

## Case Report

1. Case Number :	0117-24
2. Advertiser :	Pilot Technologies Pty Ltd
3. Product :	Health Products
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Decision:	15-May-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 television advertisement features a man and woman in their backyard. The man is seen trying to untangle a hose and they exchange the following dialogue:

MAN: Oh, come on, come on, come on.

WOMAN: Looking at a little floppy down there, love.

MAN: Just gotta get a stronger grip on it. It'll be fine.

WOMAN: Sounds like a kink, need a hand?

MAN: I thought you'd never ask.

WOMAN: Try Pilot? They can get your hose working again in no time.

Voice Over: Get ED treatments delivered, at [pilot.com.au](http://pilot.com.au). Hard, made easy.



## **THE COMPLAINT**

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

*Very sexually suggestive about limp hoses, a guy wanking a hose, his partner asking is it not hard enough*

*The adverts are suggestive, crude and in bad taste in the way erectile dysfunction is being presented.*

*Ad about a man handling a garden hose with a gross reference to erectile dysfunction. Wife offers to help 'give him a hand'. The time was about 1745, my kids aren't in bed yet. This is wildly inappropriate for this time slot.*

*The overt sexual connotations are improper especially in programs aimed at a younger audience such as Lego Masters. The who advertisement makes me feel uncomfortable.*

*They literally have a guy "pulling" himself then a hose goes "hard"  
I'm not wowser but C'mon*

*The pilot ads about erectile dysfunction disguised as hose ads are on during weekends and daytime television rather than later at night when kids aren't watching*

## **THE ADVERTISER'S RESPONSE**

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

*Response to Ad Standards Notification 0117-24*

*We refer to your letter on behalf of Ad Standards dated 29 April 2024 (Notification) enclosing a number of complaints relating to a series of advertisements (collectively, the Advertisements) for Pilot Technologies Pty Ltd (Pilot). Thank you for the opportunity to provide a response.*

*The Advertisements comprise two different cuts of the same footage, but ultimately convey the same concept. They depict a man struggling to untangle a garden hose which is off-screen, while his wife watches on and makes comments. The man then stands up with the hose now visible and upright. Transcripts of both cuts, being 30 seconds and 15 seconds, are produced at the end of this response (Annexure A).*

*We acknowledge Ad Standards' categorisation of the complaints as primarily engaging section 2.3 of the AANA Advertising to Children's Code (Children's Code) and*

*section 2.4 AANA Code of Ethics (Ethics Code). We set out our response regarding those provisions below.*

*In our submission:*

*(a) the Children's Code does not apply to the Advertisements at a threshold level, and even if it does, section 2.3 is not contravened; and*

*(b) while section 2.4 of the Ethics Code is engaged, it is not contravened, in large part because of the Advertisements' use of double entendre.*

*Children's Code*

*Whether the Children's Code applies*

*The Notification indicates that the Advertisements may raise issues under the Children's Code. We consider that the Children's Code does not apply to the Advertisements.*

*The Children's Code applies to "Advertising to Children", which is defined as:*

*Advertising that targets Children and which 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 Practice Note indicates that this definition involves a multi-factorial test rather than a list of disjunctive criteria, in stating that all factors will be considered in each case and that their relative weight "will be determined on a case by case basis". We address each factor below.*

*Nature and intended purpose of the product.*

*The product being advertised is Pilot's medical consultation service for erectile dysfunction (ED). Naturally, such a medical service could not be seen as principally or significantly appealing to children, primarily because this is a medical condition*

*experienced by adults, and any medical interventions are clinically indicated for adults only. Thus, the nature and intended purpose of the product are squarely for adults, and in practice this is confirmed by Pilot's services only being available to persons over the age of 18, as dictated in Pilot's Terms and Conditions.*

*Presentation of the advertisement content.*

*The presentation of the advertisement is not principally appealing to children. It can be accepted that cheerful music and a colourful setting of a home garden may be of some appeal to children, but they would be of no more appeal to children than they would be to adults. If it were the case that such general elements could render an advertisement "advertising to children", then a vast majority of television advertisements set in domestic homes would be governed by the Children's Code.*

*More generally, all characters in the Advertisements are identifiably adults (and in fact many of the complaints demonstrate an understanding that the man and woman are married or in an adult relationship). And the dialogue clearly conveys a conversation between adults, as the subject has no relevance to children. There is nothing in the Advertisements that is inherently or innately related to children, let alone principally appealing to them.*

