



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0374-19
2. Advertiser :	Shopback
3. Product :	Other
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Determination	13-Nov-2019
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This TV On Demand advertisement depicts a male character standing in a bedroom shirtless and taking photographs of something below his waist which he then send to two women who gasp. The women comment "It's so big I can't believe it's real" and "I want to get my hands on all of this right now". The scene cuts back to the man who is shown to be wearing a towel and taking photos of boxes at his feet. One of the women then shows another woman her phone and speaks to her about the benefits of the app.

THE COMPLAINT

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

The reference to taking a dick picture followed with a comment referring to the sick pic. Promoting porn

In an online age where men and women are subject to unsolicited imagery (both in online dating and from sports people) I feel this is laughing at what can be damaging to younger viewers. The sharing of the images with what appears to be a teenage female is also inappropriate behaviour of something that should remain private to the sender if this is what they choose.



THE ADVERTISER'S RESPONSE

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

The TVC advertisement that is the subject of complaint 0374-19 is compliant with AANA Advertiser Code of Ethics (Code of Ethics),

With specific regard to Section 2, the Advertisement does not:

- *Discriminate against or vilify any person or section of any community;*
- *Use images of minors;*
- *Employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people;*
- *Present or portray violence;*
- *Include strong or obscene language, or otherwise inappropriately use language; and/or*
- *Depict material contrary to Prevailing Community Standards on health and safety*

The advertisement, which is a promotion for ShopBack, highlights the savings that can be made on ShopBack through key brand partners. The male character (Josh) photographs his shopping haul and sends it to his two friends (Martha and Keira, respectively). The two female characters comment on the amount of shopping and the deals he has received. We then cut to Josh taking more photos of his shopping (which we see in frame) and Keira talks about the great deals you can find on ShopBack. All characters on screen are above the age of 25 and no minors have been filmed.

Furthermore, the advertisement has been provided a G classification through CAD approvals. It is currently only being shown during Love Island (rated M) on Nine Now BVOD. In order to view BVOD on Nine Now the viewer must be over the age of 18. Given the classification of the advertisement and its placement, ShopBack believes that the advertisement is suitable for the mature audience viewing it.

We note the complainant's particular concerns that Keira is discussing Josh's shopping haul with a minor, however all actors are above the age of 25 and ShopBack submits that brands mentioned are not in themselves offensive.

Specifically, the complainants have referred to Josh taking a photo of his penis and sending it to his friends. While there is at the very most some oblique innuendo, this is clearly not the case and ShopBack fervently denies that the advertisement 'promotes porn', which is an exaggeration. The complaints have also wrongly recounted the advertisement. There was no "sharing of the images with what appears to be a teenage female" at all (not to mention the fact that the female in question is 25). When the audience and the said female finally look at the images on the phone, it clearly shows ShopBack's app and Keira immediately explains ShopBack's shopping and cashback rewards.



To summarise, we request that the complaint relating to our advertisement be dismissed on the grounds that:

- It has been given an official G classification through CAD and is only being shown during an M rated TV show.*
- There are no minors in the advertisement whatsoever.*
- It is clear within the advertisement that Josh is taking a photo of his shopping and not of his penis.*

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:

- Promotes porn
- Suggests inappropriate pictures are shown to a teenage female

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

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 considered whether the advertisement contained sex, sexuality or nudity.

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 advertisement contained a suggestion that the male was photographing his genitals, and this could be considered sexually suggestive behaviour. The Panel considered that the advertisement did contain a suggestion of sex.

The Panel considered whether the advertisement depicted 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 for the application of the term in the Code, the use of male or female actors in an advertisement is not of itself a depiction of sexuality.

The Panel considered that the suggestion that the male was taking a photo of his genitals and sending it to multiple women, and the reactions of the women, was a



suggestion of a capacity to express sexual desire and an emphasis of sexual matters. The Panel considered that the advertisement did contain sexuality.

The Panel considered whether the advertisement contained nudity and 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 a factor when considering whether an advertisement treats nudity with sensitivity to the relevant audience.

The Panel considered that while the male's genitals are not visible there is a suggestion in the advertisement that he is naked.

The Panel considered whether the advertisement treated the issue of 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...Full frontal nudity and explicit pornographic language is not permitted. Images of genitalia are not acceptable."

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 noted 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 the advertiser's response that the advertisement is only shown Love Island on 9Now. The Panel considered that the advertisement would have a mainly adult and older teenage audience.

The Panel considered that while there is a suggestion early on in the advertisement that the male is sending pictures of his genitals to two women, the actual situation is clearly resolved in that he is shown wearing a towel and taking photos of products he has purchased using the app.



The Panel noted the complainants' concern that that one woman appeared to show a teenage girl an unsolicited, sexual image.

The Panel acknowledged that there is a concern in the community relating to unsolicited sexualised images being sent to teenagers and younger women, however in this instance the Panel considered that all the women in the advertisement appeared to be over eighteen. Further, the reactions of the two women receiving the messages did not appear as though the messages were unsolicited or unwanted.

The Panel considered that while the advertisement did initially contain a sexual suggestion, the real actions of the man was clearly resolved in a non-sexualised manner. The Panel considered that while there was a suggestion of nudity the male is later depicted wearing a towel and most members of the community would not consider a male wearing a towel to constitute inappropriate nudity.

The Panel considered that the innuendo in this advertisement was not inappropriate for an audience of people who would be watching the MA rated show Love Island.

The Panel considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant television audience of the program and in the Panel's view the advertisement did not breach Section 2.4 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaint.