



Case Report

1	Case Number	0036/15
2	Advertiser	Ashley Madison - Avid Life
3	Product	Professional Service
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	25/02/2015
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- Other Social Values
- 2.1 - Discrimination or Vilification Gender
- 2.2 - Objectification Exploitative and degrading - women
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

A guy starts singing a catchy jingle, "looking for someone other than my wife.." He is joined by another man who is singing the same jingle and scrolling the website on a tablet device in the same manner as if he were playing a guitar. Images of women are shown on the tablet. We then see a collage of other men singing the same jingle.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

This ad should not be on television at any time. An advertisement for cheating on one's spouse being a good thing is immoral and wrong. I believe that advertising the fact that someone can cheat on their husband or wife online does not belong on television, or on any media outlet. My partner and I were shocked when we first saw it, and have seen it rather frequently on for the past few weeks. It's sad to think that things like this are actually allowed to be shown on TV - no matter what time it's on.

If men want to visit such websites that's their choice but to target married men to entice them into adultery is uncalled for. This advertisement has the potential to destroy families and

break up marriages it should not be allowed on TV no matter what time of day it is. It gives the idea that your wife is boring and to look elsewhere. This is a very dangerous commercial.

I object to this advertising because it is promoting promiscuity in married men. I also find it sexist that only men are encouraged to commit adultery in their marriage, not women.

This ad is letting all men know that they can go and have an affair. Their logo is "Life is short. Have an affair". And their ad has men singing that they want something better than my wife. I don't want my children growing up thinking it is ok to cheat on their partners. It is wrong and I am disgusted by it.

This does become a health and safety issue when you are promoting and condoning a husband or partner having sexual relations with someone other than his wife. I don't have a problem with the prostitution side of the ad, just the fact that the word 'wife' is used and being depicted as sexually useless.

The advert is inappropriate, highly immoral, disgusting and wrong, by promoting the act of cheating on your marriage partner. By encouraging dishonesty and immorality, it should not be approved by any television or other media channel, on the basis of gender discrimination. The ad is distasteful and offensive to any married woman and therefore does not promote a healthy marital relationship.

It encourages men to go outside their marriage to have affairs with women on the website. While not illegal, it contributes to the breakdown of marriages in Australia and all the negative outcomes for everyone involved, including emotionally and financially and the cost to the public when children end up acting out from the hurt of their home breaking up.

Morally and socially wrong, offends me to hear such content being encouraged and promoted.

The running of these ads also normalises adultery or cheating with these guys looking for someone other than their wife as if it is as ordinary as looking for a different GP or car mechanic.

I feel that it degrades women that it could give men an idea to cheat on their wife it breaks up marriages and family's I find it very offending and degrading I don't think it should be on television the fact that the add is men singing I am looking for someone other than my wife I find discussing it is a sleazy advert that should be removed not encouraging me to cheat.

It is shocking that a service like this can even be advertised on Australian TV, very shameful!

THE ADVERTISER'S RESPONSE

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

Ashley Madison ("AM") is in receipt of a letter from the Advertising Standards Bureau ("ASB") regarding complaints received by the ASB, concerning Ashley Madison's "Wife_No Tag" commercial (the "AM Advertisement").

Please note that AM is familiar with the AANA Code of Ethics, having conducted several different advertising campaigns in Australia, and understands the parameters that advertisers need to operate within. The Code is reviewed internally before any advertisements are submitted in Australia. However, AM respectfully disagrees with the current complaints, and asks that the ASB dismiss it at the forthcoming meeting of the Board.

With respect to the issues raised in the Complaints, the AM Advertisement does not contravene or violate section 2 of the Code. In fact, the AM Advertisement is legal and in complete compliance with the Code, and the social networking service that Ashley Madison provides is fully legal and compliant with all laws in Australia.

Section 2.1 - The referenced AM Advertisement does not discriminate on any basis whatsoever, does not vilify any women, nor does it exploit, condone or elicit unlawful behaviour. The AM Advertisement does not exploit sex and sexuality. It simply contains a somewhat humorous and catchy jingle.

Section 2.2 - Moreover the AM Advertisement does not generalize, degrade, exploit or disparage either gender, and it does not offend the standards of public decency prevailing among a significant segment of the population. This is simply a vocal minority raising such complaints.

Section 2.3 – There is absolutely no violence, gratuitous or otherwise, whatsoever in the AM Advertisement.

Section 2.4 - This section states that Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience. We respectfully believe that this commercial accomplishes this. There is absolutely no nudity, no reference of sex or sexuality, nor any sexual/physical contact between the actors in the spot. Due to the “S” rating received by CAD, the spot only runs after 11:00 pm. This commercial is in line with, and in fact substantially less provocative, than other Australian spots that contain an “S” rating.

Section 2.6 – The AM Advertisement does not present aggressiveness or violence in any way whatsoever. It is also clearly a humorous advertisement. The AM Advertisement utilizes an over-the-top jingle to further emphasize the “humorous” nature of our commercial. The AM Advertisement also does not use any obscene language or anything that can be depicted as unsafe.

