

Case Report

1. Case Number :	0047-24
2. Advertiser :	Department of Health
3. Product :	Community Awareness
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Decision:	21-Feb-2024
6. Decision:	Dismissed

ISSUES RAISED

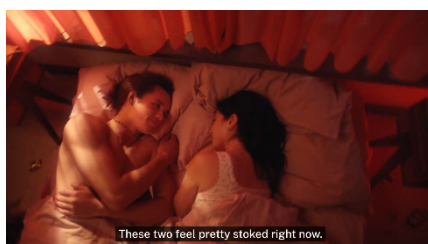
AANA Code of Ethics\2.4 Sex/sexuality/nudity
AANA Advertising to Childrens Code\2.3 Sexualisation

DESCRIPTION OF ADVERTISEMENT

This TV on demand advertisement has three versions.

The 30 second version opens with a man and woman lying in bed smiling, embracing and giggling, suggesting they have had an intimate moment. The voice over tells us that 'these two feel pretty stoked right now.' The video then shows a series of steps that had previously happened in the lead up to that moment. These scenes show the man reaching for a condom, the couple on the couch, and the female accepting a 'perfect match' on her phone. Viewers then see the couple sitting in different waiting rooms for an appointment with their local healthcare professional. The scenes show the couple greeting the healthcare professional to confidently talk about a routine STI test. The video cuts back to the first scene, where the couple is in bed together, smiling as they know they are protected against STIs. The advertisement then says 'Make STI testing your Beforeplay. Use protection and book a check up today. Find out more at [Health.gov.au/STI](https://www.health.gov.au/STI)'

The two 15 second versions open with two couples – one with a female-male couple, and one with a male-male couple - lying in bed smiling, embracing and giggling, suggesting they have had an intimate moment. The scenes then rewind to show the couples individually sitting in a health professional's waiting room. The scenes show the couple greeting a healthcare professional to confidently talk about a routine STI test.



THE COMPLAINT

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

It occurs during a family oriented program, where young children were watching, and the ad is very sexualised for that type of audience.

Government health ad regarding STI testing and sex very inappropriate while watching gladiators with young family

The ad is about STIs and starts with "these two just had sex" the issue is that this ad is being played on streaming services at any time of the day i.e. 6am whilst children are watching streaming TV shows, leading to having to explain sex and sti's. It is not age appropriate and the big channels, 9,10 and 7 seem to not regulate the ads on their streaming. The language in the ad is confronting and uncomfortable, and certainly not PG or even G.

This ad shows people in bed having sex, actually says sex, condoms, foreplay and is shown MULTIPLE times on 10play throughout Australian Survivor - a show that is rated PG!!! It's one of the few family friendly shows we watch together as a family and children should NOT be subject to an ad that contains such adult content. It was shown on EVERY ad break throughout the hour long show. You can't skip the ads on 10play - you are forced to watch them at every break, of which there are 8.

Inappropriate to be shown during "the chase" which is supposed to be a family game show. The ad was shown at 5:50 on channel 7 while I was watching this show with my young 7-15 year old grandchildren.

THE ADVERTISER'S RESPONSE

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

Sexually Transmissible Infections (STIs) are a public health challenge in Australia, with significant increases in cases of notifiable STIs since 2012 for chlamydia, gonorrhoea and syphilis, including congenital syphilis. This is despite these illnesses being entirely preventable and treatable.

In 2022, notifications of infectious syphilis in Australia more than doubled from record rates in 2015. If left untreated, STIs can lead to serious health complications and impact quality of life including infertility, miscarriage, lifelong disability and in rare instances, death.

The highest notifications rates for STIs are in the 20-34 year age group, particularly infectious syphilis. There are also increasing rates of STIs being reported from young people aged 15 years.

A national awareness and education campaign has been developed to address the increasing rates of preventable STIs. The campaign aims to raise awareness about the importance of STI prevention, testing and treatment and promote safe sex behaviours. The primary target audience is 20 to 34 year olds, with 18-19 year olds a secondary audience of the advertising.

While 15-17 year olds are not targeted in the media buy, increased awareness of STIs in the early stages of becoming sexually active could help prevent infections and encourage safe sex behaviours.

Stigma and shame are often associated with STIs which undermines early testing and treatment. The campaign aims to address this by encouraging the target group to take control of their sexual health and protect themselves and their partners from infections.

Several stages of consumer research were undertaken to inform the campaign's strategic approach and messaging. STIs were found to have low salience amongst the target group and there is limited knowledge of prevalence and who is at risk. Care has been taken to ensure the campaign is inclusive and respectful of a range of relationship types, and to help normalise talking about STIs and testing, as part of regular safe sex behaviours.

The 'Beforeplay' campaign aims to be suggestive rather than explicit in nature, relatable, engaging and provides a clear call to action to the target audience. Research was undertaken to ensure appropriateness of all imagery and language.

Advertising is being placed through a highly targeted media strategy to reach the primary audience of 20 to 34 year olds, and secondary audience of 18 to 19 year olds. Contextually relevant media environments were chosen based on target audience media channel usage information. This includes targeted online and out of home advertising based on age (18-34 years) and interests (such as licenced clubs, music festivals and nightclubs).

The media strategy also uses mitigation tactics to limit incidental exposure to minors. Demographic overlays are used across online publishers, including video on demand platforms, and accounts that have no age data are excluded.

Notwithstanding this highly targeted approach and mitigations in place, the campaign's media buying agency has subsequently advised there is still some risk of incidental exposure to minors who have viewing access from an 18-34 year old's account.

The Department has taken the complaints of potential exposure to minors seriously and has placed additional mitigations across online advertising channels, including video on demand and gaming platforms.

These include additional online programmatic filters to ensure the video advertising assets do not air during family programs and all gaming apps and sites have been removed from the buy. The campaign's media buying agency has also communicated with video on demand television networks to not place the advertising in family shows, including those mentioned in the submissions.

In accordance with section 2 of the advertising codes:

2.1 Advertising or marketing communication shall not portray people or depict material in a way which discriminates against 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.

The advertising aims to raise awareness of STI prevention and testing among the target group, without singling out any specific race, ethnicity, nationality, gender, sexual preference, religion, disability or other group. The campaign includes a range of couples from various backgrounds and relationship types to support broad reach and inclusivity, and to reduce the risk of discrimination.

2.2 Advertising or marketing communication shall not employ sexual appeal:
(a) where images of minors, or people who appear to be minors, are used; or
(b) in a manner which is exploitative or degrading of any individual or group of people.

The advertising does not feature images of minors, or people who appear to be minors. The actors appearing in the advertising are all within the 20 to 34 year old group. The public health messaging and visuals are chosen to promote health and safety in sexual behaviour without exploiting or degrading any individual or group.

2.3 Advertising or marketing communication shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

There is no portrayal of violence in this advertisement.

2.4 Advertising or marketing communication shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The advertising takes a peer-to-peer approach to communication and aims to treat the subject of sex and sexuality with sensitivity and respect. The advertising was tested with the target audience at several stages of development and was found to be relatable and engaging without being explicit or insensitive. There is no full nudity or sexual acts shown in the advertising.

2.5 Advertising or marketing communication shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

All language used is appropriate in the context of public health messaging and talking about preventing STIs, the importance of testing and practising safe sex. No strong or obscene language is depicted in this advertisement.

2.6 Advertising or marketing communication shall not depict material contrary to Prevailing Community Standards on health and safety.

This campaign uses public health protection messages based on the clinical advice of the Australian Government Department of Health and Aged Care and Chief Medical Officer to ensure messaging is in line with the latest medical guidelines and public health advice. This evidence-based approach ensures the campaign promotes safe and healthy behaviours and practises that have been proven to reduce the transmission of STIs and improve health outcomes. The campaign does not depict material or messaging contrary to the Prevailing Community Standards on health and safety.

2.7 Advertising or marketing communication shall be clearly distinguishable as such to the relevant audience.

The advertising clearly depicts the intended target audience and is distinguishable as Australian Government advertising via the Australian Government crest and authorisation statement.

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 advertisement is promoting sexual health testing. 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 considered that each version of the advertisement depict couples in intimate scenes. The Panel noted that the colours used in the advertisement are muted and the scenes of intimacy move quickly and have changing camera angles. The Panel considered that while some viewers may prefer that children do not view the advertisement, the context and scenario are adult and although may be viewed by children, would not be principally appealing to them.

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

The Panel noted that the advertisement was placed on On Demand TV and considered that the audience would be broad and would include children, noting programming such as Survivor and Gladiators.

The Panel noted the advertiser's response which detailed what steps they took to ensure that the audience was predominately adult, and considered that while the programs may be family viewing, it did not have an expected average audience of over 25% children.

Targeting children conclusion

The Panel considered that the product would have appeal to children, but that 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 consequently 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 depicts couples and suggests that their interactions are sexually intimate, although the scenes are not explicit. The Panel considered that the advertisement did depict sexually suggestive behaviour.

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 a reference to sexual intimacy is a depiction of sexuality and that the advertisement did 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 noted that several of the people in the advertisement are depicted shirtless or in underwear and considered that some viewers may consider this to be partial 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 this advertisement was placed on free-to-air television and considered that the audience would be broad.

The Panel considered that the advertisement uses the term sex in a factual and straight forward manner in the context of an important community health message.

The Panel noted that the advertisement uses muted colours, and scenes of intimacy move quickly, and have changing camera angles. The Panel considered that there was no use of explicit language in the advertisement or detailed descriptions of sex or sexual activity.

The Panel acknowledged that some members of the community would prefer that the issue of sexual health not be discussed on television but considered that in the context of a community awareness advertisement, it did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience, which would include children.

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.