

Case Report

1. Case Number :	0067-23
2. Advertiser :	Mars Wrigley Australia
3. Product :	Food/Beverages
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	26-Apr-2023
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.3 Violence
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This advertisement depicts two women in the front seats of a car listening to music. A song comes on (“Call me maybe”) and the driver chews a piece of Extra Gum and starts singing and dancing. The other woman also takes a piece of gum and enjoys the music as well. The scene ends with the second woman leaning over and kissing the first.



THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

- 1) *This add breaks the law of CONSENT which has been passed recently. One female suddenly and aggressively grabs the other girl suddenly and kisses her. There was no consent before this happened.*
- 2) *If this had been a male doing this to a female it would have been called out as lacking consent before physical contact and being aggressive or even sexually intimidating.*

3) Standards should apply to all people including same sex couples.

4) Lesbians also suffer from violence and domestic violence and this advertisement appears to promote aggressive kissing without consent. The girl looks ecstatic after kissing the other girl as if she has done something wonderful. But, she has really violated the space of another female without asking permission first. This behaviour should not be encouraged by young girls and chewing gum should not be used to promote aggression.

5) No product should be used to promote aggression and invading the space of others without permission.

There would certainly be a huge outcry of rape or similar these days, if the extra commercial showed a guy lunging across and kissing the girl without any warning or permission. However the commercial depicts a mixed race gay couple, so it implies that it is perfectly fine to kiss a person without any warning, just so long as they are gay.

To many same sex relationships in the media all the time. It needs to be tolerated but should not be advertised as the norm.

At 9.00 pm this would be viewing projected at children as well as adults. It is completely unacceptable, it just continues to cause confusion for our young people at an age that is easily confused about sexual destination. We are so sick of seeing same sex relationships being promoted as the norm in public media. We accept that there are situations where people find themselves stuck in a body that seems alien to them and give them our sympathy but that is no reason to keep including these relationships in general media. please clean it up.

My children should not be exposed to 2 women kissing on a Saturday morning on free to air TV, I should choose when to tell my children about same sex relationships it shouldn't be forced on to them by commercial TV.

My 8yr old son thought it was gross and we as adults thought it was disgusting. We are sick of seeing commercials having sexualised content.

I don't think it's necessary to have 2 girls kissing on an advertisement, just the same I don't think you should have a male and female kissing. You can portray the product without using sex it's chewing gum. Kids don't need it thrown in there face

Two women passionately kissing on a TV commercial is not acceptable. People are watching a PG show with their family and do not expect to be confronted with lovemaking on an advertisement.

The add has sexual references. It's a chewing gum add depicting references that are sexually oriented. The program during which the add is shown is a child's show: Lego Masters. Gum is a child oriented product: sweets. The ad is inappropriate for young viewers.

THE ADVERTISER'S RESPONSE

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

Mars Wrigley values the work of Ad Standards in supporting compliance and best practice standards for the benefit of both consumers and our broader industry. Mars Wrigley appreciates the opportunity to respond to the Complaint and hopes the context set forth is sufficient to continue running the Advertisement.

1. Background

Advertisement background: The idea of the campaign ('Do what makes you ding') was to show that confidence is embracing yourself and the things that you love (or 'make you ding'). Our creative insight was that for many consumers, there are songs they truly love but are ashamed to admit to it because of society norms/standards/etc. (think "Don't stop believing", "Wonderwall", "Baby, One more time"). These are songs they sing in the car when alone but never with others. With that in mind, our key message is that nothing should hold you back from being your fullest you...from cranking up the music and shimmying like no one's watching. Nothing should hold you back from doing what makes you feel your most authentic self.

Compliance background: At Mars Wrigley, we pride ourselves in setting forth some of the most stringent Responsible Marketing commitments in the FMCG industry. The Mars Global Marketing Code for Human Food is Mars' industry leading commitment to address and govern marketing issues. The Code sets out the standards that guide the way that Mars and its brands communicate and interact with consumers. The purpose of the Code is to serve as a framework through which Mars sets boundaries for its marketing, while driving positive change and setting an example for industry peers for what we believe to be right for consumers. We base these beliefs on strong science, consumer insight and a sensitivity for the concerns of stakeholders. Below is a snapshot of our key pillars, with the most relevant for this case starred [NOTE: this is only available to view in the PDF submitted given restrictions in text box submission area]. For further information on our responsible marketing commitments, please refer to the full Mars Marketing Code for Human Food.

The Mars Marketing Code for Human Food also cover our commitments to promote inclusive marketing. As a business, we know that there is enormous diversity in society, and we want to be a leader in reflecting this in our marketing content in a thoughtful and meaningful way. That's why Mars has committed to more inclusive marketing that makes a difference - by focusing on how we represent and portray all people through our advertising and branded content, both in front of and behind the camera. Our inclusive marketing commitments aim to ensure that creative executions by Mars, Incorporated and our brands show all individuals as multidimensional and authentic to who they are across our advertising and the content we create.

