



Case Report

1	Case Number	0237/15
2	Advertiser	Ashley Madison - Avid Life
3	Product	Professional Service
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	10/06/2015
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- Other Social Values
- 2.3 - Violence Causes alarm and distress
- 2.3 - Violence Domestic Violence
- 2.3 - Violence Violence
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

A "zombie" woman is shown going through the mundane day-to-day of her life (breakfast, cleaning up around house, watching tv etc.). The woman is shown seated on a lounge next to her sleeping partner. She is holding a baseball bat and flexes her fingers around the handle as she looks at her partner. The woman then notices an advert playing on the television in front of her, promoting Ashley Madison. The woman is transformed back to normal and is wearing a dress and make-up. She holds her finger up to her mouth and the text on screen reads, "AshleyMadison.com. Bringing your marriage back to life."

THE COMPLAINT

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

It's pretty obvious but surely our morals have not declined this much that we now need to advertise having an affair. No need to encourage this behaviour I would suggest.

Apart from the zombie look being a little gruesome, it depicts marriages as dead and just going through the motions. It depicts to act out physically/emotionally with someone other than your partner. Its motto, as written at end of ad, life is too short. Have an affair. As

humans (we are not the living dead) we need to be heard and listened to, in all aspects of life and communicate to achieve these successful relationships. When affected, families, friends, children are (indirectly) caught up in it.

Prescription to violence is what this country is fighting against.

THE ADVERTISER'S RESPONSE

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

Please note, that we are very familiar with the AANA Code of Ethics, and understand the parameters that advertisers need to operate within. Moreover, we have had several correspondences with the ASB relating to previous advertisements submitted in Australia and have taken advice as to modifying our advertisements or replacing our advertisements, to be in line with the Code. In fact, the Zombie Madison commercial is one that is currently on the air in the United States, Canada, the UK, and New Zealand. We have not had any push back to this commercial, and it does not contain any of the controversial matters that have other AM commercials have allegedly contained. In this regard, and for the reasons set out below, Avid respectfully requests the Board dismiss the current complaint.

To Avid's knowledge, the ASB has received one (1) complaint to date with respect to the current AM Advertisement. The individual complaint focuses on the fact that the woman in the commercial is holding a baseball bat in a manner that she may wish to harm her spouse, and that in order to feel alive and save her marriage, she is encouraged to have an affair.

However, this individual complaint lacks merit. The current AM Advertisement is compliant with both the Code and the applicable laws in Australia. Moreover, the Board has said several times in the past that it does not adjudicate the morality of the legal Ashley Madison service. Specifically, in its recent determination of Case Number 0036/15, the Board noted when discussing the marketing of Ashley Madison's service, "that there is no restriction on such a service being available or on it being 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." In this regard, since the Board has determined that promotion of infidelity and of Ashley Madison by itself should not be addressed by the Code, and since the service that Ashley Madison provides is compliant with all applicable Australian laws, the Board should not uphold the current complaint, which focuses on the concept of infidelity and encouragement of affairs.

Similarly, in its decision of Case Number 0292/10, the Board determined, "that the Ashley Madison advertisement does not demean married people simply by suggesting that it is appropriate to have an extra-marital relationship."

Please also be advised that Avid has complied with the latest decision rendered by the Board, and the advice that we have received from the ASB. In fact, we have voluntarily removed a previous advertisement from circulation, and replaced it with this AM Advertisement that has only received one complaint. addressed the Board's concern in this current replacement AM Advertisement.

The AM Advertisement does not contravene Section 2 of the Code. Specifically:

- *Section 2.1 - The current AM Advertisement does not discriminate or vilify any particular group, nor does it exploit, condone or elicit unlawful behavior, or degrade a gender*
- *Section 2.3 – There is absolutely no violence, gratuitous or otherwise, whatsoever in the AM Advertisement. The holding of the baseball bat does not indicate violence or even that violence is forthcoming. Any such conclusion is a huge leap. The commercial has a humorous undertone, and uses the well-known jingle to build up to the crescendo of the commercial. Even the tagline at the end "Bringing Your Marriage Back To Life" is a playful pun on the Zombie theme.*
- *Section 2.4 - This section states that Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience. Due to the "S" rating received by CAD, the spot only runs on television screens 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. The Board previously decided that a similar Ashley Madison commercial did, in fact, "treat sex/sexuality and nudity, with sensitivity to the likely adult audience at that time of night", and therefore did not breach section 2.4 of the Code. Moreover, there is absolutely no nudity, sexuality, or sexual undertones whatsoever. Such complaint related to sex and nudity is completely unfounded.*
- *Section 2.6 –The AM Advertisement also does not use any obscene language or anything that can be depicted as unsafe. In fact, Avid wholeheartedly agrees with the Board's comment that even if the advertisement is promoting a service which a member 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.*

While the number of complaints for the current AM Advertisement have been extremely low (only one known complaint to date), a substantially higher number of Australians support our business. Avid currently has over 1,000,000 total members in Australia.

