



Case Report

1	Case Number	0454/12
2	Advertiser	Wimmers
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	28/11/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

The advertisement shows two men and a woman standing at the front door of a house. The men are depicted in a way (through their clothing and one of them holding a fishing rod) which suggests they are on their way to go fishing. One of the men (man #1) explains that he left his rod at another person's house and walks away from the house. The other man (man #2) and the woman are then shown going into the house and into a bedroom together. The final part of the advertisement shows man #2 opening a fridge in a kitchen, picking up a Wimmers' soft-drink from the fridge, placing the soft-drink back in the fridge and finally filling up a glass of water from a tap in the kitchen.

THE COMPLAINT

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

It demeans women and is inherently sexist.

It portrays a voiceless, untrustworthy woman who has no moral objection to sleeping with one man when in a relationship with another.

It says that stealing a beverage of a friend is more morally objectionable than sleeping with their partner.

The advert has been deliberately shot like a low budget porn film, which heightens the sexism.

THE ADVERTISER'S RESPONSE

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

First, it is important to note that the specific complaint regarding the advertisement appears largely based on the inferences drawn by the complainant that: man #1 and the woman are a couple; and man #2 and the woman have sex when they go into the bedroom. These inferences are merely implicit and can not be conclusively determined from the advertisement. There is nothing overtly or explicitly sexual in the advertisement and all characters are fully clothed at all times. However, this response will address the issues raised by the complainant with respect to the inferences made.

The advertiser asserts that the advertisement is complicit with section 2 of the AANA 2012 Code of Ethics (“the Code”). Generally speaking, the advertisement is not out of line with prevailing community standards. The advertisement is not overtly or explicitly sexual, and the complainant’s perceptions of what the advertisement depicts can be derived by implication only. The advertiser does not refute that certain implications about the advertisement may be drawn by some people upon viewing it. However, considering the advertisement’s ‘M-rating’ classification and appropriate broadcast scheduling, the implication proffered by the complainant would be drawn by adults only.

Specifically addressing section 2 of the Code:

Section 2.1 – Discrimination or Vilification re: gender:-

The advertiser refutes that the advertisement discriminates against or vilifies any of the characters in the advertisement on account of their gender (or any other attribute listed in the Code). The conduct and treatment of the characters in the advertisement are not represented in any way which is relatable to or because of their gender. The characters in the advertisement are not treated in a disparaging manner because of their gender. As such, the advertisement does not offend this section of the Code.

Section 2.2 – Employing sexual appeal in a manner which is exploitative and degrading of any individual or group of people:-

This section was not specifically raised in the complaint; however it is clear from the tone of the comments in the complaint that the Board may consider this section in making its determination. Although there is an implicit undertone of sexual appeal to the advertisements, it is not employed in a way which exploits or degrades any individual or group of people. The characters are obviously consenting adults, so any suggestion that the perceived actions of the characters are exploitative or degrading is unjustifiable. The inferences of the advertisement, although morally objectionable to the complainant, are not necessarily condoned by the advertisement or advertiser. Just because an advertisement alludes to a particular act, does not mean it condones the act. The AANA 2012 Code of Ethics Practice Note (“Practice Note”) suggests that just because a sexual undertone in advertisement may offend some people, it does not necessarily go against prevailing community standards. Further, in the context of the relevant mature audience, the perceived actions of the characters in the advertisement are not out of contemplation of the relevant audience. The Practice Note states that discreet portrayal of sexuality is generally permitted, particularly when taking into consideration the context of the relevant audience. It is clear that the advertisement does not breach this section of the Code.

Section 2.4 – Treat sex, sexuality and nudity with sensitivity to the relevant audience:-

Given the ‘M-rated’ classification of the advertisement and the broadcasting of the advertisement at appropriate times, it is clear that the discreet undertone of sex and sexuality in the advertisement is treated with the sensitivity appropriate to the mature audience it is targeted at. The advertisement has no semblance of nudity or explicit sexual depictions. The

advertisement's broadcasting schedule is complicit with the Broadcasting Services Act 1992 (Cth). It is the advertiser's view that a reasonable and mature adult audience would not find the advertisement's treatment of sex and sexuality insensitive. As such, this section of the Code is not offended by the advertisement.

Specific issues raised by the complainant:

The advertiser respectfully refutes the assertions made by the complainant. Generally, it is apparent that the complainant is confusing the use of sexuality with the concept of sexism or discrimination or vilification on the basis of gender and sexuality.

Specifically, the complaint states that the advertisement "portrays a voiceless, untrustworthy woman". This statement is merely perception. It should also be noted that man #2 also does not speak throughout the commercial. Further, both man #2 and the woman are consenting adults in the actions perceived by the complainant.

The complaint asserts that the advertisement "says that stealing a beverage of a friend is more morally objectionable than sleeping with their partner." As previously stated, just because an advertisement alludes to a particular act, does not mean it condones the act. In fact, the advertiser asserts that the advertisement in fact assumes and adopts the prevailing community standard that sleeping with your friend's partner is objectionable.

The complaint states that the advertisement was "deliberately shot like a low budget porn film". This is merely opinion and a matter of taste regarding production quality. Just because an advertisement might be low budget does not make it adverse to the Code or prevailing community standards.

Conclusion:

The advertisement is intended to be light-hearted and humorous and is targeted to a mature adult audience. The issues raised in the complaint are based upon inferences and not upon anything explicitly shown in the advertisement. The advertisement does not breach the Code and does not condone or promote behaviour out of line with prevailing community standards, particularly in the context of its classification and broadcasting schedule.

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 complainant's concerns that the advertisement is demeaning to women in its suggestion that a woman will happily sleep with her partner's friend behind his back.

The Board considered whether the advertisement was in breach of Section 2.1 of the Code. Section 2.1 of the Code states: "Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of...gender..."

The Board noted that the advertisement features a woman leading her partner's friend in to her bedroom whilst her partner is away from the house.

The Board noted the complainant's concerns that the woman is presented in a manner which suggests that women have no moral objections to sleeping with someone else. The Board noted that the man's friend is also depicted as having no moral objections regarding the woman but has hesitation in having his friend's drink and considered that the overall tone of the advertisement is farcical and not suggestive of women per se behaving in a morally questionable manner.

The Board determined that the material depicted did not discriminate against or vilify any person or section of the community on account of gender and did not breach Section 2.1 of the Code.

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 the advertiser’s response that the advertisement features fully clothed actors and considered that whilst the advertisement strongly suggests that the man and the woman have engaged in sexual activity, this suggestion is presented in a manner which is not inappropriate for an M rated advertisement which should only be viewed by persons over 15 years of age.

Based on the above the Board determined that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and did not breach Section 2.4 of the Code.

Further finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaint.