

Case Report

1. Case Number :	0244-23
2. Advertiser :	Magic Touch
3. Product :	Sex Industry
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Decision:	8-Nov-2023
6. Decision:	Upheld – Modified or Discontinued

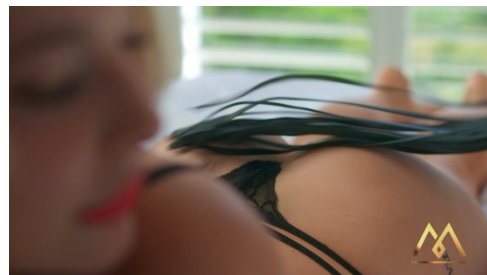
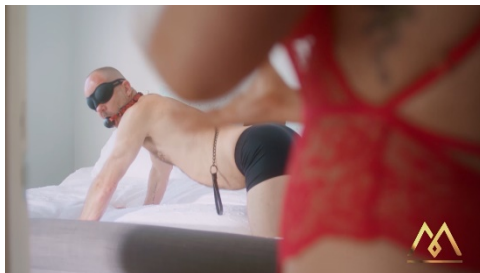
ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This television advertisement has two versions, a 30 second version and a 15 second version which include the following scenes:

- various couples together – in the bath, bed, beach
- a woman in lingerie holding a flogger opening a door to reveal a man kneeling on a bed, he is blindfolded and gagged and has a lead attached to a collar
- a woman lying on her stomach, with a flogger hitting her across the buttocks.



THE COMPLAINT

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

Ads should be shown after watershed of 9pm. Not suitable for children.

Not appropriate for the time slot. Children could be watching and not something I want to watch when eating my lunch.

I'm personally not offended but I do not believe it is inappropriate to have multiple showings for a business that sells sex toys in a 2:30pm-3:00pm slot showing The Simpsons considering it is something that could be watched by younger children.

Inappropriate sexual ad content being broadcast in the middle of the day; usually only shown after midnight. The Advertisement was for adult sex toys ect The actors were scantily clad in sexually provocative costumes and included same sex couples kissing.

Mainly offended by the time of day it was showing and on a family channel. Very explicit and not really appropriate when children watching TV at this time of the day. I'm usually pretty easy going but felt like I was suddenly watching late night TV, not something I want my young nieces and nephews to be viewing.

THE ADVERTISER'S RESPONSE

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

This commercial first ran in January 2023 and complaints were received by Ad Standards (case number 0011-23) the case was dismissed. The commercial itself has not been altered with the exception of the tag, now showing a deal for free earbuds on spends over \$50.

My reply regarding the content is the same as case 0011-23, in a gender fluid society that we live in today nothing in the commercial would be deemed offensive by a reasonable person, all of the complaints above refer to the timeslot.

The commercial received an M Rating and according to the Industry Code (see below) the commercial can be shown between the hours of 12 noon – 3pm or 7:30pm – 6:00am (school days) and 7:30pm-6:00am (weekends & school holidays) which are the time slots this commercial has been booked. One of the complaints refers to the commercial screening during the Simpsons, I'm surprised the viewer was not more concerned with the content of the Simpsons compared to a 30 second commercial with no nudity, obscene language and mostly highlighting inclusivity of all preferences.

COMMERCIAL TELEVISION INDUSTRY CODE OF PRACTICE

2.2.2 M Classification zone. Subject to subclause 2.3.2(a), material that has been classified M may only be broadcast at the following times:

- a) School Days 7.30 pm to 6.00 am 12 noon to 3.00 pm*
- b) Weekends and School Holidays 7.30 pm to 6.00 am*
- c) Public Holidays 7.30 pm to 6.00 am*

2.3.2 For as long as subsection 123(3A) of the Act is in force:

a) a Film classified M may only be broadcast:

- i. between the hours of 8.30 pm and 5.00 am on any day, or 6*

II. between the hours of noon and 3.00 pm on any School Day

I trust the above answers the queries.

