a kiosk. The image being a child’s eye level was not intentional, a kiosk store lightbox is floor mounted.*
- This campaign was concluded on the 9th September and had been removed from all of our stores.*
- Customer feedback regarding our campaigns is highly valued and will help shape the direction of future campaigns. Our dedicated Customer Care team documents all feedback and we are grateful for the time taken by the public to express their views.*

*Issues Raised To Date:*

*2.4 - Sex/sexuality/nudity S/S/N - general*

*2.4 - Sex/sexuality/nudity S/S/N - nudity*

*Complaints Received To Date:*

*COMPLAINT RECEIVED ON: 02 Sep 2015*

*MEDIA: Poster*

*PLACE: LUSH store, Westfield Carindale*

*WHEN : Today, Sep 2nd, 2015*

*ADVERTISER: LUSH cosmetics*

*AD DESCRIPTION: The campaign shows a full body, naked photograph of the backsides of four women.*

*REASON FOR CONCERN: I am offended as this is nudity for the sake of causing a stir and is offensive and unnecessary. I was unable to shield my children from exposure to this advert as it was on a poster in the centre aisle of the shopping centre. When I contacted LUSH they said that the women in the photo consented so it was ok- I'm sorry but I never consented for myself or my children to be exposed to nudity on our weekly shopping trip! 0361/15*

*\*\*\*\*\**

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*Our response to the specific complaint allegations referring to the relevant section of the Code*

*In reference to Section 2.4 of the Code:*

- The advertiser has not portrayed an image that is highly sexually suggestive as interpreted by the AANA Code of Ethics Practice notes.*
- The depiction of the naked bodies is in line with core business activities, the sale of cosmetics and toiletry products, which are applied to the skin.*
- There is no full frontal nudity and genitalia is not shown.*
- This advertisement is not designed to appeal to young people.*
- The advertisement does not contain images of Children or Young People.*

*Further comments*

*• Prevailing community standards were considered in the creation of this campaign by the diverse members of our business who created the creative concept. Our Customer Care team and highly trained staff were available to discuss the ethical and body positive messages with anyone that wished to discuss their views, be it in person, telephone, email or social media. Overwhelming, we received thousands of messages of support from the general public and were told by many customers that the use of untouched images made them feel confident and validated. They also applauded our ethical messages of packaging free, "naked" products.*

- *Relevant audience was considered in relation to this campaign. Our customer base is mainly women aged between 18 and 34 who are often targeted by cosmetic marketing that is not body positive. Our brand sees individuals as unique and valued, not as physical flaws that need to be “fixed”.*
- *This campaign was due to conclude on the 9th September however due to ongoing discussions with Centre Management and feedback from the general public, we elected to remove the image on the 2nd September from our Carindale location.*
- *Customer feedback regarding our campaigns is highly valued and helps shape the current and future direction of campaigns. Our dedicated Customer Care team documents all feedback and we are grateful for the time taken by the public to express their views. There was no intent to offend with this campaign.*

## **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement features women who are completely naked and is inappropriate for viewing by children.

The Board viewed the advertisement and noted the advertiser’s response.

The Board 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 Board noted that this television advertisement features the backs of four women. The women are naked and the text above them reads “We prefer to go naked – like over 100 of our products.”

The Board noted the complainants’ concerns over the use of naked women to promote a product.

The Board noted it had previously dismissed a case for PZ Cussons (0043/11) that featured a naked man, with his back to the viewer, standing in a field of tea tree plants.

In the above case, the Board noted that:

“The man’s intergluteal cleft is partly visible above the plants. The Board noted the accompanying text of the advertisement reads, “Packed with natural stuff” and considered that the combination of the tea tree plants and the man in his natural state are relevant to this text.”

“...the Board noted that despite the broad audience of the advertisement, most members of the Board considered that the advertisement’s relevance to the product, the lack of any sexualised suggestion in the advertisement and the fact that the nudity depicted no genitalia meant that the advertisement treated nudity with sensitivity to the relevant audience.”

Similar to the case mentioned above, the Board noted that the naked women and the text “We prefer to go naked – like over 100 of our products” did have relevance to the advertiser’s proposition that it does not use unnecessary packaging on its products.

The Board considered that although the models were naked, the image was not sexually suggestive and the placement of a model’s hand on the bottom of another model was considered as an indication of affection, not a sexualised pose.

The Board considered that its assessment of the complaint related to the nudity contained in the advertisement, not issues related to sex and sexuality.

The Board considered that the key issue for consideration in the current matter is the relevant audience of this advertisement and whether the treatment of nudity in this advertisement was sensitive to that relevant audience.

The Board noted the distinction between the target audience of the advertiser and the relevant

audience of the advertisement. The Board noted that the poster advertisement is displayed in shop windows and shopping malls where any member of the public could view it. The Board therefore considered the relevant audience of this advertisement is very broad, including children.

