



## **CASE REPORT**

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|-------------------------------|---|
| 1. Complaint reference number | 442/07  |
| 2. Advertiser                 | Global One Mobile Entertainment (My Happy Ending) |
| 3. Product                    | Mobile phones/SMS                                 |
| 4. Type of advertisement      | TV  |
| 5. Nature of complaint        | Portrayal of sex/sexuality/nudity – section 2.3   |
| 6. Date of determination      | Wednesday, 16 January 2008                        |
| 7. DETERMINATION              | Upheld – discontinued or modified                 |

## **DESCRIPTION OF THE ADVERTISEMENT**

This television advertisement features scenes of various young women lying on beds simulating orgasms as a female voiceover announces "You've never seen this before. Watch My Happy Ending. Text COME to 1970 6666. Gorgeous real amateur girls going wild on your mobile. Text COME to 1970 6666 now." The image of one of the women holding her breast, with nipple exposed, is visible for part of the advertisement.

## **THE COMPLAINT**

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

*There are numerous sex sms video ads, many of which I find offensive, however this one was definitely inappropriate. I am sick of being visually assaulted with this trash. I understand companies have the right to advertise their product, but how about advertising somewhere more appropriate like in men's or adult magazines rather than my living room every night. I feel this sort of content is inappropriate in advertisements due to the nature of advertisements. Unless television stations want to start providing program guides for their commercials (with ratings) this sort of explicit content is inappropriate.*

*I feel this is totally inappropriate whatever time of day or night even my husband was shocked. As a woman I felt completely degraded. Being a Saturday night my 7 year old son would normally be watching this show fortunately he was out of the room at the time. I think the advertisers need to take a real look at the way they are portraying (sic) women. Where is this going to stop.*

## **THE ADVERTISER'S RESPONSE**

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

*We requested our advertisement to be aired in the 11pm plus timeslots. The next criteria are for the advertisements to be telecast on appropriate channels which we believe would have a high percentage of our target market. Global One television advertising appears on both Free To Air (FTA) and Subscription TV (STV). Classification of our TVCs are through CAD who dictate placement on FTA. As each market is purchased individually, telecast is in local time. STV is a single feed across Australia so telecast times vary. These complaints relate to activity on Fox Sports and Fox 8 – both STV channels. I note one complaint is for 11.00pm which is within this time frame. The second complaint refers to the timeslot of 9.15pm. I note that the complainant resides outside of NSW in WA. I am led to believe that all timeslots are based on NSW time, which is out of our control.*

*The advertisement is for My Happy Ending, which offers viewers the chance to purchase mobile videos to be downloaded to their mobile phones. While there are sounds of a sexual nature in the*

*background, the advert does have a sales oriented voiceover for the entire duration of the advert.*

*On reviewing the content of our advertisement, we are of the strong opinion that we have not breached Section 2.3 of the AANA Advertiser 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 appreciate that our advertisements will not appeal to 100 percent of TV viewers, and note that this applies to almost all TV advertisements.*

## **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 the sale and advertising of products of this nature are legal provided that such advertising complies with the provisions of the Code. In particular the Board noted that section 2.3 of the Code requires advertisements to 'treat sex, sexuality and nudity with sensitivity to the relevant audience and where appropriate, the relevant programme time zone.'

The Board noted the complainants' concern that this advertisement was inappropriately graphic and sexual in nature for a late night television advertisement. The Board also noted that one complainant had seen this advertisement in a 9pm timeslot.

The Board viewed the advertisement and noted that the advertisement contained images of women who are intended to be seen as engaged in sexual activity. The SMS number to call is 'COME' which is also sexually suggestive. The Board noted that while there is a sales oriented voice over in the advertisement there is also clearly distinguishable the sound of women moaning - again in a sexually suggestive manner.

The Board considered that the advertisement's images, sounds and text are all very sexually suggestive and are clearly at the extreme end of advertisements for this type of product. The Board noted the results of recent research conducted by the Advertising Standards Bureau which indicated that the community takes a more conservative approach to sex and nudity than the Board. The Board considered that in light of this research it was likely that the community would consider this advertisement inappropriate, even for the late night timezone on television. On this basis the Board determined that the advertisement did not treat sex, sexuality and nudity with sensitivity to the relevant audience or timezone - including the late night timezone. As the Board considered that the advertisement was inappropriate for the late night timezone it also determined that the advertisement was definitely inappropriate for broadcast prior to this time.

The Board noted that the advertisement is broadcast on both Free-To-Air and Subscription Television. In relation to Free-To-Air television and subscription television that was not restricted to adults, the Board considered that the advertisement breached section 2.3 of the Code.

The Board noted that the advertisement had been viewed around 9pm in Perth and that the advertiser had requested that the advertisement only be shown after 11pm. The Board considered that the television channel broadcasting the advertisement had a responsibility to ensure that the advertisement could not be seen until after 11pm in all parts of Australia.

Finding that the advertisement breached section 2.3 of the Code, the Board upheld the complaints.

## **ADVERTISER'S RESPONSE TO DETERMINATION**

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

*In response to this, I wish to advise that on Friday 18th January 2008 we took the TVC in question off the air.*

*The TVC will be modified taking the boards points into consideration.*

*Thank you for giving us the opportunity to respond to this complaint.*