

Case Report

1	Case Number	0305/14
2	Advertiser	Fresh One
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet - Social
5	Date of Determination	30/07/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.2 - Objectification Exploitative and degrading
- 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

Images on Freshonebeans Facebook page:

1. Americano: Close up image of two women's bottoms. They are wearing undies with the American flag printed on them and have their hands resting on each other's bottom.
2. Any time is a good time for a Fresh One: a man and woman are seated at a table. The man has turned in his seat to look at a woman walking past who is wearing a short black skirt.
3. Couple in elevator: image of a man and woman embracing in an elevator.
4. Shower: image of a woman wearing a white shirt in a shower.
5. I will have my Fresh One any way I want it: a woman wearing black lingerie and knee length boots is stood with one foot resting on the chest of a man lying in the ground.
6. Bathe me with milk if you must: image of a woman pouring milk over her body. Her head is not visible and she is not wearing a top - only a bra.

THE COMPLAINT

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

The advertisements are patronizing, offensive and dehumanizing to women! They objectify women and are incredibly sexist and pornographic.

All of the advertising images I have described above are degrading and misogynistic. They objectify and sexualise women and most of them are explicit and pornographic. I am deeply offended by the use of a woman's body portrayed in such a sexualised and degrading manner as a way to sell a product. It disgusts me!

Additionally, when other people have made direct complaints to the Advertiser, they have responded rudely, deleted comments and banned users.

It is sexual for no reason, it objectifies women. I'm sick of the misogyny. They think they can get away with this?!

As a marketing and communications professional I find these ads offensive, disgusting and demeaning.

THE ADVERTISER'S RESPONSE

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

It has come to my attention that there has been concentrated attention to our Facebook site for Fresh One beans. I am aware that there have been complaints to the ASB as well as many negative posts, rants and some threats of violence and physical damage on our Facebook page. From our investigations and further assumptions these seem mostly to be from a group known as Collective Shout and some of their derivative supporters although I can see from most of the official complaints to the ASB that anonymity has been requested.

After a fairly lengthy investigation into other Facebook advertising and other general exposure via this social media platform as well as discussions with our legal advisers I am confounded by the level of attention the page has received. There seems to be so many more portals that offer expletive based commentary and naked sexual imagery well beyond the gregarious nature of Fresh's One's page.

This would then indicate that the level of negative attention to the page and number of complaints received by the ASB would be the result of a focused attack on Fresh One. This scenario (which has been attempted before by this particular group) is one that now has commercial implications and can now be confronted on a litigious level.

Please advise by way of email what if any action you require from our Management Team, to be considered and presented to our legal advisers. This will preserve the legitimacy of our legal pursuits and accountability for damage done to our brand by this group via misleading

reposts and plagiarised advertisements.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether these advertisements breach Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concern that the advertisement depicts images of women which are sexist, degrading and inappropriate for a broad audience.

The Board viewed each posts and noted the advertiser’s response.

The Board first considered the definition of advertising or marketing communications. Under the Code, advertising and/or marketing communication means “any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, and over which the advertiser or marketer has a reasonable degree of control, and that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct.”

The Board considered that posts on a Facebook site of an advertiser which draw specific attention to the advertiser’s product in a manner calculated to promote that product is a marketing communication tool over which the advertiser has a reasonable degree of control. The Board determined that the provisions of the Code apply to the images and posts referred to in this determination.

The Board considered each post separately.

Post 1: Americano

The Board considered whether the post 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 that in order to be in breach of this section of the Code the image would need to be both exploitative and degrading.

The Board noted that the image features two women photographed from behind. They are wearing bikini style underwear that is printed with the stars and stripes intended to evoke the American flag. The women have their arms around each other and their hands on each other’s bottoms.

The Board noted that the women are seen only from the waist down and their heads are not visible. The Board noted that the failure to show the women’s heads does depict the women as objects and considered that the focus of the image was on their bodies. The Board agreed that this did amount to a depiction that was objectifying, however the measure of this clause is whether or not the image is exploitative and degrading and considered that in this instance,

although the image was exploitative in its focus on the women's bottoms and the reference to Americano flavour coffee, it did not amount to a depiction that was using sexual appeal in a manner that was degrading. In the Board's view the double entendre reference to having a hot coffee or two (with the analogy being to have two women) was not in this context degrading because of the clear reference to a style of coffee.

The Board determined that this post did not breach section 2.2 of the Code.

The Board considered whether this post 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 the women appear to be in glamorous or dressed up attire and that the outfits in connection with the positioning of their hands suggested that they could be part of a dance group or performance group. The Board noted that the text to the right of the image states: "I can't get out of bed without a hot American or two" and that in connection with the image this had sexual connotations suggestive of sexual activity. However the Board noted that the depiction was sexualised but only in its suggestive wording. The Board noted that section 2.4 of the Code permits sexually suggestive images provided that such images treat sexuality with sensitivity to the relevant audience. The Board noted that Facebook pages are available to people over the age of 13. However the Board considered that this particular Facebook page would generally be attractive to and have an audience of adult coffee drinkers. In the Board's view, adult coffee drinkers who are active on Facebook are the relevant audience for these posts. However, the Board noted that the posts could be seen by children over the age of 13 and that this should be taken into consideration as a small part of the audience.

In the Board's view the sexually suggestive text and image did treat sexuality with sensitivity to a relevant audience that of Facebook active adults interested in coffee and coffee beans and that the sexual innuendo would not be clear to a younger audience.

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

Post 2: "Any time is a good time for a Fresh One".

