

## Case Report

1. Case Number :	0013-24
2. Advertiser :	Menulog
3. Product :	Food/Beverages
4. Type of Advertisement/Media :	TV - Pay
5. Date of Decision:	24-Jan-2024
6. Decision:	Dismissed

### ISSUES RAISED

AANA Advertising to Childrens Code\2.3 Sexualisation  
AANA Code of Ethics\2.4 Sex/sexuality/nudity

### DESCRIPTION OF ADVERTISEMENT

This Pay TV advertisement features Christina Aguilera and Latto singing about Menulog and various products that can be delivered using the service.



### THE COMPLAINT

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

*Sexualised advertising in a program watched by many children.*

*This ad portrays scantily clad women with bug busts protruding from tight clothing. At the best of times this is insulting and degrading to women, however as the commercial seems to run at any time, including afternoons, the commercial inadvertently appears during children's shows, or when children may be watching TV, including streaming services. I believe the ad breaches article 2.3 of the Children's Advertising Code.*

## **THE ADVERTISER'S RESPONSE**

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

*Thank you for the opportunity for Menulog to provide a response to the Ad Standards Community Panel in response to complaint case file number 0012-24.*

*Menulog will address issues raised by the Community Panel under section 2.3 of the AANA Advertising to Children's code and section 2.4 of the AANA Code of Ethics regarding the Menulog 'Did Somebody Say' advertising campaign (Advertisement).*

*The Menulo mnemonic 'Did Somebody Say' is one of the most recognised audio logos and brand assets in Australia. The advertising campaigns using this mnemonic feature a variety of international and local celebrities. The Advertisement raised in the complaints features a dueted performance by international artists Latto and Christina Aguilera (the Artists). Through music, the Advertisement intends to raise consumer awareness about the wide range of items available on the Menulog platform, particularly grocery and convenience items. The Campaign combines two different musical genres to create a new category of 'HipOpera'. The music creates a sense of excitement for the audience, which is targeted at the delight a customer should feel when ordering from the Menulog platform.*

### **2.4 - Sex, sexuality and nudity**

#### **Section Description**

*Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience.*

#### **Menulog Response**

*The AANA Code of Ethics Practice Note has the following definitions under section 2.4:*

*Sex - Sexual intercourse; person or persons engaged in sexually stimulating behaviour.*

*Sexuality - The capacity to experience and express sexual desire; the recognition or emphasis of sexual matters.*

*Nudity - The depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity.*

*Menulog takes its corporate social responsibility very seriously, which includes content and messaging conveyed across all its marketing and advertising. Menulog maintains that throughout the advertisement there are no direct depictions or references to sex, sexuality or nudity, and as such, does not agree with the complaints' suggestions that the advertisement based on the following applications of the definitions in the Practice Note:*

*Sex - The advertisement does not depict sexual intercourse, and/or a person(s) engaging in sexually stimulating behaviour. The advertisement features two Artists performing a song about the different options that are available to be ordered on the Menulog platform, either sitting together at a dining room table or standing performing directly to camera, with limited dancing movements. The artists never interact in a way that could be described as depicting a sexual act, with limited physical movement and no touching that is suggestive of, or appearing to be a person engaged, in a sexually stimulating behaviour.*

*Sexuality - The advertisement does not depict any capacity to experience and express sexual desire and/or the recognition or emphasis of sexual matters. The advertisement features two Artists performing a song about the different options that are available to be ordered on the Menulog platform.*

*Nudity - The advertisement does not depict a person(s) without clothing or covering and/or partial or suggested nudity. As part of the collaboration with Menulog, both Christina Aguilera and Latto designed their own outfits based on their personal brand and what they felt empowered and comfortable to wear whilst filming the advertisement. Furthermore, it is clearly visible to viewers that both Artists are wearing full-length ball gowns, with one gown also featuring long sleeves. No other body part is visible, except for their décolletage or cleavage, which is partially visible. This body part is not depicted in an overtly sexual manner and is a result of the 'corset' design feature of the dresses, as well as the natural biological parts of the Artists.*

#### *Audience classification*

*The 'Did Somebody Say' Menulog campaign is part of the core brand identity of Menulog in Australia. These campaigns have previously used international artists such as Katy Perry and Snoop Dogg. Each of these advertisements, including the one in question, have been classified by ClearAds Australia to ensure correct compliance with the advertising rules and regulations for broadcasting.*

*Several of the complaints reference times of the day where it is reasonable to assume that the intended viewership is a mature audience based off the ClearAds Australia M classification zones below:*

*School Days - 7:30pm to 6:00 am and 12 noon to 3:00pm*

*Weekends and School Holidays - 7:30pm to 6:00 am*

*Public Holidays - 7:30pm to 6:00 am*

*ClearAds Australia rated the advertisement in question a 'G' placement code, under the PG classification zone, meaning that the advertisement can be broadcast at any time without restriction.*

*Menulog believes that in the absence of an M classification zone, it is unreasonable for the complaints to stipulate that the advertisement be deemed inappropriate for certain viewing times.*

*Further, the advertisement in question has been broadcast on both Kayo and Binge streaming services. The STV universe has a different application of CAD approvals as all primary subscribers have to be above the age of 18. The demographic breakdown of Binge subscribers shows that less than 1% of their audience is under 18 years of age. Menulog acknowledges that children may view the advertisement whilst using either platform, and considering that this advertisement is targeted at adults, notes that there are no direct or indirect explicit references of depictions of sex, sexual activity and nudity.*

*2.3 - Advertising to Children: (a) must not employ sexual appeal; (b) must not include sexual imagery; and (c ) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.*

