



Case Report

1	Case Number	0044/11
2	Advertiser	Advanced Medical Institute
3	Product	Professional services
4	Type of Advertisement / media	Billboard
5	Date of Determination	23/02/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

2.3 - Sex/sexuality/nudity - Treat with sensitivity to relevant audience

DESCRIPTION OF THE ADVERTISEMENT

A woman wearing a hard hat and fluorescent jacket and holding a sign which says, "2 min?" The words "Do you last" are written above the sign. To the right of the woman is a bed in the road with a man in his underwear sat on the side of it. The text underneath the man reads "Call or SMS 'longer' 1800 311 311".

THE COMPLAINT

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

Having to explain to primary school aged children what the billboard is advertising. We have six schools in Upper Coomera and I am sure there are a lot of children asking questions. I don't feel this sort of advertisement is appropriate anywhere!

My children wished to know what the Ad meant: they can read but couldn't make sense of it. I didn't think they should have to face this blatant sexual statement. I got online and read a statement from this company suggesting parents could just gloss over it if the children did ask which made me complain.

I consider the advertisement offensive and request it be urgently removed.

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 2.3 of the code which 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 which 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 our client is 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 this advertisement.

Without limiting the foregoing, we note that the communications are not directed to or targeted at children and do not contain any obscene or coarse language. We accordingly submit that section 2.5 of the Code is not relevant to this advertisement, however to the extent that section 2.5 of the Code is considered to encompass general community attitude issues we refer you to our comments relating to section 2.3 of the Code below.

The advertisement does not involve any dangerous activities. We accordingly submit that the advertisement does not infringe section 2.6 of the code in any way.

The advertisement does not use discriminatory language of any kind. It does not seek to be critical of persons in any way and deals with these legitimate medical problems in a positive way. In making these comments the advertisement makes an inference that people who have this condition are not uncommon and should not be embarrassed about their condition. We accordingly submit that the advertisement does not infringe section 2.1 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.

As you are aware, our client commissioned an independent market research report 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=cmail>

As is evident, these responses clearly demonstrate a prevailing community acceptance of such advertising and further, alarm that the ASB feels it must censor the word 'sex' from AMI's advertisements.

While some people in the community may disagree with the word 'sex', a larger section of the community opposes 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/2005/05/26/2346336.htm>

• PerthNow: <http://www.news.com.au/perthnow/comments/O.21590.24239765-2761,00.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 are aware that the board has separately commissioned its own research in relation to these matters. Whilst we understand that the Board's research indicates that a section of the community do not like AMI's advertising we believe that a significant portion of these concerns are related to the size and extent of AMI's advertising rather than the content of them.

As a result, we submit that whilst the advertisement might be considered to portray issues of sex and sexuality, we submit that it does so with the appropriate level of sensitivity having regard to the audience and medium in which it has been presented.

In particular, we note that the advertisement does not contain the word "Sex" or any other sexual related language, the advertisement does not contain any nudity and the imagery and language used on the billboard is conservative and considerably less confronting than numerous other billboards for AMI services and the services and products of other advertisers which have been approved by the board.

Consequently, whilst the advertisement portrays issues of sex and sexuality, we submit that it does so with the appropriate level of sensitivity having regard to the audience and that there is accordingly no breach of section 2.3 or section 2.5 of the Code.

For all of the reasons set out above, we submit that the advertisement does not breach section 2 of the code and that the complaint should be dismissed.

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 complainants' concerns that the advertisement raises the issue of sex to children and is offensive.

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

The Board first 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 ...sex...'

The Board noted that the advertisement features a woman wearing a hard hat and fluorescent jacket and holding a sign which says, "2 min?" and the words , "Do you last" are written above the sign. To the right of the woman is a bed in the road with a man in his underwear sat on the side of it.

The Board noted that the implied message of the advertisement is that if men can only last 2 minutes during sex they should call AMI for assistance. The Board considered that as this message is implied and is not presented in a manner that suggests that men are not good enough if this is the case and that the advertisement is not derogatory to men, the advertisement does not discriminate against men.

Based on the above the Board determined that, in this instance, the advertisement did not depict any material that discriminated against or vilified any person or section of society. 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 2.3 of the Code. Section 2.3 of the Code states: "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 advertiser is currently able to advertise their product, provided that such advertisements are within the Code.

The Board noted that the billboard format means that the entire community may be exposed to it, with its messaging reaching beyond that of the target audience. Whereas advertisements in other mediums may limit the relevant audience, the nature of billboards means that there is no practicable way for the community to control their exposure, or their children's exposure, to their content. The Board noted that some of the level of community concern about the advertisement is concern over the product and the fact that it can be advertised. The Board stated that this issue has to be separated from the content of the advertisement as it is not an issue that is within the jurisdiction of the Board.

The Board agreed that some members of the community will argue that this billboard does not treat the issue of sex with sensitivity to the relevant audience. A minority of the Board also considered that the Billboard did not treat the issue of sex with sensitivity to the relevant audience.

The majority of the Board however considered that that there is no explicit reference to sex in the advertisement and the image of the man sat on a bed in his underwear is not a sexualised image. The Board considered that the advertisement would not be readily understood by most children and considered that the advertisement was not offensive in its depiction of the services the advertiser offers.

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 2.3 of the Code.

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