



CASE REPORT

1. Complaint reference number	61/09
2. Advertiser	Advanced Medical Institute
3. Product	Professional Services
4. Type of advertisement	TV
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 television advertisement from the Advanced Medical Institute for its new technology that can help women climax during intercourse. The advertisement shows images of men and women and talks about feelings this can cause such as frustration and irritability. The voice over says that the new development could help women achieve a toe curling, sheet shredding climax - these words also appear on screen. It then shows more images of men and women provides the phone number and tells people if they are tired of faking not to wait but to call the doctors at AMI. The number to call is then repeated.

THE COMPLAINT

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

There were 3 adds that were consistantly played in every add break from 2030 to 2330 when I went to bed. I am not a prude and understand that this is all relevant to life but to hammer home a product as offen as these were is rediculous. It is still the middle of the school holidays and many children under the age of 15 were still up and watching. It is not the product but the amount of times it was shown.

I am sick and tired of ads explicitly talking about sex and sexual disfunction. I have two children and I don't need them asking at the age of 4 what an orgasm is. It is still school holidays and many kids are still up at this time. Is nothing sacred any more, if you have problems with your sex life then either put up with it or go and see your doctor. I was sitting with my parents in law when the ad came on and I really don't think it is appropriate to have ads discussing matters of a sexual nature at any time. I am heartily fed up with them...

1. I find the ad morally offensive

2. The voice over with the woman groaning is disgusting and explicit

3. People can find out about this product at the chemist or their doctor, the tv is not the place for such things.

4. I find the ad offensive to all men, suggesting that they have some medical defect because they do not use chemicals to artificially extend their duration to ejaculation. The ad is misleading and is based on false premises

5. The ad is offensive the women suggesting all they want is a man with a big dick and who lasts 10 hours in bed.

THE ADVERTISER'S RESPONSE

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

As you know, we act for Advanced Medical Institute.

It is our understanding that three complaints have been received in relation to AMI's TV advertisements and that the issues raised in relation to the TV advertisements relate to section 2.3 of the code.

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 programme time zone. ... The latter two advertisements are quite similar with one having an M CAD rating and the other having an MA CAD rating. The MA rated advertisement uses the term "orgasm" whereas the M rated advertisement does not...

Each of the advertisements is only run when network programmes of the same or higher rating are run. In relation to free to air television this restricts the times at which the M rated advertisements are run to between noon and 3pm during weekdays(excluding school holidays) and after 8:30 pm and the MA rated advertisement to after midnight. In relation to pay TV stations, we are instructed that certain channels on the stations are directed at particular audiences and are aimed at particular audience demographics. These advertisements are only run on these stations when programmes with equivalent rated programmes are run on those channels in line with commercial television rating requirements and guidelines. If a lower rated programme is run during these times then the advertisement is not permitted to be run during these times under the commercial television ratings guidelines. This means that the advertisements are only run at times and during programmes when children are unlikely to be watching television as they should either be attending school (in relation to the daytime advertisements) or in bed (in relation to the night time advertisements) or not watching the particular programme in relation to pay TV stations (as it is not rated as suitable for children) and the advertisements are scheduled at these times and during these programmes for this very reason. The company does not run advertisements on free to air TV between noon and 3pm during school holidays or prior to 8:30pm for this very reason.

From the complaints received, it seems that there were no instances of our client's advertisements being aired outside these times. We also specifically note that the W channel on Austar is aimed at mature audiences and generally contains shows which have adult sexual themes such as Sex in the City, Ellen Degeneres, The Naked City and so on. Whilst each of the advertisements portray issues of sex and sexuality, we submit that they do so with the appropriate level of sensitivity having regard to the relevant audience ordinarily watching TV at this program time zone and rating.

As evidence supporting this submission, we also enclose a copy of an independent market research report which was conducted by Galaxy Research on these issues.

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 earned 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;

This research is also supported by an analysis of online commentary in relation to these issues. For example, attached is a link to a news story that ran on ninemsn.com, that attracted nearly 200 comments from the public: <http://news.ninemsn.com.au/article.aspx?id=663170&source=cmailer>

As is evident, these responses clearly demonstrate a prevailing community acceptance of such advertising.

While some people in the community may disagree with the word 'sex', a greater section of the community oppose the censorship of the advertising.

Also submitted are two other discussion forums from previous news stories that demonstrate similar sentiments:

- *ABC Online: <http://www.abc.net.au/news/stories/2008/08/26/2346336.htm>*
- *PerthNow: <http://www.news.com.au/perthnow/comments/O.21590.242397652761.00.html>*

All of these forums - with comments from hundreds of Australians - show a clear majority of community support for AMI's use of "Sex" in its public advertising.

We believe that each of these forums (and Galaxy's independent research report) clearly indicate that AMI's advertising is in line with prevailing community standards and is appropriate.

We note that there is a comment from one of the complainants regarding the term

"orgasm". As set out above this particular advertisement is MA rated and is only run during MA rated programmes. These programmes often discuss sexual themes which are not appropriate for viewing by children and when children should not be viewing the relevant program. These programmes often include terminology which is more sexually explicit than the term used in the advertisement and the advertisement is only run during programmes of this rating for this very reason.

Finally, we note that commercial television ratings guidelines have been developed by Commercials Advice Pty Limited (CAD) to regulate the material that may be included in television programs and advertisements at different time zones and that the ratings guidelines provide detailed guidelines as to whether or not material contained within television programs and advertisements treat these issues appropriately.

It's important to note each of these advertisements were approved prior to broadcast by CAD. During this approval process, three of the advertisements were given an M rating and one advertisement was given an MA rating, which has been accepted and adhered to by the advertiser. The advertisements have only aired in timeslots deemed by CAD to have an M or MA rating (as applicable). AMI's TV advertisement fully complies with the commercial television rating guidelines relating to the times at which the advertisements are run.

For all of the reasons set out above, we submit that the advertisements do not breach section 2.3 of the code.

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 sexual references in this television advertisement and the potential for children to be viewing. The Board noted that at least some of the complainants' concerns were directed to the product itself.

The Board considered the application of Section 2.3 of the Code, which provides:

"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 that the advertisement's target audience was a more mature audience, having regard to the content that features on the relevant stations and during the relevant timezones when the advertisement was broadcast. The Board noted the advertiser's response that the advertisement is rated M (with a stronger version rated MA). The Board accepted that the advertisements were broadcast in the correct timezones. The Board noted that the programmes during which these advertisements are broadcast during the day are Mature programmes and that parents should be aware that stronger advertising material can be broadcast during this timezone.

The Board considered that the advertisement's references to sex and sexuality were relevant to the product, were unlikely to be understood by children and were suitable for a mature audience.

While the Board recognised that some members of the community may be offended by the discussion of certain issues relating to sex in a television advertisement, the Board found that the advertisement did not breach Section 2.3.

The Board noted the use of the terms 'intercourse', climax, and references to a 'toe curling, sheet shredding climax' in the advertisement. The Board considered that the use of 'intercourse' was relevant to the product or service being advertised and was used factually and not inappropriately considering the relevant audience, and that there was nothing inappropriate with these particular references to reaching a climax during a Mature timezone. The Board considered that the use of these terms was not inappropriate, strong or obscene and 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.