

Case Report

1. Case Number :	0184-24
2. Advertiser :	Australian Radio Network Pty Limited
3. Product :	Entertainment
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Decision:	24-Jul-2024
6. Decision:	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.2 Exploitative or Degrading

AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This television advertisement is promoting the Kyle and Jackie O show on KIIS FM. A neon sign features the words "The end of boring radio".

Kyle says, "The name of the album is hit me hard and soft, what's that mean?"

Billie Elish says, "What does it mean to you?"

Jackie O says, "Well we go straight to the bedroom".

Kyle says, "Naked dating. Time to get nude everyone"

A woman standing behind a microphone takes off her jacket to reveal she is wearing black lingerie.

Kyle says, "I don't date women with the same size arse as I've got".

Jackie O says, "Oh that would be a big arse. Far out you're annoying this morning."

Kyle says, "It's going to be one of those days".

Jackie O says, "I reckon you're about two comments away and I'm gonna crack it".

The hosts then make "shh" noises at each other.

A neon sign features the words, "Make up your own mind".



THE COMPLAINT

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

Kyle and Jackie O radio advertisement, channel 7.

Advert unnecessarily shows a women in sexy, revealing bra and underwear. Absolutely not relevant, and once again reinforces women as objects, in an environment where disrespect and violence against women is at an all time high. Just not acceptable anymore, it sends a very strong message to girls, boys, women and men about how women are seen in society.

It is on before 7pm on Channel 9 and has some smutty remarks and a woman is being sexualised, she is disrobing, revealing skimpy underwear.

THE ADVERTISER'S RESPONSE

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

Australian Radio Network Pty Limited (ARN) appreciates the opportunity to provide a response to the two (2) complaints received in relation to ARN's television commercial promoting the Kyle & Jackie O radio show (Show) on KIIS 101.1 in Melbourne (KIIS TVC).

ARN takes the AANA Code of Ethics (Code) seriously and regrets that our advertisement has caused offence to the complainants.

We note that AdStandards has assessed the complaints about the KIIS TVC as raising the following issues:

- *AANA Code of Ethics\2.4 Sex/sexuality/nudity\S/S/N - general*
- *AANA Code of Ethics\2.2 Exploitative or Degrading\Degrading - women*

We also note that AdStandards has requested that our response address all parts of section 2 of the Code as the Community Panel's consideration will not be limited to the specific issues raised by individual complainants. Accordingly, each of these sections has been addressed in turn below.

Background

A description of the KIIS TVC has been provided in ARN's Advertiser Response Form as follows:

A 30 second TVC, Begins with words in purple neon light on brick wall – “THE END OF BORING RADIO KYLE & JACKIE O”. Man in studio interviewing a Lady on a zoom call. Man in studio discussing show segment, Lady in studio taking off dressing robe, wearing lingerie. Continues with conversation in the studio. Radio hosts are arguing and shooshing one another. Large purple Neon Sign on brick wall – “MAKE UP YOUR OWN MIND”. Cuts to end frame with Large KIIS 101.1 Logo as Pink/Purple Neon Sign - Now on. KYLE & JACKIE O IN THE MORNING Listen on the free iHeart Radio APP.

ARN notes that that purpose of the KIIS TVC is to promote the Show, which has recently commenced broadcasting in Melbourne on KIIS 101.1.

The Show is one of the most well-recognised radio shows in the country, but up until 29 April 2024 was only available via live terrestrial radio broadcasts to listeners in Sydney (noting that listeners could access the live show outside of Sydney via online simulcasts and delayed catch up podcasts as well as “best of” shows in the evenings on radio stations around the country during the Kyle & Jackie O “Hour of Power”).

The KIIS TVC is targeted at the Melbourne audience to introduce them to the type of content they can expect to hear on the Show. It provides a snapshot of this content, including interviews with global celebrities (such as Billie Eilish) and the light-hearted and comedic interaction that occurs between the hosts. The KIIS TVC also features a reference to a popular segment on the show called “Naked Dating”. This part of the KIIS TVC includes approximately one (1) second of footage of a woman undressing from a robe into lingerie while host, Kyle Sandilands, says “Naked dating, time to get nude everyone” and the other host, Jackie “O” Henderson, says “Wow”.

The Show is known for its unique brand of entertainment, which is promoted at the start of the KIIS TVC with the words: “the end of boring radio”. The tagline that appears towards the end of the KIIS TVC – a common theme of ARN’s broader advertising campaign – is “make up your own mind”, encouraging viewers to listen to the Show and decide for themselves, rather than rely on what they may have heard about the Show from other people. Seen in this context, it is reasonable to expect that the advertising materials would seek to reflect the product being advertised by giving a preview of the type of content typically heard on the Show.

The KIIS TVC was rated “J” by ClearAds (CAD). A “J” rating is defined as follows:

Definition: Parental Guidance Recommended/Care in placement

May be broadcast at any time of day, except during P and C programs or adjacent to P or C periods. Exercise care when placing in programs principally directed to children.

Product Description: Commercials which comply with the PG classification criteria in Appendix 1 of the Code of Practice but require special care in placement in PG programs principally directed to children.

ARN adhered to the requirement that the KIIS TVC not be placed during P or C programs or adjacent to P or C period. ARN's target audience for the KIIS TVC is all people 25-54 and it worked with its media buyer to place the advertisement accordingly. ARN notes that both programs which the complaints relate to (Lego Masters and Dream Home) each have significant audience share in this demographic. ARN also exercised care with its advertising campaign by producing a "softer" version (without the reference to "Naked Dating" and footage of the woman in lingerie and without the comments regarding host Kyle Sandilands dating women referred to below) (Alternate TVC) that would run earlier in the day when it would be more likely that children could be watching.

Since receiving the complaints, ARN has worked with its media buyer to review the ongoing TV schedule and remove the KIIS TVC or replace it with the Alternate TVC in any programs that may be perceived as directed to children (such as Lego Masters).

Main issues raised in complaints

AANA Code of Ethics\2.4 Sex/sexuality/nudity\S/S/N – general

ARN notes that the complainants respectively described the KIIS TVC as "unnecessarily shows a women in sexy, revealing bra and underwear" (complaint 1) and "It was terrible to run this tacky, sexual ad during Lego Masters Australia vs The world on 9Now with children watching. The ad shows a mostly naked female and the shock jocks talk about her body in a body shaming way. It's all together really off during a kids show" (complaint 2).

ARN regrets any distress that was caused to these viewers and had no intent to cause offence or expose children to any inappropriate sexualised imagery.

In ARN's submission, the KIIS TVC does not breach the Code with respect to sex, sexuality or nudity for the following reasons.

(a) The footage of the woman in lingerie removing her robe and Kyle Sandilands stating "Naked Dating. Time to get nude everyone" is not overtly sexual and in ARN's view is no more than mildly sexual.

(b) The lingerie footage was only fleeting (approximately one (1) second in duration) and did not involve any suggestive posing, positioning, undue focus on breasts, nipples or genitals or any further suggestive undressing such as pulling down a bra strap or underpants.

(c) There was no sexual interaction with another person or any suggestion of any sexual activity.

(d) *The lingerie worn by the woman is no more revealing than that typically considered acceptable in underwear and swimwear advertisements shown to a similar broad audience.*

(e) *As outlined above, the depiction of the woman in lingerie is not unrelated to the product being advertised (i.e. it is directly relevant to the Show).*

(f) *The Naked Dating segment that is referenced is not inherently sexual. It is a light-hearted, uninhibited entertainment segment in the Show that is about empowering people to feel comfortable and confident in their skin but not necessary any portrayal of sexuality.*

(g) *As noted above, ARN took a careful approach to ensure the KIIS TVC was placed in timeslots and targeted at audiences fitting the target demographic of all people 25-54. The KIIS TVC treated any mild sexuality portrayed with sensitivity to the relevant audience. For programs which were more likely to have large children's audiences, the Alternate TVC was run.*

