

Case Report

1. Case Number :	0138-24
2. Advertiser :	Gyna Fertility
3. Product :	Health Products
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Decision:	5-Jun-2024
6. Decision:	Upheld – Not Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification

DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement is in the format of a cartoon and depicts a woman waiting for a pregnancy test while the characters "Time" and "Food" wait with her. The following dialogue plays during the advertisement:

VO: "Does fertility really decline after 35?"

FOOD: "what's going on with her?"

TIME: "Oh, she's just waiting for another pregnancy test. It will be negative and I'm really not on her side. After 30, it only gets harder"

FOOD: "what does she think is the problem? I probably can't be helping."

TIME: "like most women her age, she thinks that it's up to fate and that she should just keep on trying and eventually something will stick, but, she's almost too old. It's a shame, really"

WOMAN: "Oh my gosh, im pregnant!"

TIME: "how is that possible?"

GYNA: "Oh, hey guys!"

FOOD: "who are you?"

GYNA: "I'm Gyna, a program that helps women boost their fertility naturally. Look at her now"

FOOD: "oh i love babies!"

GYNA: "And it couldn't have come at a better time. He couldn't take much more ovulation tracking. We finally got rid of you [FOOD] and other sneaky fertility blockers that were preventing her from conceiving."

TIME: "so she doesn't have to do IVF? Everyone is doing it now."

GYNA: "why would she do that for \$12,000 without first taking our free fertility quiz and learning exactly how to boost her fertility naturally? We gave her an estimate of five months, and she was pregnant in four."



THE COMPLAINT

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

The ad is both misleading in content and offensive in the way it is targeting a vulnerable group - women with fertility issues and struggling to get pregnant. It implies that the fertility issues are their fault because of their age, and that diet can solve their problems. Completely dodgy content being plugged on social media feeds. As a female in mid-30s, I feel the ad is exploiting a highly emotional medical issue with misleading programs. Promoting itself as a "health and wellness" business, there is no indication as to whether this information is prepared by qualified dieticians or has any medical basis.

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 Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement:

- is misleading
- implies that fertility issues are the fault of the woman.

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

Misleading advertising

The Panel noted the complainant's concerns that the advertisement is misleading and gives no indication as to the medical qualifications of the business. The Panel noted that the issue of misleading advertising is not one which falls within Section 2 of the AANA Code, and as such, could not be considered by the Panel.

Section 2.1: Advertising shall not portray 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 orientation, religion, disability, mental illness or political belief.

The Panel noted the Practice Note to Section 2.1 of the Code provides the following definitions:

- Discrimination – unfair or less favourable treatment.
- Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.
- Gender – refer to the attributes, roles, behaviours, activities, opportunities or restrictions that society considers appropriate for girls or boys, women or men. Gender is distinct from 'sex', which refers to biological differences
- Age – based on a person's actual age (i.e. from the date they were born) and not a person's biological age (i.e. how old they may appear)

The Panel noted the complainant's concern that the advertisement implies that fertility issues experienced by women are solely due to their age and diet.

The Panel considered that although age and diet can impact fertility, they are not the only factors. Other aspects including medical issues, and male fertility can also play a significant role.

The Panel considered that the tone of the 'time' character in the advertisement was humiliating, ridiculing, and dismissive and implies that any difficulties the couple have had conceiving were solely the fault of the woman.

The Panel acknowledged that the advertiser had a right to promote its services, however considered that the portrayal of the woman in the advertisement was insensitive, and the message could have been conveyed with greater sensitivity.

Overall, the Panel considered that the advertisement portrayed women, particularly those experiencing fertility issues, in a way that vilified them based on age and gender.

Section 2.1 conclusion

The Panel found that the advertisement did breach Section 2.1 of the Code.

Conclusion

Finding that the advertisement breached Section 2.1 of the Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DECISION

The advertiser has not provided a response to the Panel's decision. Ad Standards will notify Meta of the breach.