

Case Report

1. Case Number :	0139-24
2. Advertiser :	eHarmony, Inc.
3. Product :	Professional Service
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Decision:	5-Jun-2024
6. Decision:	Dismissed

ISSUES RAISED

AANA Advertising to Childrens Code\2.1 Prevailing Community Standards
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This television advertisement features two women cuddling on the couch as they wait for the dryer to finish. One of the women jumps onto their bed while the other woman dumps the clean laundry on her. They exchange a kiss.



THE COMPLAINT

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

It is not appropriate to have an ad about dating during kids programming. I'm watching nickelodeon channel with my children at 10am and multiple times the eharmony ad has come on showing 2 women kissing on a bed!!. Inappropriate on a children's channel. No eharmony ad should be shown.

These are children watching. They do not need to be exposed to sexual content

THE ADVERTISER'S RESPONSE

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

While eharmony's service is not intended for or targeted to children, the Ad is rated G - appropriate for all audiences. Nothing in the Ad promotes any product or service that encourages unsafe practices.

The Ad does not discriminate against any member based on any characteristics, including the enumerated characteristics in Section 2.1 of the Code of Ethics (C of E). There are no minors portrayed in the Ad, and nothing in the Ad is exploitative or degrading to the couple; Section 2.2 of the C of E. There is no violence in this Ad as detailed in Section 2.3 of the C of E.

As for Section 2.4 of the C of E, it is eharmony's position that there is nothing overtly sexual about this Ad. It merely portrays a couple doing daily chores and playfully enjoying each other's company. There is one kiss included, but it is just a peck on the lips. There is no nudity, sexual intercourse, sexually stimulating behavior, and no sexual depictions. The Ad is a representation of eharmony's tagline "Get Who Gets You," showing that there is someone out there for everyone, and that a person seeking a relationship can find a match who shares their interests and sense of humour. It appears that the Clear Ads rating is consistent with eharmony's position on this Ad.

eharmony did not select Nickelodeon children's programming for airing of its Ad, and it appears to have been a bonus spot(s) selected by the network. For ads with a G rating (appropriate for all), eharmony cannot exclude specific programming during which bonus spots will air without also restricting advertising on the same channel altogether. Channels that air children's programming, including Nickelodeon, also air other types of programming.

THE DECISION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Children's Advertising Code (the Children's 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 service is a dating website aimed at adults, and considered that this would not have principal or significant appeal to children.

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

The Panel considered that the advertisement features two adult women doing laundry and has an overall theme of finding a romantic partner who understands and accepts you. The Panel considered that the content of the advertisement was principally appealing to an adult audience and was not 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 complainant viewed the advertisement while watching children's programs on the Nickelodeon channel.

The Panel noted the advertiser's response that the program had been placed on that channel by the network as a bonus spot, which was outside of the advertiser's control. The Panel further noted that the advertiser could not prevent advertisements from being placed on the channel during children's programming without preventing it from playing all day.

The Panel noted that whilst the Nickelodeon channel primarily features cartoons and children's programs, from 6pm in the evening the channel does show PG and M rated sitcoms and talk shows.

The Panel considered that the advertisement played on the channel in the morning during children's programming where over 25% of the audience was likely to be children. The Panel considered that while the advertisement's placement overall may not include a significant proportion of children, its placement on Nickelodeon in the morning would most likely have a significant child audience.

Targeting children conclusion

The Panel considered that:

- the product would not have significant appeal to children
- the content of the advertisement was not principally appealing to children
- the audience for the advertisement did, at times, include a significant proportion of children.

Weighing the three points above, the Panel concluded 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."

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 a couple in a loving moment although they share a brief kiss, the overall behaviour is not sexually stimulating or 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 considered that a depiction of intimacy and a romantic relationship 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 considered that both women are fully clothed and 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 that this advertisement had been given a G rating by ClearAds and had been placed in programs appropriate to this rating.

The Panel noted the complainant had viewed the advertisement while watching children's programming and considered that the advertisement was likely to have a broad audience which would include children.

The Panel considered that the kiss shared by the couple was brief and not overly sexual. Overall, the Panel considered that the advertisement did treat the issues of sex, sexuality and nudity with sensitivity to the broad audience which would include children.

Section 2.4 Conclusion

The Panel determined the advertisement did not breach Section 2.4 of the Code.

Conclusion

Finding that the advertisement did not target children or breach any other sections of the Code, the Panel dismissed the complaint.