



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0145/13</b>
<b>2</b>	<b>Advertiser</b>	<b>Advanced Medical Institute</b>
<b>3</b>	<b>Product</b>	<b>Health Products</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Radio</b>
<b>5</b>	<b>Date of Determination</b>	<b>22/05/2013</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.5 - Language Inappropriate language

### DESCRIPTION OF THE ADVERTISEMENT

A female voice over says, "Sex without an erection is like a torch without a battery. Doesn't matter where you point it, it's not going to work". She then goes on to say that if your man suffers from premature ejaculation he should talk to AMI about their oral strips.

### THE COMPLAINT

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

*This ad mentions premature ejaculation and penis erections and mind shattering sex. It is played on B105 while children are being driven to school as well as during the working day where it is highly inappropriate to hear this in the workplace.*

*These adverts are played approximately every 15 minutes after 8.30pm, a time when many children are still awake and listening to the radio - or in the case of my younger child, listening as they go to sleep. These ads are extremely inappropriate for children as not only*

*are they quite explicit, but they promote the idea of sex as some sort of performance sport.*

## **THE ADVERTISER'S RESPONSE**

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

*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 6-7 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 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 1 00 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 "bonking" 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. This particular advertisement is only run after 8:30pm which is a time when listeners are generally restricted to adults. In addition, WSFM have an older audience profile playing 60's, 70's, 80's and 90's music and is aimed at a 30+ aged audience, especially after 8.30pm. This advertisement has also been run at similar times on other radio stations around the country including the EDG E and 2DAYFM in Sydney, FOXFM in Melbourne, B I 05 in Brisbane and 92.9FM in Perth and to date we have not received any complaints from those stations. 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 listening 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 (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 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 is sexually explicit and inappropriate to be aired on the radio as children could hear it and that the advertisement appears to be directed at shaming people with this problem.

The Board noted that this is a product that is legally able to be advertised provided that it meets the requirements of the Code.

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 race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted that it had previously upheld complaints against some 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 and 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 advertisement opens with a comment about sex without an erection and goes on to offer a solution to premature ejaculation.

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 this particular advertisement is only run after 8:30pm which is a time when listeners are generally restricted to adults. 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.

The Board noted that the advertisement is for a sexually related product and that mentions of sex, erections and enhancement of sexual performance are relevant to the product. The Board noted that the advertisement raised issues of sex and sexuality that some members of the community may find inappropriate for radio broadcast at any time.

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 however, the Board considered that the advertisement's treatment of sex and sexuality was not inappropriate to an after 8.30pm 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 ad 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 complaints.

## **THE INDEPENDENT REVIEWER'S RECOMMENDATION**

## **THE DETERMINATION ON REVIEW**