

Case Report

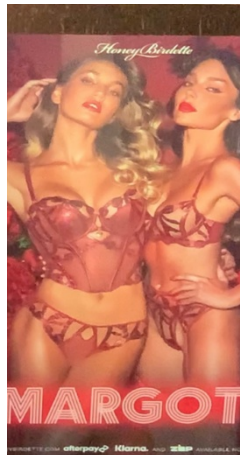
1. Case Number :	0037-24
2. Advertiser :	Honey Birdette
3. Product :	Lingerie
4. Type of Advertisement/Media :	Store Window
5. Date of Decision:	21-Feb-2024
6. Decision:	Upheld - Not Modified or Discontinued

ISSUES RAISED

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

DESCRIPTION OF ADVERTISEMENT

This advertisement depicts two women in red lingerie. The lingerie is titled "Margot"



THE COMPLAINT

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

These are porn inspired ads which feature representations of women in various states of nakedness. They do not belong in the public space at family shopping centres where non consenting community members - including children- are forced to view them.

THE ADVERTISER'S RESPONSE

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

Advertiser did not provide a response.

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 includes sexualised content which is inappropriate for advertising targeting children.

The Panel viewed the advertisement and noted the advertiser had not provided a 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.

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 brand that sells lingerie 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 bright pink colour might be attractive to children, along with the word play, however the abstract style of the advertisement was unlikely to be principally appealing to them.

The Panel considered that young children would not understand the sexual nature of the advertisement. The Panel considered the advertisement did not include bright colours or characters which would attract the attention of children. The Panel considered that the content of the advertisement was principally appealing to adults 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 that the advertisement is placed in the front store window in a shopping centre. The Panel considered that the audience would be broad and would include some children, but it was unlikely that it would 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 the expected average 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:

"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 contains 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 women are posing standing next to each other, and are not interacting with each other in a sexualised manner. 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 women were wearing revealing lingerie and 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 both women were wearing lingerie and considered that this is a depiction of partial nudity. In particular, the Panel noted that the style of underwear meant that a large amount of the woman on the right’s pubic mound was visible, and that this was a high level of nudity.

Are the issues 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 in store windows and considered that the relevant audience includes retail workers, people shopping in the Honey Birdette store and people who are not shopping at Honey Birdette but who are walking past the store, and that this last group would include children.

The Panel considered that the women were not posed in an overly sexualised manner. The Panel considered that the style of lingerie worn by the woman on the left was not overly revealing and did not contain a high level of nudity.

The Panel noted that the style of the lingerie worn by the woman on the right meant that a large amount of her pubic mound was visible. The Panel considered that many members of the community would find this to be a confronting level of nudity in a public space.

The Panel noted that AANA Code of Ethics Practice Note indicated that overtly sexual images included those where clothing reveals a large amount of pubic mound, and as such this image would be considered overtly sexual.

The Panel considered that the overtly sexual image was not appropriate for the relevant broad audience which would likely include children.

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.

Conclusion

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

THE ADVERTISER'S RESPONSE TO DECISION

The advertiser has not provided a response to the Panel's decision. Ad Standards will continue to work with the relevant authorities regarding this issue of non-compliance.