



CASE REPORT

1. Complaint reference number	372/09
2. Advertiser	Jamba GmbH(Lust Mobile)
3. Product	Food & Beverages
4. Type of advertisement	Pay TV
5. Nature of complaint	Portrayal of sex/sexuality/nudity – section 2.3
6. Date of determination	Wednesday, 26 August 2009
7. DETERMINATION	Upheld – discontinued or modified

DESCRIPTION OF THE ADVERTISEMENT

This television commercial has a range of images relating to the voice over script.

The image of brunette woman with superimposed ‘large pink lips’ to cover her breasts and bottom accompanied by voice over “Uhhhh - this summer is too hot to handle. Watch Tera getting naked by the pool, just SMS X5.”

The next image is of a blonde girl whose bottom is covered by the superimposed ‘lips’, she appears to rub her hand near her bottom and then shown to be sucking her fingers accompanied by the voice over “19 year old Nikki sure can’t wait for her private picnic, join her with X6, WOW”.

The image of a blonde woman with superimposed ‘large pink lips’ to cover her breasts and bottom accompanied by voice over, “Chelsea is all wet and sweaty... want to see what happens next? Just text X7”.

The last image is a TV screen with the words “2 hot 2 show” accompanied by voiceover “And subscribe to check on this filthy Latina in her backyard text X8 and send to 191 555”.

THE COMPLAINT

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

Highly inappropriate sexually explicit content without prior warning. Highly inappropriate content during this timeslot, easily accessible to children.

I am absolutely APPALLED that the ad was on at this time of night, when my kids were still watching the channel with me. It was obvious that the ad was explicit, vulgar, promoting prostitution and associated behaviour. Neither my children nor my elderly mother need to see this filth and vulgarity at an 8.20pm timeslot during a family dinner. This was also screened at 10.45pm wst screened during the program titled “ Michael Jackson childhood Secrets”. This add was overly graphic and pronographic and left nothing to the imagination whatsoever and shown at a totally inappropriate timeslot for the content. If I or any member of my family wished to view this offensive material we would subscribe to the Adult channel. WE DO NOT.

Despite the time, this program is advertised as rated PG. It's Saturday night & school holidays. Michael Jackson has just passed away and MTV are cashing in on it by running the 3 1/2 hour special that a huge cross section will be watching. This type of commercial is inappropriate. Although breasts etc are covered in the ad it is extremely explicit with the models pulling underwear down, bending over and sucking their fingers. The accompanying commentary only makes it more offensive. I attempted to contact Foxtel however, they don't answer the phone after 11pm!! Don't rate the show as PG or don't run these ads during the program! I am highly offended.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

The advertisement in question is targeted towards a certain demographic of the community that desire this material for their own private use and as the complainant has indicated it can be seen as offensive by some members of the population which is why it is aired post 11pm by our media suppliers and never before 11pm.

The advertisement is placed almost 7 days prior with our media supplier and sometimes global events do occur such as the tragic passing of Michael Jackson. These events are always met with shock however it is something that we are unable to control including re-positioning of our advertisements.

The advertisement at no time neither suggests, encourages or uses prostitution to promote the downloadable services, additionally the model in the creative does not any stage touch her vagina or any genital area, and was adjusting her clothing only.

We have also gone to extraordinary lengths to conceal all body parts with on-air super imposed images.

From July 1, we as a responsible service provider have worked with ACMA in ensuring new double-opt-in regulations are carefully met, including not advertising any environment that targets those under 15 years of age – something that again this advertisement does not do, nor would encourage minors to download.

We will always welcome any concerns from the community we do feel that this advertisement was viewed at a time after the untimely passing of a global celebrity in a day part that ordinarily the general population would not be watching with their families.

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 that it has previously considered this advertisement shown in Free-to-air television (334/09) and upheld the complaints in relation to the advertisement in that media.

The Board noted that this advertisement is shown on subscription television and that one complaint relates to its broadcast on MTV at 8.30 p.m..

The Board noted the complainant's concerns about the time at which this advertisement was broadcast, that it was shown during a PG program and that it contains depictions which are sexually graphic.

The Board considered the application of Section 2.3, relating to sex, sexuality and nudity and section 2.1, relating to discrimination and vilification on the basis of gender.

The Board noted that the product advertised is sexual in nature and that advertising the product in this manner is permissible in certain timezones. However the Board is still required to consider whether the sexuality is treated with sensitivity to the relevant audience and timezones. The Board considered that this particular advertisement went further than being merely sexually suggestive and that the depiction of the woman putting her hand near her bottom and then licking her fingers is highly sexualised and not sensitive to or appropriate for even a late night audience.

The Board noted the advertisement was directed towards a mature audience and mostly screened in a late timezone appropriate to an adults only classification. However the Board noted that this advertisement was also broadcast during programming that is PG rated and at a time when children are likely to be viewing.

The Board noted that in all images the women's genitals and breasts were obscured by the 'lips' motif. The Board considered that this depiction of nudity was not inappropriate for a latenight timezone.

The Board also considered that the depiction of the women in poses that were sexualised and with obscured nudity was not, of itself, discriminatory or vilifying of women generally and therefore determined the advertisement did not breach Section 2.1 of the Code.

Finding that the advertisement did not treat sexuality, and sex with sensitivity to the relevant audience the Board determined that the advertisement breached section 2.3 of the Code and upheld complaints.

ADVERTISERS'S RESPONSE TO THE DETERMINATION

Comments which the advertiser made in response to the determination regarding this advertisement included the following:

The spot was taken off air on the 5th of July.