



ADVERTISING
STANDARDS
BUREAU

Level 2, 97 Northbourne Avenue, Turner ACT 2612
Ph (02) 6173 1500 | Fax (02) 6262 9833
www.adstandards.com.au
ACN 084 452 666

Case Report

1	Case Number	0049/14
2	Advertiser	Menarini
3	Product	Health Products
4	Type of Advertisement / media	TV
5	Date of Determination	12/02/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.5 - Language Inappropriate language

DESCRIPTION OF THE ADVERTISEMENT

The advertisement shows a couple in their bedroom dressed in their underwear. While the woman is trying to seduce her partner, he seems somewhat distracted and not focused on her. We see that he is glancing over to a picture of an older lady hanging on the wall. A voiceover begins to state that if like up to 1 in 3 men, the viewer lacks staying power in the bedroom, that the only thing they should think of is the doctor.

We transition to a doctor's surgery where we see the same couple sitting together waiting for the doctor. They look encouraged and relieved as the doctor opens the door to bring them in. We cut to the final sign-off of an animated sequence depicting two bodies in the letters of P.E. that transform into an acro-yoga pose accompanied by a VO stating "Got PE, Get Control".

THE COMPLAINT

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

The end of the commercial depicts 2 diagrams of sexual nature which I find offensive.

Adult content displayed during Melbourne Stars-semi final watched by myself, husband and children. Offensive that this is advertised during a heavily promoted event watched by

families/ children. Words "premature ejaculation" obvious at end of commercial. Seductive scene at beginning not appropriate either for family style program.

THE ADVERTISER'S RESPONSE

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

A.Menarini Australia Pty Ltd (Menarini) would like to express its regret that an advertisement aimed purely at increasing awareness of an important health-related matter in our community has caused concern to the complainant. Menarini is an ethical company that abides by Codes of Practice, including the provision of accurate and balanced information in an ethical and respectful manner. As such, the company has rigorous internal review protocols and procedures, undertaken by trained staff, who are also members of the same community as the complainant.

Menarini is an ethical company that abides by all regulations locally and reviews all materials through a robust internal process prior to any public advertising or education. This particular advertisement was approved with an M-rating by free TV Commercials Advice (CAD) and was aired only during the programs and air-times allowed with that rating. By receiving this rating, Menarini addresses potential concerns regarding potentially offensive material and the time of day at which it is aired.

In response to this particular complaint and the areas of the code identified:

2.4 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

Treatment of this sensitive subject was tasteful throughout the shooting of the commercial. Full nudity is never shown and the final sign-off is a simple animation of bodies in the shape of the letters PE and in the same pose as seen in our print media (an 'acroyoga' pose, which is a yoga pose). The commercial was aired during the times allowed as per the 'M' rating of the commercial – during the same time that other TV shows showing more nudity than this commercial air.

2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

The words premature ejaculation – the medical condition for which we are raising awareness – are never said and merely printed under the letters PE at the end of the commercial. The other language used to reference the condition is 'staying power' – a common term used by consumers to describe the condition as indicated through extensive market research during the development of this commercial. The commercial was aired during the times allowed as per the 'M' rating of the commercial – during the same time that other TV shows with similar language are aired.

As per TGAC requirements, prescription products cannot be advertised to consumers. However, educational campaigns to consumers to raise awareness about medical conditions

are deemed suitable under the conditions stated by the Medicines Australia Code of Conduct.

The Medicines Australia Code of Conduct at 13.7 states the following:

13.7 Disease Education Activities in Any Media

Disease education activities may provide information, promote awareness and educate the public about health, disease and their management.

13.7.1 Activities must not include any reference to a specific prescription product. The promotion of products covered by the Code of Conduct to the general public via disease education activities would breach Section 13.3 of the Code and the Commonwealth Therapeutic Goods legislation which stipulates that prescription products must not be promoted to the general public.

13.7.2 A disease education activity may make reference to the availability of different treatment options (which may include a range of prescription products/classes and/or alternative treatments such as surgery or over the counter products) but this should not be of such a nature that an individual would be encouraged to seek a prescription for a prescription only product.

