

Case Report

1. Case Number :	0123-24
2. Advertiser :	Hismile IP Pty Ltd
3. Product :	Health Products
4. Type of Advertisement/Media :	Internet - Social - TikTok
5. Date of Decision:	15-May-2024
6. Decision:	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity
AANA Code of Ethics\2.5 language

DESCRIPTION OF ADVERTISEMENT

This TikTok advertisement features a woman looking into a bathroom drawer as there is a vibrating sound coming from it, with text on the screen saying "Did my stepmother leave something on?", she then picks it up and realises its a toothbrush. Throughout the advertisement the voice-over tells viewers about what the toothbrush can do, including "three modes so you can decide how hard you want it - pun intended b[beep]ch"and "this sh(beep) is limited as f(beep)".



THE COMPLAINT

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

I believe the ad in question breaches advertising ethical code within Australia. Due to the nature of the crimes being used in such a suggestive manner, I believe the ad promotes child abuse and incest, as well as using the selling point of a 'pornography category' to sell their product. If the ad is not eluding to pornographic categories which demonstrate what are considered illegal acts in Australia, it simply is glorifying irresponsible parenting ie neglect leading to sexual abuse as neglect is abuse and exposing children to sexual material is illegal.

THE ADVERTISER'S RESPONSE

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

This complaint pertains to an Ad for our product the Hismile Electric Toothbrush. The complaint relates to a 70 second Ad that was available on TikTok dated 19 April 2024. Specifically the complaint notification outlines the issues as "The ad is a point of view of a child suggesting to have found their stepparents sex toy and them being 'deviously interested' in said item. Stepparent is poignant because like porn culture would suggest it is considered morally okay. The fact biological parent was not used only implies there was a reason not to.

REASON FOR CONCERN: I believe the ad in question breaches advertising ethical code within Australia. Due to the nature of the crimes being used in such a suggestive manner, I believe the ad promotes child abuse and incest, as well as using the selling point of a 'pornography category' to sell their product. If the ad is not eluding to pornographic categories which demonstrate what are considered illegal acts in Australia, it simply is glorifying irresponsible parenting ie neglect leading to sexual abuse as neglect is abuse and exposing children to sexual material is illegal."

In determining whether the complaint is to be upheld or dismissed, we note your office will consider the rules from the AANA Code of Ethics.

Our office maintains a compliance program for its advertising to ensure we comply with all relevant standards, regulations and advertising codes. We address each rule from the Code below.

We believe that it is fair to rule out 2.1, 2.2, 2.3, 2.5, 2.6, 2.7 as the Advertisement does not infringe on these aspect of the code, nor does the complaint have issue.

2.4 - Sex, Sexuality and Nudity

To determine if an advertisement infringes on section 2.4 we note that we must establish the relevant audience. Considerations therefore must be given to the medium in which the Advertisement appeared, the audience and their likely response, the nature of the product and any material distributed to customers.

In light of the above, we summarise the advertisement as follows:

- 1. The TikTok Advertisement was on TikTok and was approximately 70 seconds in length. According to a TikTok for business case study, using StudioCanal, the average watch time per video for an advertisement on TikTok is 3.33s.*
- 2. The Ad does show or talk about any sex, sexuality or Nudity.*
- 3. In the video there is a notification of it being an AD with the TikTok Overlay of promotional content in the bottom left of the screen as well as in the text describing the video.*
- 4. Sexual Depictions, the use of the word stepmom does not immediately imply sexual connotations for an audience on TikTok and the depiction does not go any further than the use of the word step mom. This may be used as an attention grab but any further inference is completely up to the interpretation by the viewer. To the average consumer on TikTok, the over riding impression from the Ad would be that the girls step mom has left on a toothbrush in their bathroom. The Ad does not create the impression that the Step mom is neglecting her parental responsibilities and exposing her kids to sexual material and sexual abuse. If someone were to make the inference that our Ad was about a sex toy or anything of that this would only be if they were able to make the correlation through their own minds and would have to be of age. Much like you can say the word sex, the word step mom should not be banned.*

In light of the above, it is our considered position that the advertisements do not infringe on section 2.4 or have the capability to promote child abuse and incest to the average customer and that the Advertisement meets the standard of ethics.

We trust that the provision of this report will substantiate our Advertisement and cause the Complaint not to be upheld by the Ad Standards council.

THE DECISION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concerns that the advertisement uses inappropriate sexual innuendo.

The Panel viewed the advertisement and noted the advertiser's response.

Section 2.4: Advertising or Marketing Communications 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 the content of the advertisement and considered that 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 advertisement includes two sexual innuendos, including suggesting the toothbrush may be a stepmother’s vibrator, and talking about “how hard you want it”. The Panel considered that the advertisement contained 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 considered that the advertisement did not contain nudity.

Is the issue of sexuality 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 the advertisement was a sponsored ad on TikTok. The Panel considered that TikTok requires users to be at least 13 years old, and the relevant audience for this advertisement is likely to be people over 13. The Panel noted that this was a sponsored advertisement and as such users did not necessarily have to have followed or interacted with the advertiser's content for the ad to be served to them.

The Panel noted the complainant's concern that the advertisement promotes child abuse, incest and is referring to a pornography category.

The Panel considered the first few seconds of the advertisement which contained an adult hand reaching for a vibrating object in a draw which belongs to their stepmother. The Panel noted the person's hand is clearly an adult's and not a child's. The Panel considered that there is no depiction or suggestion that the person in the advertisement is having a sexual relationship with their stepmother and the advertisement is not promoting incest.

The Panel considered that some members of the community may see the scene in the advertisement as referring to pornography videos featuring stepmothers, but considered that this would not be understood by anyone unfamiliar with this genre. The Panel considered that the scene is quickly resolved to show that it is a toothbrush, and that there is no depiction of a sex toy or sexual relationship.

The Panel noted voice-over saying "decide how hard you want it - pun intended" is also a sexual reference which has a clear double meaning. The Panel considered that while using sexual themes in an advertisement for a toothbrush may be distasteful, the sexual references are not explicit and would be unlikely to offend the audience of TikTok users.

Overall, the Panel considered that the sexual themes in the advertisement were mild and were treated with sensitivity to the TikTok audience.

Section 2.4 Conclusion

The Panel found the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and did not breach Section 2.4 of the Code.

Section 2.5: Advertising or Marketing Communications 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.

The Panel noted that the Practice Note for this section of the Code includes:

“The “f” and “c” words are generally viewed as harmful, unacceptable and not permitted. Nonverbal representations of the “f” word are also generally not permitted... Advertising which sufficiently beeps or censors language so that it cannot be understood will not be seen to be strong or obscene language.”

The Panel noted the advertisement included some beeped swearing. The Panel noted that although the words were beeped, they could be understood as “bitch”, “shit” and “fuck”.

The Panel considered that swearing is a common occurrence in TikTok videos, and although the words have not been completely beeped out, they have been sufficiently covered so that they are unlikely to be considered strong or obscene by the audience of TikTok users.

Section 2.5 conclusion

The Panel determined that the advertisement did not breach Section 2.5 of the Code.

Conclusion

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.