



## Case 2020-004-IG-UA

### Facts

- A user in Brazil posted a picture with eight photographs of symptoms of breast cancer.
- Five of the eight photos showed uncovered female nipples.
- The post's title in Portuguese indicated that the post was to raise awareness about signs of breast cancer.
- Each photo was accompanied by an explanation of the symptoms.
- The posts had a pink background and the user announced that it was part of Pink October (an annual worldwide [campaign](#) to raise awareness about Breast Cancer, specifically about early identification and signs of the cancer).

### Contextual Issues

- *Need for showing uncovered nipples in the post:* The post was aimed at educating women about the early *signs* and *symptoms* of the cancer. As many of these [symptoms](#) of breast cancer are nipple-related, such as redness or flaky nipple skin, nipple discharge blood, change in nipple's [appearance](#), this post would be fundamentally ineffective in generating awareness if the nipples were not shown.
- *Societal Need:* Censoring this post is especially detrimental to public interest in Brazil as there is a documented need for breast cancer awareness in the country. Breast cancer is the [leading](#) cause of death by cancer in women in Brazil. And, about 40% of the cases are diagnosed in stages III or IV, and only after the onset of symptoms. Thus, censoring awareness posts such as these would lead to an intangible but definitive harm to the public.
- *No reasonable justification to censor:* Facebook's executives have previously [suggested](#) that their Adult Nudity policies are motivated by protecting the safety of underage users whose images may be uploaded online, as well as to avoid the uploading of non-consensual images. In this case, there are no facts on record or user reports to suggest that these pictures were of underage women or that they were shared non-consensually.

### Relevant Rules and Analysis

#### I. Community Standards

- Facebook's Community Standards on [Adult Nudity and Sexual Activity](#) disallow images of uncovered female nipples. However, the Standards make a specific exception for "breastfeeding and health-related situations (for example, post-mastectomy, [breast cancer awareness](#) or gender confirmation surgery".
- Facebook allows nudity when it is shared to "raise awareness about a cause or for education or medical reasons", provided that the user's intent is clear.

This case should have qualified for the exception for showing uncovered female nipples as:

- *Firstly*, the user's intent to educate was clear by the title of the post that explicitly said it was to raise awareness about the signs of breast cancer.
- *Secondly*, the user posted captions/explanations describing the symptoms in each photograph, likely intended to educate women about identifying these symptoms.



- *Lastly*, the user's clear reference to the Pink October campaign made it clear that the post was intended to raise medical awareness.

## II. International Best Practices on determining permissibility of nudity

- In determining whether this post must be restored, we recommend that the Oversight Board follows a speech protective standard, such as the three-prong test laid down by the US Supreme Court in [Miller v. California](#). Based on the Miller test, the Board must consider whether taken as a whole and applying contemporary community standards, the post appeals to the prurient interest, and whether it lacks serious political or scientific value.
- We recommend the Court to consider the Indian Supreme Court's decision in [Aveek Sarkar v. Union of India](#), where the Court held: *A picture of a nude/semi-nude woman, as such, cannot per se be called obscene unless it has the tendency to arouse feeling or revealing an overt sexual desire. The picture should be suggestive of deprave mind and designed to excite sexual passion in persons who are likely to see it, which will depend on the particular posture and the background in which the nude/semi-nude woman is depicted.*
- Based on these tests, we believe that this post must be restored as the uncovered female nipples are not intended for sexual arousal but are aimed at generating medical awareness.

### Appeal regarding expansion of Community Standards

- We call upon the Board to use this opportunity to critically assess Facebook's Policy of exclusively banning female uncovered nipples. This female-specific ban raises concerns regarding inexpressible restriction on freedom of expression under Article 19 ICCPR and violation of anti-discrimination principles under Article 26 ICCPR.
- An exclusive ban on female nipples unequal limits on women's expression as compared to men's expression. It also [disproportionately](#) affects activists, educators and artists whose work focuses on already-marginalized bodies, including queer and gender-non-conforming persons.
- Further, an exclusive ban on female uncovered nipples violates gender equality laws and could even be viewed [viewpoint discrimination](#) for the right to free expression.
- In this regard, we urge the Board to consider a 2019 [decision](#) of the US Court of Appeals that overturned a law that exclusively banned women from going topless in public. The Court said that to argue that women's breasts have sexual implications that men's breasts do not, would amount to enshrining public sensibilities grounded in prejudice and stereotypes to become part of the official policy.

### Conclusion

- Based on the reasons discussed above, we do not believe that this post violates Facebook's Adult Nudity and Sexual Activity Standards. This post appears to fall under the specific exemption for nudity aimed at educating and spreading medical awareness.
- By removing this post, Facebook has narrowed the scope of permitted speech and conflated nudity with sexuality. Thus, the Board must restore this post as not only does it not violate Facebook's Community Standards, it also serves an important public interest of spreading medical awareness around an issue of utmost public importance.