

## Case Report

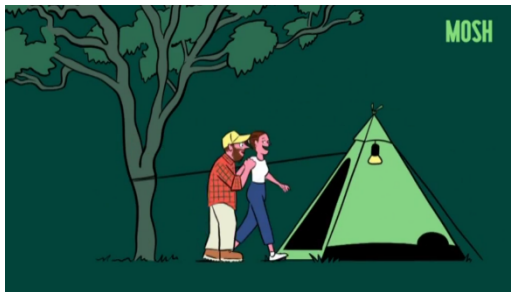
1. Case Number :	0034-24
2. Advertiser :	Mosh
3. Product :	Health Products
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Decision:	21-Feb-2024
6. Decision:	Dismissed

### ISSUES RAISED

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

### DESCRIPTION OF ADVERTISEMENT

This television advertisement features an animated scenario of a couple camping.



### THE COMPLAINT

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

*At 12 in the afternoon!!, on a Saturday. Don't want to see ads about men's erectial problems , nor do my young children. So inappropriate in that time slot, all that kind of stuff should be advertised late at night so children are not subject to adult issues !!!!!!!*

*I feel uneasy seeing a problem about Erectile Dysfunction on TV at any hours. Today between 8 and 9m am. I feel that this is not something to be publicly promoted. It is between a man and his doctor.*

## **THE ADVERTISER'S RESPONSE**

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

*I've spoken with our media agency and they have advised that we followed the appropriate processes and got CAD approval for the ad (attached), deeming it fit for TV scheduling - with the exception of placements within children's programming.*

*If the placement was the latter, I believe this is an issue for the network and they will be the best people to take it up with.*

## **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 is inappropriate for placement where it may be viewed by 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 treatment service for erectile dysfunction and 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 animated imagery of a couple camping. The Panel noted that the mere use of animation does not automatically result in the advertisement being of principal appeal to children.

The Panel considered all the elements of the advertisement, including that, the colours used were dark, the figures in the tent were shown as silhouettes, and the animated characters appeared to be adults.

The Panel also noted there was no music to gain the attention of children, and that the inference created by the collapse of the tent would be unlikely to be understood by children.

The Panel considered that while the advertisement may gain the attention of children, it would be more likely to gain the attention of adults and would not be 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 complainants viewed the advertisement at various times, including mid-morning and lunchtime.

The Panel noted that the advertisement received a J classification, meaning it could play anytime except during Children's programming.

The Panel considered that the audience for the advertisement was unlikely to have an audience of over 25% children given the general viewing programming.

**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 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 advertisement contained the phrase ‘ED’ and ‘PE’, referring to erectile dysfunction and premature ejaculation, and that this was a reference to sex, although 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 that the story of the advertisement was a metaphor for erectile dysfunction, and the voice over directly references ED. The Panel considered that the overall advertisement did contain a recognition of sexual matters.

### **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 featured in the advertisement were fully clothed and the advertisement did not contain nudity.

### **Is the issue 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 had received a ‘J’ rating from ClearAds, meaning it could be broadcast at any time except in children’s programming. The Panel noted that the advertisement was played during general viewing times, and the relevant audience was likely to be broad and include children.

The Panel noted that although the advertisement contains a double entendre, the setting depicted is a camping scene which is in itself innocuous. Although there is a

suggestion of erectile dysfunction with the collapsing of the tent, it is unlikely that children would make this connection, as they are unlikely to understand the symbolic significance.

The Panel noted that the advertisement directly mentions 'ED' and 'PE' and considered that this was an abbreviation which would not be understood by young children, particularly as it avoids the full term.

The Panel acknowledged that parents may prefer not to have such advertisements appear on television to avoid uncomfortable conversations with their children. However, the Panel considered that the overall advertisement was not explicit, did not state the sexual nature of the term 'ED' and 'PE' and overall treated the recognition or emphasis on sexual matters with sensitivity to the 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.