

COMPLAINT NUMBER	20/103
ADVERTISER	Beiersdorf Australia Ltd
ADVERTISEMENT	Nivea, Television
DATE OF MEETING	12 May 2020
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold two complaints about a television advertisement for a Nivea skin care product. The Complaints Board said the fleeting image of a woman expressing sexual pleasure was not indecent. The Complaints Board said the advertisement had not met the threshold to causes serious or widespread offence.

Description of Advertisement

The Nivea television advertisement promotes its Nivea Q10 Power anti-aging day cream and says, “Emotions shape you and make you unique, just like your face.” It has scenes with women expressing different emotions. including a woman on a theme park ride, a woman giving birth, and a man and a woman in bed, with the woman showing sexual pleasure. The advertisement ends with claims about the product and the Nivea logo.

Summary of the Complaints

There were two Complainants concerned the advertisement showed an image of a woman in bed with a man, having an orgasm and screened at an inappropriate time when children could be watching.

Issues Raised:

- Social Responsibility
- Decency and Offensiveness

Summary of the Advertiser’s Response

The Advertiser said the concept was to show a range of authentic emotions which shape personality and the face. The frame in question uses a head shot only to shows love and connection in a genuine way. The advertisement was classified with a G rating by CAB with no restrictions. The Advertiser said the small number of complaints are respectively inconsistent with contemporary community standards on sex, sexuality, and nudity.

Summary of the Media Response

The Commercial Approvals Bureau (CAB) said the G rated advertisement played after 7:00pm during a current affairs and PGR rated movie meaning young children were unlikely to be viewing. CAB stated there is nothing explicitly sexual in this scene and the suggestion of a sexual act is not in itself inappropriate during PG or G rated programming.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(c) Decency and Offensiveness: Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was a skin care product which contains an ingredient identical to the properties created in your own skin. There was a secondary message about the significance of the face for expressing emotions.

Placement

The Complaints Board noted the advertisement had been given a G (General) rating by the Commercial Approvals Bureau, which means it may be broadcast at any time. One Complainant saw the advertisement during the news and current affairs programme *Seven Sharp*, which is categorised as Unclassified Programming and one Complainant saw it during the animated movie *Despicable Me 3*, which is rated PGR (Parental Guidance Recommended)

The Broadcasting Standards Authority refers to Unclassified Programming as “news, current affairs, sports and live content that is not, because of its distinct nature, subject to classification. However, broadcasters must be mindful of children’s interests and other broadcasting standards and include audience advisories (i.e. a warning) where appropriate.” The Complaints Board said the advertisement had therefore played within the constraints of its afforded rating.

Does the advertisement contain anything that is indecent?

The Complaints Board agreed the advertisement does not contain any indecent content. The Board said there is no nudity or overly graphic images shown. It said the advertisement’s focus is on the expression on the woman’s face rather than the activity she is engaged in.

Is the advertisement likely to cause serious or widespread offence?

The majority of the Complaints Board said the advertisement is unlikely to cause serious or widespread offence. The majority of the Board said the image in question is a fleeting one second shot within a thirty second script. The majority of the Complaints Board said the image is suggestive rather than explicit. The majority of the Board said while it would be apparent to most adults that woman is expressing sexual pleasure, children would be less likely to register the sexual nature of the image. The majority of the Complaints Board said the advertisement had not reached the threshold to cause serious or widespread offence and it was not in breach of Rule 1(c) of the Advertising Standards Code.

A minority of the Complaints Board disagreed and said the image is unnecessary within the context of an advertisement selling a skin care product. The minority said the advertisement clearly shows a woman lying in bed with a man kissing her neck. The woman’s facial expression shows ecstasy rather than just emotion, which the minority of the Complaints Board said could be uncomfortable viewing for some audiences, especially those watching

with children. For the minority of the Complaints Board the advertisement was in breach of Principle 1 and Rule 1(c) of the Advertisement Standards Code.

However, in accordance with the majority, the Complaints Board ruled the advertisement was socially responsible, taking into account context, medium, audience and product and was not in breach of Principle 1 or Rule 1(c) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaints were **Not Upheld**.

No further action required

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.

APPENDICES

1. Complaints
2. Response from Advertiser
3. Response from Media

Appendix 1

COMPLAINT

Seven Sharp
2020-03-24
19:18

During prime time - with YOUNG kids watching.

Ad shows a couple after having sex and the woman clearly having had an orgasm whilst the man is kissing her naked shoulder.

COMPLAINT

Television Three Dispicable Me 3 (Movie)
2020-04-04
7pm - 8.40pm

The man's face on woman's shoulder which is not covered, the expression of the woman, they looked to be in bed. All those things are inappropriate materials to show during a family movie or that time frame anyway. I was watching the movie with my 8 year old child and definitely it was awkward when the ad came up. ***The screenshot is from YouTube made by Nivea ANZ and the ad we saw was the same one.

Appendix 2

RESPONSE FROM ADVERTISER, BEIERSDORF

Case Reference Beiersdorf Television – Complaint 20/103 (Key number BDF 902030 NZ)

Advertiser's Response to Complaints

Beiersdorf Australia Limited is organisation behind the iconic NIVEA brand, amongst others. We are also the advertiser related to complaints bearing case reference 20/103 to Advertising Standards Authority (ASA) Complaints Board for our NIVEA Q10 Power Anti-Wrinkle cream.

