



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0390-20
2. Advertiser :	Hard Fizz
3. Product :	Alcohol
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	20-Jan-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

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

DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement on the @juan-medina_jcm page features the caption "A bit fizzy @chloechapman @hard_fizz @fae".

The post features a series of images including:

- a woman wearing pink roller skates and a white bikini bending over to adjust her laces. A can of the product is in front of her
- a woman holding the product resting it on the buttocks of another woman
- The torso of a woman holding in a pink bikini holding a watermelon and a can of the drink
- A woman wearing a white bikini next to a pool with product near her
- A man spraying a woman in a pink bikini with the product.
- A close up of the product spraying upwards as it is squeezed.

THE COMPLAINT

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

I am super disappointed that a new brand with such high influence on social media are using the sexualisation of the female body to sell alcohol. As a young female, I am appalled by the continuation of fizz breaching alcohol advertising standards. Sexual bikini shots, models pouring the products over themselves, content where celebrities are implying the influence the product give them.



It's 2020. Isn't sex sells a little bit old and lazy marketing? We should be empowering young Australians to be body confident. Not using the female body to appeal to young men.

Their content continues to be soft porn.

This is something we shouldn't be promoting or flooding the feeds of young Australians

THE ADVERTISER'S RESPONSE

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

The content in question was conceived, directed and acted by our owners of FIZZ. No paid models were used in the making of the content and it was captured in a controlled, private setting. Our diverse ownership group play an integral role in much of our marketing and brand vision and it was not our intent to offend, nor to endorse excessive consumption or unsafe behaviour. The female ownership group are empowering themselves to showcase their balanced lifestyle and taking good care of their bodies.

Our intent was not targeting young men as described rather it was targeted to a diverse demographic who appreciate body confidence in young Australians. Our marketing on Instagram is organic and these posts involved no paid spend meaning it will be reaching consumers that have proactively chosen to follow the brand rather than "flooding the feeds" of young Australians as mentioned in the complaint.

We strongly deny that this marketing should be described as 'softporn' and find this terminology offensive to the efforts of the people involved and those that feature in them

At Hard Fizz our brand marketing will always feature light-hearted humour, with a "tongue in cheek approach", which was consistent in the social media content the complaints refer to. The overwhelming response to these posts was positive and we intend to continue to market to the majority in an appropriate way rather than market to a minority.

We have an established internal governance structure which we will continue to follow, to review all content and ensure it meets community guidelines prior to making public. We will continue to diligently follow this process, taking into account this point of view.

It was not the intent of these posts in question to offend or promote unsafe behaviour.

We will continue to build the brand in the marketplace in a responsible manner and will be consulting industry along the way.



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 advertisement:

- Uses sexualisation of the female body to sell alcohol
- Is soft porn.

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

Section 2.2: Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people.

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.

Does the advertisement use sexual appeal?

The Panel noted there are six images relating to this advertisement. The Panel considered whether each image contained sexual appeal.

Image 1

The Panel noted that this image featured a woman in a white bikini and pink roller skates bending over. The Panel considered that a large amount of the woman's skin, including her right buttock, is visible. The Panel considered that Image 1 contained sexual appeal.

Image 2

The Panel noted that in this image the woman was resting her drink on another woman's backside and considered that Image 2 did contain sexual appeal.

Image 3

The Panel noted that the image featured a close-up of a woman's torso and that the woman is wearing a pink bikini. The Panel considered that Image 3 contained sexual appeal.

Image 4

The Panel noted that this image featured a woman in a white bikini with her knees on the ground, leaning forward resting on her arms. The Panel considered that an image



of an attractive woman in a bikini by a pool was an image which contained sexual appeal.

Image 5

The Panel noted that this image featured a fully clothed man spraying a woman in a bikini with a can of the product. The Panel considered that some members of the community may interpret the advertisement to be an allusion to the man ejaculating or urinating on the woman. The Panel considered that the advertisement featured sexual innuendo and sexual appeal.

Image 6

The Panel noted that this image was a close-up of the product spraying into the air, and considered that it did not contain sexual appeal.

Does the advertisement use sexual appeal in a manner that is exploitative?

Image 1

The Panel considered that the woman is shown in a confident and active manner. The Panel noted that the image and caption were clearly a promotion for the alcohol brand, and not a suggestion that the woman is an object or commodity. The Panel noted that the woman's entire body is visible and there is no focus on the woman's body parts. The Panel noted the advertiser's response that the woman is not a paid model but is one of the owners of the brand, and it is relevant for her to feature in marketing for that brand.

