



CASE REPORT

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| 1. Complaint reference number | 51/09 |
| 2. Advertiser | Advanced Medical Institute |
| 3. Product | Health Products |
| 4. Type of advertisement | Radio |
| 5. Nature of complaint | Portrayal of sex/sexuality/nudity – section 2.3 |
| 6. Date of determination | Wednesday, 11 February 2009 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This radio advertisement from the Advanced Medical Institute for its women's clinic has a woman asking if listeners had a climax last time they had sex. It then tells listeners that many women don't. It then promotes AMI's latest development and says this could help listeners enjoy the best sex of their lives. It tells listeners to contact the doctors at the clinic and the woman's voice then repeats the phone number with the "0" stressed in the second repetition.

THE COMPLAINT

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

Offensive to an intelligent human race in the way this has exploded on our public media and should be limited to medical condition journals etc..

Female children aged 10 & 14 years in the car. In traffic, unable to switch it off quickly enough without crashing.

I am stunned that this ad, obviously aimed at older people could be broadcast in the early to mid afternoon.

I got into my car to go home with my 12 year son and daughter (twins) when the ad came on. My son and daughter both started asking what the ad was about and what it all meant. A subject that I was not ready for nor had my wife and I planned to discuss that with them. It is a subject that even adults don't discuss in general conversation. This form of advertising is both inappropriate, offensive and places undue strain and pressure on parents to explain something that they don't wish to talk about or lie to their children.

Just totally inappropriate. The radio station encourages work places to listen. This type of advertising is embarrassing and is, I believe, in the wrong time slot. I have contacted the radio station with no response.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

It is our understanding that several complaints have been received in relation to a series of advertisements relating to female sexual health issues and that the issues raised in relation to the advertisements appear to relate to section 2.3 of the code. Based on our analysis of when the advertisements were run the complaints appear to relate to half a dozen different radio advertisements.

As you know, section 2.3 of the code requires advertisements to treat sex, nudity and sexuality with

sensitivity to the relevant audience and the relevant program time zone. AMI is a high profile and well known radio advertiser. It has been one of the largest radio advertisers in Australia for the last 4-5 years with the Company frequently being rated as a top 5 radio advertiser in each capital city during many of the weekly ratings conducted during this time. AMI's extensive profile of using radio advertising to promote its treatment options is well known in the community and the likelihood that an AMI advertisement would be heard if a consumer listened to a particular radio station would not be any surprise to members of the public given AMI's longstanding and well established public profile of advertising on particular commercial radio stations. AMI's advertising is confined to certain radio stations with those radio stations being selected on the basis of their demographic audience and the level of enquiry generated by advertising on the relevant station. In this respect we note that AMI owns more than 100 toll free telephone numbers and uses different telephone numbers for each station. AMI also uses call counting software licensed to it by one of Australia's leading telecommunications companies. This system and technology enables AMI to track whether its advertising is effective and has been aimed at the correct target audience.

In terms of the advertising on particular stations, each of the radio stations used by AMI have restrictions regarding the nature of the advertisements which may be run on those stations as well as time restrictions as to when those advertisements may be run. Those restrictions have been developed by the program director and are in addition to restrictions applicable under the code. For example, NOVA and AUSTereo do not permit the use of phrases like "premature ejaculation", "bonking", "orgasm" and so on during breakfast (6am to 9am) and kids pick up time (2:30pm to 4pm). At these times AMI's advertising is confined by these stations to the use of softer terms such as "making love" and so on. These restrictions have been developed by the relevant program directors as a result of complaints received by them in relation to AMI advertisements and based on the program directors assessment of the nature of advertising which they believe is appropriate having regard to their station, the program time zone and the target audience for that station and program time zone. Whilst AMI acknowledges that some members of the community do not like AMI's advertisements we believe that the advertisements comply with the code by treating sex and sexuality sensitively having regard to the relevant audience and the relevant program time zone. As set out above, more confronting advertisements are restricted by relevant stations to time zones when children are less likely to be in the car with softer advertisements being run in those times. In this respect we note that AMI has used indirect and subtle references in some of the advertisements (such as references to "arriving early") due to the different demographics of the particular radio stations and program time zones.

As you are aware, AMI has previously commissioned an independent market research report from Galaxy Research on these types of issues, a copy of which has previously been provided to you. Galaxy Research is an independent Australian marketing research and strategy planning consultancy. Galaxy Research's credentials are widely recognised and it is the polling organisation of choice for The Daily Telegraph, The Sunday Telegraph, Herald Sun and The Courier Mail. Galaxy Research are also the most frequently quoted source of PR survey information in Australia and Galaxy Research has aimed an enviable reputation as the most accurate polling company in Australia, stemming largely from their election polls. The scope and methodology used by Galaxy Research in undertaking the report was determined independently by Galaxy Research. As you will see from Galaxy Research's report: 84% of Australian adults do not find the word "sex" offensive in the context of advertising products which treat sexual health problems. AMI does not believe references to female sexual health and euphemisms for orgasms such as "the big O" and "toe curling" are any more offensive than the term "sex". However, in the event a significant portion of the community disagrees with that assessment then it is likely that such difference of opinion will result in a large number of complaints being made to the relevant radio stations with the stations then contacting AMI and asking it to change its advertising.

The choice of radio stations by members of the public is voluntary and the prevalence of AMI's advertising on certain stations is well known. If particular members of the public do not want to listen to AMI advertisements then they have the option of selecting alternate stations.

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 complainants' concerns about the sexually explicit nature of the subject matter of the advertisement as played in the relevant time zone and the potential for children to be listening. The Board considered the application of Section 2.3 of the Code, relating to sex, sexuality and nudity.

The Board noted that the presentation of the advertisement is in a plain, neutral spoken manner, apart from the ending where the woman's voice stresses the "0" in the phone number. The Board noted the context of the medium and the type of programs playing when the advertisements are broadcast. The Board also noted that parents have the opportunity to switch off radio programs and advertising, unlike advertisements displayed in an outdoor environment.

The Board considered that in this context, the advertisement's presentation of sexual themes was appropriate to the relevant audience and therefore found no breach of Section 2.3 of the Code.

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