

Case Report

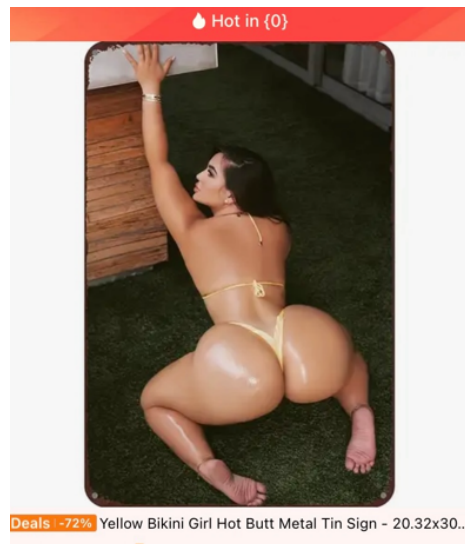
1. Case Number :	0260-24
2. Advertiser :	Temu
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet
5. Date of Decision:	23-Oct-2024
6. Decision:	Upheld – Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.2 Exploitative or Degrading
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This internet advertisement features an image of a woman on all fours with her buttocks facing the camera, wearing a g-string swimsuit. The image is accompanied by text "Yellow Bikini Girl Hot Butt Metal Tin Sign."



THE COMPLAINT

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

purchasing basic household items from the online site TEMU and amongst the product range there is sexually inappropriate products placement that randomly appear , I think these should be filtered for age & not placed amongst innocuous items . I took this screenshot last week when I ordered some items I have since read of similar complaints in the news <https://www.bbc.com/news/technology-67272541>

THE ADVERTISER'S RESPONSE

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

We submit this response on behalf of our client, Temu, in respect of the above mentioned case and the relevant complaint pertaining to it (Complaint). Please see below Temu's response to the Complaint and attached copy of the relevant image of a the relevant product, being a metal tin sign depicting a woman in a bikini (Product), which we understand to be the subject of the Complaint (Product Image).

Definitions - "Advertising"

We submit that the Product Image does not constitute "Advertising" as defined under the Australian Association of National Advertisers' (AANA) Code of Ethics (Code). The Product Image simply constitutes an image of a product that was available for purchase on the Temu platform, being a metal tin sign of a women in a bikini. Thus, the Product Image is simply a listing of the Product at its point of sale (being the Temu platform) to facilitate purchases of the Product, as opposed to a form of external marketing communication which was intended to reach/draw the attention of the general public. We therefore submit that the Code is not applicable with respect to the Product Image.

Section 2.4 - sensitivity to sex, sexuality and nudity with respect to the relevant audience

In the alternative that the Product Image is deemed to meet the definition of "Advertising" under the Code, it is submitted that the Product Image is not of a nature which breaches section 2.4 of the Code.

Temu recognises that the image on the metal tin sign may be perceived as a depiction of sexuality by some members of the public.

As stated in AANA's Practice Note with respect to the Code (Practice Note), images of models in a bikini are generally permitted provided they are not overly sexual and inappropriate for the relevant audience.

Temu considers that any such perceived 'sexuality' has been treated with adequate sensitivity with respect to the intended predominantly adult audience.

We note the complainant viewed the Product Image whilst purchasing items on the Temu platform. Under Temu's Terms of Use, users of the Temu platform must be at least 18 years old. Minors between the ages of 18 and 13 years of age are only permitted to use the Temu platform through an account owned by a parent or legal guardian with appropriate permission and direct supervision. Children under 13 years of age are not permitted to use the Temu platform (see clause 2.1 of Temu's Terms of Use).

It is presumed that the intended audience, likely to see the Product Image, would be a broad predominantly adult audience and would not see the Product Image as overly sexual. It is submitted that, within the context of the Product Image being exposed to a predominantly adult audience on the Temu platform, the Product Image does not lack the requisite degree of sensitivity.

Further, we note the Product Image simply constitutes an image of a product that was available for purchase on the Temu platform, being a metal tin sign of a woman in a bikini.

With respect to the image of the model on the sign more specifically, it is submitted that the model displayed on the Product is not depicted in a pose which is unduly or overtly sexualised. The model is featured in a pose to emphasise a particular body part and garment, which are the key features of the Product. Whilst the model's buttocks is visible, this is appropriate in the context, given the Product is marketed as a metal tin sign of a girl in a bikini with a "hot butt".

Section 2.2(b) - exploitative or degrading advertising

Whilst not expressly mentioned in the notification received, it is relevant to note that the Product Image does not amount to a breach of section 2.2(b) of the Code. The Product Image does not employ sexual appeal in a manner which is exploitative or degrading of an individual or group (namely women).

As noted above, the Product Image is simply an image of the Product. The image of the model's body is directly related to the Product and thus the image is not, in and of itself, exploitative or degrading. The model is in a confident pose and not posing in a manner suggesting she is submissive, being degraded or an object to be used.

