



Case Report

1	Case Number	0158/13
2	Advertiser	Advanced Medical Institute
3	Product	Health Products
4	Type of Advertisement / media	Internet
5	Date of Determination	22/05/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

A man doesn't want to have sex with his partner because he suffers from premature ejaculation. After taking the AMI product though he is keen to engage in sexual activity and is shown in the kitchen removing his clothes and embracing his partner.

THE COMPLAINT

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

This is on a website which children can easily access and don't have to go looking for it as these advertisements come up before the video starts. Also the video I wanted to watch was for Marvel Superheroes which is something that children are likely to watch.

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 2.4 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.

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 2.4 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 2.3 also apply to section 2.5.

AMI is a high profile and well known advertiser. The use of YouTube and the positioning of advertising on You Tube is governed by You Tube's terms of use and policies. Those terms of use and policies include the following:

YouTube Age Gates:

When a video or brand channel is placed behind a YouTube age gate, either through the advertiser's choice or as a result of a Community Guidelines violation, only 'of-age' users logged in to our site with a YouTube account can access the content. In some instances our policies require a video to be age-gated first in order for an advertiser to use it (e.g., Promoted Videos ad for an alcohol campaign). The YouTube Age Gate is the only option available to age-gating requests at the video watch-page level.

Demographic targeting by age for ads:

If our policies or the advertiser requires that an ad be demo targeted to a certain age demographic, our ad-serving technology can demo target the ad based on the birth date registration data in logged-in user accounts. For example, if content featured in an ad may not be appropriate for a general audience under our policies, we require the ad to be demo targeted to 18+ users. What this means is that only users logged in to their YouTube account who are at least 18 years old may see this particular ad on our site. Non-logged users will see a different ad.

AMI's advertisement is clearly targeted at consumers who are over 18 years of age and AMI's advertisement is restricted to users you have logged into their YouTube account and who are at least 18 years of age in accordance with YouTube's policies so that the advertisement may only be seen if access is made to YouTube's site by a person who is over 18 years of age.

The advertisement is accordingly clearly targeted at and limited to age appropriate demographics.

In addition, contrary to the claim made in the complaint that the man is naked, the man is clearly wearing boxer shorts and the boxer shorts are clearly visible at all times.

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 taking into account the YouTube policies and restrictions applicable to the advertisement.

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 uses the phrase "premature ejaculation". It does not use the term "sex" and access is clearly limited by You Tube to persons who are over 18. AMI believes that the phrases used in this advertisement 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 162110).

In the circumstances we submit that the advertisements treat sex and sexuality appropriately having regard to the restrictions on access to the advertisement put in place by You Tube. We further note that it appears that only 1 complaint has 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.

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 depicts sexualised behaviour which is inappropriate for children to see.

The Board viewed 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 the advertisement had been seen whilst the complainant was on YouTube

and that the complainant was concerned that children could also see the advertisement.

The Board noted that the advertisement features a man who is reluctant to go to bed with his partner as he suffers from premature ejaculation but after taking the oral strip the man and woman start to engage in intimate relations in the kitchen scene. The Board noted that the man removes his top but considered there is no inappropriate nudity and there is only very mild sexual advances made by the man. The Board considered that the overall visuals were not sexually explicit.

The Board noted the advertiser's response that the advertiser uses only positioning of advertising on You Tube as governed by You Tube's terms of use and policies. Those terms of use and policies include

age gates that only target people that have a determined demographic based on the information they input at log in. The Board considered that this was a reasonable approach to being able to advertise in this medium and uncontrolled by the advertiser.

The Board noted that prevailing community standards would suggest that children are closely monitored by a responsible adult when viewing the internet, especially websites such as YouTube, and considered that in the context of an advertisement played on YouTube the advertisement does treat 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.

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