



Case Report

1	Case Number	0162/10
2	Advertiser	Advanced Medical Institute
3	Product	Health Products
4	Type of Advertisement / media	Radio
5	Date of Determination	28/04/2010
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

This radio advertisement commences with background song "I wanna do it like an animal". Female "My bloke makes love like a rabbit." Male "I'm always at it." Female "Yeah and 10 seconds later you hop off." Male "sorry". Female "I want you to do it like a Tasmanian Devil". Male "A Tasmanian Devil?". Female "They can go for hours". Male "No way". Female "Haven't you heard the expression 'Horny little devil'?".
Voice over "Be a demon lover, AMI's nasal delivery technology has turned thousands of Australian men into horny devils."
Song over "Let's do it like we're animals".
Voice over - Call AMI now on 1800 20 20 40.

THE COMPLAINT

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

It is a completely inappropriate time slot. My 9yo and 6yo children are awake and can hear the radio. Why are ads for this company and others like it allowed to air after 6am and before 8.30pm. It is almost impossible to stop children from hearing the ad - by the time you realise it is on the 30 second slot is already about 1/3 of the way in and trying to turn it off only further piques the child's interest in what you're doing.

THE ADVERTISER'S RESPONSE

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

The advertisement does not use discriminatory or negative language of any kind. It does not seek to be critical of persons in any way and simply invites people to call AMI if they have a problem. It also contains positive messages indicating that people who have this problem might improve their situation if they seek treatment. We accordingly submit that the advertisement does not infringe section 2.1 of the code in anyway.

The advertisement does not contain any statements which are factually inaccurate or which involves any dangerous activities. We accordingly submit that the advertisement does 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 the advertisement use language which is appropriate in the circumstances. The advertisement does 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 4-5 years with the Company 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 100 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 "premature ejaculation", "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 timezone.

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 in the car 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.

This particular advertisement uses the phrases "making love", "do it like an animal", "demon lover" and "horny little devil". It does not use the phrase "want longer lasting sex" or the term "sex" at any time. AMI believes that the phrases used in the 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. The advertisements are also similar in nature to the advertisements which were considered by the board in 94/06 and found to be in compliance with the code.

AMI also notes that recent program content on 2MMM during the relevant timeslot have included serious adult themes including interviews with *Ralph* magazine models and visits to *Underbelly* secret spots featured in the first *Underbelly* series. Each of these shows is currently featured on 2MMM's website relating to this timeslot.

In the circumstances we submit that the advertisement treats 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 complainant’s concerns about the sexual references in this radio advertisement and that the advertisement is inappropriate for children to hear. The Board also noted that an element of the complaint indicates concern with the product being advertised at all, rather than strong concerns about particular aspects of the advertisement.

The Board considered the application of Section 2.3 of the Code, which provides: "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 product being advertised is a sexual dysfunction product. The Board also noted that this product is legally permitted to be sold and advertised provided that the advertising complies with the provisions of the Code.

The Board noted that the advertisement's target audience was a more mature audience, having regard to the content that features on the relevant stations and during the relevant timezones when the advertisement played.

The Board considered the relevant audience for this radio advertisement was a narrower audience than applies in the case of an outdoor advertisement and noted that programming aimed at adult listeners could be switched off while children were present.

The Board noted that the advertisement makes reference to animals’ sexual habits but does not use any words related to sex in the advertisement other than the term ‘horny’. The Board considered that the references to sex were unlikely to be understood by young children and were therefore sensitive to the relevant audience which is primarily adult.

The Board acknowledged that some members of the community may be offended by the discussion of certain issues relating to sex in a radio advertisement, but found no grounds under Section 2.3 to uphold the complaints.

The Board noted the use of the term ‘horny’ and to ‘doing it like rabbits’. The Board considered that the use of terms which are sexually suggestive was relevant to the product or service being advertised. The Board considered that the use of this language was appropriate, was not strong or obscene and 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 complaint.