



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0035/12</b>
<b>2</b>	<b>Advertiser</b>	<b>Advanced Medical Institute</b>
<b>3</b>	<b>Product</b>	<b>Professional services</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Radio</b>
<b>5</b>	<b>Date of Determination</b>	<b>22/02/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

2.4 - Sex/sexuality/nudity S/S/N - general

### DESCRIPTION OF THE ADVERTISEMENT

A male voice over asks females what makes them happy in the bedroom and they reply "lasting more than 30 seconds" "...generous lover" "stud not dud".

The voice over then goes on to say that AMI have invented a mouth fresh strip to help men last longer.

The breakfast version refers to 'private problems' and the regular version refers to 'premature ejaculation'. Call 1800 40 40 30 or SMS 'STRIP' to 1800 40 40 30.

### THE COMPLAINT

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

*This advertisement is very offensive - not only is it demoralising to people who suffer from this problem it is also being use as psychological blackmail to seek out this particular product not to mention the repetition of this advertisement is boarding on brainwashing the women depicted in this commercial are producing a negative image for minors who would be listening the time of day in which this advert is played whilst being commuted to and from school as the women are implying it's alright to have intercourse with a plethora of sexual partners.*

*I would like to lodge a formal complaint regarding the placement of certain advertisements in particular the advertisement pertaining to the "longer lasting sex". I have lost count of how many times this advertisement is played during my travel to/from work whilst I am travelling with my daughter in the car. I believe it is totally inappropriate to play content associated*

*with that advertisement between 7am and 9am and 3pm and 8pm. It is not allowed on TV during those times so I can't understand why radio is any different.*

*It portrays sexual issues to people of all ages in matters which cause discomfort at times which are family-time radio. I did not want to know about premature ejaculation. Being sixteen years old (and these advertisements having started several years ago) I and many of the people I know am disgusted by the content and greatly discomforted whether listening to the radio alone or with my family. I am not sure whether the ASB can alter the regulations of listening times as my primary goal would be to exclude such advertisements from times when school-aged children are likely to be listening but the content is also not appropriate. I do not believe the advertisement to be considering the relevant audience nor recognising the sensitivity of such a topic.*

*Listening to the radio with my 11 year old - no warning - explaining to my 11 year old what the ad was referring to - terms were disgusting and graphic.*

## **THE ADVERTISER'S RESPONSE**

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

*As you know, NRM Corporation is the new owner of AMI's business.*

*There are 3 similar advertisements currently dealing with premature ejaculation and this letter has responded in relation to each of these advertisements as it is unclear which advertisement the complaint relates to.*

*A copy of the advertisements is attached.*

*We understand that the issues raised in relation to these advertisements relate to section 2 of the code.*

*Based on past decisions made in relation to AMI, we understand that the core sections of the code which are relevant are:*

*1. section 2.1 of the code which requires that the advertisement not contain material which discriminates against or vilifies a person;*

*2. 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;*

*3. section 2.5 of the code requires advertisements and/or marketing communications to only use language which is appropriate in the circumstances and to not use strong or obscene language;*

*and 4. section 2.6 of the code which requires that advertisements not depict material which is contrary to prevailing community standards on health and safety.*

*Please let us know if the board intends to consider any other section of the code so that we are afforded*

*a reasonable opportunity to make submissions on the matter as it is our present understanding that no other section of the code is relevant to these advertisements. Without limiting the foregoing, we note that the communications are not directed to or targeted at children. We accordingly submit that section*

*2.4 of the Code is not relevant to these advertisements.*

*The advertisements do not use discriminatory language of any kind. They also do not seek to be critical of persons in any way - on the contrary the advertisements endeavour to deal with this difficult issue in a positive way.*

*We accordingly submit that the advertisements do not infringe section 2.1 of the code in any way.*

*The advertisement does not contain any statements which are factually inaccurate or which involves any dangerous activities. We accordingly submit that the advertisements do not infringe section 2.6 of the code in any way.*

