

DECISION OF THE ADVERTISING REGULATORY BOARD

Complainants	Charles Parkerson Louise Barry-Taylor
Advertiser	The Love Sex Expo
Consumer/Competitor	Consumer
File references	503- The Love Sex Expo - Charles Parkerson & another
Outcome	Dismissed
Date	15 November 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Charles Parkerson and Louise Barry-Taylor against an out of home advertisement promoting “The Love Sex Expo”.

Description of the advertising

The image in dispute is:



Complaints

In essence the first complainant is of the view that:

- The language and the picture together send a message that women are always available to engage in sex.
- The absence of another person in the frame depersonalizes the sex act, and could be construed as an act of reducing women to commodities in the sex act and also suggests that two consenting adults are not required for sex, and that the viewer of the image can decide to engage in sex and that the object thereof, the woman, is a mere enabler of the desires of the viewer.
- It lacks sensitivity of the gender-based violence currently being experienced in South Africa and does not reflect the values of a constitutional democracy, and the Bill of Rights which has as its first order of rights, the right to dignity, equality and freedom.

The second complainant submitted that:

- The trailer containing the advertisement was placed in the traffic routes to schools in the area exposing under age children to the show.
- Evidence has been found which connects pornography (which is available at the Expo) and human trafficking which is an enormous challenge locally and internationally.

The complainant also attached the following link in support of her complaint:

https://www.youtube.com/watch?v=s0r-weVwKjA&fbclid=IwAR1DKGZ3A1DKjeJG9GRbmGFT6n6ZBpdUxc1mwkxYROPYzK3TpLjF_hnFmGQ

Response

The Respondent submitted that, like the Love Sex Expo that is being promoted, its advertising campaign is fun and tasteful. The Respondent further added that although the Love Sex Expo has already happened, it is undecided if it will use the same advertising campaign again for future expos, or will change it.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

- Offensive advertising - Clause 1 of Section II;
- Unacceptable advertising – Gender - Clause 3.5 of Section II
- Children - Clause 14 of Section II

Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

Jurisdiction

The Directorate notes that the Advertiser does not fall under the jurisdiction of the ARB but has co-operated fully in supplying a response.

For the purpose of clarity the Directorate notes that Clause 3.3 of the Memorandum of Incorporation of the ARB states:

“3.3 The Company has no jurisdiction over any person or entity who is not a member and may not, in the absence of a submission to its jurisdiction, require non-members to participate in its processes, issue any instruction, order or ruling against the non-member or sanction it. However, the Company may consider and issue a ruling to its members (which is not binding on non-members) regarding any advertisement regardless of by whom it is published to determine, on behalf of its members, whether its members should accept any advertisement before it is published or should withdraw any advertisement if it has been published.”

The matter will therefore be considered for the guidance of the members of the ARB. It remains the Advertiser’s prerogative whether or not to submit itself to the decision.

Potential Undertaking

The principal sanction of the ARB is to have advertising that breaches the Code removed from publication. Therefore, if an advertiser undertakes to remove an advertisement and not use it again in future, that undertaking is accepted without considering the merits of the matter.

The respondent has indicated that although the Love Sex Expo has already happened, it is undecided if it will use the same advertising campaign again for future expos or change it. The advertiser has therefore not given the Directorate an unequivocal undertaking not to use the advertisement complaint against in future.

Given this, the Directorate will proceed to look into the merits of the matter.

Merits

The Directorate notes that it is limited in its mandate to considering the issues raised in the complaints, and cannot widen its consideration to other potential issues with the advertisement. In unpacking the complaints, the Directorate starts by noting that at least part of the complaints appears to relate to a discomfort with the Advertiser's event, especially its sexual nature.

The Directorate cannot consider the acceptability of the event, not any allegations around the material found at the event. It appears *ex facie* that the event promoted by the Advertiser is a legal event and can therefore be advertised, in line with the rules in the Code.

The only issue before the Directorate is the content of the billboard.

Children and Offence

In essence, the Second Complainant finds the advertising offensive because it is placed in an inappropriate public space where children might see it.

Clause 1 of Section II states "No advertising may offend against good taste or decency or be offensive to public or sectoral values and sensitivities, unless the advertising is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom." It also clarifies that a particular advertising may be offensive to some and it is not sufficient grounds for upholding an objection.

The "General Principle" of Clause 14.1 of Section II is that "Advertisements addressed to or likely to influence children should not contain any statement or visual presentation that might result in harming them, mentally, morally, physically or emotionally".

In considering whether an advertisement is offensive, consideration will be given, *inter alia*, to the context, medium, likely audience, the nature of the product or service, prevailing standards, degree of social concern, and public interest. The Directorate notes that it has to consider the advertisement from a reasonable perspective of a viewer who is not overtly sensitive or hypercritical.

The event that the Advertiser is promoting is a Sex Expo and can only be referred to as such. The advertisement does not contain any explicit details or graphic illustrations regarding the event. There is no depiction of nudity or overt sexuality and any child who is exposed to the advertisement would therefore not understand any sexual inferences from the billboard. The execution is in fact like a cartoon, similar to illustrations that children are exposed to on a daily basis.

The Directorate understands that the advertisement might spark questions from an inquiring child who can read with regard to the event itself, and might result in an uncomfortable conversation for the parent. This is, however, not enough to justify an order to withdraw the advertising.

Given the above, the advertisement is not in contravention of Clause 1 of Section II or Clause 14 of Section II with regard to the reasons raised in the complaint.

Gender

In essence, the first Complainant is of the view that the language and the picture in the advertisement send a message that women are sexual objects, depersonalizes the sex act, and could be construed as an act of reducing women to commodities in the sex act.

The Directorate understands the Complainant's concern regarding harmful gender stereotypes especially in relation to issues of gender-based violence against women and femicide, as these factors do contribute towards inequality in our society.

Clause 3.5 of Section II states that gender stereotyping or negative portrayal are not permitted in advertising, unless such a stereotyping or portrayal is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. The Code defines "gender stereotyping" as advertising that portrays a person or persons of a certain gender in a manner that exploits, objectifies, or demeans them.

Having carefully considered this matter, and taking into account the probable impact as a whole upon those who are likely to see the advertisement, the Directorate concludes that the woman used in the advertisement is not exploited, objectified or demeaned in any way. The Complainant appears to have an issue with the woman's posture. The Directorate is, however, of the opinion that the depicted image of the women is not overtly sexual and there is no communication within the advertisement that infers that the depicted woman and women in general are sexual objects. It is reiterated that the illustration is a cartoon, and most people do not sexually objectify cartoons.

The Directorate also notes that the Complainant took issue with the fact that only a woman's image is used in the advertisement. The Directorate, however, wishes to point out that it is not within its mandate to dictate to Advertisers what gender or gender combination to choose with regard to artists who are used in advertisements. The only concern in this regard would be the manner in which the person, irrespective of his or her gender, is depicted in relation to the rules of the Code. The Directorate has, however, already determined that the woman in the advertisement is not objectified or demeaned in any way and that her posture is not overtly sexual.

The Directorate notes that, given the subject matter of the advertising, the Advertiser appears to have chosen a particularly non-provocative and non-sexual manner in which to communicate its offering and get the attention of potential consumers.

In the circumstances, the Directorate finds that it cannot be said that the advertisement contravenes Clause 3.5 of Section II of the Code by demeaning or objectifying the depicted woman in the manner defined in the Code.