

THE SKINNY ON REGULATING BODY IMAGE IN ADVERTISING

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Advertisers, along with fashion brands and the media in general, have long been challenged as promoting unreachable ideals of beauty. The use of genetically blessed models, long-limbed and with tiny proportions, or an Adonis-like physique, or the display of others who are best described as 'uniquely' proportioned, to sell products is par for the course. With approximately one million Australians suffering from some form of eating disorder, and body image in advertising considered a "health issue" and "community concern" by the Advertising Standards Community Panel (**Panel**), advertisers are a soft target.

In a recent update to their Code of Ethics (**Code**), the Australian Association of National Advertisers (**AANA**) has introduced new guidance so that advertisements portraying an 'unrealistic ideal body image' could be subject to censure by the Panel.

So, what are the changes and how will they impact advertisers?

Overview of changes

The changes have been introduced via a Practice Note which guides advertisers and the Panel in understanding the AANA's intent regarding the "prevailing community standards relating to health and safety" set out in Section 2.6 of the Code. The Practice Note now includes a section titled 'Body Image'.

The overarching requirement is that advertising must not portray an "unrealistic ideal body image" by portraying body shapes or features that are "unrealistic or unattainable through healthy practices". If this sounds difficult to pin down to you, you may not be alone.

In relation to "unrealistic ideal body image", the Practice Note states this can occur where the ad implies that "a body shape, or feature, of the kind depicted (e.g. very thin or very muscular)" is required to use the product or service or that a person should alter their body shape or features in order to use the product or service.

The Practice Note further states that "unrealistic ideal body image" may also occur where models are depicted in a way that:

- promotes unhealthy practices, or
- presents an unrealistic body image as aspirational, or
- is reasonably likely to cause pressure to conform to a body shape that is unrealistic or unattainable through healthy practices,

unless such depictions are justifiable in the context of the product or service advertised.

The Practice Note points out that advertisers are not obliged to only use "healthy weight" models or prohibited from including a diversity of bodies (i.e. both smaller and larger bodies). Rather, advertisers need to take care to avoid images of people with "extreme body weights or shapes" or poses or depictions that produce an "unrealistic sense of body image, for example, through the style of the advertising, the clothing, lighting, or make-up used".

The Practice Note (and the Code in general) does not prohibit altering or digitally enhancing images, or require a disclosure relating to photoshopped works (as is the case in other countries). However, where the digital alteration of a person's image is "to such an extent that their body shape, or features, are no longer realistic or attainable through healthy practices" (e.g. extreme lengthening of legs or disproportionate tightening of waist), the advertisement may breach the Code.

Where will the Panel draw the line?

As flagged above, a key issue and industry concern with these changes relates to its practical interpretation for advertisers and the Panel. i.e. Since bodies come in all shapes and sizes and are viewed subjectively, how will the Panel determine which body sizes or shapes pass the test and which are in breach? Where is the line drawn between slim and "very thin" or toned and "very muscular"? What will the use of optional enhancement (i.e. through implants or other devices) mean for the realism of a body image or otherwise? What is an "unrealistic" body image or an "extreme" shape? Will this new Practice Note prohibit the use of high-end fashion models who are typically thin or muscly men of the kind featured in health and fitness ads? Will the Practice Note disallow or otherwise impact the use of male models with calf implants, or women with breast implants?

It is really not clear as yet where the boundaries will lie, although in looking at the crux of Section 2.6 of the Code, body image is likely to be in issue and the Code triggered where there is a clear health and safety issue evident in the advertising, such as if the body shape of the talent is at the point of appearing unhealthy or is clearly problematic along the above lines.

The Panel has already for the better part of a decade determined complaints from concerned citizens under the Section 2.6 "health and safety" provision of the Code in relation to the use of talent that appear underweight, so it's not entirely a new issue. So far, the Panel has dismissed a range of complaints regarding body image – from high-end perfume ads featuring international fashion models to ads promoting clothing brands and weight loss products.

The Panel has historically recognised that it is commonly expected that fashion models are slimmer than the average person, as the following cases illustrate:

- A Gucci perfume ad received a complaint because the models featured were "skeletal thin in a most 'discomfort inducing' way" (according to the complainant). Gucci defended the ad on the basis that the models were not unhealthy and their appearance was "consistent with most other models working in the fashion industry". The Panel agreed, noting the advertisement was in the "context of high-end fashion" and "acceptable in this context". (Case Report 149/08)
- A complaint regarding a Westfield billboard advertisement which showed a girl "skinny to the point her body is distorted" (according to the complainant), was dismissed with the Panel stating that "it is common to use models that are slimmer than the average person" in the fashion industry. The Panel acknowledged the model was "very slim" but dismissed the complaint because "she does appear to be healthy and the image is consistent with similar fashion advertising" (Case Number 0139/13).

It is hoped the Panel will take a similar, reasoned view moving forward. It would be an absurd result if the changes to the Practice Note overhauled decades of fashion culture where slim or idealistically-shaped models tend to prevail.