THE DECISION

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 is overtly sexual and inappropriate for the time of day it was broadcast.

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

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 the advertisement contains sexualised images. The Panel considered that the advertisement did not contain explicit sex scenes, however the overall impression of the advertisement is one of sexual activity. The Panel considered that the advertisement did contain 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 is promoting adult sexual devices and that therefore the product itself is sexualised. The Panel noted scenes referred to above, and considered that the advertisement did emphasise sexual matters and does depict 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 the people in the advertisement are not nude, however some are depicted in underwear. The Panel considered that the depiction of people in

underwear would be considered by some members of the community to be partial nudity.

Are the issues of sex and 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 considered that the requirement to consider 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 noted that there are two versions of the advertisement, and both received an M rating from ClearAds which allows broadcast between 12pm and 3pm on school days (as well as 7.30pm-6am, however complaints appear to relate specifically to daytime timeslots). The Panel considered that although the advertisement classification allows broadcast at these times, it must still determine whether the advertisement treats sex, sexuality and nudity with sensitivity to that audience.

The Panel acknowledged that the sexual nature of the product and service may not be considered appropriate by people viewing the advertisement, however in this instance the Panel considered that the products depicted in the advertisement are products available for purchase from the advertiser. The Panel noted that some members of the community would prefer that these types of products are not advertised, however legally they are able to be and a depiction of those products is not by itself a breach of the Code.

The Panel noted that it had previously considered the same advertisement in case 0011-23, in which:

“The Panel considered that while children may understand the overall concept of the advertisement, the specific scenes in the advertisement are unlikely to be understood by children. The Panel considered that given the timeslot in which the advertisement aired that the primary audience of the advertisement would be adult and children would be supervised.

“The Panel considered that the advertisement was sexually suggestive, but not highly sexually suggestive or explicit and that the advertisement did treat the issue of sexuality with sensitivity to the relevant audience.”

The Panel considered that the current case was substantially similar to case 0011-23 on Pay TV, however considered that the daytime timeslot did require further consideration. The Panel considered that most scenes in the advertisement are brief and do not focus on specific acts, however considered that there are several which

warrant scrutiny due to the stronger sexual nature compared to other mild scenes showing intimate couples.

The Panel noted the scene with a woman lying on her stomach, with a flogger hitting her across the buttocks, and considered that the zoomed in nature of the scene and its briefness meant that while the scenario was strongly sexualised, that sexuality was unlikely to be understood by young children, and older children would likely be at school.

The Panel noted a scene in which a woman in red enters a room where a man is on his knees wearing a blindfold. The Panel noted that in the 30sec version of the advertisement, the man does not move and the door closes without the viewer seeing anything else. The Panel considered that while the scenario was strongly sexualised, that sexuality was unlikely to be understood by young children, and older children would likely be at school.

However, in the 15 second version of the advertisement, the angle of the scene is different: the man turns toward the camera and it is clear that along with the blindfold, he is wearing a lead attached to a collar and a ball-gag. The Panel considered that this scene was much more confronting for a young audience, as well as an adult audience who may not expect to see such a fetishised sexual scene during lunchtime hours.

The Panel noted that the 30 second version of the advertisement does contain a very brief scene of the same man, however he is shown from the front and the ball-gag is not fully visible. The Panel considered that while the scenario was strongly sexualised, that sexuality was unlikely to be understood by young children, and older children would likely be at school.

Overall, the Panel considered that the 30 second version of the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience. The Panel considered that the 15 second version of the advertisement did not treat sex, sexuality and nudity with sensitivity to the relevant audience, specifically due to the scene depicting a man kneeling while wearing a blindfold, ball-gag and lead.

Section 2.4 Conclusion

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

Decision

Finding that the advertisement did breach Section 2.4 of the Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DECISION

The advertiser has confirmed that the advertisement will not run between 12pm and 3pm.