The Panel determined that Image 1 did not use sexual appeal in a manner that is exploitative of the woman in the advertisement.

Image 2

The Panel considered that the woman's facial expression makes it appear as though she is having fun. The Panel considered that although the full body of the other woman is not pictured, the overall suggestion is that the women are friends and the first woman is cheekily placing a cold drink on the backside of the other woman. The Panel considered that the women are not treated as objects or commodities. The Panel considered that the focus of the advertisement is on the woman's face, and the product being advertised. The Panel noted the advertiser's response that the women are not paid models but are owners of the brand, and it is relevant for them to feature in marketing for that brand.

The Panel determined that Image 2 did not use sexual appeal in a manner that is exploitative of the women in the advertisement.

Image 3



The Panel considered that the product is clearly on display in the advertisement and there is no suggestion that the woman is an object or commodity. The Panel considered the focus of the advertisement is on the product and the watermelon the woman is holding, and there is no particular focus on the woman's body parts. The Panel noted the advertiser's response that the woman is not a paid model but is one of the owners of the brand, and it is relevant for her to feature in marketing for that brand.

The Panel determined that Image 3 did not use sexual appeal in a manner that is exploitative of the woman in the advertisement.

Image 4

The Panel noted that the woman is posed as though she is stretching by a pool in a bikini and considered that her attire was relevant to the setting. The Panel considered that the product is depicted in the image, and referred to in the caption, and there is no suggestion that the woman is an object or commodity. The Panel considered that the woman's full body was visible and that there was no particular focus on her body parts. The Panel noted the advertiser's response that the woman is not a paid model but is one of the owners of the brand, and it is relevant for her to feature in marketing for that brand.

The Panel determined that Image 4 did not use sexual appeal in a manner that is exploitative of the woman in the advertisement.

Image 5

The Panel noted that a fully clothed man spraying a woman with liquid could be seen to be a power disparity. However, in this instance the Panel considered that the woman was posed with her arms above her head and was seen to be having fun. The Panel considered that the overall impression of the advertisement was of two people having fun with the product and was not an indication that the woman was an object or commodity.

The Panel considered the focus of the advertisement is on the situation and there is no particular focus on the woman's body parts. The Panel noted the advertiser's response that the woman is not a paid model but is one of the owners of the brand, and it is relevant for her to feature in marketing for that brand.

The Panel determined that Image 1 did not use sexual appeal in a manner that is exploitative of the woman or man in the advertisement.

Does the advertisement use sexual appeal in a manner that is degrading?

Image 1

The Panel considered that the woman was posed in a fun, active manner and that she was not portrayed in a manner which lowered her in character or quality.



Image 2

The Panel considered that although the full body of one of the women is not shown, the overall impression of the advertisement is two friends having fun. The Panel considered that the advertisement does not lower the women in character or quality.

Image 3

The Panel considered that the purpose of the image is to highlight the flavour of the product and the image does not lower the woman in character or quality.

Image 4

The Panel considered that the woman was posed in a fun, active manner and that she was not portrayed in a manner which lowered her in character or quality.

Image 5

The Panel considered the overall impression of the advertisement was of a man and woman having a good time while promoting their product, and that this did not lower the man or woman in character or quality.

Section 2.2 conclusion

The Panel found that image 6 did not contain sexual appeal and the provision of Section 2.2 did not apply to this image.

The Panel found that images 1, 2, 3, 4 and 5 did not employ sexual appeal in a manner which is exploitative or degrading of an individual or group of people, nor did the advertisement as a whole.

The Panel determined that the advertisement did not breach Section 2.2 of the Code.

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).

Image 1



The Panel noted that the woman in the advertisement was not engaged in sexual activity. The Panel considered that Image 1 did not contain sex.

Image 2

The Panel noted that one of the women is resting her hands and a can of drink on the other women's backside. The Panel considered that while this is an intimate pose, Image 2 does not contain sex.

Image 3

The Panel considered the woman is posed with her hands holding the product and she is not engaged in sexual activity. The Panel considered that Image 3 did not contain sex.

Image 4

The Panel considered that the woman is posed as though stretching and that she is not engaged in sexual activity. The Panel considered that Image 4 did not contain sex.

Image 5

The Panel considered that while the image may be interpreted as an allusion to a sexual act, the mere act of spraying someone with water is not a depiction of sex.

Image 6

The Panel noted that this image was mainly of the product and 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.

