

## Case Report

1. Case Number :	0058-24
2. Advertiser :	Southern Cross Austereo
3. Product :	Entertainment
4. Type of Advertisement/Media :	Radio
5. Date of Decision:	6-Mar-2024
6. Decision:	Upheld – Modified or Discontinued

### ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity

### DESCRIPTION OF ADVERTISEMENT

This radio advertisement featured a snippet of the “Jimmy & Nath Born Funny” podcast, featuring guest Josh Thomas saying, “I think you’re underestimating how clean gay men's butt holes are, we’re not licking straight men's butt holes”. Nath replies to this saying, “yeah, some of the cleanest butt holes going around” and Jimmy and Nath ask their producer Jarryd to give a “thumbs up”, to which Josh Thomas reacts, and then they all laugh together.

### THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*Radio ad on heard on cairns Hit 103.5 fm 22/2/24 at approx 6.30 pm for Listnr app podcast 'born funny' included verbal graffic description of lewd sexual acts: "People under estimate how clean a gay mans butt hole is, but no one is licking a straight mans butt hole". I found it offensive and glad i did not have children in the car.*

### THE ADVERTISER’S RESPONSE

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

*I refer to your letter dated 23 February 2024 regarding a complaint (Complaints) submitted to Ad Standards on 22 February 2024. The Complaint concerns an advertisement (Advertisement) by Southern Cross Austereo promoting its “Jimmy & Nath Born Funny” podcast on the Cairns radio station HIT 103.5 FM.*

#### 1. Description of the Advertisement

*The Advertisement was created by Southern Cross Austereo (SCA). The 34-second Advertisement ran on our Cairns radio station HIT 103.5 FM to promote episode 31 of the "Jimmy & Nath Born Funny" podcast first published on 18 February and available on the LiSTNR app (which is operated by SCA).*

*The relevant part of the Advertisement is the snippet below from the podcast. You can find the full podcast on the LiSTNR app.*

*Josh Thomas is the guest on the relevant podcast episode and says, "I think you're underestimating how clean gay men's butt holes are, we're not licking straight men's butt holes". Nath replies to this saying, "yeah, some of the cleanest butt holes going around" and Jimmy and Nath ask their producer Jarryd to give a 'thumbs up', in which Josh Thomas reacts, and then they all laugh together.*

## *2. Broadcast of the Advertisement*

*The Advertisement was broadcast only once across HIT regional radio stations at about 6:30pm on Thursday, 22 February 2024. This shortly before Jimmy and Nath's national radio show that airs from 7:00pm to 10:00pm weekdays on our HIT Network radio stations.*

*We have not broadcast the Advertisement since that date and have no plans to do so. We also have no plans to provide the Advertisement for communication by any other media business.*

## *3. Section 2 of the AANA Code of Ethics*

*Your letter indicates the Advertisement raises issues under section 2 of the AANA Code of Ethics (Code).*

*While we understand that the Advertisement may raise some level of community concern, we are confident it did not contravene section 2 of the Code.*

*Our comments in respect of section 2 of the Code are set out below.*

*2.1 not portray or depict material 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*

*The Advertisement does not depict material which discriminates against or vilifies a person or section of the community on any of these grounds.*

*2.2 not employ sexual appeal in a manner (a) where images of Minors or people who appear to be Minors, are used; or (b) in a manner which is exploitative or degrading of any individual or group of people.*

*The Advertisement does not employ sexual appeal using Minors or people who appear to be Minors and is not exploitative or degrading of any individual or group of people.*

### *2.3 not present or portray violence*

*The Advertisement does not present or portray violence.*

### *2.4 not present sex, sexuality, or nudity*

*The Advertisement was scripted to advertise the 'Jimmy & Nath Born Funny' podcast in a mild-mannered, cheeky tone, to showcase the humorous guests on their podcast. Aligned with contemporary community standards that acknowledge and are accepting of LGBTQI relationships, consideration has been given to the language used and the prevailing support for members of the gay male community today. The tone of the Advertisement is overwhelmingly light-hearted and jovial and discusses these elements in an irreverent and playful style.*

*Furthermore, the Advertisement was aired at about 18:30 on Thursday, 22 February 2024. Having regard to the demographic characteristics of listeners to our programs, we do not consider this to be a time when children are likely to be listening. It is therefore unlikely the audience during this time would deem this content unacceptable or a breach of the Code.*