ARN notes that the KIIS TVC also features a short clip from an interview with singer Billie Eilish where host Kyle Sandilands asks: "the name of the album is "Hit Me Hard and Soft". What's that mean?". Eilish replies "What does it mean to you" and host Jackie O says "Well, we go straight to the bedroom." Whilst adult audiences would understand the line of questioning and the host's response ("we go straight to the bedroom") to be referring to sex, this is not an interpretation that would be understood by children. Children would not interpret the references to have clear sexual connotations. Accordingly, and for completeness (given this was not expressly the subject of any complaint), ARN submits that this part of the KIIS TVC is also not in breach of Section 2.4 of the Code.

AANA Code of Ethics\2.2 Exploitative or Degrading\Exploitative - women

ARN notes that the complaints raise concerns in the following terms: "Advert unnecessarily shows a women in sexy, revealing bra and underwear. Absolutely not relevant, and once again reinforces women as objects, in an environment where disrespect and violence against women is at an all time high. Just not acceptable anymore, it sends a very strong message to girls, boys, women and men about how women are seen in society" (complaint 1) and "The ad shows a mostly naked female and the shock jocks talk about her body in a body shaming way. It's all together really off during a kids show" (complaint 2).

To reiterate, ARN regrets any distress that was caused to these viewers and had no intent to do so.

ARN does not believe that the KIIS TVC uses sexual appeal in a way that is exploitative or degrading in breach of Section 2.2 of the Code.

While ARN accepts that the depiction of the woman in lingerie removing her robe is one which members of the community may consider to contain sexual appeal, it was not done so in a way that was exploitative or degrading for the following reasons:

(a) There is no depiction of any power imbalance between the woman and a man or any commoditisation of the woman in the KIIS TVC.

(b) The footage of the woman was fleeting (approximately one (1) second) and did not linger or focus on particular body parts. Whilst one of the complaints suggests that the hosts “talk about her body in a body shaming way”, this is not in fact the case. There is a separate and unrelated comment that quickly follows from host Kyle Sandilands. There is a transition in the TVC away from the Naked Dating segment to Mr Sandilands saying “I don’t date women with the same size arse as I’ve got”. This is not in any way a reference to the woman featured in the Naked Dating segment (but is addressed further below in relation to section 2.6 of the Code).

(c) The woman featured is a contestant in the Show’s Naked Dating segment. She participated voluntarily in the segment, the aim of which is to find attraction with another contestant. The act of her removing her robe, as depicted in the KIIS TVC, is a feature of the segment and was not portrayed in any degrading or exploitative way.

(d) As noted above, the Segment is about empowering people to feel comfortable and confident in their skin, not to humiliate or embarrass and certainly not to degrade the contestants.

(e) The footage is taken directly from a segment in the Show and is therefore directly relevant to the product/radio broadcasting service being advertised. It does not use sexual appeal to lower women in character or quality.

Section 2 – other provisions

2.1 - Discrimination or vilification

The KIIS TVC does not discriminate or vilify any individual or group of people on the basis of any of the defined attributes. ARN repeats its position outlined above that the KIIS TVC does not vilify or degrade women, in breach of this section of the Code.

2.2 - Exploitative or degrading

This issue is covered in the section above regarding the main issues raised in the complaints.

2.3 – Violence

The KIIS TVC does not present or portray violence.

2.4 - Sex, sexuality and nudity

This issue is covered in the section above regarding the main issues raised in the complaints.

2.5 – Language

The KIIS TVC does not employ strong or obscene language. For completeness, whilst not the subject of any complaint, ARN notes that the use of the word “arse” (which is featured in the KIIS TVC) has been found on many occasions by the Panel not to be in breach of the Code – particularly where used in a non-aggressive way as is the case in the KIIS TVC.

2.6 - Health and Safety

The KIIS TVC does not depict any material contrary to prevailing community standards on health and safety.

