



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0075/16</b>
<b>2</b>	<b>Advertiser</b>	<b>Chemist Warehouse</b>
<b>3</b>	<b>Product</b>	<b>Toiletries</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
<b>5</b>	<b>Date of Determination</b>	<b>09/03/2016</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.5 - Language Inappropriate language

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement for the Chemist Warehouse's February Catalogue Sale features images of the products available to purchase. Products include Voltaren tablets, Natures Own Magnesium Capsules and Durex condoms.

## THE COMPLAINT

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

*I feel that this is highly inappropriate for the time of day. The time and content was inappropriate.*

## THE ADVERTISER'S RESPONSE

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

*It appears the complainants concern relates to the inclusion of the product shot of the condoms on which the Durex slogan "love sex" is visible as a byline on the packaging. There is no voiceover or emphasis drawn to this slogan but rather the only place this byline*

*appears is the incidental appearance on the product packaging. This appearance is not overt nor obvious and no attention is drawn to this byline.*

*As members of the Bureau would be all too aware, many a scholarly article has been penned about the importance and health benefits associated with keeping consumers fully aware about the availability of condoms. It is without question important that the public remain fully informed about the availability of condoms and where they are able to be purchased from to assist in managing their sexual health. We accept that discussions about sexual behaviour and intercourse more broadly may be sensitive and as such understand the CAD PG rating assigned to this commercial. Given the PG rating the advertisement was only placed in time slots and within shows for which this rating is applies.*

*We contend that the advertising of the availability of this product, the use of the product shot and the viewing times during which the advertisement were displayed were all appropriate and acceptable within deemed community and regulator norms. More broadly we suggest that advertising of condoms, a vital sexual health product, and their availability for sale should be seen as not simply acceptable but rather an important piece of health communication.*

## **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 depicts images of condoms and is inappropriate for airing on television during the afternoon.

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 this television advertisement features products for sale in the Chemist Warehouse Catalogue Sale and that one of the products is Durex condoms.

The Board noted that images of various different types of products are displayed on screen whilst a voiceover describes the sale associated with them and considered that the condoms are not given any undue attention or focus but are presented in the same matter of fact manner as the other products which include food and vitamins. The Board noted that the voiceover refers to the condoms as ‘Durex products’ and considered that this reference is factual, based on the product name, and is not sexualised. The Board noted that two packets of Durex condoms are shown on screen and considered that whilst the writing on the packaging includes the brand name and the words, “lovesex” in the Board’s view this depiction of a product which is available to purchase freely in most chemists is fleeting and is not inappropriate in the context of advertising the product.

The Board noted that alongside the packets of Durex condoms are two boxes of KY jelly and considered that whilst most adults would understand any sexual context for these products in

the Board's view most children would not, and in the context of a fleeting image of products available to purchase in a store the Board considered that this image did not treat the issue of sex inappropriately.

The Board noted that the advertisement had been rated 'PG' by CAD. The Board acknowledged that some members of the community would prefer that this type of product not be advertised on television but considered that in this instance the advertisement did not feature any sexual acts or references to sexual activity and that it did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience which would include children.

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.