



## Case Report

1	Case Number	0410/15
2	Advertiser	Nando's Australia Pty Ltd
3	Product	Food / Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	28/10/2015
6	DETERMINATION	Dismissed

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

A young man and his friend sit down to eat at a Nando's restaurant. One of the men has his mobile phone in his back pocket and as he sits down to eat he pocket dials his girlfriend. The girlfriend is travelling in a car with her mother and answers the call. The mother and daughter hear the boyfriend and his male friend enjoying and commenting about the new range of food. Images of the new Nando's Burgers, Wraps and Pita's range. The logo then appears 'Nando's - Eat Interesting'.

### THE COMPLAINT

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

*The female overhears Sexual noises suggesting that her partner is having a homosexual relationship with his friend. I have seen this ad during the day when children are viewing the television. Inappropriate ad with sexual innuendo.*

*The woman and her friend do not know what the comments are about. We are meant to be amused that the audio and visual don't match.*

*I object to this advertisement because the audio is explicitly sexual in nature. The audio also suggests promiscuous relationships.*

*While I object to this content I also object to the time that it is being aired.*

## **THE ADVERTISER'S RESPONSE**

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

*We have considered the complaint and the advertisement in question in light of the provisions of the AANA Code of Ethics ("the Code").*

*We note that the nature of the complaint relates specifically to the concern that the advertisement in question contains audio that is sexually explicit in nature. We have carefully considered the Code, and have assessed its provisions against the content of this advertisement. We submit that the advertisement does not breach the Code on any of the grounds set out in the same.*

*We note that provision 2.2 of the Code sets out 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." We note that the advertisement in question does not attempt to employ sexual appeal in any way. The conversation between the males in the eating scenes is presented in a humorous context, being mistaken as risqué in nature when heard by the female characters. There is no accompanying sexual imagery at all, and the context of the conversation is clearly established to the viewer in the scenes with the males eating. Accordingly, we submit that the advertisement does not breach provision 2.2 of the Code.*

*Further, we note that provision 2.4 of the Code sets out that "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience." We note that the only references to sexuality in the advertisement pertain to the noises made by the male characters as they eat their food. The noises they make convey their enjoyment and satisfaction, and this is clear to the viewers who can see the accompanying visuals. The only characters in the advertisement that hear the noises and accompanying conversation out of context are the female characters, and although they appear shocked, it is clear to the audience that this is due to them hearing the exchange out of context, and getting the wrong idea due to the double meaning applicable to the phrases used in the conversation. Misunderstandings due to hearing conversations out of context is a common occurrence which most viewers would recognise and be able to relate to with good natured humour.*

*We note that the advertisement in question was rated "W" by CAD and was only shown in timeslots appropriate to its rating.*

*Accordingly, we submit that the advertisement does not breach provision 2.4 of the Code, as any sexuality present in the advertisement is treated with sensitivity to the relevant audience. Further, we submit that the advertisement does not breach any other provisions of the Code.*

*Finally, we have considered the AANA Food & Beverages Advertising & Marketing Communications Code ("F&B Code"), and in our view, there are no provisions that are specifically relevant to this advertisement, as no claims with regards to nutrition or any of the other matters pertaining to the F&B Code are made. Accordingly, for the sake of*

*completeness we submit that the advertisement is not in breach of any provision of the F&B Code.*

## **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 a scenario with sounds that are sexual in nature and inappropriate for viewing by children.

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

The Board then 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 the advertisement features two men at a Nando’s restaurant. One of the men has his mobile phone in his back pocket and as he sits down to eat he pocket dials his girlfriend.

The girlfriend is travelling in a car with her mother and they can hear the two men enjoying and commenting on the range of food. Images of the Nando’s Burgers, Wraps and Pita’s are seen and the logo then appears ‘Nando’s – Eat Interesting’.

The Board noted that the advertisement is a light hearted depiction of a funny situation and intended to show the new range of meals available at the restaurant in an entertaining way.

The Board noted that the men are shown eating in a restaurant and that the visuals in combination with the noises are clearly understood to be noises of appreciation for the food and their expression and conversation between the two is clearly referencing the flavours of the food.

The Board noted that the girlfriend and mother can only hear the conversation and sounds and cannot see what the men are doing. The Board agreed that from the sounds heard by the women, without the context of seeing the men consume the food, the noises could be misunderstood to be something of a more sexual nature.

The Board agreed that the intention of the advertisement was to create a situation that could have double meaning and that the sounds do have a sexual innuendo but it is very mild.

The Board noted the advertisement had been rated ‘W’ by CAD and had been aired in the relevant W timeslot.

The Board considered that the depiction of the men eating albeit being misinterpreted as being involved in something else more intimate was not inappropriate in the context of a W rated advertisement which could be seen by a broad audience including children.

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

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

