



Case Report

1	Case Number	0119/17
2	Advertiser	Isherwood Medical Services
3	Product	Health Products
4	Type of Advertisement / media	Radio
5	Date of Determination	22/03/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

This radio advertisement features a dialogue between two females about the symptoms of menopause, including burning, itching, and pain during intercourse. One suggests that the other visits her gynaecologist, Dr Penelope Isherwood, for treatment.

THE COMPLAINT

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

It was played at 6.50am on what I believed to be "family friendly" GoldFM 92.5. It is outrageous that my children (7, 10 & 13) not only had to listen to the descriptions, but that I then had to field and answer their questions regarding those conditions! I believe the station and advertiser may have breached advertising guidelines in that it uses phrases and terminology inappropriate for a large number of the audience at that time of day. Perhaps you could consider if a discussion on vaginal pain during intercourse is age-appropriate for 7-10 year old boys and girls?

THE ADVERTISER'S RESPONSE

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

ASB reference: 0119/17

Complaint regarding Isherwood Medical Services advertisement

We refer to your letter in relation to a complaint (“the Complaint”) about an advertisement for Isherwood Medical Services (“the Advertisement”). The Advertisement was broadcast on 92.5 Gold FM, a radio station of Southern Cross Austereo. As the creator and broadcaster of the Advertisement, we respond as follows on behalf of the advertiser, Isherwood Medical Services (“the Advertiser”).

Please find below our comprehensive comments in relation to the Complaint.

1. Description of the Advertisement

The Advertisement was created by Southern Cross Austereo in response to a brief by the Advertiser. The Advertisement was approved by the Advertiser in October 2015. The Advertisement is thirty seconds in duration and features a dialogue between two females about the symptoms of menopause. One suggests that the other visits her gynaecologist, Dr Penelope Isherwood, for treatment.

The Advertisement was broadcast on 92.5 Gold FM on 22 February 2017 at 6.49am.

2. AANA Code of Ethics

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

We submit that the Advertisement is not in breach of Section 2.1 of the Code. The Advertisement does not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age sexual preference, religion, disability, mental illness or political belief.

Section 2.2 of the Code states that advertising shall not employ sexual appeal in a manner that is “exploitative and degrading of any individual or group of people”. Again, we submit that the Advertisement is in no way exploitative or degrading of any individual or group of people.

We submit that Section 2.3 of the Code is not applicable as the Advertisement does not present or portray violence.

Similarly, we submit that Section 2.6 of the Codes does not apply to the Advertisement as it does not depict material contrary to prevailing community standards on health and safety.

Section 2.7 of the Code states that advertising shall be clearly distinguishable as such to the relevant audience. We submit that it was clear to listeners that the Advertisement was a message paid for by the Advertiser to promote their services.

3. Section 2.4 of the Code

The Advertising Standards Bureau has requested that we consider Sections 2.4 and 2.5 of the Code, as issues raised in the Complaint. Section 2.4 of the Code requires an examination of whether we have treated the subject matter of sex, sexuality or nudity with an appropriate level of sensitivity with regard to the “relevant audience”.

The Advertisement contains no nudity. It deals with a medical issue all women confront in their lifetime that is related to, but not limited to, their sex life. We are of the view that the Advertisement deals sensitively and discreetly with issues surrounding menopause. It avoids explicit reference to “sex” and refrains from specifically mentioning any body parts. The tone of the Advertisement is conversational, and focused matter-of-factly on medical issues.

On the question of “relevant audience”, we can advise that 92.5 Gold FM does not target listeners who are under 18 years of age. The station is marketed to listeners aged 35-59 years. 58% of listeners are female.

The GfK Gold Coast Survey No. 3 2016 confirms that:

a) The highest proportion of 92.5 Gold FM listeners were in the 40-54 age group (28.89% of listeners)

b) The overwhelming majority of 92.5 Gold FM listeners (90.37% of listeners) were aged 18 and over.

We attach the results of the GfK Gold Coast Survey No. 3 2016.

We submit that this older demographic class of listeners would not be highly sensitive to the themes of the Advertisement or its execution. Indeed, some women in our target audience may be experiencing the very issues described in the Advertisement and be interested in the Advertiser’s services.

We do acknowledge that the Complaint was made by a complainant who was accompanied by her children at the time the Advertisement was broadcast. However, we 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 “references [to the adult store] are relatively mild and no specific products or activities are mentioned”.

We submit that the references to menopause symptoms and gynaecological services are mild and confirm that no specific products or activities apart from a reference to “laser treatment” are mentioned in the Advertisement.

We would further like to clarify that the time at which the Advertisement was broadcast (6.49am) is not traditionally considered to be a time when children are likely to be listening to the radio. Gold FM has made efforts to limit the instances in which the Advertisement is broadcast between 7.00am-9.00am when there is a greater likelihood of children listening, and will continue to do so in the future.

