



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 :	0392-20
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 features a woman in a white bikini leaning out the side of the pool. Her head isn't visible and the product is in the foreground.

The caption for the advertisement states, "WATERMELON & BERRY, BEEN MELTING TASTE BUDS SINCE DAY ONE BABY ~ #letsgetfizzy

### 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.*

*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 that this image featured a woman in a white bikini leaning out of a pool in the background, and in the foreground is an image of the product. The Panel noted that the woman's cleavage is visible. The Panel considered that the advertisement contained sexual appeal.

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

The Panel noted that the image and caption were clearly a promotion for the alcohol brand, and was not a suggestion that the woman is an object or commodity. The Panel noted that she is in the background and is not the focus of the advertisement. 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 the advertisement did not use sexual appeal in a manner that is exploitative of the woman in the advertisement.

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

The Panel considered that the focus of the advertisement was on the product, not the woman, and her depiction was appropriate to the pool setting. The Panel considered that she was not portrayed in a manner which lowered her in character or quality.

**Section 2.2 conclusion**

The Panel found that the advertisement did not employ sexual appeal in a manner which is exploitative or degrading of an individual or group of people and 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).

The Panel noted that the woman in the advertisement was not engaged in sexual activity. The Panel considered that the advertisement 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.

The Panel noted that the woman wearing a bikini posed in a manner where her cleavage was emphasised and this could be considered sexualised. The Panel considered that the advertisement contained 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’.

The Panel considered that the woman is wearing a white bikini and that her cleavage is visible. The Panel considered that the image contained partial 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 advertiser's own Instagram page. The Panel considered that the relevant audience would be followers of the advertiser's page and would likely be adults.

The Panel considered that whilst the woman's attire may be sexualised, the focus of the advertisement was on the product. The Panel considered that the woman's genitals and full breasts were not visible and that she was dressed appropriately for a pool activity.

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

#### **Section 2.4 Conclusion**

The Panel found that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant Instagram 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.

#### **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.