2. Response to Complaint

Per the Notification of Complaint, our response will address “all parts of Section 2 of the AANA Code of Ethics: 2.1 - Discrimination or vilification, 2.2 - Exploitative or degrading, 2.3 – Violence, 2.4 - Sex, sexuality, and nudity, 2.5 – Language, 2.6 - Health and Safety, 2.7 - Distinguishable as advertising...and AANA Code for Advertising and Marketing Communications to Children and the AANA Food and Beverages Marketing and Communications Code.” We will first provide an overall assessment of the Complaints and then address each sub-section.

OVERALL:

- We take the work of AANA and the consumer feedback very seriously. We understand the gravity of the Complaint surrounding consent. Upon receiving the Complaint, a cross-functional (marketing, advertising, media, PR, legal, corporate affairs) and inter-global team met immediately to review the Advertisement challenged. Our first finding is that the consent complaint filed is not based in facts and therefore Mars Wrigley is responding today to keep the Advertisement on air. Unfortunately, the complaint filer has not accurately recalled the Advertisement and has included a narrative of his/her own.*
- Our second finding is that what adults find appropriate for children is subjective, however, we all agree that children are a vulnerable audience. To ensure we are sensitive to this, we adhere and champion that no marketing should be targeted primarily to children under 12 years old via content (the creative itself) or media buying (on TV where no more than 25% of the audience is under 12).*
- Our last finding is that while the kiss at the end of the Extra Advertisement might be upsetting to some viewers, at Mars Wrigley we know that there is enormous diversity in society, and we want to be a leader in reflecting this in our marketing content. Our inclusive marketing commitments aim to ensure that creative executions by Mars Wrigley and our brands show all individuals as multidimensional and authentic to who they are across our advertising and the content we create.*

Regarding 2.2 - Exploitative or degrading, 2.4: Sex, Sexuality, Nudity:

At Extra and Mars Wrigley, we believe all people are equal. We celebrate diversity and what make us all truly unique. While we understand not everyone shares the same views as us, we do believe we have an opportunity to use our platform to celebrate and champion inclusivity and diversity through our advertising and brand campaigns. Our ambition is to create meaningful brand campaigns that reflect the world we live in; that depict real people from all walks of life in everyday moments that bring them confidence and joy. Through the work we do with all our brands, we hope to create a better, more inclusive world where everyone is treated with respect, dignity, and fairness.

We strongly believe that we have adhered to the standard that “Advertising shall not employ sexual appeal: (a) where images of Minors, or people who appear to be

Minors, are used; or (b) in a manner which is exploitative or degrading of any individual or group of people.” The actresses cannot be mistaken for minors and the kiss they share is not exploitive or degrading. Further, in relation to section 2.4, we believe we have treated sex and sexuality with appropriate sensitivity, as the depiction is limited to one kiss between two consenting adults.

Regarding 2.1 - Discrimination or vilification, 2.3 – Violence, 2.6 - Health and Safety: We do not believe there is basis for this complaint under subsections 2.3 or 2.6, as the ad description is inaccurate and thus the complainant has no grounds. The complaint description states “Extra gum has a commercial where a girl unknown to the girl driver jumps into a car and then decides to lunge across to kiss the other girl (the driver) without any warning or permission. REASON FOR CONCERN: There would certainly be a huge outcry of rape or similar these days, if the extra commercial showed a guy lunging across and kissing the girl without any warning or permission.”

We note that in reality the Advertisement starts with both women in the car, in the front seats, implying they are known to each other, and that this is not a first meeting. They are also wearing seatbelts, which dilutes the argument that the driver “jumps into a car,” which does not occur. We also highlight the fact that both women move to reciprocate the embrace in the final frame. As such, while we are absolutely opposed to the depiction of sexual violence in advertising, we do not believe that the Advertisement includes any such violence or any safety risk, as claimed in the complaint.

Further, in relation to section 2.1 we note that the Advertisement depicts a same-sex couple. Mars Wrigley has purposefully included this in an effort to ensure its messaging is inclusive to all sections of the community, in this instance focussing on sexuality. We believe that the Advertisement demonstrates Mars Wrigley’s commitment to inclusivity and goes over and above what is required by section 2.1.

Regarding 2.5 – Language:

There is no dialogue included in the Advertisement. Further, we note that the music lyrics are not strong or obscene.

Regarding 2.7 - Distinguishable as advertising:

The Advertisement ends with an end-card clearly calling out the advertising campaign (“Do what makes you ding! [Extra gum logo]”).

Regarding Advertising and Marketing Communications to Children:

Per our Responsible Marketing policy, Mars Wrigley commits to: no marketing targeted primarily to children under 12 (or under 13 in Digital) and on TV, we primarily target adults and no more than 25% of an audience can be under 12. For this Advertisement specifically, on TV our targeting is based on reaching People 25-54.

