



Case Report

1	Case Number	0051/11
2	Advertiser	Johnson & Johnson Pacific Pty Ltd
3	Product	Sex Industry
4	Type of Advertisement / media	Pay TV
5	Date of Determination	23/02/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

2.3 - Sex/sexuality/nudity Treat with sensitivity to relevant audience

DESCRIPTION OF THE ADVERTISEMENT

A couple, dressed in pyjamas, are in bed, speaking about how they spend their intimate time together. The man alludes to the individual benefits of using K-Y® Yours + Mine™ for him and for her. The woman then comments on the special reaction that occurs when the two products are combined. An analogy of the pleasure experienced when the products combine is expressed via black and white footage of a couple conducting a ballroom dancing jump. The couple is then shown in the bed, covered in bed sheets. Both the man and woman are smiling about the positive experience they had whilst using K-Y® Yours + Mine™ during the implied intimacy. A pack shot of the K-Y® Yours + Mine™ product is then shown and a voice over recaps its unique benefit.

THE COMPLAINT

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

*My abject apologies if I misheard this BUT even so, I don't think ads for sex aids should be shown between 9:30pm and 10:30pm during The Antiques Roadshow!!
I should be able to watch a "very safe" TV show with a G rating (with my 93-year-old father) without being embarrassed!*

*I also note that this same product is being advertised online on a website called
<http://www.kidspot.com.au>*

<http://www.kidspot.com.au/sponsor/ky-yours-&-mine+19.htm>

I wonder about the appropriateness of this too.

THE ADVERTISER'S RESPONSE

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

Relevant sections of the AANA Advertiser Code of Ethics (the Code)

Your letters refer to the following sections of the Code:

(a) Section 2.3 – “Advertising or marketing communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and where appropriate, the relevant programme time zone.”

(b) Section 2.5 – “Advertising or marketing communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.”
Response to complaint

The complainant has complained that the ad was too descriptive and not shown in an appropriate time slot as it was before 9.00pm.

In reference to the complaint about sexual intercourse, we note Section 2.3 of the Code impliedly permits use of sexual content in advertising, provided certain conditions are met.

The advertiser maintains that, in accordance with this Code, the subject of sex has been treated with sensitivity and with respect to the relevant audience. The actors portray mature couples in loving relationships and all references to the act of sex are implied, rather than overt.

Further to this, both television advertisements created for K-Y® Yours + Mine™ are intended for mature audiences and have been assigned ‘M’ ratings by Commercials Advice Pty Limited (CAD). According to this designation, these ads are deemed suitable for persons aged 15 years and over, and as such, were aired exclusively during the hours specified by CAD as defined below (except during Preschool (P) and Children (C) programs or adjacent to P or C periods):

- Weekdays (schooldays):*
 - 8.30pm–5.00am (see Note 1)*
 - 12 noon–3.00pm (see Note 2)*
- Weekdays (school holidays) & Weekends:*
 - 8.30pm–5.00am (see Note 1)*

Note 1: not in G or PG programs or sport starting at or continuing past 8.30pm. If the program continues past 10.30pm, this restriction ceases to apply.

Note 2: see Clause 2.10.3 of the Code of Practice for time zone difference adjustment.

The language used in the advertisements was not strong or obscene and was, as shown above, appropriate to the time zone.

Accordingly, we submit that the advertisements complied with Sections 2.3 and 2.5 of the Code.

Response to complaint:

We acknowledge the complaint made by the complainant in relation to television advertisements for K-Y® Yours + Mine™ which aired during the show Law & Order SVU. Both the advertiser and its designated media agency accept responsibility for this oversight and will endeavour to ensure that in the future, no such advertising appears during programs that contain sexual violence or crimes of a sexual nature.

Response to complaint:

In reference to the objections made by the complainant, we refer to the two advertisements for K-Y® Yours + Mine™ provided to the ASB. Please note that neither advertisement makes mention of the words “vagina” or “penis”.

In accordance with Section 2.3 of the Code, we maintain that the subject of sex has been treated with sensitivity and with respect to the relevant audience. The actors portray mature couples in loving relationships and all references to the act of sex are implied, rather than overt.