Action taken by Temu

Temu acknowledges the Complaint made and has already taken action to remove the Product Image and Product, as well as consider what practices can be adopted going

forward to prevent similar displays being made or viewed as experienced by the complainant. Temu is open to liaising, and working with, Ad Standards to resolve any issues or concerns.

Noting the remedial action taken by Temu in relation to the Complaint, Temu requests that the matter proceed on an informal basis.

Should you have any queries please do not hesitate to contact us.

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 depicts a sexually inappropriate image when shopping online.

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

Is it an ad?

The Panel noted the advertiser's response that the material did not constitute advertising.

The definition of advertising is:

- a. any advertising, marketing communication or material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,*
 - over which the advertiser or marketer has a reasonable degree of control, and*
 - that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,*
- b. but does not include:*
 - labels or packaging for products*
 - corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy*
 - in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel, station or network.*

The Panel considered that the image of the sign drew attention to the product and was within the control of the advertiser. The Panel considered that while product packaging is excluded from the definition of advertising, an image of the product designed to draw attention to it does fall within the definition of advertising.

The Panel considered that the image did meet the definition of advertising under the Code.

Section 2.2: Advertising shall not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people.

The Panel noted the AANA Practice Note which provides guidance on the meaning of the terms exploitative and degrading:

- *Exploitative - (a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or (b) focussing on their body parts where this bears no direct relevance to the product or service being advertised.*
- *Degrading – lowering in character or quality a person or group of people.*

The Panel noted the Practice Note to Section 2.2 states:

“For material to breach this section of the Code, it must contain sexual appeal. Models in underwear or lingerie surrounded by or next to fully clothed models may suggest a power imbalance and be found to be exploitative or degrading. Material can be found to be exploitative or degrading even where the model is looking confident where the model is being depicted as a product or commodity or the focus on body parts is not relevant to the product or service being advertised. Advertising which used sexual appeal and suggests that a person is a product, or that they exist only for the enjoyment of others has been found to breach this section of the Code. Likewise, advertising which uses attractive models in revealing clothing, where the use of the model is not relevant to the product, has been found to be exploitative. ‘Focusing on body parts’ can include a close-up, multiple close-ups or long-still on breasts or buttocks or cropping in such a way as to emphasise these body parts. Such focus on body parts is not acceptable unless used to advertise relevant products and services.”

Does the advertisement use sexual appeal?

The Panel noted that the advertisement featured a picture of a sign which depicted a woman wearing a bikini in a sexualised pose. The Panel considered that the depiction featured sexual appeal.

Does the advertisement use sexual appeal in a manner that is exploitative?

The Panel noted that the advertisement was a depiction of the product for sale, and as such the use of the image was directly relevant to the product being promoted. However, the Panel considered that the image itself portrayed the woman in a highly sexualised manner which suggested that she was an object or commodity. The Panel considered that the advertisement was exploitative.

Does the advertisement use sexual appeal in a manner that is degrading?

The Panel considered that woman was depicted in a manner that suggested she was an object, and considered that this depiction was degrading.

Section 2.2 conclusion

The Panel concluded that the advertisement did breach Section 2.2 of the Code.

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:

“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 while the woman was in a highly sexual pose, she was depicted alone and there was no suggestion of sexual activity. The Panel considered that the advertisement did not contain 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 the woman in the image was posed in a highly sexualised manner and 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 noted the woman in the advertisement was wearing a bikini, and was posed in a manner which meant that large amounts of her buttocks were exposed. The Panel considered that the advertisement contained partial nudity.

Are the issues of 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 noted that assessing whether sexual suggestion is ‘sensitive to the relevant audience’ requires consideration of who the relevant audience is and how they are likely to react to or feel about the advertisement.

The Panel noted that this advertisement appeared on the Temu website and was seen by the complainant while they were shopping for other, non-sexualised products. The Panel noted the advertiser’s response that users of the website need to be over 18, or be over 13 with adult permissions and supervision.

The Panel noted that an online retail website would be predominantly used by adults and the relevant audience would be mainly people over 18.

The Panel noted that in most instances it would be appropriate to use an image of the product to promote that product. However, the Panel considered that in this instance the product contained a highly sexualised image of a woman. The Panel considered that many people shopping for non-sexualised products would find the image offensive and shocking. The Panel considered that the advertisement did not treat the issues of sex, sexuality, and nudity with sensitivity to the relevant adult audience.

The Panel considered that the advertiser should use a cropped or blurred image of the product to convey the highly sexual nature of the image, and the full image should only be visible to people directly on the product page, or who are searching for sexualised products.

Section 2.4 Conclusion

The Panel found that the advertisement did breach Section 2.4 of the Code.

Conclusion

Finding that the advertisement breached Section 2.4 of the Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DECISION

Temu has discontinued the advertisement the subject of the complaint.