13.7.3 The emphasis of the disease education activity should be on the condition and its recognition rather than on the treatment options. The appropriate treatment for an individual patient is for the healthcare professional to decide in consultation with the patient.

13.7.4 A disease education activity should cover the key characteristics of the disease. It should ensure that the impact/implications of the disease are realistically conveyed without being alarmist.

13.7.5 If discussed, management options should be presented in a comprehensive, balanced and fair manner that does not unduly emphasise particular options or the need to seek treatment.

13.7.6 The language used should be designed to convey key messages clearly, supported by appropriate design and formatting appropriate for the intended audience.

13.7.7 The name of the pharmaceutical company must be identified on any disease education activity but should not be given prominence.

The advertisement complies with each of the sections stated above as the information contained in the advertisement:

13.7 – promotes awareness about a medical condition and its management

13.7.1 – no reference is made to a prescription product or any product at all, but only to effective treatments

13.7.2 – reference is only made to speaking to a doctor about treatments

13.7.3 – the emphasis is on the condition, that something can be done about it, and that

information should be sought from a doctor

13.7.4 – only the condition, its occurrence and where to seek information are referred to

13.7.5 – reference is made to speaking to a doctor for management options

13.7.6 – the language used refers to the condition as it is known in the community and also referred to as found in medical literature. It is factual and accurate

13.7.7 – the name of the company is referenced in the end frame as required.

While the topic of premature ejaculation may be uncomfortable for some people, Menarini takes seriously its role to educate the public about premature ejaculation as the most common sexual dysfunction among men affecting up to 1 in 3 men in Australia.

Menarini again expresses its regret that an advertisement aimed purely at increasing awareness and education of an important health-related matter in our community has caused concern to the complainant.

Menarini does however believe that the information provided in its advertisement is factual and respectful of the medical condition it raises awareness of and educates about, and is reflective of a high level of community standard and ethics.

In summary, whilst we are fully respectful of the complainant's concern about this advertisement, we are equally respectful to the fact that the public is entitled to disease awareness and education.

Menarini again expresses its regret that an advertisement aimed purely at increasing awareness and education of an important health matter in our community has caused concern for the complainant.

Menarini does however believe that the information provided in its advertisement is scientifically and medically factual, and respectful of the medical condition it raises awareness of and educates about, and is reflective of a high level of respect and sensitivity for community standards and ethics.

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 features sexualised language and content which is not appropriate for viewing by children.

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

The Board considered whether the advertisement was in breach of Section 2.4 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 advertisement is for premature ejaculation treatment. The Board noted that whilst many members of the community would prefer that this product not be advertised on television, it is a product which is legally allowed to be advertised.

The Board noted it had previously dismissed an advertisement for a similar product in case 0036/12 for Men’s Clinic International:

“The Board considered the content of the advertisement against the provisions of Section 2.4 and noted that the advertisement raised issues of sex that some members of the community may find inappropriate for television broadcast at any time. The Board noted that the product is legally allowed to be advertised and considered that the content was relatively mild considering the topic and that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant M rated audience.”

The Board noted that in this instance whilst the man and woman in the advertisement are shown in a bedroom setting they are both wearing underwear and their kissing is not strongly sexualised or inappropriate.

The Board noted that the advertisement had been rated ‘M’ by CAD and considered that whilst the complainant had viewed the advertisement during the tennis, the time that they viewed the advertisement was 9.20pm which is consistent with the ‘M’ rating.

The Board noted that the references to premature ejaculation used in the advertisement are made in the context of making an appointment with a medical doctor to seek appropriate assistance and considered that consistent with its previous determinations the language and visuals used in the advertisement do treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

The Board 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 noted the complainant’s concerns regarding the sexualised language used in the advertisement. The Board noted that ‘premature ejaculation’ refers to a recognised medical condition and considered that the term is used in the advertisement in its correct medical context. The Board noted that the advertisement also makes reference to “staying power in the bedroom” and “sexual satisfaction” and considered that this language is not strong or obscene and is not inappropriate in the context of an ‘M’ rated advertisement for a sexual health product.

The Board considered that the advertisement did not use language which was strong, obscene or inappropriate in the circumstances.

The Board determined that the advertisement 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 complaints.