The Board noted that advertisements displayed in such forms of media cannot be filtered by parents to prevent children viewing them. The Board expressed concern that shop poster advertising must ensure that it is sensitive to a broad audience.

The Board noted it had previously upheld a case for Tom Ford (0158/15) where a woman was lying naked in a pool of the fragrance being advertised. In that case, the Board noted: “the model is naked and that she is lying on her front. The Board noted that the woman’s breast is covered by her own arm, however her buttocks and inter-gluteal cleavage are clearly visible. The Board noted the woman appears to be bending over in a way that exposes her buttocks.

The Board noted the placement and size of this advertisement and noted that the image is within a department store and is positioned high above product lines and fragrance counters. The Board noted that the audience will be broad and will include adults and children.

The Board noted that the woman is lying in a pool of water or what may be interpreted as a pool of the fragrance being advertised but agreed that the use of a completely naked woman in a promotion of a fragrance has little relevance.

The Board noted that the exposure of the woman’s buttocks in the manner depicted is very sexualised and in the context of a fragrance advertisement in a department store in full visibility of children does not treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.”

In the current matter, the Board acknowledged that the image did not have the same sexual nature as that mentioned above.

The Board considered however, that most reasonable members of the community would understand and accept that the nudity in the advertisement is not pornographic or overtly sexualised but rather a visual statement related to the damage that packaging has on the environment.

The Board noted the advertiser’s response that “the image in the window is a body positive reference to this fact [unpacked products]...” and that “the image is completely untouched, as we feel that we should not be ashamed of our bodies in their natural state, and that every single one of us is beautiful in our diversity, regardless of colour, shape, size, or life choices.”

The Board noted that the advertisement was in the store window and in the aisles of the shopping centre which means it can be viewed by a broad audience including children. The Board considered that the level of nakedness in the current advertisement exceeded that shown in both cases mentioned above. The full body images and the fact that there are four women rather than an individual meant that the overall impact was increased and was confronting.

The Board considered that the advertisement does not treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience which would include children and determined that the advertisement did breach Section 2.4 of the Code.

Finding that the advertisement did breach section 2.4 of the Code, the Board upheld the complaints.

## **THE ADVERTISER'S RESPONSE TO DETERMINATION**

Thank you for your recent email advising us that the Advertising Standards Board has upheld the complaint(s) received in relation to our “Naked” Campaign and note your determination at a recent meeting that LUSH Fresh Handmade Cosmetics Australia has breached one or

more of the Advertiser codes administered by the ASB.

We note your offer to notify the ASB of the measures we intend to take or have taken in relation to this determination and wish to include the following statement in the published case report.

We were pleased with the ASB findings that the poster was not deemed to be sexually suggestive and most members of the Board, when taking into account the slogan wording, image particulars and our proposition of not using unnecessary packaging for our products, were satisfied that the nudity had been treated with sensitivity to the relevant audience. However; it is noted that when considering previously upheld cases for PZ Cussons and Tom Ford, the level and quantity of nudity present in our advertising, exceeded that of the cases above and as such, has breached Section 2.4 of the Code and the complaints have been upheld.

We accept the ASB's findings and will take this under advisement when planning future campaigns. We also wish to re-confirm that this advertising was removed from all LUSH stores on the 9th September with our Carindale store removing theirs on the 2nd September.

We would also like to share a small selection of some of the positive feedback and comments we received from the general public regarding this advertisement:

Facebook responses:

"...Its impact on me was so great that while in the shower, it made me cry. It is so good to see un-photoshopped normal, natural looking women. It's so rare to see that and it made me feel really good to see it. I have spent a large majority of my adult life hating my body and your poster made me feel good. THANK YOU from the bottom of my heart for doing this..."

"Love your new campaign. It's great to see a company standing up for women's natural bodies and it's great for you to stand up to your values of reducing packaging and celebrating people of all shapes and sizes with no airbrushing. The human body is a natural thing and people shouldn't be afraid to love their bodies for what they are."

"...Tackling the issues of body image and the effects packaging has on the environment at the same time is honestly so smart and I'm sending a hug to whoever the models in the photos are..."

Email responses:

"...It is so wonderful to see non-fictional female bodies in advertising. It made me feel so happy to see models with real cellulite and freckles and everything - features that come completely standard on most women, but we have somehow been taught to believe that these are a trauma that must be corrected. Thank you for presenting real women's bodies in a way that is so unashamed and unapologetic..."

EDM responses:

"Love the photo. Power to all women!"



All forms of customer feedback regarding our campaigns is highly valued and helps shape the direction of future campaigns. Our dedicated Customer Care team document all feedback received and in sharing some of these messages with the ASB, we hope this will help reflect the wider impact to the broad audience that viewed our advertisement.