Moreover, and importantly the AM Advertisement does not exploit sex and sexuality. AM takes necessary steps to ensure that its advertisements (including the AM Advertisement in question) are aired at appropriate times given its target audience. AM has complied with the Code as it relates to potentially sensitive content and sexual innuendo.

AM understands that its brand/business, is not for everyone. However, while we understand that there is a subjective element to one’s “tastes”, the AM Advertisement objectively complies with the letter of the Code, and the intent and spirit of the Code. There is nothing unlawful about the AM business, nor is there anything unlawful in the AM Advertisement. We run this commercial in other countries (including Canada and the United States) without issue. We trust that this addresses the complainants’ concern. Ashley Madison would like to thank the ASB in advance for its consideration of our response. We look forward to hearing

from you and continuing to work co-operatively with the ASB and its Board.

Please find this correspondence as an additional response from Avid with respect to the aforementioned complaint. As you are aware, Avid has already provided a thorough response to Complaint Number 0036/15. However, we have received an additional letter from the ASB and felt it was necessary to provide this supplementary information.

We are in receipt of the complaints that have been provided to the ASB. It is of utmost importance to note that the number of complaints received by ASB pale in comparison to the number of users and supporters of Ashley Madison in Australia. Specifically, while the ASB has acknowledged receipt of over 600 complaints since the summer, Avid has seen almost 200,000 signups from Australia on its Ashley Madison site during this same time period. In fact, we have averaged on a monthly basis over 2,500,000 site visitors per month in Australia, and currently have 1,066,478 total members in Australia. Needless to say, while it may appear that there have been a high number of complaints to the ASB, the data illustrates otherwise: That a significantly higher number of Australian citizens support and like our lawful website.

Ashley Madison has experienced substantial success in Australia, and in turn we have contributed a significantly high number of marketing dollars to the Australian broadcasters and the Australian economy in order to continue the momentum.

Avid looks forward to continuing and expanding our marketing spend in Australia. The data clearly illustrates that the vast majority of the Australian public have welcomed our company and our innovative advertising. It would be patently unjust for the ASB to take any action against the Ashley Madison advertisement based on a vocal minority, other than to continue to allow Avid to broadcast its lawful Ashley Madison commercials during the approved time-slots (post 11:00 pm).

Thanks you for your continued consideration. We would be happy to provide you with additional data that supports our position.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement is sexist and offensive in its encouragement to men to seek an affair, the images of women used are inappropriate and the advertisement is in breach of prevailing community standards due to the consequences for families as a result of affairs.

The Board acknowledged that it had previously considered this advertisement in August 2014 (0307/14) and dismissed the complaints. However during the six month period since that decision the ASB has received an unusually high number of additional complaints and during that time has recruited a number of new Board members. Consistent with similar situations (for example an AMI billboard which was considered twice within a short period (278/08))

the Board agreed to consider afresh whether or not the advertisement met the requirements of the AANA Code of Ethics.

The Board noted that the majority of complaints were about the service and the fact that the service can be advertised. The Board noted that there is no restriction on such a service being available or on it being promoted, rather only on how it is promoted. The Board considered that the promotion of a service promoting affairs or infidelity is not of itself a matter that can be addressed by applying the Code.

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

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted the advertisement features men singing about wanting someone other than their wives. In its earlier consideration of the same advertisement (0307/14) the Board noted it had determined:

“...that Ashley Madison offers a service whereby people seeking an affair can contact other like-minded people and considered that whilst this advertisement is promoting the service from the point of view of a man seeking a female partner in the Board's view there must also be women signing up for the service if they are to be available for the men.

The Board considered that whilst many members of the community would find the promotion of infidelity to be inappropriate and morally questionable in the Board's view the advertisement itself does not portray or depict material in a way which discriminates or vilifies a person or section of the community on account of their gender.”

Similarly, in consideration of a billboard advertisement for Ashley Madison in 2010 (0292/10) the Board had determined:

“... The Board considered that the advertisement does not demean married people simply by suggesting that it is appropriate to have an extramarital relationship and that the advertisement does not breach section 2.1 of the Code.”

In the current advertisement the Board noted the complaints and whether or not the advertisement as a whole or components of it depicted material discriminatory or vilifying to women, in particular: the advertisement's strong references to 'someone other than my wife', the swiping action of a man on his device showing a catalogue of women, and the montage of men all calling for 'someone other than my wife'.

The Board considered the strong references in the wording and songs in the advertisement to the service being for finding 'someone other than my wife'. The Board noted that the advertised product is a dating site and that the website states the service is for men seeking women, women seeking men or men or women seeking same sex partners. The Board noted that whilst the advertisement only makes reference to one scenario, consistent with its previous decision the Board considered that women would need to have signed up for the

service in order to be available for the men and that the advertiser's choice to only depict the service from a male client's perspective is not discriminatory to or vilifying of women.

The minority of the Board considered that the reference in the advertisement to 'other than my wife' was not discriminatory as it was a statement that focused on the unique aspect of this service – being a 'dating' service for married people.

The majority of the Board however considered that 'other than my wife' is a statement which singles out wives as a group of people and implies that wives are not important within a marriage, can be replaced and to a degree normalises seeking someone other than your wife. The Board noted the advertiser's response that the tone of the advertisement is intended to be funny.

