

Case Report

1. Case Number :	0038-24
2. Advertiser :	Honey Birdette
3. Product :	Lingerie
4. Type of Advertisement/Media :	Store Window
5. Date of Decision:	21-Feb-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 advertisement depicts a woman in a red robe and underpants, posed in a background of red flowers. The lingerie is titled "Whitney. Scarlet"



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 is inappropriate for placement where it may be viewed by children and the broad community.

The Panel viewed the advertisement and noted the advertiser did not provide 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 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 lingerie and considered that this would not be appealing to children.

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

The Panel noted that the advertisement depicts a woman in lingerie and a robe. The Panel considered that the imagery has a red overtone as the woman is wearing red and is surrounded by red flowers. The Panel considered that there is no imagery which would be appealing to children (such as cartoon imagery). The Panel considered that while the advertisement may be large, the imagery itself would not be 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, however noted that it is unlikely that the expected average audience would include a significant proportion of 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 the expected average audience for the advertisement would not include a significant proportion 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 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 depicted a woman alone in a robe. 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 woman is wearing a robe over underpants only and the robe is open slightly. The Panel 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 woman in the advertisement was wearing lingerie, 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 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 image featured one person and there was no particular focus on her body parts. The Panel noted that the woman’s breasts are appropriately covered and while the lingerie on the groin area was brief, her genitals are covered.

The Panel considered that the woman’s pose and the context of the advertisement were not overtly sexual. The Panel considered that it is reasonable for an advertiser to feature their products in a shopfront advertisement, so long as the depiction of those products is not overtly sexual.

The Panel considered that the sexuality and partial nudity in the advertisement was 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 complaint.