We consider that analysis of the AANA Code of Ethics Practice Note 2017 confirms that the Advertisement did not breach Section 2.4. Our reasons are as follows:

(i) We do not consider the Advertisement to contain explicit sexual depictions or highly sexually suggestive content. We acknowledge that there is oblique reference to sex with the word “intercourse”, however we contend that this is directly relevant to the services offered by the Advertiser.

(ii) The Advertisement does not contain any explicit pornographic language. Given the audio-only medium through which the Advertisement is broadcast, it is clear that there are no images of full frontal nudity or genitalia in the Advertisement, nor are there any descriptions of, or explicit references to, genitalia in the Advertisement. We submit that the overall theme and tone of the Advertisement is medical, not sexual.

(iii) Discreet portrayal of nudity and sexuality is permitted as long as it is in an appropriate context. We consider that references to menopause and intercourse in an advertisement for gynaecological services are valid, appropriate and relevant.

(iv) The Practice Note makes clear that the use of the word “sex” does not, of itself, make an advertisement unacceptable. We note that the Advertisement does not at any point make any mention of the word “sex” but the more discreet term “intercourse” in one instance.

4. Section 2.5 of the Code

Section 2.5 of the Code states that advertising or marketing communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

We submit that the language used in the Advertisement is at all times appropriate to its subject matter (i.e. symptoms of a medical change that affects all women at a certain age). It is our view that the subject is handled sensitively and tastefully. Given that 92.5 Gold FM’s target audience is in large part made up of women aged 35 to 59, some of our listeners may be directly experiencing the issues raised in the Advertisement. Therefore, it is our view that the Advertisement uses language appropriate for the relevant audience.

The AANA Code of Ethics Practice Note 2017 makes clear that words and phrases which are innocuous and in widespread and common use in the Australian vernacular are permitted to be used in advertisements. We submit that the words “gynaecologist”, “menopause”, “itching”, “burning”, “dryness” or “pain during intercourse” are innocuous and in common use. They are directly relevant to the subject matter of the Advertisement and not used in an explicit, sensationalist or overtly sexual way. We also clarify that, contrary to the complainant’s allegation in the Complaint, the phrase “itching vaginas” is not used in the Advertisement at any time. In summary, we are firmly of the view that at no time did the Advertisement contain strong or obscene language.

5. Other Codes

We do not consider that the Complaint falls within the remit of the AANA Code for Marketing & Advertising Communications to Children, or the AANA Food & Beverages – Advertising & Marketing Communications Code.

6. Conclusion

In light of the foregoing, we submit that the Advertisement is highly likely to be non-controversial to the relevant audience and contend that it is not an infringement of the Code.

We look forward to the ASB's determination. In the meantime, please contact me should you require any further information.

THE DETERMINATION

The Advertising Standards Board (the "Board") considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement describes vaginal problems in detail which is not appropriate for a broad audience.

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 this radio advertisement features two women discussing menopause symptoms.

The Board noted the complainant's concern that the advertisement makes reference to 'vaginal problems' but considered that the advertisement does not feature the word 'vagina' and the references to menopausal problems are discreet enough to not be obvious to younger listeners.

The Board noted that one of the women mentions 'pain during intercourse' and considered that the word 'intercourse' has a sexual and non-sexual meaning but is not a word which is likely to be understood by younger children. The Board noted that the word intercourse is not used with the word 'sexual' and there are no other sexual references in the advertisement. The Board considered in the context of a radio advertisement for the services of a gynaecologist, the use of the word 'intercourse' does not of itself amount to a strong sexual reference.

The Board noted the overall tone of the advertisement and considered that it was factual, not sexual, and relevant to the medical condition under discussion. The Board noted the placement of the advertisement on the radio means that it would be available to a broad audience which would include children but considered that the content is unlikely to be attractive to children and the radio station is not of itself likely to appeal to children given that over 90% of its actual audience is aged over 18 years of age.

The Board acknowledged that some members of the community would prefer that this type of service not be advertised at all but considered that the actual content of the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience and determined that the advertisement did not breach Section 2.4 of the Code.

The Board 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 (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided”.

The Board noted that the advertisement features a reference to ‘intercourse’.

The Board noted it had recently dismissed a similar complaint about a radio advertisement that featured a reference to intercourse in case 0562/16 where:

“The Board noted that intercourse has a sexual and non-sexual meaning and considered that it is not used in the advertisement with the word sexual and even if children were to understand what the word means, in the Board’s view its use in the advertisement does not amount to strong or obscene language and in the context of a line from a movie it is not inappropriate in the circumstances.

The Board acknowledged that some members of the community would prefer that no mention of sexual activity be mentioned on the radio but considered that in this instance the advertisement did not use strong, obscene or inappropriate language.”

In the current advertisement the Board noted that the word ‘intercourse’ is used in a factual manner by a woman describing menopausal symptoms and considered that although the language refers to a sexual act, in the Board’s view the language used was not strong or obscene and in the context of the advertised service it was not inappropriate language.

The Board considered that the advertisement did not use strong, obscene or inappropriate language and determined that the advertisement did not breach Section 2.5 of the Code.

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