The two (2) complaints covered by this case is summarised below:

Case	0089-20	0089-20
Complaint	24/03/20	04/04/20
Media	Television TVNZ 1 Seven Sharp @ 19:18	Television Ch 3 Dispicable Me 3 (Movie) @ 7pm – 8.40pm

Concern (verbatim)	<p>“During prime time - with YOUNG kids watching.</p> <p>Ad shows a couple after having sex and the woman clearly having had</p> <p>an orgasm whilst the man is kissing her naked shoulder.”</p>	<p>“The man's face on woman's shoulder which is not covered, the expression of the woman, they looked to be in bed. All those things are inappropriate materials to show during a family movie or that time frame anyway. I was watching the movie with my 8 year old child and definitely it was awkward when the ad came up. ***The screenshot is from YouTube made by Nivea ANZ and the ad we saw was the same one.”</p>
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The TVC in question was aired in both a 30-second and 15-second variant. A copy of the TVC in MP4 format is attached in the response. The script of the TVCs is as follows:

30 second variant	15 second variant
<p>(Female voice over)</p> <p>Emotions shape you.....</p> <p>....and make you unique.</p> <p>Just like your face.</p> <p>Nivea Q10 Power....</p> <p>....New Zealand's number one anti-age day cream...</p> <p>....contains natural Q10....</p> <p>.....a hundred percent identical to the one made by your skin.</p> <p>It boosts skin's anti-age defence to visibly reduce wrinkles.</p> <p>Nivea Q10 Power.</p> <p>A hundred percent skin identical....</p> <p>....a hundred percent you.</p>	<p>(Female voice over)</p> <p>Nivea Q10 Power....</p> <p>.... New Zealand's number one anti-age day cream.....</p> <p>...contains natural Q10 identical to the one made by your skin...</p> <p>.... to visibly reduce wrinkles.</p> <p>Nivea Q10 Power.</p> <p>A hundred percent skin identical....</p> <p>....a hundred percent you.</p>

Apart from ourselves as advertisers, the advertising agency engaged was Richard Rose of Surry Hills, Sydney; and the media agency engaged was OMD Auckland, of Mt Eden, Auckland, New Zealand.

The TVCs were cleared by Commercial Approvals NZ under Job Reference Number 22504 and classified on 22/1/2020. Both 15s and 30s variants were classified with a G rating and the cross references are as follows:

- 15s TVC – Key Number BDF9020 15 NZ
- 30s TVC – Key Number BDF9020 30 NZ

The complaints have focused on a scene in the 30s variant of our TVC and its alleged breach of the Advertising Standards Code - Principle 1, Rule 1(c); on Decency and Offensiveness.

The initial entry scenes of this TVC depicts women in multiple scenarios expressing emotion. They refer to a whole host of emotions matching the voice over, where emotions shape a person, makes one unique and the focus is on the face, consistent with an advertisement for a face care product. The emotions are all expressed on the face, showing anger, pain, happiness, wellbeing and comfort. Conceptually, the TVC conveys emotions make one unique and shape one's personality as well as one's face. Our faces tell the story of emotions over time – it is precious, personal and should always be protected – and because it is unique, it should be protected with our unique NIVEA Q10 product.

The key point is that the TV shows different emotions on different faces with nothing visible on screen. The entry scene demonstrates emotions shape us, and we see a range of them that are meant to be very authentic rather than emotions are which simulated or hyped. The frames in question by the complainants show love and connection in a genuine way. There is no intent to push any other meaning.

The balance of the TVC – which is largely the majority of the TVC – conveys pack shots and science animation sequences highlighting the skin identical Q10 ingredient and its beneficial protective benefits on skin. It conveys the substantiated statement of being New Zealand's number one anti age cream.

It should be noted that the initial TVCs were pre-checked and the final TVCs were cleared through CAB where nothing was flagged regarding restricted viewing or concerns with appropriateness for children. The TVCs were classified with a G rating through this process.

Further to this, four similar complaints were made for the same TVC in Australia to Ads Standards.

The complaint was considered by the Ad Standards Community Panel on 11 March 2020.

The complaints focused on a scene in the 30s variant of the TVC and its alleged breach of the AANA Code of Ethics Part 2.4 on sex, sexuality and nudity. The outcome was:

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

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.

The small number of complaints on these TVCs suggest these complainants are respectively inconsistent with contemporary community standards on sex, sexuality and nudity.

We trust this response be given its due consideration by the ASA Complaints Board.

Appendix 3

RESPONSE FROM MEDIA, COMMERCIAL APPROVAL BUREAU

RE: Beiersdorf Television – Complaint 20/103 (Key number: BDF 902030 NZ; Classification : G)

Thank you for the opportunity to comment on the two complaints that the above Nivea commercial is in breach of Principle 1 Rule 1(c) of the Advertising Standards Code.

I note first that both complaints relate to the advertisement being broadcast after 7pm, once during a news & current affairs show and once during a PG classified family movie. The advertiser was clearly not targeting young children and any children that were watching were likely to be watching with an adult.

The scene in the advertisement that has caused offence is approximately 1 second long and appears within a vignette of scenes depicting the “emotions that shape you”. There is nothing explicitly sexual in this scene and it is the expression on the actor’s face that suggests a sex act. In our opinion, the suggestion of sex will be missed by younger viewers and, even if not, the suggestion of a sexual act is not in itself inappropriate during PG or G rated programming.

Finally, this commercial was approved in January 2020 and, to the best of our knowledge, has only been the subject of these two complaints. This would suggest that the advertisement is not causing “serious or widespread offence”.