*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. Section 2.5 of the code requires that advertisements not contain strong or obscene language and that advertisements use language which is appropriate in the circumstances. The advertisements do not contain strong or obscene language. To the extent that section 2.5 of the code is considered to have a broader application than coarse or obscene language the submissions relating to section 2.3 also apply to section 2.5.*

*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 business frequently being rated as a top 5 radio advertiser in each capital city during many of the weekly ratings conducted during tills 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 tills 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. Tills 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 "honking" 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. The approach of using a softer form of the advertisement for these times has been adopted and implemented in this case.*

*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 programme 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.*

*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 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; 68% of Australians do not find the phrase "want longer lasting sex" offensive in the context of advertising products which treat sexual health problems. This phrase has become synonymous with AMI and respondents to the survey would have been well aware of this connection in responding to the survey; and 51 % of Australians believe the phrase "want longer lasting sex" should be permitted on billboard advertisements for products which treat sexual health problems. Billboards are considered to be the most invasive form of advertising as billboards are unable to be switched off and the report provides clear evidence that significantly more than 50% of Australian adults have no problems with AMI's TV or radio advertising. These particular advertisements use the phrase "premature ejaculation" and only one of them uses the word "sex" with this advertisement being limited to times of day when children are unlikely to be listening to the radio. AMI believes that the phrases used in these advertisements are less confronting than other phrases used by AMI in other advertisements which have been found by the board to be in compliance with the code (e.g. the phrase "do it like an animal" which was used in 16211 0). In fact AMI believes that these advertisements are some of the milder advertisements used by it during the last 5 years. In the circumstances we submit that the advertisements treat sex and sexuality appropriately having regard to the relevant timeslot. However, in the event a significant portion of the community disagrees with AMI's assessment that the phrases are not offensive 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. We note that this has not occurred. 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. For each of the reasons set out above we submit that the advertisement does not breach section 2.3 or section 2.5 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 that the advertisement contains inappropriate sexual content and can be heard by children.

The Board reviewed the advertisement and noted the advertiser's response.

The Board considered whether the advertisement was in breach of Section 2.1 of the Code. Section 2.1 of the Code states: "Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief."

The Board noted that the advertisement features various women describing what makes them happy in the bedroom and that one woman states she wants 'a stud not a dud'. The Board noted that it had previously upheld complaints against AMI advertisements which depicted men with sexual dysfunction in a demeaning manner. The Board considered that, although some people may consider this part of the advertisement demeaning, the overall content of the advertisement does not amount to material that is discriminatory of any people with a disability or to a particular identifiable group of men.

The Board determined that the material depicted did not discriminate against or vilify any person or section of the community and did not breach Section 2.1 of the Code.

The Board considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience."

The Board noted the advertiser's response that AMI's radio advertising is confined to certain radio stations selected on the basis of their demographic audience and that more confronting advertisements are restricted to these stations and to time zones when children are less likely to be in the car with softer advertisements being run in those times. The Board noted that in this instance the 'softer' version of the advertisement refers to 'private problems' and the general version refers to 'premature ejaculation'.

The Board noted that the advertisement is for a sex related product and that mentions of sex and enhancement of sexual performance are relevant to the product.

The Board considered the advertisement's target audience was adult listeners and noted that programming aimed at this audience could be switched off while children were present. While the Board recognised that some members of the community may be offended by the discussion of certain issues relating to sexual performance in a radio advertisement, the Board considered that the advertisement's treatment of sex and sexuality was not inappropriate, was mild in tone and was sensitive to the relevant audience

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

The Board then considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: "Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided."

The Board considered the term 'premature ejaculation' would be offensive to some people, but in this instance it is used in a clinical manner, only used once and is relevant to the product advertised. The Board considered it appropriate and not strong or obscene language in this context.

The Board determined that the advertisement did not use strong or obscene language and that it 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.