For completeness, ARN wishes to address the comment in one of the complaints which suggests that the hosts spoke about the woman’s body “in a body shaming way”, given that the Health and Safety section in the Practice Note to the Code specifically addresses this topic of “body image”.

As outlined above, the part of the KIIS TVC this is referencing is a separate, unrelated topic where Kyle Sandilands states “I don’t date women with the same size arse as I’ve got.” Jackie O responds “Oh that would be a big arse”. The comments were in no way directed to the woman in the KIIS TVC but rather were self-deprecating and an opinion expressed by Mr Sandilands about his own dating preferences, delivered in his usual audacious style. ARN acknowledges that there is significant community concern about the promotion or encouragement of unhealthy practices driven by body shaming or promoting unrealistic ideal body images. However, ARN considers that the hosts’ comments in the KIIS TVC would not be taken as generalised commentary about ideal body image, but rather a personal preference of an individual. In that respect, the comments did not amount to body shaming or depicting any material that would be contrary to prevailing community standards on health and safety.

2.7 - Distinguishable as advertising

The KIIS TVC is clearly distinguishable as an advertisement.

Conclusion

For the reasons outlined above, ARN respectfully requests that the matter be dismissed by the Community Panel.

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 complainants' concerns that the advertisement:

- Objectifies women
- Features sexual content inappropriate for the audience

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

Section 2.2: Advertising shall not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people.

The Panel noted the AANA Practice Note which provides guidance on the meaning of the terms exploitative and degrading:

Exploitative - (a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or (b) focussing on their body parts where this bears no direct relevance to the product or service being advertised. Degrading – lowering in character or quality a person or group of people.

Does the advertisement use sexual appeal?

The Panel noted that the advertisement depicts a woman in lingerie and considered that this contains sexual appeal.

Does the advertisement use sexual appeal in a manner that is exploitative?

The Panel considered that the woman in lingerie is depicted while the hosts are talking about a naked dating segment featured on their radio show. The Panel considered that this depiction of the woman in a radio studio is relevant to promoting this product. The Panel considered that the woman is depicted as an active participant in the segment and is not portrayed in a manner that suggests she is an object or commodity.

The Panel considered that the advertisement does not employ sexual appeal in a manner which is exploitative of the woman.

Does the advertisement use sexual appeal in a manner that is degrading?

The Panel noted that in a separate segment of the advertisement, the male host makes a comment about certain physical characteristics, suggesting they would be a reason for him not to date a woman. The Panel noted that when making this comment the man is not referencing the woman in lingerie in the previous segment.

The Panel considered that the woman in the advertisement is not referred to or depicted in a manner which lowers her in character or quality.

The Panel considered that the advertisement does not employ sexual appeal in a manner which is degrading to the woman.

Section 2.2 conclusion

The Panel concluded that the advertisement did not breach Section 2.2 of the Code.

Code of Ethics 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:

“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 talks about naked dating and depicts a woman in lingerie. The Panel considered that this is not a direct reference to sex, and the advertisement does not contain 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 considered that the advertisement contains a depiction of a woman in lingerie and a reference to naked dating and considered that the advertisement contains sexuality.

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 the advertisement contained a brief scene of a woman in lingerie and considered that the advertisement contained partial nudity.

Are the issues of 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 the advertisement received a “J” rating from ClearAds which is the equivalent of a PG rating, meaning that the advertisement can be placed in all programs except those principally directed to children. The Panel noted that the advertisement was placed in line with these guidelines. The Panel considered that the relevant audience would be broad and would likely include children watching television with their families.

The Panel considered that the scene depicting the woman in lingerie was brief, and that the level of nudity in the advertisement was mild. The Panel considered that the reference to naked dating was not explicit or strongly sexualised. Overall, the Panel considered that the mild sexuality and nudity in the advertisement was treated with sensitivity to the relevant broad audience.

Section 2.4 Conclusion

The Panel determined the advertisement did not breach Section 2.4 of the Code.

Conclusion

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaints.