



CASE REPORT

1. Complaint reference number 420/08
2. Advertiser Jamba! GmbH
3. Product Mobile Phone/SMS
4. Type of advertisement Pay TV
5. Nature of complaint Discrimination or vilification Gender - section 2.1
Portrayal of sex/sexuality/nudity – section 2.3
6. Date of determination Thursday, 30 October 2008
7. DETERMINATION Upheld – discontinued or modified

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement for a Jamba! GmbH mobile phone video downloads. It shows two women in bikini bottoms in a pool in seductive poses 'playing' with each other. Animated pink stars flash on screen over the women. Viewers are asked to text a number to subscribe to the video.

THE COMPLAINT

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

*The advertisement is quite graphic in nature showing scantily clad women simulating group sex; even though there was * over the women's private areas this is far too graphic to be on television at all. The ad was on at 6.50pm during a PG television show Scrubs where I know my children were watching and were shocked and I am sure many others were too.*

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

I consider the advertisement to be too strong sexually for a PG-rated programme; my children (aged 14 and 11) were watching the programme. I do not believe that masturbation or inserting a banana into a vagina to be an appropriate subject to advertise on TV.

It is obviously suggestive of a way for a woman to degrade herself for another person's pleasure. I find it perverted and obscene.

I have seen ads for this kind of material before, usually on late night TV - but the time slot is not of consequence. However, this ad, particularly the first video shown, was very graphic in its depiction of lesbian sex. A small black bar over the genital area does not excuse the content that was so blatantly displayed. I pay for the privilege of having the Comedy Channel in my home - I DO NOT want to see that kind of porn while watching a PG comedy show.

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, and I don't think my kids or anyone else's need to see it.

It was sexually explicit and showed actual sexual acts as well as private parts.

THE ADVERTISER'S RESPONSE

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

We have received 1 complaint regarding the Bubble Mob “Sexy Russian Girls” commercial (1055 series) and to be more exact referring to the content within the spot pertaining to the text in the voice over as well as the excessive or more repeated sexual nature of the spot. We at Bubble Mob have taken serious note of this complaint, and have undertaken an internal review of the complaint (s) and through this response seek to address the issues raised.

Jamba (Bubble Mob’s parent Company) was founded in 2000 in response to the growing demand for mobile services and has since grown to become one of the largest providers of mobile content and services in the world. It is our aim to become a global force in the mobile entertainment markets. To that end we continuously strive to make our brands synonymous with quality, value and the highest level of customer service. As such, we have dedicated teams whose sole responsibilities are to ensure that we comply with the legal requirements of each country we operate in, including Australia.

We launched our operations almost 4 years ago in Australia and work closely with regulatory advertising bodies including AANA and Commercials Advice / Free TV (CAD) and all of our media partners to ensure we meet the present standards of Australian society.

We have read through the frustrations of the complainant in relation to the content in which there is claimed to be “masturbation” or “the insertion of a banana into a vagina”. We would at this point like to point out that the advertisement in question is programmed for an Adult time slot and therefore watched by an adult audience if this was seen at an earlier time then this is an issue that must be taken up with MTV not with Jamster. In relation to the content and the complaint itself: At no point is there any masturbation in the TV spot nor any insertion of any objects including bananas into vaginas. We follow the strict guidelines for delivering mobile content in Australia and none of such content would make it within the existing regulations.

Bubble Mob takes this complaint and concerns of these nature very seriously and we remain in the belief that the advertisement in question “Sexy Russian Girls” is one which has taken every possible precaution to ensure there is no visual or sexual contact or overt nudity. The TVC in question does have an erotic nature however we feel strongly that this does not surpass any excessive nude / sexual boundaries and through this letter we at Bubble Mob feel as if we have addressed the main issues in concern.

We will continue to defend the airing of this advertisement in its original form. Bubble Mob intends to be a leader in social standards and as a result of this action we feel as if the issues raised by the complainant will now have been solved as a result of our reply.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board considered the application of Section 2.3 of the Code, which provides:

"Advertisements shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone."

The Board noted complainants' concerns that the advertisement was screened during PG programmes, during programmes that may be appealing to children or for family viewing and at times when children might be watching. The Board also noted the advertiser's response that the advertisement is programmed for an adults only time slot.

The Board considered the content of the advertisement and considered that the content was appropriate for late night television viewing and that the appropriate audience is adults. The Board noted that the advertisement has been shown on PayTV channels which are not restricted to adults and that the advertisement was shown at a time of evening that children were not unlikely to be watching. The Board had regard to the nature of the Pay TV channel, the programmes, and the time in which the advertisement was screened. The Board considered that the level of nudity and sexual themes depicted in the advertisement were not appropriate to the relevant audience to which the advertisement was screened.

The Board therefore found that the advertisement was in breach of Section 2.3 of the Code and upheld the complaint/s.

ADVERTISER'S RESPONSE TO DETERMINATION

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

I can assure you that we will not put this advertisement on the television earlier than 11pm. We agree that the advertisement should never have been shown at 7pm and have informed the TV stations that this is the case.