



CASE REPORT

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| 1. Complaint reference number | 63/09 |
| 2. Advertiser | Advanced Medical Institute |
| 3. Product | Professional Services |
| 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 nasal delivery technology and a discovery that can help women reach the 'big O' has a man talking about the problems experienced in relation to premature ejaculation and woman talking about low libido in women and not reaching a climax. The number to call is then repeated twice.

THE COMPLAINT

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

I find the sexually explicit language offensive. My husband and I, and our teenage children do not wish to hear this language on my free radio. Please get these ads off our radio stations.

Ad Details: Radio, Nova 96.9FM. Heard the premature ejaculation advertisement at 2:50pm, during the time when kids are picked up from school. I thought that AMI mentioned they would not advertise around this time? I would rather prefer it that they did not advertise at all.

I don't object to the advert just the very poor timing of such a descriptive advert. NOTE: When my 17 year old son says to me as we are driving along the road 'gee that's groace'. I believe we have a problem with our allowance of poor judgment.

I feel that this advert is inappropriate for young lessons to hear - I have young daughters that have since asked what an erection is!! This is played very often and on most occasions during hours that children are being driven to and from school.

I believe the detail and tone of the advertisement is over the top. I have no interest in hearing this person is finding satisfaction, etc. I cannot understand why such an ad should be played from so early in the morning. It not only offends myself, but my elderly parents who, until recently, would listen to the radio during breakfast. They no longer do this because of this ad. I am sure that there must be other ways to advertise this service, if it needs advertising at all. The ad goes for shock value and appears to have no medical or public interest reason for broadcast.

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. Copies of each of the advertisements are attached.

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 sexual references in this radio advertisement and the potential for children to be listening. 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 played. The Board considered the relevant audience for this radio advertisement was a narrower audience than applies in the case of an outdoor advertisement and noted that programming aimed at adult listeners could be switched off while children were present, as could radio advertising aimed at adult listeners. 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 radio 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 radio advertisement, the Board found that the advertisement did not breach Section 2.3.

The Board noted the use of the terms 'premature ejaculation', 'reaching a climax' and 'reaching the Big O' in the advertisement. The Board considered that the use of 'premature ejaculation' 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 the references to reaching a climax and reaching the Big O as these were not references that would be understood by children. 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.