The majority of the Board however considered that the emphasis on the term 'wife' gave a strong message that 'wives' are inadequate or somehow lacking and that this suggestion is degrading to wives and does amount to material that demeans or makes people think less of wives. The majority of the Board considered that this element of the advertisement breached section 2.1 of the Code.

The Board noted the supplementary material supplied by the advertiser which provides information on the apparent success of their marketing campaign with regard to visitors to their website and an increase in membership numbers. The Board acknowledged this information but considered that the number of complaints received by the ASB is a strong indicator that there is a significant level of community concern regarding the manner in which the service is advertised on television and based on its discussion above the majority of the Board considered that the advertisement is demeaning to women in its suggestion you should outsource your sexual relationship with your wife to a woman you have found on the internet.

The Board also noted the images of the man 'swiping' the screen of his device to show the array of women available on the website. The Board noted that current technology means that tablet screens can be swiped in order to change screens and that this is a realistic depiction of how online dating services can be used.

The minority of the Board considered that the depiction of men swiping through pictures of women who have voluntarily signed up to this service is a realistic demonstration of using the service and that this is not of itself discriminatory against or vilifying of a person or group of people based on their gender.

Following considerable discussion the majority of the Board considered that whilst current technology can involve swiping a screen the overall impression of this scene in the advertisement is of men flicking through a catalogue of women and that this depiction strongly depicts women as a commodity to be bought and is demeaning and vilifying of women.

The Board considered that this element of the advertisement amounted to material which discriminates against or vilifies a person or section of the community on account of their gender.

The Board also noted that the advertisement could potentially be discriminatory against men

by suggesting that all men or husbands seek affairs. The Board considered that this advertisement did not present men in a demeaning manner as, despite the montage of men at the conclusion of the advertisement, the strong suggestion is still that the service is for those men who choose to participate and that, while this is presented as being a lot of men, there is not a strong suggestion that all men choose to do this.

In the Board's view the advertisement did not discriminate against or vilify men.

The Board determined that the advertisement did breach Section 2.1 of the Code.

The Board considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

The Board acknowledged that most of the complaints in the current case are related to a moral objection to the product itself.

The Board noted its previous determination in 0307/14 where:

"In this instance the Board noted that whilst images of different women are shown on an i-Pad the advertisement does not depict any actual physical contact between the men and women.

The Board noted that the images of women feature several depictions of women's cleavage. The Board noted that this advertisement had been rated 'S' by CAD and considered that the level of nudity is relatively mild, the women are not in overtly sexualised poses and overall the images are not inappropriate for the relevant adult audience...

... the Board noted that the theme of the advertisement is not appropriate for children but considered that the 'S' rating meant that the advertisement would be aired in programming between 11pm and 5am when young children are unlikely to be watching television."

The Board contrasted this with its consideration of an earlier billboard advertisement (0292/10):

"The Board considered that the only sexual reference is to 'have an affair'. The Board considered that the statement was relevant to the product advertised and, although not mentioning sex, in the context of the advertisement would be clearly understood to be encouraging sex between consenting adults. The Board noted that the advertisement is a billboard and is available for viewing by a broad audience. The Board considered that the theme of the advertisement – an affair – was explicit and although not likely to be understood by young children, was a treatment of sex and sexuality that is not appropriate for a broad viewing audience that includes older children. The Board determined that the advertisement did not depict sex and sexuality with sensitivity to the relevant audience and therefore breached section 2.3 of the Code."

Of most relevance for Section 2.4 is consideration of the audience of the advertisement. While the billboard advertisement (0292/10) was available to a broad audience, the current television advertisement screens late at night. The Board considered that the advertisement did treat sex/sexuality and nudity – in particular the images and the intimation of having an

affair – with sensitivity to the likely adult audience at that time of night.

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

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted the complainants’ concerns about the consequences of affairs which can include violence and breakdowns of family units. A minority of the Board considered that an advertisement which blatantly encourages men to have sexual relations with a woman who is not their wife is contrary to Prevailing Community Standards on Health and Safety due to the associated issues linked to extra marital affairs and relationship breakdown.

Following considerable discussion however the majority of the Board noted that whilst the advertisement is promoting a service which many members of the community would find to be morally questionable, in the Board’s view there is no obligation on the viewer to take up the advertiser’s services. The Board noted the advertiser’s response regarding the high number of subscribers to their website in Australia and considered that the high volume of complaints may indicate that community practice and community standards are at odds with one another. However, the Board noted the actual content of the advertisement and considered that there was nothing in the advertisement itself which would be a breach of Prevailing Community Standards on health and safety.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.1 of the Code the Board upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Avid strives to work co-operatively and collaboratively with the Board. While we don’t agree with the recent decision, we respect the Board’s decision and will abide by it.

We have decided to pull the ad and replace it with a different advertisement (which we believe will not receive nearly the same frequency of complaints). We will submit the new ad through the ordinary course with CAD, and once we are provided with the approval and the CAD numbers we will replace the current ad in with the new ad on a full 100% rotation.

