



Case Report

1	Case Number	0101/16
2	Advertiser	Tom Ford Beauty
3	Product	Toiletries
4	Type of Advertisement / media	Print
5	Date of Determination	23/03/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.2 - Objectification Exploitative and degrading - women
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement relates to Tom Ford Black Orchid fragrance, a prestige women's fragrance. The Advertisement features the high-fashion, high-society model, Cara Delevingne, reclining in a pool of reflective black water surrounded by floating orchid flowers. Behind and to the side of her is featured a bottle of Tom Ford Black Orchid women's fragrance. The name of the product appears in plain white capitals: TOM FORD BLACK ORCHID.

THE COMPLAINT

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

There is no need for a woman to be naked to advertise on the first page and I am offended that my granddaughter opened it expecting it to be something she could read and it should have been safe for her to do so. It is entirely up to the people who have been appointed to police this who need to consider should this happen on their watch and would they be happy with the people looking at this if it were their daughter or if they would be happy for a child to be viewing this advertisement and if it is possible for David Beckham to advertise with a full suit on then why not this other advertisement. Yes I am offended, deeply offended and I should be, everyone should be or have they become so numb to seeing this too often.

THE ADVERTISER'S RESPONSE

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

First and foremost we feel that the complaint is misdirected by the fact that the complainant seems to consider that the advertisement is using a naked female to advertise a male fragrance. This we contend is not correct as the product being advertised is in fact a high end female fragrance and the model in the Advertisement is nude, however very discreetly and tastefully nude.

The nudity in the Advertisement is subtle, sensual, sculptural and sensitive, reflecting an artistic and promotional effect. The model is lying still, much of her body is concealed by the equally sensual water, and there is nothing explicitly sexual in the image. The use of the word "offended" by the complainant is obviously subjective, as is the notion that the Advertisement is in some way offensive or disgusting.

Fragrance is an intimate personal product that is worn on the skin. The sophisticated nudity of Ms Delevingne in the Advertisement is designed to capture that aspect of the Tom Ford Black Orchid fragrance, in a manner that appeals to a sophisticated female consumer. The focus of the Advertisement is on the right-hand side and particularly on the model's eyes, which express calm, reflective confidence, and a larger than life image of the fragrance bottle emerging from the surface of the pool, and also on the product name which appears in big, bold letters. The arabesque body line contributes to this focus. The Advertisement speaks not of nudity, but of the experience and desirability of wearing the particular fragrance.

Perhaps the complainant is concerned at the amount of body you can see, this advertisement, we contend, is less exposure than is commonly seen on family beaches: it accords with prevailing community standards in Australia and it would be extreme and unjustified to characterise it as, offensive to the community.

The complainant also contends that the magazine is something that her granddaughter should be safe to read and they she is deeply offended by the advertisement.

Far from having no place in the Style Magazine, the Advertisement is entirely appropriate for it and ideally placed, being consistent with high fashion images used to promote perfumes and other luxury products in magazines. The placement reflects the product's target audience of a sophisticated, adult, female consumer. Such readers are familiar with advertisements for perfume and personal care products which frequently depict glamorous models in stylised, elegant poses, including nudity.

"The Sunday Style Magazine is a weekly insert of the Sunday Telegraph newspaper. It cannot be purchased separately, and consumers will only see it once they have bought the newspaper.

Sunday Style is Australia's premier glossy insert. Launched in March 2013, it is a trusted source of inspiration and exclusive style for a modern and digital savvy audience.

Sunday Style readers are fashion forward. Style permeates every facet of their world - from

their wardrobes and cars, to where they eat, exercise, travel and entertain. Sunday Style targets, all women from 25 to 54. <http://www.newscorpaustralia.com/brand/sunday-style>"

It is of course a matter of personal choice whether particular Magazine readers leave it around the family home, but the advertisement is not in any way targeted at small children and we feel is sensitive to our target audience.

The Advertisement (variations) has also featured in several other publications which target mature sophisticated women readers, including AFR Magazine, Vogue, Harper's Bazaar, other issues of Sunday Style and Russh Magazine. We have received one other complaint regarding the placement of a larger / different layout of the same Advertisement in one of these publications, Reference 0129/15 which ASB has dismissed.

2.4 Section 2.4 of the Code

The Practice Note provides important guidance regarding section 2.4 of the Code. It is readily apparent that the Advertisement falls well within the guidelines.

