



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0138/11</b>
<b>2</b>	<b>Advertiser</b>	<b>Reckitt Benckiser (Aust) Pty Ltd</b>
<b>3</b>	<b>Product</b>	<b>Sex Industry</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>27/04/2011</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

The TVC opens on a couple kissing and laughing. The man leaves the condom wrapper on the bedside table and the condom wrapper starts flying out of the window.

The condom wrapper hits the window of a room where a young woman and a young man are studying. The young man puts his hand on the woman's knee and then they look at each other. As the condom wrapper continues its trip, it flies in front of a woman while she's placing flowers on her balcony. She looks back inside the house and exchanges a cheeky look with her husband who's sitting on the couch.

The condom wrapper flies in front of a woman's window. She looks inside the apartment and closes the curtains.

The condom wrapper lands in front of a police car windscreen and the 2 police men look at each other.

The Durex condom range appears on the screen followed by a couple hugging each other in the bedroom. As the couple continues to hug each other the bedroom becomes darker and darker and the silhouette of the couple is shadowed. A pack shot of Durex Fetherlite Intense condoms is showed with a voice over recapping the product benefit.

### THE COMPLAINT

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

*The showing of 'adolescents' possibly no more than 15 years of age (although the actors are probably older) being seduced into having sex because a condom flies through their window*

*and the depiction of two men in a car suggesting homosexual sex is not appropriate for this time of night. At present it is school holidays and young teenagers are up later than the norm. However 9-9.30 is not an unusual hour for teenagers to still be up. I have two 12 year old girls who are really 'grossed out' about this ad. To advertise this product to adults is one thing although not appropriate on TV in my opinion but to advertise directly to teenagers is both exploitive and irresponsible. To add insult to injury the theme song is 'let's have some fun tonight'. To suggest that it is OK to have underage sex or homosexual sex in my lounge room and to my children is very very offensive. This advertisement belongs to the 'phone sex' time slot of after midnight.*

## **THE ADVERTISER'S RESPONSE**

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

*We have carefully reviewed the complaint concerning the Durex TVC (Complaint) and respond as follows:*

*1. We take complaints about our advertising seriously. We note that you have stated that the Board will review the Durex TVC in its entirety against section 2 of the AANA Advertiser Code of Ethics (Code). We believe that the only provisions of section 2 which have any potential application to the Durex TVC having regard to the complainant's comments (but which are not breached by the Durex TVC) are sections 2.3 and 2.5 which state that:*

*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.*

*2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.*

*As indicated above, and for the reasons discussed below, we deny that the Durex TVC breaches either of the above provisions.*

*2. The complainant states that:*

*"the showing of 'adolescents' possibly no more than 15 years of age (although the actors are probably older) being seduced (sic) into having sex because a condom flies through their window and the depiction of two men in a car suggesting homosexual sex is not appropriate for this time of night."*

*In respect of the first part of this comment, we note that the Durex TVC targets people in the age group of 18 to 39 years and the two young people sitting on a bed in the Durex TVC (that we assume the complainant refers to in the first part of the above comment) depicts young adults and, contrary to the complainant's claim, are over 15 years of age. Also, the Durex TVC does not show them being seduced into sex. It shows the couple looking at each other and the young man placing his hand on the young woman's knee. In respect of the image of the two men in the car, we submit that at its highest, it contains a very mild form of innuendo. In both cases, we submit that the images and accompanying music are merely suggestive and do not treat sex or sexuality other than with sensitivity.*

*3. The Durex TVC has been assigned an 'M' rating by Commercial Advice Pty Limited.*

*According to the Free TV, Commercial Advice website, this means:*

*Recommended for Viewing Only by Persons 15 and Over*

*May be broadcast during the following hours, except during P and 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.*

*We attach copies of our “Client Spot Schedule” detailing, among other things, the time periods and television programmes during which the Durex TVC has been broadcast from 3 April, 2011 to date. The broadcasting has been in accordance with the Durex TVC’s M rating. The complainant refers to school holidays in her complaint. However, the only impact of school holidays on the broadcasting of M rated commercials is that they may not be shown in the time slot of 12 noon–3.00pm. The Durex TVC has not been broadcast during this time slot.*

*4. In her complaint, the complainant also refers to the advertisement of our products to teenagers (who, according to the Macquarie Dictionary, fall within the ages of 12 and 20).*

*However, as indicated above, the only teenagers in the target audience for the Durex TVC are those in the 18 to 20 age bracket and the advertising has been strictly in accordance with the Durex TVC’s M rating. We submit that this is neither “exploitive” (sic) nor “irresponsible”, as alleged, but in compliance with the Australian classification system.*

*5. In respect of the song played during the Durex TVC, which includes the words “gonna have some fun tonight”, we submit that this is suggestive and nothing more.*

*6. We submit that there are a wide range of attitudes to the treatment of “sex, sexuality and nudity” among the community. Section 2.3 of the Code requires treatment of these subjects with sensitivity “to the relevant audience and ... the relevant programme time zone.” As indicated above, the Durex TVC has been broadcast in accordance with its M rating, no earlier than 8.30pm. In most cases, it has been broadcast after 9.30pm and in all cases during programmes suitable for “mature” audiences, such as, “Serial Killers”, “Desperate Housewives”, “Bones” and horror movies. We submit that the relevant audience of the Durex TVC, and the programmes during which it has been broadcast, is by definition a mature one which is unlikely to be shocked, outraged or offended by the suggestiveness of the Durex TVC. Even the suggestive sexual encounter at the end of the Durex TVC is somewhat veiled by darkness or shadow. While not every viewer of the TVC may like it or think it appropriate, we submit that most viewers would not find it offensive or inappropriate.*

*7. In respect of section 2.5, the Durex TVC does not use strong or obscene language or language which could be described as anything except appropriate given the subject matter of the TVC, its rating and the programmes during which it is broadcast. The words do not directly describe sex but, in keeping with the general tone of the TVC, are suggestive in nature.*

*We request that the Complaint be dismissed.*

## **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 promotes underage and homosexual sex.

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

The Board 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 wrapped condom carried on a breeze past different people in different situations, and that when these people see the wrapper they exchange mildly suggestive glances. 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 the references to sex are discreet and that the lyrics of the accompanying soundtrack ('let's have some fun tonight') are very mild and do not necessarily refer to having sex. The Board noted that in one scene the condom wrapper lands between two men and that they exchange a glance. The Board considered that most members of the community would interpret this scene as containing mild sexual innuendo and, regardless of whether or not it would be construed as men interested in each other or as men bemused by the condom wrapper landing on the vehicle, was not inappropriate.

The Board noted the complainant's concerns that the advertisement features adolescents aged around 15 years about to engage in sex and that the advertisement was promoting sex to this young age group. The Board noted the advertiser's response that their target audience is adults aged 18 to 39 years, and that the actors in the scene referred to by the complainant were young adults.

The Board noted that the advertisement has been classified M by CAD and that the advertisement was placed in M rated timeslots.

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 also considered the use of the words 'love sex' in the advertisement and whether this complied with section 2.5 of the Code which requires that advertising and marketing communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.' The Board noted that the words 'love sex' appear on screen towards the end of the advertisement. The Board considered that this phrase is not strong or obscene and that in the context of an M rated advertisement for condoms is

appropriate. The Board 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.