

Case Report

1. Case Number :	0033-24
2. Advertiser :	Thorne Harbour Health
3. Product :	Education
4. Type of Advertisement/Media :	Transport
5. Date of Decision:	21-Feb-2024
6. Decision:	Dismissed

ISSUES RAISED

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

DESCRIPTION OF ADVERTISEMENT

This advertisement has four versions, all featuring an image of a different man in underwear holding a cupcake as confetti falls around him.



THE COMPLAINT

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

Plastered on a large ad at the back of a bus, was an image of a male with extremely tight underwear with an outline of his genitals while he was holding a cupcake, he also had nipple rings - extremely inappropriate space for an ad such as this where children frequent.

It is an overly sexualised advertisement that is inappropriately being shown at such a large scale, especially in the context where it was being displayed and at the time it was being displayed.

THE ADVERTISER'S RESPONSE

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

I am responding to your email on 24 January 2024, which included a complaint received by Ad Standards. The image referred to in the complaint is from the 'Drama Downunder' campaign, which Thorne Harbour Health (THH) created for the South Australia Mobilisation + Empowerment for Sexual Health (SAMESH) program, a partnership between THH and SHINE SA. SA Health funds the SAMESH program, and its goal is to improve the social and sexual health outcomes of LGBTIQ+ communities affected by or at risk of HIV.

The campaign launched on 25 September and concluded on 3 December. The advertisements were displayed on the back of buses and in tram stops/bus shelters through JCDecaux.

From the complaint you received on 16 January 2024 it is asserted that our advertisement is in breach of sections:

- AANA Code of Ethics – 2.4: Sex/sexuality/nudity – S/S/N – general.*
- AANA Advertising to Childrens Code – 2.3: Sexualisation/must not include sexual imagery.*

The complaint states: "Plastered on a large ad at the back of a bus, was an image of a male with extremely tight underwear with an outline of his genitals while he was holding a cupcake, he also had nipple rings - extremely inappropriate space for an ad such as this where children frequent. It is an overly sexualised advertisement that is inappropriately being shown at such a large scale, especially in the context where it was being displayed and at the time it was being displayed."

In response to issues raised by the complainant, we disagree on several points.

Firstly, the underwear being used in the campaign is similar to those advertised by underwear companies (i.e., Calvin Klein or Bonds) and the model in our campaign is standing similar to how underwear models stand in their advertisements. We disagree with the complainant's description of our campaign as containing 'extremely tight underwear with an outline of his genitals'. The image does not differ to advertisements showcasing underwear or swimwear. Secondly, our campaign advertisement does not allude to sexual acts, sexuality or nudity. The messaging deals with sex indirectly, and only to the extent that it delivers health promotion messages regarding sexual health. We disagree with the complainant's description of our campaign as 'overly sexualised'.

Therefore we do not believe that our campaign contravenes the AANA Code of Ethics as it is not overly, and certainly not in comparison to other advertisements promoting

sexual services or products, which have had complaints dismissed by Ad Standards (Case Numbers 0235-23, 0186-23, 0074-23).

In the complaint, the appropriateness of outdoor media is put into question. Again, we disagree with this for several reasons. Firstly, outdoor media is used by many companies and health organisations to reach the target populations. Complaints dismissed by Ad Standards that aimed to raise community awareness or promote health messages also used outdoor media (Case 0264-23, 0259-23, 0053-23). Secondly, outdoor media is the most commonly reported medium through which community members report seeing and engaging with our campaign messages, highlighting its importance in promoting public health messages.

The complaint states that the advertisement, and by association, the message, should not be displayed at such a "large scale". Sexual health is often a stigmatised health issue, which this campaign aims to correct. This is done by displaying sexual health messaging in large-scale formats and public spaces. Furthermore, the campaign has used outdoor media platforms each year since its creation in 2007, and previous complaints have been dismissed by Ad Standards (0038-19, 0429/17)

We draw your attention to the need for such a campaign. To address the steady and significant increases in STI notifications between 2021 and 2023 (as listed in the table below), SA Health require SAMESH to implement social marketing campaigns that increase health literacy and promote sexual health testing on a large scale, and to reach as many people as economically possible with its funding. Furthermore, "implementing prevention education in community settings where people live, work and socialise to improve knowledge and awareness of STIs" is one of the priority areas for the Fourth National STI Strategy produced by the Federal Department of Health and endorsed by SA Health.