In particular, taking into account the points made above as to the use of nudity in the Advertisement being discreet and apt, contributing to the overall artistic and promotional effect, the image is not highly sexually suggestive or inappropriate for the relevant audience; it is not an explicit sexual depiction; there is no full frontal nudity; there is no image of genitalia or nipples; there is no suggestively sexual pose; there is no clear sexual innuendo; the model is not depicted as a sexual object; and the image is not highly sexualised.

The use of nudity in the Advertisement is consistent with high fashion images used to promote perfumes. In this regard, we refer the Board to its decisions regarding a L'Oreal advertisement for Bonbon perfume by Viktor & Rolf which depicted a naked woman in a red ribbon and bows sitting cross legged (see ASB case report 0175/14). In that case the Board ruled that the advertisement did not breach the Code. As well as noted above the decision by the board on this "basically" the same image (see ASB case report 0129/15).

There is no breach of the Code in this case: the Advertisement treats sexuality and nudity with sensitivity to the relevant audience, having regard to the publication and prevailing community standards in Australia.

2.5 Other sections of the Code

Section 2.1 of the Code, provides that "Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender..."

The Advertisement complies with this section which restricts depictions of certain types of behaviour against people within certain groups. The relevant group in this instance is women. The relevant types of behaviour are "discrimination" and "vilification". The Practice Note provides some guidance on these terms. "Discrimination" means "unfair, or less favourable treatment" and "vilification" means "humiliates, intimidates, incites hatred, contempt or ridicule".

The Advertisement does not in any way discriminate against or vilify Ms Delevingne or

women generally. Rather, Ms Delevingne is depicted in a highly stylised, tasteful and confident pose. She appears content and reflective. The use of the nudity is discreet and apt, fitting the artistic and promotional purposes, as discussed above, and is consistent with sophisticated images used to promote high end perfumes.

Section 2.2 of the Code provides that "Advertising or Marketing Communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people."

The Advertisement complies with this section.

The Practice Note provides some guidance on the terms "exploitative" and "degrading". "Exploitative" means "clearly appearing to purposefully debase or abuse a person, or group of person, for the enjoyment of others, and lacking moral, artistic or other values". The term "degrading" means "lowering in character or quality a person or group of persons".

The Advertisement features a well-known, high profile model, who is artistically and tastefully positioned. She appears reclining in a dark pool of water while holding a bottle of the Black Orchid perfume. Her mood, as depicted in her gaze, is relaxed, yet confident. The Advertisement embodies a modern version of classically sensual femininity. This is consistent with the image of the Tom Ford brand, which is known for marrying modern sensibility with art and high fashion.

The overall creative treatment is artistic and sensual, not sexual and certainly not exploitative or degrading to the model or women generally. This is in distinct contrast with advertisements for which complaints have been upheld by the ASB for breaches of section 2.2 of the Code (see ASB case reports 0032/14, 0030/13, 0104/13).

The remainder of Section 2 of the Code does not apply to the Advertisement. It is not violent (2.3), does not feature obscene language (2.5) and is not contrary to prevailing community standards on health and safety (2.6).

Other complaints

Relevantly, the Advertising Standards Authority (ASA) in the UK recently considered the image used in the Advertisement in respect of a complaint made pursuant to the CAP Code. In that case the Advertisement took the form of an outdoor poster on display in a high traffic area of London. The ASA dismissed the complaint and concluded that "the pose was sensual and sexually suggestive but it was not sexually explicit" and instead was "stylised and artistic and in-keeping with ads for beauty products such as perfumes where depictions of feminine beauty and the female body were commonly used".

The regulatory frameworks regarding these matters in Australia and the UK are not identical and the ASB is in no way bound by decisions of the ASA. However, the ASB decision concerned the same image, and a similar review process. It indicates that the image in the Advertisement falls well short of the boundary that would need to be overstepped according to the guidelines regarding section 2.4. "Sexually suggestive" does not equate to highly sexualised. The ASA's final determination can be viewed online at http://asa.org.uk/Rulings/Adjudications/2015/4/Tom-Ford-Beauty/SHP_ADJ_288599.aspx#.VUFD6iFVhBc.

We are also aware that the ASB recently issued a draft case report regarding a complaint against Myer Pty Ltd concerning a different crop of the image in the Advertisement in the form of a large light box poster in the fragrance department of the Bourke Street Myer department store (refer Case Number 0158/15). The ASB upheld the complaint under section 2.4 only, on the basis that the relevant audience was "broad" and included both "adults and children". The ASB noted that "the exposure of the woman's buttocks in the manner depicted is very sexualised and in the context of a fragrance advertisement in a department store in full visibility of children does not treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience". We respectfully disagree with the ASB's conclusions, particularly as to the image being "very sexualised", but also note that the report related to a different crop of the image which, with the product name positioned over the upper leg and buttocks and less water surface to give context, may have created a different impression with this crop of a similar image.