The Board considered whether the post 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 the image featured a man and a woman sitting at a table as another woman walks past them. The Board noted that the words to the right of the image stated "Third wheel? Not on our time." The Board noted the young woman walking past has made eye contact with the man and that her stance suggests that perhaps words were exchanged.

The Board considered that the woman was not being looked upon unknowingly and that she was not in a position or environment that appeared threatening. The Board considered that the text alongside the image was ambiguous and that it is necessary to read into the text and image a strong reference to sexual activity. The Board noted that the heading above the

image states anytime is a good time for a Fresh One and considered that the advertiser is intending to make a reference to three way (consensual) activity. In the Board's view however there was a strong and clear link to the product being Fresh One beans and the fact that people drink coffee at any time of the day.

The Board considered that the association between the product and the text was clear and the sexual reference was implied. For the reasons noted above in relation to Image 1, the Board considered that the post did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience of Facebook active adults interested in coffee and coffee beans and that the sexual innuendo would not be clear to a younger audience and determined that it did not breach section 2.4 of the Code.

Post 3: Elevator

The Board considered whether the post 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 this image shows a man and woman embracing in an elevator with the woman's leg being supported by the man as she wraps it around his waist.

The Board noted it had previously dismissed a television advertisement featuring a couple being amorous in an elevator (0160/13) and considered that in this instance although the accompanying text reads, "Any time is a good time for a Fresh One" in the Board's view the level of sexual suggestion is not inappropriate in the context of a Facebook advertisement for a product that is of appeal to adults rather than children. The Board noted that the couple are wearing clothes and considered that whilst the image was sexualised it did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience. The Board considered that the image did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience of Facebook active adults interested in coffee and coffee beans and that the image of a couple kissing was not inappropriate for a younger audience and determined that it did not breach section 2.4 of the Code.

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

Post 4: Shower

The Board considered whether the post 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 this image features a woman in a shower wearing a white business shirt with her head tilted back as the water runs down her back.

The Board noted that there is no nudity and that her breasts are not visible through the wet shirt. The Board noted the text next to the image that states: "Grind me, bathe me in hot steamy water and moisten me with cream if you must. Have it your way, anyway, a mouthful of my beans will leave you in ecstasy." The Board noted that there is clear sexual suggestion and connotation relating to the reference to "grind me..." etc and the grinding of coffee beans (the advertised product). The Board considered however that the double entendre is not one

that would be easily understood by children and that although the implication is clearly a sexual one, the woman in the image is fully covered. The Board noted that the text is probably intended to be a reference to sexual activity, however the overall impression is still strongly about activity with coffee. The Board considered that, taking into account the sexual suggestion in conjunction with the image of the woman in the shower, the overall depiction is not strongly sexualised and does treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience of Facebook active adults interested in coffee and coffee beans and that the sexual innuendo would not be clear to a younger audience.

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

Post 5: I will have my Fresh One any way I want it

The Board considered whether the post 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 the image featured a woman standing above a man. The woman is dressed in black and has high heeled boots. The woman’s foot is placed on the man’s chest as he leans back on bent legs.

The Board noted that the overall theme of the image is one of a female dominatrix as the additional text reads “I will have my Fresh one any way I want it because I can.” The Board noted that the couple are clothed and that the image is set up to look staged or like they are performing. The Board noted that the woman is presented as the dominant party and that this is a send up of the power imbalance in society giving the woman the power role. The Board noted that although the woman has the man pinned with her foot, he does not appear frightened and he appears to be consenting in the role he is in.

The Board noted that the outfits and the pose clearly amount to a depiction that is moderately sexualised, however on balance the Board determined that the post was not inappropriate for the relevant audience of Facebook active adults interested in coffee and coffee beans and that the sexual innuendo would not be clear to a younger audience and did not breach section 2.4 of the Code.

Post 6: Bathe me with milk if you must

The Board considered whether the post 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 image that featured a woman on the beach wearing a black bikini top and pouring milk over her torso. The Board noted the additional text that reads: “Bathe me with milk if you must. How do you like it?”

The Board noted that the woman is seen only from the neck down and that her face and head are not visible. The Board noted that the woman is on her own and that the focus of the image is on her breasts and torso. The Board noted that the woman is voluntarily pouring the milk over herself. The Board considered that the image of the woman is focused on her body and pouring milk over herself. The Board considered that the image is objectifying due to the

focus on her breasts and torso. The Board noted the text ‘bathe me with milk if you must and how do you like your Fresh One?’ is a reference to a manner of consuming coffee. The Board agreed that the depiction of the woman gives a sexualised double meaning. In the Board’s view however the image is not exploitative or degrading, with references to ‘bathing in milk’ often associated with luxury (Cleopatra for example) rather than any demeaning activity.

The Board considered that the post did not breach section 2.2 of the Code.

The Board considered whether the post 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 considered that the pouring of milk over the woman’s body could be likened to Cleopatra bathing in milk and that the concept of someone on the beach pouring milk over themselves was an unrealistic scenario that was intended to make a link between the post and the product of coffee that is often consumed with milk.

The Board agreed that the post was mildly sexualised but considered that it did treat the issue of sex with sensitivity to the relevant audience of Facebook active adults interested in coffee and coffee beans, that the sexual innuendo would not be clear to a younger audience, and did not breach section 2.4 of the Code.

The Board noted that it had also considered other posts that appear on the same Facebook page (ref: 0213/14) and that those posts had been upheld.

Finding that the advertisement as represented by each of the posts detailed above did not breach the Code on other grounds, the Board dismissed the complaints.