

WHAT THE FAQ: Four Seasons Dares To Advertise Naked Condoms Literally

By Matt Hansen, Solicitor

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A new commercial for Four Seasons' "Naked" brand of condoms turns to the oldest trick in the book and uses sex to sell, well, sex. See: <http://www.youtube.com/watch?v=ROJy9TlhxtY>. (WARNING: Contains sex scenes). Reportedly, however, the Commercials Advice Division of FreeTV Australia (CAD), which is the body responsible for classifying ads for broadcast on free to air TV in Australia, refused to classify the commercial unless "all sexual references" were removed.

This would appear on its face to be a bizarre request, and raises many questions. This article attempts to answer those questions:

If you take out all the sexual references from an ad that is about sex, then the ad is about...?

Five seconds. And consists of a healthy looking blond couple entering a pharmacy, being asked if they need any help, then inexplicably saying "thank you" and leaving.

That sounds boring. CAD must have thought this ad was too much for Australian TV audiences. What is the standard?

The most extreme rating an ad can get from CAD (barring a special "S" class for adults services such as phone-sex lines) is "MA". An ad that is rated MA cannot be shown before 9pm and after 5am and not in any program rated G or PG. The ad must also comply generally with the Commercial Television Industry Code of Practice, which states in regards to the levels of sex and nudity in MA rated programs that:

"Visual depiction of intimate sexual activity may contain detail but must only be implied. The impact shall not be high (ie no higher than strong). The depiction must be relevant to the story line or program context. Visual depiction of nudity must be relevant to the story line or program context. The impact shall not be high (ie no higher than strong). Verbal references to sexual activity may be detailed but the impact shall not be high (ie no higher than strong). The verbal references must be relevant to the story line or program context. A program or program segment will not be acceptable where the subject matter serves largely or wholly as a vehicle for gratuitous, exploitative or demeaning portrayal of sexual activity or nudity. Exploitative or non-consenting sexual relations must not be depicted as desirable."

So why wouldn't CAD just give the ad an MA rating and let us adults who stay up passed 9pm see the sexy ad about sex?

CAD may have determined in this case that the imagery of two people having sex in a public pharmacy, in a variety of positions, in full view of customers was too high an impact for TV audiences.

It is important to note that generally speaking, the threshold for audience tolerance for sexual content in advertising is currently very low, with a noticeable increase in public outcry over the "sexualisation" of advertising, such as the recent outcry over Bond's "BOOBS" campaign.

But hey, when I saw "Jackass Presents: Bad Grandpa" (don't judge me) at my local Hoyts cinema, I saw the ad. Why is that?

CAD only classifies ads for free to air TV. Ads for cinemas are not subject to CAD approval as the cinemas decide for themselves what ads get displayed before movies. In this case,

Hoyts decided that the audience for a movie which highlighted a scene where an old man gets his genitalia caught in a vending machine as one of its key moments would not be so offended by two long-haired blonde Australians testing condoms in their local pharmacy.

There you go with the judging.

That's not a question.

So can the ad be displayed anywhere else?

Online is fine as there is no classification system in place. It could also appear on subscription TV provided it gets classified under that industry's own system.

Could the ad still attract complaints?

Yes, the AANA Code of Ethics applies to all ads in Australia, even those online and in cinemas.

Would it get upheld if it got a complaint made against it?

Obviously the ad is a prime candidate for complaints to the effect that the ad does not treat sex with sensitivity to the relevant audience, and certainly seeks to push the limits of the application of the AANA Code of Ethics in this respect.

However in our view the ad is not without chance of a strong defence. Indeed, one could argue that the relevant audience for this ad would consist of those audience members who see MA-rated films such as "Jackass Presents: Bad Grandpa" and those who actively sought out the ad on YouTube. Hypothetically, if it were shown on TV in the appropriate timeslots and programs, those mature audiences who watch the same would also arguably be the "relevant audience". Limited to that demographic, and combined with the fact that the sex scenes depicted in the ad were presented as performed by two clearly consenting adults in a comical tone that eschewed titillation and raunchiness for a decidedly clinical and nonchalant approach, there is a strong argument that the ad does indeed treat sex with sensitivity to the relevant audience.

Whether the Advertising Standards Board would take the same view or would adopt a more conservative approach as undertaken by CAD remains to be seen. All we know is that it will be fun to watch as this one plays out.

Contact us

If you would like further information on CAD approval, advertising standards, or assistance in defending a complaint against an advertisement, please contact one of our experts below. We can provide tailored legal and practical advice to assist you with reviewing or clearing advertising material.

Matt Hansen
+61 2 8935 8803

matt.hansen@anisimoff.com.au

Heidi Bruce
+61 2 8935 8806

heidi.bruce@anisimoff.com.au

Clint Fillipou
+61 3 9907 4302

clint.fillipou@anisimoff.com.au



www.anisimoff.com.au



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