Image 1

The Panel noted that the woman wearing a bikini and bending over and that this could be considered a sexualised pose. The Panel considered that Image 1 contained sexuality.

Image 2

The Panel considered that a woman depicted as touching and resting against another woman's backside was an image which contained sexuality.

Image 3



The Panel considered that an image of a woman in a bikini with only her torso visible could be considered to contain sexuality.

Image 4

The Panel noted that the woman is wearing a bikini and stretching and considered that this pose was sexualised. The Panel considered that Image 4 contained sexuality.

Image 5

The Panel considered that an image of a woman being sprayed with liquid whilst wearing a bikini is an image which contains sexuality.

Image 6

The Panel noted that this image was mainly of the product and 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'.

Image 1

The Panel considered that the woman is wearing a white bikini and bending over, and that a large amount of her buttocks is visible. The Panel considered that the image contained partial nudity.

Image 2

The Panel noted that both women were wearing bikinis and that a large amount of the second woman's buttocks is visible. The Panel considered that the image contained partial nudity.

Image 3

The Panel noted that the woman is wearing a pink bikini, and that some members of the community would consider an image of a woman in a bikini to contain partial nudity.

Image 4

The Panel considered that the woman is wearing a white bikini and is posed in a manner which means a large amount of her buttocks is visible. The Panel considered that the image contained partial nudity.

Image 5



The Panel noted that the woman is wearing a pink bikini, and that some members of the community would consider an image of a woman in a bikini to contain partial nudity.

Image 6

The Panel noted that this image was mainly of the product and did not contain nudity.

Are the issues of sexuality and 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 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 was an Instagram post on the photographer's own Instagram page which tagged the brand and the woman featured in the ad. The Panel considered that the relevant audience would be followers of the photographer's page and would likely be older teenagers and adults.

Image 1

The Panel considered that while the woman's pose may be sexualised, the overall feeling of the advertisement was of a woman having fun and engaging in physical activity. The Panel considered that the woman's whole buttocks, genitals and breasts were not visible and that she was dressed appropriately for a pool-side activity.

The Panel considered that the image was not highly sexually suggestive and was appropriate for the relevant Instagram audience.

Image 2

The Panel considered that the overall impression of the image was fun, and that the mild sexuality and nudity were not inappropriate for the relevant Instagram audience.

Image 3

The Panel considered that the woman's breasts and genital region were appropriately covered by the bikini and the partial nudity in the advertisement was not inappropriate for the relevant Instagram audience.

The Panel considered that the purpose of the image was to highlight the flavour of the alcoholic beverage, and the woman's pose was not overtly sexual. The Panel



considered that the level of sexuality in the image was not inappropriate for the relevant Instagram audience.

Image 4

The Panel noted that the woman was wearing a bikini and that her breasts, genital region and entire buttocks were not visible. The Panel considered that the partial nudity in the image was not inappropriate for the relevant Instagram audience.

The Panel considered the overall impression of the advertisement was of a woman enjoying the sun and stretching beside a pool. The Panel considered that the level of sexuality in the image was not inappropriate for the relevant Instagram audience.

Image 5

The Panel noted that the woman was wearing a bikini and that her breasts and genital region were not visible. The Panel considered that the partial nudity in the advertisement was not inappropriate for the relevant Instagram audience.

The Panel noted that this advertisement could be interpreted in a sexualised manner, however considered that the overall impression of the advertisement was of two people having fun and was not overly sexual.

Section 2.4 Conclusion

The Panel found that Image 6 did not contain sex, sexuality or nudity.

The Panel found that Images 1, 2, 3, 4 and 5 did treat sex, sexuality and nudity with sensitivity to the relevant Instagram audience, as did the advertisement as a whole. The Panel determined that the advertisement 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.

ABAC Code

The Panel noted that advertisements about alcohol products may be considered against the provisions of the AANA Advertiser Code of Ethics as well as the Alcohol Beverages Advertising Code Scheme (ABAC). The Panel noted that complaint/s in this case were referred to ABAC for assessment. The Panel noted that the ABAC Responsible Alcohol Marketing Code (ABAC Code) is an alcohol specific code of good marketing practice and has specific standards which apply to the promotion of alcohol products. The Panel further noted that it can only consider complaints about alcohol advertising under the concept of prevailing community standards as set out by the AANA Code of Ethics. The Panel noted that the advertisement may be considered by the ABAC Chief Adjudicator or the ABAC Adjudication Panel applying the ABAC Code, as well as this determination under the Code of Ethics.