*Expected average audience.*

*We recognise that the Advertisements appear outside of late-night TV, including during some sporting events which draw an age-diverse audience. However, the Advertisements received "J" classifications from ClearAds (see Annexure B), meaning they would not be broadcast during or adjacent to P- or C-rated programs (which could attract a significant proportion of children).*

*We do not believe evidence supports that more than 25% of the predicted audience would be children (as the Practice Note indicates is a consideration for this point).*

*However, we acknowledge that the time and placing of the Advertisements in close proximity to TV shows with high viewership ratings means that some numbers of children are unavoidable in the regular and predictable audience.*

*Nonetheless, we consider that the Advertisements were aired (1) in accordance with their CAD ratings, and (2) without a significant proportion (as defined) of the expected audience being children.*

*Even if it is the case that some (though not a significant) portion of the Advertisements' audience included children, given that neither the product advertised nor the presentation of the Advertisements appeal in any way to children, the Advertisements in question could not reasonably be concluded to satisfy the three-pronged criteria of "Advertising to Children".*

*It follows that the Children’s Code, and all of its provisions including Section 2.3, do not apply to the Advertisements.*

#### *Analogous Ad Standards rulings*

*To assist the Panel, we refer to its recent rulings regarding the recently revised Children’s Code and its application to similar advertisements and complaints.*

*In case 0034-24 (February 2024), the panel found the Children’s Code did not apply to an analogous advertisement, similarly for the treatment for erectile dysfunction, which used the double-entendre of a collapsing tent on a couple’s camping trip. In dismissing this complaint, the Panel relevantly found:*

*(a) the advertised product – a treatment service for erectile dysfunction – was not principally or significantly appealing to children; and*

*(b) the fact the animated characters appeared to be adults, in combination with other factors, was less likely to gain the attention of children.*

*The Panel concluded the advertisement would “be more likely to gain the attention of adults” and was not “principally appealing to children”. If this conclusion was available for a colourful, fast-paced animation – which is a style inherently closer to children’s television – the same conclusion must be drawn in relation to the Advertisements.*

*Similarly, in Case 0033-24, the Panel found a series of advertisements promoting treatment for HIV did not target children and therefore the Children’s Code did not apply. The Panel relevantly remarked:*

*“...the advertisement depicts various men in underwear holding a cupcake and surrounded by confetti. The Panel considered that such celebratory imagery would be appealing to children, however it would be equally appealing to adults. The Panel therefore considered that the advertisement was not principally appealing to children.” (Emphasis added).*

*Where such a conclusion may be drawn in relation to cupcakes and confetti, it must equally be drawn in relation to a suburban backyard and garden hose.*

#### *Children’s Code – Section 2.3 – Sexualisation*

*If the Panel does not agree and finds that the Children’s Code does apply, the Children’s Code is in any event not contravened by the Advertisements.*

*The only provision of the Children’s Code indicated by the Notification to be relevant is Section 2.3(b). It provides that advertising to children “must not include sexual imagery”.*

*We contend that the Advertisements contain no sexual imagery. For the same reasons articulated below that the Advertisements do not fall foul of Section 2.4 of the Ethics Code, they do not offend Section 2.3 of the Children’s Code. That is because no sexual reference is available to children viewing the Advertisements.*

#### *Ethics Code*

*We respectfully adopt the observation of Ms Rose in her email dated 29 April 2024 that these complaints are similar to those previously dismissed by the Panel, and note Ms Rose’s suggestion that the reason for the convening of the Panel was to consider the application of the newly updated Children’s Code.*

*We nonetheless provide a brief response in relation to the Ethics Code below, though much of the response repeats analysis we have previously provided to the Panel for other Notifications, due to the similarity of the Advertisements and the complaints, and therefore the application of the Ethics Code.*

#### *Section 2.4 – Sex, sexuality and nudity*

##### *No sexual matters conveyed to younger viewers*

*As with previous Pilot advertisements considered by the Panel, the complaints variously assert that the Advertisements make sexual references via suggestive language and/or gestures.*

*Section 2.4 of the Code relevantly provides “advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience”. The AANA Practice Note for the Ethics Code (Practice Note) elaborates as follows:*

*“Section 2.4 prohibits the harmful use of sex, sexuality or nudity in advertising and requires that such content must be appropriate for the relevant audience. Images that are considered harmful and which are not permitted are those which are overtly sexual and inappropriate having regard to the relevant audience”.*

