

CAN SEX STILL SELL? BECAUSE THE ADVERTISING STANDARDS BOARD ISN'T BUYING...

By Leanne Jezercic, Senior Associate

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The old maxim “sex sells” has a longstanding history in advertising. Falling back to sexual appeal to sell a product is one of the most reliable creative strategies, used from one end of the product spectrum to the other. Whilst provocative images of well-defined women (and men) is rife in the fashion, fragrance and cosmetics space, even the most “unsexy” of products like automotive servicing, plaster and cat food have tried it on.

However, in the modern age (and certainly in the present climate, with the “#metoo” movement against sexual harassment, and where equality and gender roles and rights remain a strong and topical issue), advertisers that rely on sexual appeal can find themselves in increasingly hot water.

We are seeing repercussions in the form of online backlash on social media for some brands, played out when ads use sexual appeal in a way that is inappropriate, sexist or objectifying (usually to women). Add to this the recent amendments introduced to the Australian Association of National Advertisers (AANA) Code of Ethics (Code), and the landscape has changed when it comes to what brands can expect to get away with. Simply, there is now a much broader scope for the Advertising Standards Board (ASB) to uphold complaints where an advertisement uses sexual appeal in a way that is either exploitative or degrading – and advertisers should take note.

How has the Code changed?

We set out the Code changes in our previous article ([see here](#)) but in summary, provision 2.2 of the Code previously read:

Advertising or Marketing Communications shall not employ sexual appeal:

- (a) where images of Minors, or people who appear to be Minors, are used; or
- (b) in a manner which is exploitative and degrading of any individual or group of people.

From 1 March 2018, the provision now reads:

Advertising or Marketing Communications shall not employ sexual appeal:

- (a) where images of Minors, or people who appear to be Minors, are used; or
- (b) in a manner which is exploitative or degrading of any individual or group of people.

While the changes to provision 2.2 of the Code appear semantic, they are actually quite significant. Previously, provision 2.2 required that an advertisement needed to use sexual appeal in a way which was both exploitative and degrading in order to be in breach of the Code. However, this meant that in some circumstances, ads that were clearly exploitative were not in breach of provision 2.2 if they were not also degrading, meaning it was a two-limbed threshold. Now, provision 2.2 reads “exploitative or degrading” and so the threshold has lowered, since only one of these metrics must be hit in order to trigger provision 2.2.

The definition of “exploitative” has also been amended so that an advertisement can be found in breach of the Code where 1) it takes advantage of the sexual appeal of a person, or group of people, by depicting them as commodities or 2) it focusses on body parts where this bears no relevance to the product or service being advertised. This is much clearer than the previous definition of “exploitative” which required that the ad be “clearly appearing

to purposefully debase or abuse a person, or a group of persons, for the enjoyment of others, and lacking moral, artistic or other value”.

Prior to 1 March 2018, the ASB foresaw that the updates to the Code would mean the ASB could take a stricter view of advertising featuring sexual appeal, thus raising the bar for advertisers. This looks to have eventuated, as the changes to the definition of “exploitative” have given the ASB a clearer way forward to uphold complaints under provision 2.2, as the following examples illustrate.

Examples - where are advertisers getting caught out?

One of the upheld complaints related to an online ad for a luxurious waterfront home for sale which used aspirational scenes of the property that included bikini-clad women using the pool, and partying on a boat. While the complaints centred on the “near naked women” and “sexual innuendos with licking fingers and zooming of body parts”, the particular scene which the ASB referred to in upholding the complaint was one where the key female lead watched other women modelling outfits, waving her hand to accept or dismiss the models, apparently based on appearance.

The ASB considered that this scene showed the women “as being similar to cattle” and was exploitative of women because it portrayed them as commodities or objects to possess. The ASB noted other scenes contained sexual appeal – not relevant to advertising real estate – but the ASB did not consider these to be in breach because the women were shown confident, enjoying themselves, and not in a way which was exploitative or degrading. This theme of confidence and appearing comfortable or “in control” also ran through some of the other dismissed complaints, where there was no apparent commodification of the women in question.

The dismissed complaints also confirm that it is still acceptable to depict women wearing only lingerie where the product advertised is lingerie and the pose is not sexually suggestive. The same applies for swimwear or clothing generally, although care should be taken not to place undue focus on particular body parts.

A billboard advertisement for boots that showed a woman in a revealing “high cut” leotard reminiscent of the 80s “Flashdance” film was found in breach of provision 2.2 because there was a significant focus on the woman’s (mostly) bare bottom. In coming to their decision, the ASB considered that the lighting in the ad highlighted this area and drew the eye away from the boots being sold. While it would have been legitimate to show some leg when the product advertised is shoes, the ASB considered that exposing a large amount of the woman’s buttocks was unnecessary and not directly relevant to the boots being sold and so did employ sexual appeal in a manner which was exploitative of the woman in the ad.

In another example, a TV ad for a dentist featured a man drinking coffee on a park bench admiring women as they walk past and then smiling to reveal no teeth. One of the women thinking he is homeless then puts money in his cup. While the women in the ad were found by the ASB to be “in control” (via the action of the woman placing the money in the man’s cup) and the ad poked fun at the man and not the women, it was determined that an undue focus on the women’s bottom, legs and chest – including filming from the neck down, with the face not being shown - did constitute sexual appeal, and while it related to the storyline, it was not relevant to the dental services being advertised.

A light hearted double entendre (e.g. “the take it all off sale” alongside imagery of a woman taking off her top to reveal lingerie for Bras n’ Things) did however pass the test and was not in breach of provision 2.2 because the woman was not presented as an object, or with focus on particular parts of her body. Similarly, given that this was an advertisement for bras, the context was no doubt appropriate.

Lessons for advertisers

While the changes to the Code do appear to give the ASB a clearer basis upon which to uphold complaints, they also arguably make it easier for advertisers to spot potential red flags in advertising and comply with provision 2.2. If the storyline or presentation of an ad has any hint of depicting a person as an object or if there is undue focus on body parts with no relevance to the product being sold, then the advertiser may have entered the danger zone and should seek advice on the best way forward.

Contact us

If you would like more information about advertising clearance and avoiding breach of the Code, please get in touch with either of our team below.

Leanne Jezercic

+61 2 8935 8805

leanne@anisimoff.com.au



www.anisimoff.com.au



<https://www.facebook.com/AnisimoffLegal>

Clint Fillipou

+61 3 9907 4302

clint.fillipou@anisimoff.com.au



<https://twitter.com/AnisimoffLegal>



<http://www.linkedin.com/company/anisimoff-legal>