Table 1: Notified cases of sexually transmissible infections by year for the period 1 January 2021-30 December 2023

	2023	2022	2021
<i>Infectious Syphilis</i>	<i>401</i>	<i>363</i>	<i>317</i>
<i>Gonorrhoea</i>	<i>2264</i>	<i>1789</i>	<i>1433</i>
<i>Chlamydia</i>	<i>6414</i>	<i>5619</i>	<i>5517</i>

Therefore, we think that promoting the campaign on large-scale and public platforms is not only appropriate but required. It addresses a public health issue, is endorsed by national strategies and is supported by the SA Health Department.

The second thematic aspect of the complaint refers to promoting the message to children. The campaign is not aimed at children, does not include children nor

reference them, and includes no visuals that aim to draw their attention (i.e., toys or animated characters). It does not employ sexual appeal to engage children (2.3A), does not include sexual imagery to engage children (2.3B), and does not state or imply that children are sexual beings or that ownership or enjoyment of our product will enhance their sexuality (2.3C).

Information supplied by JCDecaux indicates that the public saw 8.5 million impressions of the campaign, with people seeing it 8.3 times each during its 12-week run. There is no data available on the proportion of people aged 15 and younger, as identified by the Children's Code, saw or engaged with the campaign advertisement. The content of the advertisement and the product being sold is not relevant or appealing to children under the age of 15. We propose that all outdoor media campaigns engage the same proportion of people across metropolitan Adelaide.

Therefore we do not believe our campaign contravenes the AANA Advertising to Childrens Code as it is not aimed at children, does not attempt to engage them and does not feature them.

With regard to the relevant sections of the code the Board has requested responses to, due to this complaint, we contend in terms of:

2.1: The campaign images listed in the complaint do not portray or depict people or material in a way that discriminates or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

2.2: The campaign images listed in the complaint do not employ sexual appeal where a) children are depicted or b) in a manner that is exploitative or degrading of any individual or group of people.

2.3: The campaign images listed in the complaint do not include violent elements nor portray violent situations.

2.4: As illustrated by the information presented above, the public health need and campaign imagery treats sex, sexuality and nudity with sensitivity to the relevant audience. The campaign imagery and messaging are in no way gratuitous and are consistent with and in response to an urgent public health need. The campaign imagery does not depict any form of sexual act, does not mention nor suggest the sexual orientation of any individual and depicts no forms of nudity.

2.5: The campaign images listed in the complaint do not use explicit or inappropriate language.

2.6: The campaign images listed in the complaint do not depict material contrary to the Prevailing Community Standards on health and safety.

2.7: The campaign images listed in the complaint are clearly distinguishable as advertising and marketing communication.

We look forward to receiving the results of the Board's consideration of these complaints. Thank you for taking the time to read our response and look forward to hearing from the Board and its decision.

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 complainant's concerns that the advertisement is inappropriate for placement where it may be viewed by children and the broad community.

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 or service is promoting sexual health testing for men. The Panel considered that this would not be principally or significantly appealing to children.

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

The Panel noted that the advertisement depicts various men in underwear holding a cupcake and surrounded by confetti. The Panel considered that such celebratory imagery would be appealing to children, however it would be equally appealing to adults. The Panel therefore considered that the advertisement 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 that the advertisement is placed on public transport and considered that the audience would be broad and would include children, however considered that the audience would not be over 25% children aged under 15.

Targeting children conclusion

The Panel considered that the product would not have appeal to children, the content of the advertisement was not principally appealing to children, and audiences for the advertisement would not include a significant proportion of children.

The Panel therefore 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 a depiction of 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 versions of the advertisement depicted men alone in underwear. The Panel considered that the advertisement contained messaging around getting tested, but not about sex. The Panel considered the advertisement did 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 noted the man is wearing underpants only and considered that the advertisement did contain a depiction of 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 man in the advertisement is wearing underpants only, and considered that this is a depiction of partial nudity.

Is the issue of sexuality and 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 this image appears on public transport and considered that the relevant audience would be broad and would include children.

The Panel considered that each image featured one only person and there was no particular focus on their body parts. The Panel noted that some viewers may find the genital area in each image to be prominent, however the Panel considered that in each image the genitals are fully covered, and the advertisement is consistent with underwear advertisements.

The Panel considered that each man’s pose and the imagery of the advertisement were not overtly sexual.

The Panel therefore considered that the depiction of sexuality and partial nudity in the advertisement were not explicit or inappropriate to be viewed by a broad 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.