



Case Report

1	Case Number	0048/13
2	Advertiser	Lovers Adult Store
3	Product	Sex Industry
4	Type of Advertisement / media	Radio
5	Date of Determination	27/02/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

Radio advertisement featuring the sound of buzzing and then a woman's voice asking, "Do you know what that sound is?...That sound could change your relationship". She then goes on to say that the sound is made by the "naughty new toy from We-Vibe" and that this product and other adult toys can be bought from Lovers Adult Stores in Perth.

THE COMPLAINT

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

Someone else can explain to my young children what the sound of a vibrator is and what it is used for. This should not be played on commercial radio during hours when children can hear it!

THE ADVERTISER'S RESPONSE

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

Re: Complaint in respect of an advertisement for Lovers Store on 94.5FM (the "Advertisement")

We refer to your letter dated 5 February 2013, and we respond on behalf of Mix 94.5FM regarding a complaint made under Section 2 of the AANA Advertiser Code of Ethics received by the Advertising Standards Bureau on 4 December 2012.

Please find below our reply in response to your request for further information about the Advertisement.

1. Description

We confirm that two (2) advertisements were broadcast on Mix 94.5 FM which promote the goods and services of; Lovers Adult Stores T/A KSK Safro Pty Ltd (ABN 12 1247890) (“our Client”).

The Advertisement was thirty seconds in duration and contains a combination of plain dialogue, music and sound effects. The tone of the dialogue in both Advertisements is light hearted, practical and unemotional.

The Advertisement does not contain any explicit sexual references nor does it identify any particular product. The primary aim of the Advertisement was to increase trade by making potential customers aware of the goods and services offered by our Client.

We submit that the Advertisement ought not to be considered as overtly sexual in nature as the Advertisement does not elaborate on any of the specific products or services offered by our Client.

2. Code of Ethics

We have examined the provisions of the AANA Code of Ethics, and in particular Section 2 Consumer Complaints (“the Codes”).

We submit that the Advertisement is not in breach of section 2.1 of the Codes. The Advertisement does not discriminate or seek to discriminate or vilify any persons or sections of the community based on their race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

Section 2.2 of the Codes states that the Advertisement must not appeal in a manner which is “exploitative and degrading of any individual or group of people”. Again, the Advertisement is in no way exploitative or degrades any individual or group of people.

Similarly we submit that Section 2.3 of the Codes also does not apply as the Advertisement does not present or portray violence.

We have also reviewed Sections 2.5 and 2.6 of the Codes which refer to language and health and safety, respectively, and submit that these provisions do not apply to this Advertisement.

3. Section 2.4 of the Codes - “our relevant audience”

You have requested that we examine whether we have treated the subject matter of sex, sexuality or nudity with an appropriate level of sensitivity with regard to “our relevant audience”.

When determining our relevant audience, we confirm that Mix 94.5FM content does not cater for or target younger listeners but is in fact marketed to listeners aged 24-54 years. We attach a copy of Mix 95.5FM Brand Aid as Annexure 1.

We refer to Nielson/Radio Advisor Material in particular to the relevant survey (No 8 2012), which confirms:

- a) The relevant audience of Mix 94.5FM did not consist of younger listeners.*
- b) The average age of listeners was in fact 46 years.*
- c) The majority of listeners at the relevant time (between 9.15am and 9.30am on Monday to Friday) were listening at work. It is therefore unlikely that children were listeners.*
- d) In respect of people who listened at home, the majority of that segment of the audience (being 78%) did not have any children present.*

Additionally; in relation to the complaint we submit;

- a) The Advertisement complaint is in relation to 9.22am broadcast which traditionally is not a time that children are likely to be in the car traveling to school.*
- b) In the event that people listened in their cars whilst their children were present, is at the discretion of the parent if they choose to listen to the station.*

We further refer to a decision of the Board, (Case Number 01941/12) which found that; where children may be listening to an Advertisement a breach would not be found where “reference to the adult store are relatively mild and no specific products or activities are mentioned”.

We submit that the references to the adult store are mild and submit that no specific activities are mentioned in the Advertisements nor were any of our Clients products identified (for example a “vibrator”).

Importantly, Mix 94.5FM has not and will not broadcast this Advertisement between the hours of 7:00 am - 9:00 am and also 3:00 pm - 5:00 pm.

4. AANA 2012 Code of Ethics Practice Note

With regard to the AANA 2012 Code of Ethics Practice Note, we respectfully submit that no breach of Section 2.4 has occurred. We contend that:

- (i) We do not consider the Advertisement to be highly sexually suggestive. We acknowledge that there is a discreet portrayal of sexuality; however we contend that this portrayal is relevant to the product and services offered by our Client.*
- (ii) The Advertisement does not contain any pornographic language, descriptions of full frontal nudity or genitalia.*

(iii) *The Advertisement does not contain descriptions of men and women in a suggestively sexual pose or in a manner which suggests one sex to be submissive to the other.*

(iv) *The Advertisement does not target young people and it is highly unlikely that the announcer who features in the advertisements could be perceived as being a young person.*

We therefore submit that the goods and services offered by our Client and described in the Advertisement is highly likely to be non-controversial to the audience and contend that this is in no way an infringement of the Codes and should in no way be reflected as such in the determination of the Board.

We do not consider that this complaint falls within the remit of the AANA Code of Advertising and Marketing Communications to Children, or the AANA Food and Beverages Marketing Communications Code, and we confirm that there has been no agency or media buyer involvement in this matter.

We look forward to the Board's determinations in this matter. In the meantime, please contact me should you require any further information in relation to this matter.

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 concerns that the advertisement features sexual content which is inappropriate for children to hear.

The Board viewed the advertisement and noted the advertiser's response.

The Board 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 that the advertisement features the sound of buzzing which the female voiceover describes as the naughty new toy from we-vibe.

The Board acknowledged that there is a level of community concern surrounding the advertising of adult themed products and noted that adult shops are legally allowed to be advertised.

The Board noted that in this instance the sound of buzzing can be heard and considered that the references to this buzzing and the type of products the advertiser is promoting are relatively discreet.

The Board noted the Advertiser's response that care had been taken in the placement of the advertisement both with the station it was aired on and the timings it was played. The Board noted that despite this care children would hear the advertisement. However the Board considered that the content is not explicit or sexualised and was subtle in its reference to products.

Based on the above the Board considered that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience.

The Board determined 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 complaints.