The complainant claims that it was not appropriate to advertise at 8.30pm as this is a “family time slot”. The claim is not supported by the classification of time slots by Commercials Advice Pty Limited (CAD). Both television advertisements are intended for mature audiences and were assigned ‘M’ ratings by CAD. According to this designation, these ads are deemed suitable for persons aged 15 years and over, and as such, were aired exclusively during the hours specified by CAD as defined below (except during Preschool (P) and Children (C) programs or adjacent to P or C periods):

- *Weekdays (schooldays):*
 - *8.30pm–5.00am (see Note 1)*
 - *12 noon–3.00pm (see Note 2)*
- *Weekdays (school holidays) & Weekends:*
 - *8.30pm–5.00am (see Note 1)*

Note 1: not in G or PG programs or sport starting at or continuing past 8.30pm. If the program continues past 10.30pm, this restriction ceases to apply.

Note 2: see Clause 2.10.3 of the Code of Practice for time zone difference adjustment.

The language used in the advertisements was not strong or obscene and was, as shown above, appropriate to the time zone.

Accordingly, we submit that the advertisements complied with Sections 2.3 and 2.5 of the Code.

Response to complaint:

The complainant states that the people portrayed in the advertising were “involved in a sexual act” and it was “very explicit and blatant”. As the advertisements show, those statements are not correct.

The advertiser maintains that, in accordance with this Code, the subject of sex has been treated with sensitivity and with respect to the relevant audience. The actors portray mature couples in loving relationships and all references to the act of sex are implied, rather than overt.

The complainant states that advertisements for K-Y® Yours + Mine™ were aired on Channel 7 at “around 8pm” on either “Bones” or “Castle” and this was an inappropriate timeslot. We do not believe the advertisements were shown before 8.30pm. According to our records the advertisements were shown on “Bones” between 9.30pm and 10.30pm and on “Castle” between 9.30pm and 10.30pm and between 10.30 and 11.30pm.

Both ads for this product are intended for mature audiences and have been assigned ‘M’ ratings by Commercials Advice Pty Limited (CAD). According to this designation, these ads are deemed suitable for persons aged 15 years and over, and as such, were aired exclusively during the hours specified by CAD as defined below (except during Preschool (P) and Children (C) programs or adjacent to P or C periods):

- *Weekdays (schooldays):*
 - *8.30pm–5.00am (see Note 1)*
 - *12 noon–3.00pm (see Note 2)*
- *Weekdays (school holidays) & Weekends:*
 - *8.30pm–5.00am (see Note 1)*

Note 1: not in G or PG programs or sport starting at or continuing past 8.30pm. If the program continues past 10.30pm, this restriction ceases to apply.

Note 2: see Clause 2.10.3 of the Code of Practice for time zone difference adjustment.

The language used in the advertisements was not strong or obscene and was, as shown above, appropriate to the time zone.

Accordingly, we submit that the advertisements complied with the Code and in particular Sections 2.3 and 2.5 of the Code.

In response to the complaint made anonymously as aired on Channel 7 at 8:30pm

An anonymous complaint states that advertisements for K-Y® Yours + Mine™ were aired on Channel 7 at an inappropriate timeslot. According to the complaint, that was at 8.30pm.

Both ads for this product are intended for mature audiences and have been assigned 'M' ratings by Commercials Advice Pty Limited (CAD). According to this designation, these ads are deemed suitable for persons aged 15 years and over, and as such, were aired exclusively during the hours specified by CAD as defined below (except during Preschool (P) and Children (C) programs or adjacent to P or C periods):

- *Weekdays (schooldays):*
 - *8.30pm–5.00am (see Note 1)*
 - *12 noon–3.00pm (see Note 2)*
- *Weekdays (school holidays) & Weekends:*
 - *8.30pm–5.00am (see Note 1)*

Note 1: not in G or PG programs or sport starting at or continuing past 8.30pm. If the program continues past 10.30pm, this restriction ceases to apply.

Note 2: see Clause 2.10.3 of the Code of Practice for time zone difference adjustment.

The advertiser maintains that, in accordance with this Code, the subject of sex has been treated with sensitivity and with respect to the relevant audience. The actors portray mature couples in loving relationships and all references to the act of sex are implied, rather than overt.

The language used in the advertisements was not strong or obscene and was, as shown above, appropriate to the time zone.

Accordingly, we submit that the advertisements complied with the Code and in particular Sections 2.3 and 2.5 of the Code.

