



Case Report

1	Case Number	0035/15
2	Advertiser	Advanced Medical Institute
3	Product	Professional Service
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	11/02/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

- Other Social Values
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

A young man attempts to play the piano with his penis but struggles to complete the tune. One of the judges from the panel suggest he contact AMI to help. When the young man returns he is able to play the entire piece.

THE COMPLAINT

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

The ad is in extremely bad taste and I find it very offensive.

I strongly object to this advertisement, it is cringe worthy and shockingly inappropriate. I fail to see how any self-respecting individual could approve of such an advertisement.

Ads are supposed to be pleasant/satisfying, not things that are sick to watch, I.e - would you ever go and watch a performer play a piano with his penis in real life?

THE ADVERTISER'S RESPONSE

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

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 2.4 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 the ASB's code relating to advertising and marketing to children is not relevant.

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 2.4 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 2.4 also apply to section 2.5.

The advertisement is broadcast during shows which have an appropriate rating and which contain adult content and which often have sexual references and language.

The advertisement is clearly targeted at and limited to age appropriate demographics. It is predominantly broadcast between midnight and dawn with some limited airing between 9:30pm and midnight during appropriately rated and themed shows as set out in the attached broadcast schedule. These shows are aimed at adults and usually have an adult theme.

Whilst AMI acknowledges that some members of the community do not like AMI's advertisements, we believe that the advertisement complies with the code by treating sex and sexuality sensitively having regard to the relevant audience taking into account the time of broadcast and the shows in which it is broadcast.

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.*

This particular advertisement does not use the term "sex" and does not contain any nudity. AMI believes that the phrases used in this advertisement are some of the least confronting used by AMI in its advertisements. They are also significantly less confronting than phrases used in advertisements which have been found by the board to be in compliance with the code (eg the phrase "do it like an animal" which was used in 162/10).

In the circumstances we submit that the advertisements treat sex and sexuality appropriately having regard to the place and manner of broadcast including the rating of the shows in which they are run. We further note that it appears that only a few complaints have been received in relation to this advertisement and that there does not appear to be widespread complaints about it.

For each of the reasons set out above we submit that the advertisement does not breach section 2.4 or section 2.5 of the code.

We also submit that the modified advertisement does not vilify or discriminate against any person.

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

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 complainant’s concerns that the advertisement features offensive material which is inappropriate for viewing on television.

The Board viewed the advertisement and noted the advertiser’s response.

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted the advertisement features a young man depicted as attempting to play the piano with his penis but struggles to complete the tune. A judging panel comments on his performance and suggests he contact AMI to help. When the young man returns he is able to play the entire piece.

The Board noted that the advertisement refers to using the product to assist men with the sensitive matter of sexual performance but it is presented in a factual way and is not suggesting that men who may suffer from this are inferior to those who don’t. In addition, the Board noted that the man does not appear too upset when he is unable to play the whole piece. The Board noted it had previously dismissed similar advertisements for the same advertiser, in particular 0145/13 and 0296/14 and similar to these cases considered that although some people may consider the discussion of a man’s erectile dysfunction to be inappropriate or 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 and did not breach section 2.1 of the Code.

The Board determined that the advertisement did not breach Section 2.1 of the Code.

The Board then 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 that the product is related to sexual performance and that the terminology used, particularly by the voiceover is of a sexual nature based on the product being advertised. The Board noted that it had dismissed a similar advertisement that involved two men playing the piano together (0284/05). In that case the Board considered that “...the images were not overly graphic in that they did not expose the genitals in any way....”

The Board noted that the depiction of a man playing the piano with his penis is intended to be humorous and is not a likely scenario.

The Board noted the advertiser’s response that the advertisement was aired between midnight and dawn with some limited airing between 9:30pm and midnight during appropriately rated and themed programs.

Similar to the decision above (0284/05), the Board considered that the overall tone of the advertisement would not be of appeal to a young audience and agreed that the likely audience would be adults and that in any case there were no exposed genitals or nudity.

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

Consistent with the dismiss decision relating to the television version of the same advertisement in Case 0034/15 and finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaints.