*Finally, we note the Advertising Standards Board has previously dismissed similar complaints in relation to advertisements in which strong language to connote sexual acts that has been used in a jovial and tongue-in-cheek manner (See for example: Case Number 0208-17, Case Number 0143-17).*

### *2.5 not employ strong or obscene language*

*The Advertisement does not employ strong or obscene language.*

### *2.6 not depict material contrary to Prevailing Community standards on health and safety*

*The Advertisement does not depict material of this nature.*

### *2.7 clearly distinguishable as an Advertising or Marketing Communication*

*The Advertisement is clearly distinguishable as such.*

## *4. Other Codes*

*The Complaint does not fall within the remit of the AANA Code for Marketing & Advertising Communications to Children or the AANA Food & Beverages – Advertising & Marketing Communications Code.*

## *5. Conclusion*

*For the reasons set out above, we request the Complaint be dismissed. In any case, the Advertisement is no longer on air.*

## THE DECISION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement is overtly sexual and inappropriate for broadcast.

The Panel viewed the advertisement and noted the advertiser's response.

### **Section 2.4: Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience.**

The Panel noted the Practice Note for the Code states:

*"Overtly sexual images are not appropriate in outdoor advertising or shop front windows.*

*"Although not exhaustive, the following may be considered to be overtly sexual:*

- *Poses suggestive of sexual position: parting of legs, hand placed on or near genitals in a manner which draws attention to the region;*
- *People depicted in sheer lingerie or clothing where a large amount of buttocks, female breasts, pubic mound or genital regions can be seen; The use of paraphernalia such as whips and handcuffs, particularly in combination with images of people in lingerie, undressed or in poses suggestive of sexual position;*
- *Suggestive undressing, such as pulling down a bra strap or underpants; or*
- *Interaction between two or more people which is highly suggestive of sexualised activity.*

*"Discreet portrayal of nudity and sexuality in an appropriate context (eg advertisements for toiletries and underwear) is generally permitted but note the application of the relevant audience. More care should be taken in outdoor media than magazines, for example.*

*"Images of models in bikinis or underwear are permitted, however, unacceptable images could include those where a model is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person), or where there is clear sexual innuendo from the ad (e.g. depicting women as sexual objects)."*

### **Does the advertisement contain sex?**

The Panel considered whether the advertisement contained a depiction of sex. The Panel noted the definition of sex in the Practice Note is "sexual intercourse; person or persons engaged in sexually stimulating behaviour".

The Panel noted that the advertisement contains a description of a sexual act, however considered that the advertisement did not include or depict sex.

#### **Does the advertisement contain sexuality?**

The Panel noted the definition of sexuality in the Practice Note is “the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters”.

The Panel noted that the advertisement contains a description of a sexual act and considered that the advertisement did contain an emphasis on sexual matters.

#### **Does the advertisement contain nudity?**

The Panel noted that the definition of nudity in the Practice Note is “the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity”.

The Panel noted that this advertisement was broadcast and radio and did not contain nudity.

#### **Are the issues of sex, sexuality and nudity treated with sensitivity to the relevant audience?**

The Panel noted that the definition of sensitivity in the Practice Note is “understanding and awareness to the needs and emotions of others”.

The Panel considered that the requirement to consider whether sexual suggestion is ‘sensitive to the relevant audience’ requires them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement.

The Panel noted that this advertisement was broadcast on public radio and considered that the audience would be broad. The Panel noted that the advertisement was only broadcast a single time.

The Panel considered that the advertisement contains a description of a sex act and considered that most members of the community would not consider this level of sexual reference to be appropriate for a broad audience at any time.

#### **Section 2.4 Conclusion**

The Panel determined the advertisement did not treat sex, sexuality and nudity with sensitivity to the relevant audience and did breach Section 2.4 of the Code.

#### **Conclusion**

Finding that the advertisement did breach Section 2.4 of the Code, the Panel upheld the complaint.

**THE ADVERTISER'S RESPONSE TO DECISION**

I note the decision and case report in relation to our advertisement for the Jimmy and Nath Born Funny podcast. I confirm our previous advice that we have discontinued the advertisement.