#### *Section Description*

*Advertising to Children must not contravene prevailing community standards, including by promoting products or services unsuitable or hazardous to children or encouraging unsafe practices. Advertising to Children that encourages bullying or promotes unhealthy ideal body image may also breach this rule.*

#### *Menulog Response*

#### *Menulog Response*

*To use the Menulog platform it is a mandatory requirement that all users are over the age of 18 and as such the advertisement in question is targeted at an audience over the age of 18. Menulog maintains that the advertisement does not have any direct depictions or references to sex, sexuality or nudity towards children, and as such does not agree with the complaints' suggestions that the advertisement breaches the code of conduct.*

*As mentioned above, the advertisement in question is shown on the streaming platforms Binge and Kayo. Information provided to Menulog by our media agency UM shows that less than 1% of the audience using Binge is below the age of 18 years.*

*Further, sport broadcast on TV, has special considerations for classification rules which afford some adult advertising explicitly in day periods, which are otherwise restricted (such as alcohol) and as such, it is unreasonable for Menulog's advertisement to be*

*considered in breach of the Codes, given other advertisements that would be otherwise restricted due to their mature ratings are being played at similar times to Menulog's, which is not restricted by its G rating classification.*

#### *Conclusion*

*As stated in the above commentary, Menulog submits to the Community Panel that the advertisement raised in the Complaints does not breach the AANA Code of Conduct and the other supporting and relevant codes and practice notes.*

### **THE DECISION**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Children's Advertising Code (the Children's Code) or the AANA Code of Ethics (the Code).

The Panel noted the complainants' concerns that the advertisement includes sexualised content which is inappropriate for advertising targeting children.

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

The Panel noted that for the provisions of the Children's Code to apply, the advertisement must be found to target children under 15 years of age.

#### **Does the advertisement target children?**

The Panel noted that the Children's Code defines "target children" as:

*"Target Children is determined by the context of the advertisement and the following three criteria:*

- 1. Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
- 2. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;*
- 3. Expected average audience at the time or place the advertisement appears includes a significant proportion of Children."*

The Panel noted that the Practice Note provides guidance on the interpretation of "target children":

*"All three criteria will be considered by the Community Panel in determining whether or not advertising targets Children. The weighting given by the Community Panel to each of the three criteria will be determined on a case by case basis. In the event of a complaint being considered by the Community Panel, the advertiser should be in a*

*position to provide details in terms of the nature and intended purpose of the product, the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears.*

*“In relation to the third criteria, measures to determine if Children are likely to be a ‘significant proportion’ of the expected average audience may include one or a combination of the following:*

- Where data exists, 25% or more of the predicted audience will be Children. In relation to outdoor advertising, if across a campaign the data shows a predicted audience with less than 25% Children, and there is a Children’s event or concert that is incidental to the ad placement, the audience of that incidental Children’s concert or event will not be captured.*
- C&P programmes.*
- Programs, artists, playlists, video, movies, magazines or other content with significant appeal to Children (e.g. featuring personalities or characters popular with Children).*
- Compliance with the Outdoor Media Association Placement Policy and Health & Wellbeing Policy which regulate the placement of advertising at primary and secondary schools which are locations where Children regularly and predictably gather. Where accurate program audience data is not available, the Community Panel may have regard to other factors listed above such as the program content, the time or the location where the advertisement is being shown (in line with the above provision).”*

**Point 1: Is the nature and intended purpose of the product principally or significantly appealing to children?**

The Panel considered that the advertised product is a food delivery service and considered that this was not a product which would be principally or significantly appealing to children.

**Point 2: Is the content of the advertisement principally appealing to children?**

The Panel considered the advertisement featured artists Christina Aguilera and Latto. The Panel considered that while these artists may be known to some children, they are more likely to be recognised by older teenagers and adults.

The Panel considered that while the musical theme and costume changes would be attractive to children, they would be equally attractive to older teenagers and adults.

Overall, the Panel considered that the content of the advertisement has broad appeal, and was not principally appealing to children.

**Point 3: Does the expected average audience of the advertisement include a significant proportion of children?**

The Panel noted the majority of the complainants had viewed the advertisement during sports broadcasts and day-time TV.

The Panel noted that while sports programs, such as big bash, were popular with children, they would be unlikely to have an audience of over 25% children.

The Panel considered that the audience for the advertisement would not include a significant proportion of children.

**Targeting children conclusion**

The Panel considered that the product would not have significant appeal to children, the content of the advertisement was not principally appealing to children and audience for the advertisement would not include a significant portion of children. The Panel determined that the advertisement did not target children and therefore the provisions of the Children's Code did not apply.

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

The Panel noted the Practice Note for the Code states:

*"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 the advertisement did not contain sexually stimulating behaviour or sexual interactions. The Panel considered the advertisement did not 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 features artists singing about food delivery and considered the advertisement did not 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 considered that the two artists are fully dressed at all times. The Panel considered the outfits are consistent with the music-video style of the advertisement however some of these costumes exposed their cleavage. The Panel considered that some members of the community would consider visible cleavage to be partial nudity.

### **Are the issues of nudity 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 the advertisement was broadcast on daytime television, including during sport. The Panel considered that the advertisement would have a broad audience, which would include children.

The Panel considered that the women were wearing outfits consistent with the music-video style of the show. The Panel considered that many of the outfits were cut in a way that meant the cleavage of the artists was visible. The Panel considered that this style was consistent with every-day fashion and the level of nudity was not explicit or inappropriate to be viewed by a broad audience.

The Panel considered that there was a low level of partial nudity in the advertisement and that it was treated with sensitivity to the relevant audience.

## **Section 2.4 Conclusion**

The Panel determined 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 any other section of the Children's Code or the Code of Ethics the Panel dismissed the complaints.