Regarding digital, the targeting is as below:

YouTube

Age: 18-44

Geo: Australia

Language: English

Placements: Bumpers and 15s Non-Skip on YouTube inventory only

Snapchat/TikTok

Age: 18-34

Geo: Australia

Placements: Snapchat Single Video Ad and Commercials, TikTok In-Feed ads

Should you require any further information, please do not hesitate to contact us.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainants' concerns that the advertisement portrays a kiss without consent and is too sexualized for general viewing.

The Panel viewed the advertisement and noted the advertiser's response.

Section 2.3: Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised

The Panel noted that the Practice Note for this section of the Code states:

"Although the depiction of violence in an advertisement may be relevant to the story being told in the advertisement, any violence must also be justifiable in the context of the product being advertised, or else will be in breach of this section of the Code... The results or consequences of violence (e.g. a black eye) and audio representations of violence may also be prohibited."

Does the advertisement contain violence?

The Panel noted that the Code and the Practice Note do not provide a definition of violence. The Panel noted that they needed to consider whether the general community would consider this ad to portray violence.

The Panel noted that social and legal attitudes towards consent had changed recently, and some states had adopted a requirement for positive consent before any sexual interaction.

The Panel considered that the depiction of someone kissing another person without their consent would be considered sexual assault. The Panel considered that most members of the community would understand sexual assault to be a form of violence.

However, in this instance the Panel considered that there was no indication in the advertisement that the two women do not know each other or that the kiss was unwelcome or not consensual. The Panel noted that the young woman does not pull away from the kiss, and appears to lean in towards the other woman. The Panel considered that this was an indication of non-verbal consent and that this advertisement did not depict a sexual assault.

Section 2.3 Conclusion

The Panel determined that the advertisement did not present or portray violence and therefore did not breach Section 2.3 of the Code.

Section 2.4: Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel noted the Practice Note for the Code states:

“Overtly sexual images are not appropriate in outdoor advertising or shop front windows.

“Although not exhaustive, the following may be considered to be overtly sexual:

- Poses suggestive of sexual position: parting of legs, hand placed on or near genitals in a manner which draws attention to the region;*
- People depicted in sheer lingerie or clothing where a large amount of buttocks, female breasts, pubic mound or genital regions can be seen; The use of paraphernalia such as whips and handcuffs, particularly in combination with images of people in lingerie, undressed or in poses suggestive of sexual position;*
- Suggestive undressing, such as pulling down a bra strap or underpants; or*
- Interaction between two or more people which is highly suggestive of sexualised activity.*

“Discreet portrayal of nudity and sexuality in an appropriate context (eg advertisements for toiletries and underwear) is generally permitted but note the application of the relevant audience. More care should be taken in outdoor media than magazines, for example.

“Images of models in bikinis or underwear are permitted, however, unacceptable images could include those where a model is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person), or where there is clear sexual innuendo from the ad (e.g. depicting women as sexual objects).”

Does the advertisement contain sex?

The Panel considered whether the advertisement contained sex. The Panel noted the definition of sex in the Practice Note is “sexual intercourse; person or persons engaged in sexually stimulating behaviour”.

The Panel noted that while there is a depiction of two people kissing they are not engaging in sexual intercourse or sexually stimulating behaviour. The Panel therefore considered that the advertisement does not contain a depiction of sex.

Does the advertisement contain sexuality?

The Panel noted the definition of sexuality in the Practice Note is “the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters”.

The Panel considered that the advertisement features a couple kissing and does contain sexuality.

Does the advertisement contain nudity?

The Panel noted that the definition of nudity in the Practice Note is “the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity”.

The Panel noted that both women in the advertisement are fully dressed and considered that the advertisement did not contain nudity.

Is the issue of sexuality treated with sensitivity to the relevant audience?

The Panel noted that the definition of sensitivity in the Practice Note is “understanding and awareness to the needs and emotions of others”.

The Panel noted that whether sexual suggestion is ‘sensitive to the relevant audience’ requires them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement.

The Panel considered that the advertisement was mildly sexualised and that the only intimate behaviour between the couple in the advertisement is kissing. The Panel noted that at one point the kiss is open-mouthed, however noted that this is very brief. The Panel considered that the kiss is not highly sexualised or graphic.

The Panel noted that the complainants had viewed the advertisement at various times of the day on free to air TV and the audience is likely to be broad and include children.

The Panel noted that some complainants expressed concern that the couple depicted were of the same sex. The Panel considered that showing a same-sex couple is not itself a breach of the Code.

The Panel acknowledged that some members of the community may prefer not to see kissing however considered that the level of sexuality in the advertisement was very

mild and not inappropriate for viewing by a general audience which may include children.

Section 2.4 Conclusion

The Panel determined that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant broad audience and did not breach Section 2.4 of the Code.

Conclusion

Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaints.