



Case Report

1	Case Number	0419/12
2	Advertiser	Natural Health Specialists
3	Product	Health Products
4	Type of Advertisement / media	Mail
5	Date of Determination	14/11/2012
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.4 - Sex/sexuality/nudity S/S/N - nudity
- 2.5 - Language inappropriate language

DESCRIPTION OF THE ADVERTISEMENT

Brochure sent through the post addressed to occupants of households. The text describes the 'sex magnet' and how it can increase the strength of a man's erection. There are testimonials from satisfied customers as well as an endorsement from a Doctor. The images include a naked man in a state of arousal, men caressing women, a woman putting her hand in to the underwear of a man and topless women in various porn-style poses.

THE COMPLAINT

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

Normally we wouldn't complain but this mail was sent without us wanting it and it is R rated and my children would have seen it if we hadn't been vigilant.

I believe that the two brochures are pornographic and are offensive to me and others – they display nude images full frontal (man with erection and woman in compromising positions and with men). The ads also advertise a free DVD of “Belladonna's FM - Extreme positions for girls who've been very naughty” – which I would assume is pornographic in nature. I don't know the legality of this but I believe that these unsolicited ads are soliciting pornography and should be taken up with the police

The photographs are of a highly pornographic nature and suggestive.

We did not ask for this to be sent to us.

My grandson usually opens all our junk mail, I am so glad he wasn't around this time, this could have had a severe impact on him.

With the amount of pornography around why should I have to have this mailed to us. It's disturbing enough to see it where you don't have any control, but my home is my safe haven from this and our home has now been violated.

What do I do with the offending material, do I send it to you, please let me know as I do not wish this filth in my house any longer than it has to be.

Explicit nudity in sex scenes suggesting behaviour with little sensitivity to the viewer I did not request to get in the mail. Unsolicited mail sent to my address with pornographic images that could be opened by any member of my family.

My husband and I consider the material to be pornographic. Sexually explicit photographs are included. Male with full penal erection. Couples lovemaking and obviously copulating. I am a registered nurse and midwife so am not sheltered or prudish but this material was shocking. This type of advertising should be confined/restricted to the sex industry outlets not in the general public domain and being sent by mail.

THE ADVERTISER'S RESPONSE

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

The letters you have received complaints about were part of a small test mailing to Australia which did not work well.

It is certainly not our intention to break the laws of your or any other country so we will not run the mailing again in Australia or any of our target markets.

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 explicit sexual imagery and language.

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 advertisement is for a product the advertiser claims can improve the sexual performance of men and that it features images of a man in a sexually aroused state as

well as various images of men and women wearing limited or no clothing. The Board noted the advertiser's response that they did not intend to use this marketing material in Australia in the future but noted that it had been sent in the mail.

The Board noted the complainants' concerns that the imagery in the advertisement is pornographic and not suitable for unsolicited mail. The Board noted that the images in the advertisement included an image of a naked man demonstrating the supposed effect of the product on his manhood and considered that whilst this imagery could be considered to be relevant to the advertised product, in the Board's view the majority of the community would consider that this depiction of an aroused man is not appropriate for advertising material. The Board noted that other images in the advertisement included woman posing topless and embracing men and considered that these images were highly sexualised and not appropriate.

The Board considered that the images were sexually explicit and that they did not treat sex, sexuality and nudity with sensitivity to the relevant audience.

On this basis the Board determined that the advertisement did not treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did breach Section 2.4 of the Code. The Board then considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: "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 Board noted that the advertisement features descriptions of the supposed effects of the product and considered that the language used is sexual rather than medical and that its overall tone is not appropriate in the circumstances. The Board considered that whilst the language used would not be considered strong by most members of the community it would be considered obscene.

The Board considered that the advertisement did use obscene language and determined that it did breach Section 2.5 of the Code.

The Board determined that the advertisement did breach Section 2.5 of the Code. Finding that the advertisement did breach Sections 2.4 and 2.5 of the Code, the Board upheld the complaints.

ADVERTISER RESPONSE TO DETERMINATION

The advertiser advised that the material will not be used again.

