



ADVERTISING  
STANDARDS  
BUREAU

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## Case Report

1	Case Number	0053/14
2	Advertiser	Reckitt Benckiser (Aust) Pty Ltd
3	Product	Toiletries
4	Type of Advertisement / media	Radio
5	Date of Determination	26/02/2014
6	DETERMINATION	Dismissed

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

The Advertisement starts with the ruffle of fabric, then a voiceover starts with messages around Valentine's Day. It then introduces the Product features (being warming / tingling sensations). Consumers are then referred to consumers to the Advertiser's Facebook page for more information. The Advertisement closes with a female giggling and the Durex tagline "Love sex, Durex" (Durex Tagline).

### THE COMPLAINT

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

*My concern was that I pick up my child from after school care at those times and was not fitting for the child to hear them go in detail about what Durex products can do for you and your partner, only to have your child ask what that means and what is the product etc. The radio station must consider that working people pick up their children after school hours upto 6pm, so it is unfair that we are put in a position like that to have to act quickly to change the station half way through the ad because that is being broadcasted or that we have to then try and explain to the children what condoms and durex is. I have no objections to the ad being broadcasted at any other times, but it is unsuitable for the ad to be on at early times (such as I mentioned)*

*I am by no means a prude but thought that at 12.28pm on a Saturday; this ad should not have been played on the radio. The tag line at the end of the ad says "Love Sex, Durex" - a bit inappropriate for that time of the day. My 5 year old said "what's sex?" Great!!!!!! Those ads used to play "after 7.30/8pm" not lunchtime.*

*The text and subject matter aren't appropriate for the times of the day that the ads are being run. I can't have the radio going in the car with my young children at the moment as I don't want to have to explain to a 6 year old what the ad is about.*

*Mix 102.3 is a radio station listened to by many families and teenagers. My children aged 14 and 11 were both in the car at the time the first ad was heard, and just then, they were sitting in the kitchen having something to eat after school.*

*Neither of them were left in any doubt what the ad was about.*

*I believe it is highly inappropriate to advertise sex so blatantly on a radio station listened to many aged due to their contemporary music.*

*We are far from prudish and discuss many things with our kids, however, there are also so many younger kids listening all over Adelaide.*

## **THE ADVERTISER'S RESPONSE**

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

*In our view the substantive issue raised in each of the complaints is the programming of the Advertisement, that is, that the Advertisement should not have been played on the radio at the times that it was broadcast. The airing times which were the subject of the complaint were as follows:*

*(a) first complaint: 18:00 on 5 February 2014 and 16:30 on 6 February 2014 (Mix 102.3FM);*

*(b) second complaint middle of the day, weekday and weekend (96 FM W.A);*

*(c) third complaint: 12:28pm Saturday 8 February 2014 (Mix 102.3 FM Adelaide)*

*(substantive issue).*

*The complaints do not otherwise appear to be directed at the content of the Advertisement. Accordingly, the advertiser has confined its response to addressing on the substantive issue.*

*To the extent that the advertiser has incorrectly understood the complaints, the advertiser respectfully requests the opportunity to provide further submissions to assist the ASB in its consideration.*

### *Submission*

*As you are aware, the Advertiser takes complaints about our advertising seriously. In making this submission, the Advertiser has considered:*

- 1. section 2 of the AANA Advertiser Code of Ethics (the Code of Ethics) as a whole. The Advertiser considers that the only provision of section 2 which has any potential application to the Advertisement, having regard to the complaints (but which is not breached by the Advertisement), is section 2.4, which provides that “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”.*
- 2. The AANA Code for Advertising and Marketing Communications to Children (the Children’s Advertising Code), including section 2.4 which amongst other things provides that Advertising or Marketing Communications to Children “(a) must not include sexual imagery in contravention of Prevailing Community Standards.” (collectively, the Codes)*

*The Advertiser has responded to the substantive issue below, taking into account the above provisions of the Codes.*

### *Code of Ethics*

*So far as the Code of Ethics is concerned, the Advertiser makes the following submissions:*

- 1. The content of the Advertisement was entirely appropriate to the relevant audience, being adult consumers of the Products 25 – 40 years of age during the Valentine’s Day period. The content of the Advertisement is not explicit and sex is only referenced indirectly (for example through the use of the words sensual and arousing). The word “sex” is only used once in the Durex Tagline at the end of the Advertisement. Accordingly the material is presented in a way which is consistent with prevailing community standards.*
- 2. The relevant audience would view the suggestive nature of the advertisement as mild, sensitive and perhaps playful treatment of the subject of sex. The Advertiser submits that, whilst some members of the community may be offended by the use of sexual terms in the Advertisement, the words are relevant to the product and therefore not inappropriate. The Advertiser further submits that most people would consider that the use of the various terms*