The Panel separately decided on a complaint regarding an Estee Lauder billboard that it would only uphold complaints where models were "inappropriately slim" (Case Report 0129/15). This seems consistent with where the Practice Note is headed, i.e. to regulate situations where a model used in an advertisement is so slim or otherwise shaped as to appear unhealthy.

Other 'criteria' that the Panel has previously applied across a range of complaints to determine if the model breaches Section 2.6 include:

- whether the model appears underweight or suffering from an eating disorder (Case Report 0129/15);
- whether the model looks unhealthy, noticeably unwell or in pain (Case Report 0277/16);
- whether the ad condones or encourages eating disorders (Case Report 0277/16);
- whether the model had clear muscle definition and looks fit and healthy rather than undernourished and/or overweight (Case Number 0504/16).

The above examples are not contained in the Practice Note but useful to consider the way the Panel has distinguished "healthy" from "unhealthy" when it comes to body image. However, whether a model has a figure that is "unrealistic or unattainable through healthy practices" as per the new Practice Note, involves considerations that go beyond an observation of appearance to also include behaviour i.e. considering how the model's figure was obtained. It is therefore more difficult to determine than an observation of whether a model looks "unhealthy, noticeably unwell or in pain", for example, which is how the Panel has previously assessed such models.

Some products in the health and wellness space, such as weight maintenance / weight loss products, typically use slim models or fitness models and this has historically been fine according to the Panel. For example, an advertisement relating to a Coconut Detox Plan and which focused on flat stomachs of the models was not in breach of Section 2.6. The Panel noted the women appeared slim, but "healthy and confident with their appearance" and noted that as the advertised program is a detox program it was "appropriate to depict women who looked like they had undergone the program" (Case Report 0436/12). A similar conclusion was reached for Slim Right weight maintenance products and a complaint regarding the use of slim models was dismissed with the Panel stating "it was reasonable for an advertiser to promote the possible results of using their product and that most members of the community would agree that the women in the advertisement are showcasing the results of the product range" (Case Reports 0058/16, 0066/16).

On the other end of the spectrum, when it comes to showing 'fit' and 'muscly' models, the Panel dismissed a complaint against an infomercial for VIMN health products (a range of supplements) which featured a very fit female swimwear designer and male health and fitness coach. The Panel held that the advertisement, which went into detail regarding their diet, health and fitness regimes, "makes it very clear that to achieve that type of body required full time commitment" and so the advertisement was not of itself likely to lead viewers into unhealthy lifestyles or behaviour; rather the advertisement was positive and encouraging of a healthy lifestyle (Case Report 0570/17).

This also appears consistent with the Practice Note which speaks of body image being justifiable in the context of the product or service being advertised, and so it does not appear that the Panel will now determine that a muscly man selling protein powder breaches the Code – but this is yet to be seen.

And it's not only weight issues that are concern. In an advertisement for Sin City Nightclub in Surfers Paradise, a complaint was made regarding the model apparently having breast implants. The Panel noted the complainant's concern that the woman in the advertisement has had a 'boob job' and dismissed the complaint noting the woman "appears healthy" and "the advertisement does not suggest women should have breast surgery in order to have the same size breasts as this woman" (Case Report 0285/16). It is no longer certain that such a position would be taken by the Panel, in our view. Therefore, it is not clear if advertisers are supposed to discriminate against talent on the basis of their unique physical characteristics, perhaps asking if they have had cosmetic surgery to achieve their look.

It is also the case that showing plus sized models or 'realistic' body types in advertisements can also result in complaints before the Panel. A TVC for Target which received a complaint for showing "a parade of naked obese girls" modelling underwear was reviewed by the Panel and dismissed. Interestingly, when it came to considering the healthiness of plus-sized models, the Panel noted that "advertisers are free to use whomever they wish in an advertisement and the complainant's concern over the size of the models does not fall under the provisions of the Code" (Case Report 0330/15). Obviously, given the new changes this position has been somewhat tempered and advertisers are much less free than they were before.

Key take home message for advertisers

Body image remains a sensitive issue and not just under the Code - advertisers who use slim models in particular are often subject to a barrage of criticism irrespective of any official complaints under the Code and big brands like Zara and Target have been on the receiving end of complaints on social media and the Internet for using 'skinny models' in advertisements promoting their wares. Sports-brand ASICS was also shamed for teaming up with Elite models to "encourage healthy, active living". The problem? The use of incredibly slim runway models wearing workout gear and presented as aspirational and the pinnacle of health was seen by the masses as non-inclusive, tone-deaf and irresponsible.



(Picture: Twitter/Asics)

It now seems as though the new focus on 'body image' in the Code and related commentary could open up advertisers to more scrutiny and complaints as to how models are cast and whether their unique features are 'unrealistic' to the point of promoting unhealthy behaviour. Advertisers should take particular care when casting talent, and also in how advertisements are created (including posing, lighting, angles, camera lenses / filters etc) and edited (i.e. photo manipulation), to avoid situations where talent appear at the extremes of thin or muscly, in particular.

Contact us

If you would like further information on how the new Code changes impact you or your business, please contact one of our experts below. We can provide tailored legal and practical advice to assist you with reviewing and clearing advertising material in relation to body image concerns, as well as defending complaints under the Code.

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