Response to complaint:

The complainant notes that she may have misheard the dialogue in the advertisement. We confirm this to be the case and have provided the correct dialogue as set out in the attached scripts. The advertiser maintains that, in accordance with the Code, the subject of sex has been treated with sensitivity and with respect to the relevant audience. The actors portray mature couples in loving relationships and all references to the act of sex are implied, rather than overt.

The complainant expresses objection to the timeslot during which the advertisement was shown.

We note that the two television advertisements created for K-Y® Yours + Mine™ are intended for mature audiences and have been assigned 'M' ratings by Commercials Advice Pty Limited (CAD). According to this designation, these ads are deemed suitable for persons aged 15 years and over, and as such, were aired exclusively during the hours specified by CAD as defined below (except during Preschool (P) and Children (C) programs or adjacent to P or C periods):

- *Weekdays (schooldays):*
 - *8.30pm–5.00am (see Note 1)*
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- *Weekdays (school holidays) & Weekends:*

- 8.30pm–5.00am (see Note 1)

Note 1: not in G or PG programs or sport starting at or continuing past 8.30pm. If the program continues past 10.30pm, this restriction ceases to apply.

Note 2: see Clause 2.10.3 of the Code of Practice for time zone difference adjustment.

The complainant objects to the advertisement being shown between 9.30 pm and 10.30pm and because it was shown between those times during “Antiques Roadshow” which has a “G” rating. As set out above, the advertisement was shown during a time slot defined and approved by CAD (i.e. after 8.30pm) and as Antiques Roadshow started at 9.30pm the advertisements complied with the CAD classification. Additionally, Section 2.3 states that the advertisement shall treat sex with sensitivity to the relevant audience and “where appropriate, the relevant programme time zone.” Given that the show started at 9.30pm, we submit that the advertisement was shown in a relevant time zone.

The language used in the advertisements was not strong or obscene and was, as shown above, appropriate to the time zone.

Accordingly, we submit that the advertisements complied with the Code and, in particular, Sections 2.3 and 2.5 of the Code.

Finally, the complainant expresses concern over the appearance of advertising for K-Y® Yours + Mine™ on the website www.kidspot.com.au. The advertiser would like to clarify that [kidspot.com.au](http://www.kidspot.com.au) is a parent’s resource and intended for use by mature audiences, in particular mothers. Furthermore, the advertising that appears on this site is static, depicting only imagery of the product, packaging and brand slogan.

Conclusion

For the reasons set out above we disagree that the advertisements were “inappropriate” or shown at an inappropriate time on television or inappropriately advertised online. We remain satisfied that the advertisements comply in all respects with the provisions of the AANA Code of Ethics (including the Codes incorporated therein), and in particular Sections 2.3 and 2.5 of the Code.

We respectfully ask the Advertising Standards Board to set aside these complaints.

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 complainants' concerns that the advertisement is offensive, shown at inappropriate times and features inappropriate sexual language.

The Board reviewed the advertisement and noted the advertiser’s response.

The Board then considered whether the advertisement was in breach of section 2.3 of the Code. Section 2.3 of the Code states: “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone”.

The Board noted the advertisement features a couple in bed together speaking about how KY Jelly enhances their relationship. The Board noted that the advertiser is currently able to advertise their product, provided that such advertisements are within the Code.

The Board noted that there is no nudity in the advertisement and that the references to sex are discreet and no actual sex related words are used. The Board noted that when the couple described how the KY Jelly works, an image of a couple dancing is shown accompanied by crescendo music, which the Board considered to be mild innuendo.

The Board noted that the advertisement has been classified M by CAD and that the advertisement would generally be shown in M rating programming on Pay TV. The Board noted the advertiser's response that they will try to ensure the advertisement is not placed in programming which contains sex related crimes.

The Board noted that whilst some members of the community would prefer that this product not be advertised on television, and would feel the advertisement is inappropriate, the Board considered that the advertisement was mildly suggestive and not likely to be offensive to most of the community viewing M rated material.

The Board determined that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach section 2.3 of the Code.

The Board then considered whether the advertisement was in breach of section 2.5 of the Code. Section 2.5 of the Code states: "Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided".

The Board noted that there were no actual sex related words used in the advertisement as the couple talk about their 'relations' and refer to their genitals without actually saying anything

The Board determined the language used was not inappropriate and that there was no breach of Section 2.5.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.