*in the advertisement would not amount to inappropriate or strong or obscene language.*

3. *To the extent that any children may have heard the Advertisement, children would not understand the meaning of “pleasure gels” or their intended use.*

4. *The Durex Tagline (which is the only occasion on which the word “sex” is directly used) is the global Durex advertising slogan. It is relevant to the product and has been used for a number of years on all Durex advertising, including print advertising, pack, point of sale material, websites and television commercials;*

5. *The target audience of Mix 102.3FM and 96FM is adults. Mix 102.3 and 96FM are not children’s radio stations. Those radio stations regularly feature talk back which is mildly suggestive of sex.*

6. *The Advertiser refers the Board to case number 0254/10 where the Board dismissed a complaint in relation to a radio advertisement which claimed “the sex was better”. The Board “noted that the advertisement is a radio advertisement and hence is capable of a broad listening audience. However the Board noted that people can choose from a number of radio stations and can turn off the radio if concerned about the content of material.” The Advertiser submits that the same applies in this case.*

7. *Finally and in any event, the Advertisement is no longer airing (given that it was being aired in and around Valentine’s Day).*

#### *Children’s Advertising Code*

8. *The Advertisement was clearly directed at adult consumers (being an Advertisement for adult pleasure Gels). The target demographic was adult couples 25 to 45 years of age;*

9. *Accordingly, in the Advertiser’s submission the Children’s Advertising Code does not apply because the Advertisement is not Advertising or Marketing to Children within the definition of the Children’s Advertising Code.*

*Response to newly received complaints*

*(response to complaints made on 7 February 2014 and 11 February 2014 dated 18 February 2014).*

*In our view the substantive issue raised in the complaint is the programming of the Advertisement, that is, that the Advertisement should not have been played on the radio at the time that it was broadcast. The airing times which were the subject of the complaint are 11 February 2014 at 4:59pm and 12 February 2014 at 4:40pm on Mix 101.1FM.*

*(substantive issue).*

*The complaints do not otherwise appear to be directed at the content of the Advertisement. Accordingly, the advertiser has confined its response to addressing on the substantive issue. To the extent that the advertiser has incorrectly understood the complaints, the advertiser respectfully requests the opportunity to provide further submissions to assist the ASB in its consideration.*

#### *Submission*

*In the Advertiser's opinion, the substantive issue in the complaint dated 19 February 2014 is identical to the substantive issue in the complaints dated 7 February 2014, and 11 February 2014.*

*As such, the Advertiser:*

*1. repeats the submissions made in paragraphs 1 to 9 of its letter of 18 February 2014; and*

*2. says that the description of the Advertisement made in the complaint is false. The complaint states that "The Advert talked about pleasuring your partner much longer and better, how to improve your sex life with different colours, sizes, shapes etc (in detail about condoms)." The Advertisement does not mention any of those matters and in fact condoms are not mentioned at all. Sex is only mentioned in the Durex Tagline and otherwise suggested inferentially in the Advertisement.*

*3. says that accordingly, it is not clear that the complaint in fact relates to the Advertiser's Advertisement. It is possible that the complaint was made in relation to a different advertisement;*

*4. says that Mix 101.FM is also an adult radio station and its target audience is adults. It is not a children's radio station.*

*In light of the above, we strongly urge the Board to also dismiss this complaint in its entirety*

*and we look forward to receiving the Board's determination in due course.*

## **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 contains sexual references that are inappropriately broadcast at times when children can be listening.

The Board reviewed 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 a voiceover starting with messages around Valentine's Day. The product features are then described. Consumers are referred the Advertiser's Facebook page for more information. The Advertisement closes with a female giggling and the Durex tagline "Love sex, Durex" (Durex Tagline).

The Board noted that the product is legally allowed to be sold and that the role of the Board is to decide on the appropriateness of the advertisement and not of the product itself.

The Board noted that the advertisement is spoken by a woman in a sultry tone. The Board noted the female voiceover describes the benefits of using the product Durex Embrace – a lubricant gel.

The Board noted that the product being advertised is a product used as part of sexual intimacy and that it is reasonable that the product features are described in the advertisement.

The Board noted that there are references used in the advertisement that are sexual in nature and that allude to sexual intimacy. The Board considered that these references are not strong or obscene and were not overtly sexualised.

A minority of the Board expressed concern about the broadcast of the advertisement at a time that children could be in the car. The majority of the Board considered however, that the only use of the words "love sex" was at the very end of the advertisement and was one brief mention. The Board noted that the innuendo used throughout the advertisement was subtle and unlikely to be understood by young children and did not amount to material that was considered inappropriate for 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 complaint.