We also refer as mentioned above to Case Number 0129/15 - the AFR Magazine image / advertisement and concluded:

"In the current advertisement the Board noted its placement in the magazine pull-out of the Australian Financial Review newspaper. The Board noted the target audience for that newspaper is adults and considered that in the context of a limited adult audience the use of an image consistent with high-fashion imagery is not inappropriate. The Board noted the complainant's concerns that children could view the advertisement but considered the Financial Review magazine is unlikely to be of appeal to children. Overall the Board considered that in light of the limited audience the use of this advertisement in a publication directed at adults does treat the issue of sex, sexuality and nudity with sensitivity to the relevant adult audience."

In all the circumstances, for the reasons we have provided, we submit that the complaint should be dismissed.

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 complainant's concern that the advertisement features an image which is not appropriate for a mainstream newspaper insert - the Sunday Telegraph Style magazine - where children could view it.

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 that the Sunday Telegraph Style magazine was included as an insert in the

Sunday Telegraph and this advertisement features a naked image of a female model. The Board noted that although the female is naked, she is posed in such a way as to obscure the private parts of her body and only the curve of her breast and back is visible.

In relation to the complainant's suggestion about alternate creative concepts that use a man in a suit, the Board considered that its role is to consider each advertisement on its own merit and whether the depiction of the female in this advertisement is discriminatory and vilifying, rather than commenting on the different treatments of men and women in advertising.

The Board noted that it is not discriminatory to use an image of a woman to promote perfume and that although the female is naked, in the Board's view she is not depicted in a demeaning manner.

The Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender.

The Board determined that the advertisement did not breach Section 2.1 of the Code.

The Board considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: "Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people."

The Board noted the advertised product is perfume. The Board noted that the practice note for Section 2.2 provides: "Not all images of people who are scantily clad will be unacceptable under this section. This section restricts the use of such images only if they are exploitative and degrading."

The Board noted a previous decision in case 0175/14:

"The Board noted that the image is highly stylised and considered that it is consistent with high fashion images used to promote perfumes and in this context the advertisement does not employ sexual appeal in a manner which is exploitative and degrading".

The Board noted in the current advertisement that the image is very stylised and consistent with its previous decision, whilst the advertisement uses the sexual appeal of the woman, she is not posed in a strongly sexual manner.

The Board considered that sexual appeal was not being employed in an exploitative and degrading way in the context of the product being advertised.

The Board determined that the advertisement did not breach Section 2.2 of the Code.

The Board finally 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 it had previously dismissed a complaint in relation to the same image when

it was placed in a magazine pull-out of the Australian Financial Review newspaper (0199/15) where:

“The Board noted at that time that the target audience for that newspaper is adults and considered that in the context of a limited adult audience the use of an image consistent with high-fashion imagery is not inappropriate.

The Board noted the complainant’s concerns that children could view the advertisement but considered the Financial Review magazine is unlikely to be of appeal to children. Overall the Board considered that in light of the limited audience the use of this advertisement in a publication directed at adults does treat the issue of sex, sexuality and nudity with sensitivity to the relevant adult audience. The Board determined that the advertisement did not breach Section 2.4 of the Code.“

The Board considered that in the current advertisement, the level of nudity is reduced as the image has been modified by the advertiser and although the female is naked, the pose was not overtly sexualised and was not sexually suggestive.

The Board noted it had previously dismissed a complaint in relation to a similar image (case 0336/13).

“The Board noted ... that the inclusion of nudity does not of itself amount to sexualisation. The Board noted that the woman are posing in a manner which suggests they are happy and confident and considered that the women are not posing in a sexual manner and that the overall image is not sexualised. The Board considered that in this instance the overall image is artistic and the level of nudity is not inappropriate for a broad audience which would include children.”

The Board noted that the current advertisement placed in a supplement, within a mainstream newspaper such as the Sunday Telegraph, meant that the audience would primarily be adults.

The Board considered that most members of the community would not find the advertisement inappropriate and that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant adult audience.

Consistent with the previous determinations (0336/13, 0199/15) the Board considered that the advertisement did not breach Section 2.4 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.