Avid has listened to and complied with the decisions of the Board in the past, and the advice of the ASB. We have replaced the previous advertisements with one that has taken into account the decision and recommendation of the ASB, and one that has been approved globally. This specific AM Advertisement is currently running in the U.S., Canada, the UK, and New Zealand. Moreover, we have always operated in good faith with the ASB, and continue to cooperate with the advertising industry's self-regulatory system.

Avid respectfully submits that the ASB should continue to allow Avid to broadcast this harmless AM Advertisement during the post-11:00 pm timeslot. The current AM Advertisement is compliant with the Code and there is no regulatory or legal basis for the Board to decide otherwise.

We 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.

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 features a woman intending to harm her partner and suggests that resorting to violence or an affair is acceptable.

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

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 considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 states: "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The Board noted this television advertisement features a man and woman depicted as zombies before the woman sees an advertisement for Ashley Madison and then transforms in to a more glamorous version of herself and indicates that she is going to have an affair.

The Board noted that in one scene we see the man sleeping on the lounge whilst the woman sits next to him holding a baseball bat in her hand whilst flexing her fingers around the handle and staring at him.

The Board noted that there is significant community concern regarding the issue of domestic violence and that it had recently upheld an advertisement which featured a scene suggestive of a woman threatening her partner in case 0170/15 where:

“The Board noted that particular scene in the advertisement of the woman holding a clenched fist in the air while glaring at her partner. The Board noted the man is seen cowering as though to shield himself from her outburst.

The Board noted the practice note to the Code states that a “strong suggestion of menace presents violence in an unacceptable manner and breaches this section of the Code.” The Board noted that the woman is not actually seen striking the man and there are no depictions of any consequence of her outburst.

The Board noted that at the time of the visuals the voiceover is heard saying “...I told Davo it had gone too far...” The Board noted that in connection with the image of the woman with clenched fist and the narrative, the overall tone was one that was menacing and threatening.”

In the current advertisement the Board noted that the overall theme of the advertisement is to highlight the woman’s dissatisfaction with her marital life. The Board noted that there is no requirement for the woman to be holding a baseball bat whilst on the lounge and considered that its inclusion in this scene is clearly suggestive of the woman’s intent to cause harm to the

man and that it is only the woman's attention being diverted by the Ashley Madison advertisement being aired on the television in front of her which stops her from hitting the man. The Board considered that the scene showing the woman glaring at her husband whilst flexing her fingers around a baseball bat is menacing and suggesting a violent act and that this suggestion is backed up by the overall theme of the advertisement which suggests the woman is unhappy with her partner. The Board noted that even though the man and woman are portrayed as zombies this is a metaphor for being dissatisfied in a marriage and the threat of violence towards a partner is unacceptable.

Overall the Board considered that the advertisement did present or portray violence in a manner which is not justifiable in the context of the product or service advertised.

The Board determined that the advertisement did breach Section 2.3 of the Code.

The Board then 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 noted that in one scene in the advertisement we see the man rolling off the top of the woman whilst in bed. The Board noted that the woman is wearing a towelling dressing gown and the man has a sheet covering his lower body and considered that the level of nudity is mild. The Board noted that this scene is suggestive of the couple having just had sexual intercourse but considered the scene is very brief and we only see the man rolling off the woman, not any activity prior to this.

The Board noted the scene where the woman transforms from a zombie and considered that whilst her cleavage is enhanced by the dress she is wearing in the Board's view the level of nudity is not inappropriate and the woman's appearance is sexy but not inappropriately sexualised.

The Board noted the advertised product is a dating website and that the advertisement had been rated 'S' by CAD which means it can be aired between 11pm and 5am. The Board acknowledged that most of the complaints are related to a moral objection to the product itself but considered that the actual content of the advertisement does treat the issue of sex, sexuality and nudity with sensitivity to the relevant adult audience.

The Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and did not breach Section 2.4 of the Code.

Finding that the advertisement did breach Section 2.3 of the Code the Board upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We are very pleased that the Board affirmed our position that there is no restriction on Ashley Madison's service being available or being promoted in Australia. Moreover, we are pleased that the Board determined that the Zombie commercial in question is in compliance with the Advertising Code as it relates to its treatment of sex and sexuality with sensitivity to the relevant audience. Finally, in accordance with the Board's Determination, we have modified the commercial by removing the scene of the woman holding the baseball bat. While this

scene is a play off of the entire “Zombie” theme of the commercial, and by no means meant to be suggestive of violence, we are sensitive to the concerns.

In this regard, since the Board affirmed that the remainder of the commercial is in compliance with the Code, we look forward to running the updated Zombie advertisement in a seamless manner.