



CASE REPORT

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| 1. Complaint reference number | 438/08 |
| 2. Advertiser | Advertising Advantage |
| 3. Product | Mobile Phone/SMS |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | Portrayal of sex/sexuality/nudity – section 2.3 |
| 6. Date of determination | Wednesday, 12 November 2008 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This TV advertisement opens with a number of bikini-clad young women cheering to the camera on the beach. The voice over says "Girl gone wild. Hot real college girls performing on your mobile phone. These girls do anything for our cameras." This is followed by individual footage of various young women: some have words such as "censored" or "girls gone wild" covering their bare breasts; some appear to be simulating sexual activity; others are engaged in wrestling each other. Throughout, the following appears on screen: "sms ORGY to 194488" and a voice over constantly encourages viewers to call the number.

THE COMPLAINT

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

Please be advised that I am fully aware this smut is permitted to be advertised after 11.00pm. My objection is that it was aired during the movie King Kong which attracts an audience of young teenagers and whilst my fifteen year old was not permitted to watch past 10.00pm the movie was taped so he could see it the next day. Had this ad been shown during a more adult type movie with an MA rating one might expect such filth, but when it occurs during a movie that children are watching this is completely unacceptable. The ASB has a duty of care when it comes to our children. TV stations should have appropriate advertising for the type of program being shown. No child should encounter this pornographic advertising when watching an otherwise suitable movie no matter how late it ends.

THE ADVERTISER'S RESPONSE

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

The complaint relates to:

- 1. the sexual content of the commercial.*
- 2. the time the ad was broadcast and the environment it was broadcast in.*

This commercial is advertising video downloads to mobile phones and has a sales oriented voice over for its duration.

On again reviewing the content of the commercial we are of the strong opinion we have not breached section 2 of the advertiser's Code of Ethics which reads:

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

We note that this commercial is rated “S” by CAD (reference SOEBDCBA) and as such is only to be broadcast on FTA after 11pm. To date this commercial has only been broadcast after 12am and targets and adult male market.

We also note that the content of this commercial is no more sexually suggestive than a significant amount of the programming content broadcast far earlier than midnight on both Free to Air and Subscription TV.

The commercial in question is intentionally risqué and sexually suggestive but is appropriate for the late night time zone in which it is broadcast.

The commercial complies with the code given:

- 1. the time of day it is broadcast (after midnight) and*
- 2. it's treatment of sex/sexuality is appropriate given its intended late night adult male audience.*

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 concern that the advertisement was inappropriately sexual and that an advertisement of this type was not appropriate for showing in a movie that children may watch.

The Board noted that it is legal for advertisements to advertise products such as sex or nudity related mobile phone services provided that such advertisements comply with the Code and also noted late night advertisements advertising sex related products are permitted to be shown provided they are shown within limited late night timezones. The Board noted the complainant's concern about the advertisement being taped and shown to children but advised that the Board can only comment on the time that the advertisement is shown and that parents need to be aware that programmes that run past 11pm at night may well contain advertisements and content that is not suitable for young children.

The Board noted Section 2.1 of the Code which prohibits 'discrimination or vilification of people on account of their gender or sex'. The Board considered that the depiction of women in sexually suggestive advertisements, while undoubtedly capable of being demeaning to women depending on the particular advertisement, was not of itself objectification of women that amounted to a breach of Section 2.1, and that this advertisement did not breach Section 2.1

The Board noted Section 2.3 of the Code which states that 'advertisements shall treat sex, sexuality and nudity with sensitivity to the relevant audience and where appropriate, the relevant programme time zone.'

The Board noted that this advertisement is aimed at the adult male market and is only able to be shown on television after 11pm.

The Board noted that this advertisement featured images of young American college women and that the women in this advertisement are either clothed - albeit in lingerie; or have their breasts and genitals hidden. The Board agreed that the advertisement is risqué and sexually suggestive. The Board considered that brief depictions in advertisements of women kissing or about to kiss were not of themselves contrary to the Code and that in this advertisement the images were brief. The Board noted the context of the advertisement is sexually suggestive and agreed that the advertisement is at the high end of content within this timezone. However the Board determined that the advertisement was appropriate for the late night time zone and was not in breach of Section 2.3 of the Code.

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