*The Advertisements clearly contain no direct depictions of, or references to, sex or sexuality. Although they make reference to erectile dysfunction – a medical condition associated with sex – they do so only through the initialism “ED”, which is only recognisable to adult audiences familiar with the condition. The Advertisements otherwise make reference to this concept only through mild double entendre.*

*Importantly, however, the references stop short of innuendo. While innuendo always involves at least an implied reference to sexual activity, double entendre establishes two simultaneous meanings, such that one class of (relevantly mature or educated) viewer will interpret an implied reference to sexual activity, while another class will interpret a reference to something unrelated.*

*In the present Advertisements, adult viewers may interpret the man's struggle with the garden hose (including the use of phrases such as "a little floppy" and "get a stronger grip") as a reference to erectile dysfunction, but children will interpret it on face value, as a difficulty with a garden hose.*

*We respectfully remind the Panel of the AANA's commentary on this point within Practice Note:*

*"Advertising that uses sexualised double entendre will often be seen to not breach the Code when there is a non-sexualised interpretation which would be understood by children viewing the advertisement."*

*In this case, child-viewers will understand the Advertisements to depict a common scene in any household garden: a struggle with a garden hose – and no sexual meaning is available to them.*

*No harmful reference to sex*

*Finally, as with previous (dismissed) Notifications regarding Pilot advertisements, to the extent the Advertisements do contain any implied references to erectile dysfunction, perceived only by their intended audience (adults), they could not be said to be harmful. The Advertisements take a light-hearted approach to dealing with a stigmatised medical condition in a way that is accessible and non-judgmental to those who may be affected. Far from being harmful, the Advertisements normalise a condition which patients are often embarrassed to address.*

*Analogous Ad Standards rulings*

*We again refer to recent rulings in relation to complaints of a similar nature (being the same rulings referred to in our previous letter).*

*Cases 0037-20 and 0344-17 both pertained to the same advertisement for the "Man Shake", which depicted men using hand gestures to mimic preparing a dietary shake. The complaints alleged that the advertisement inappropriately alluded to a sexual act. In dismissing the complaints, the Panel relevantly remarked that:*

*"whilst this gesture could be interpreted as a masturbation gesture the Board considered that the full gesture is not shown and it is immediately made clear that this hand gesture is mimicking the shaking of the advertised drink prior to consumption";*

*“some members of the community would interpret the advertisement as making a reference to masturbation but considered that the level of double entendre is very mild and would not be understood by children”; and*  
*“the advertisement does not contain any strong sexual references or language and considered that overall the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience which would include children”.*

*In our respectful view, the Man Shake advertisement is closely analogous to the Advertisements, and all three of the above observations can readily be made in respect of the Advertisements.*

*The Panel has also made a number of determinations on related linguistic points, including double entendre. For example:*

*Cases 0231-23 and 0232-23, in which phrases including “got it up”, “still a bit soft” and “through the posts” were all used in double entendre, and were deemed not to offend Part 2 of the Ethics Code;*

*Case 0143-17, in which “get it up” was similarly deemed not to offend the Ethics Code;*

*Case 0337-21, in which use of the initialism “ED” instead of “erectile dysfunction” was considered to have “allowed the advertisement to be played in a broader timeslot as the language is not graphic or explicit, as well as being sensitive towards that broad audience”; and*

*Cases 0181-11 and 0273-30, in which the more overt language of “erections” and “erectile dysfunction” were used, but the advertisements were nonetheless ruled to have treated sex with sufficient sensitivity as not to offend Section 2.4 of the Ethics Code.*

*Again, we submit that the same conclusions would be drawn regarding the Advertisements, which deploy only mild double entendre as outlined above.*

*Next steps*

*We hope that this assists the Panel in its determination. We are otherwise happy to provide any additional information that may be of use.*

## **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 two adults in the garden talking about a hose, and considered that this was unlikely to attract the attention of children.

The Panel considered the advertisement would be 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 early evening and during family shows, such as Lego Masters.

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 found 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 although the advertisement contained the phrase ‘ED’, referring to erectile dysfunction, and that this was a reference to sex, 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.

**Are the issues of sex, 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 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 gardening scene which is in itself innocuous. Although there is a suggestion of erectile dysfunction and an erection with the rigidity of the hose, it is unlikely that young children would make this connection, as they are unlikely to understand the symbolic significance.

The Panel noted that the advertisement directly mentions ‘ED’ 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 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.