



Case Report

1	Case Number	0181/11
2	Advertiser	Eli Lilly Australia Pty Ltd
3	Product	Professional services
4	Type of Advertisement / media	TV
5	Date of Determination	08/06/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

Couple working in the garden, exchange romantic gestures, house in background folds away and a tent unfolds in its place, couple go for romantic walk in countryside. Ends with couple by campfire and plain screen with "Readyanytime" and "Lilly" displayed. Throughout the advertisement a male voice over talks about male erection problems and how Eli Lilly could help.

THE COMPLAINT

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

The pictures in this ad were not offensive but the use of a tent attracted my child's attention as we love to camp. He listened as he thought this was an ad about being outdoors. I couldn't find the remote so we had to turn the TV off to avoid being bombarded by the words erection erection.

We watch the footy as a family with our twin 9yr boys not every Friday night but as much as we can. This type of advert content is extremely not appropriate for what I still consider to be and should be a family show.

Yes I do understand that the ad was aired after 8.30pm on a Friday night but find it a very disturbing and extremely inappropriate to have an ad regarding erection problems shown at this time.

We had to spend time trying to explain to one of our 9yr old boys what an "erection" was. More thought about the content of ads screened at footy halftime is needed. Extremely disgusted and very disappointed at choice of ad choice.

My six and seven year old sons watch these matches on Saturday morning from my recording of free to air. I object in the strongest possible terms to the attack on children's innocence which these ads represent and it is disingenuous in the extreme to suggest that the audience demographic was not known by programmers to include young children.

This is a serious breach by NBN and any other network which intentionally screened these ads to a largely under-12 audience.

I would like to hear in what precise terms the guidance to networks will be reinforced to ensure that age-inappropriate advertising is removed from the four-hour Friday Night Football program which runs from 1930-2330.

I will also be bringing this matter to the attention of my parliamentary representatives and will update them with your response when I receive it.

Your early action to remind networks before next broadcast on Friday 20 May will be appreciated and I await your advice in due course as to what action was taken.

It is not necessary to be advertising this sort of product at this time of night when young children are watching...it's a Friday night at 8.30pm very inappropriate.

I do not think that these ads should be on TV at this hour when families are watching the TV. It makes it hard for dads to watch the shows with daughters/granddaughter or mums and sons/grandsons. Children grow up to fast these days as it is without hearing things about these kinds of problems then asking what they mean.

THE ADVERTISER'S RESPONSE

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

1. The Complaint

The Complaint alleges the Communication raises issues under Section 2 of the AANA Advertiser Code of Ethics (AANA Code).

2. Summary of Lilly's Response

2.1 Lilly contends that the Complaint should not be subject to the AANA Code, as the Communication relates to a disease state treated by therapeutic goods. Communications about therapeutic goods and disease states are subject to an industry code - the Medicines Australia Code of Conduct. As the AANA Code excludes referral to the Advertising Standards Board of

complaints about issues covered by a specific industry code, Lilly submits that the Complaint has been incorrectly referred to the Board.

2.2 In the event that the AANA Code is considered to apply, Lilly submits:

(a) The Communication is aligned with prevailing community standards which encourage the right of the community to seek health related information. Erectile dysfunction disease awareness campaigns are not novel.

(b) The purpose of the Communication is disease state awareness encouraging adult men to seek treatment from their healthcare professional for a medical condition, erectile dysfunction.

- (c) Communications directed at disease state awareness are permitted by the Medicines Australia Code of Conduct ("MA Code").
- (d) The principal treatment for erectile dysfunction is a class of prescription medicines called phosphodiesterase - 5 inhibitors. Lilly's product, Cialis, falls within this class. The advertising and promotion of therapeutic goods such as these are subject to the Therapeutic Goods Act 1989 (Cth) ("TG Act") and the MA Code .
- (e) The Communication does not mention a therapeutic good which is prohibited by the TG Act and the MA Code.
- (f) The Communication is rated as PG, which permits the screening of such items after an 8:30PM timeslot.
- (g) The imagery of the Communication is acknowledged by the Complainant to be non offensive.
- (h) Lilly's media buyer, Mediacom, bought advertising space on behalf of Lilly from the channel within the post 8:30PM timeslot. The placement of the Communication within that time slot was at the discretion of the channel.
- (i) Lilly contends that hearing information about erectile dysfunction and hearing the word "erection" is not offensive. Any sensitivity to hearing references to 'erection' and 'erectile dysfunction' is no greater than the sensitivity that some listeners may have in response to hearing references to breast enlargement, menstruation or incontinence made in television and radio media advertisements.
- j) The Communication relates to a disease state which has been linked to serious illness including diabetes and heart disease and it serves the important purposes of providing information, promoting awareness and educating the public about the disease and its management.

3. Background

The Communication

3.1 Under Sections 12.6 and 12.7 of the MA Code, a company may issue disease state education to the general public.

3.2 The intent of the Communication is to educate adult males to seek health care professional advice in the event they suffer from erectile dysfunction. Adult males have traditionally been less willing to seek medical help for any condition, including erectile dysfunction. Erectile dysfunction is a known predictor of other more serious disease such as diabetes and heart disease, and early detection because a patient sought medical help for erectile dysfunction may save lives. It is only recently, with the advent of phosphodiesterase - 5 inhibitors that the condition of erectile dysfunction has been adequately treated. Men can be actively encouraged to seek healthcare professional advice through the screening of disease state education.

3.3 Lilly's drug, Cialis, is in a class of prescription medicines called phosphodiesterase - 5 inhibitors used for the treatment of this disease state. Cialis is a therapeutic good listed in Schedule 4 to the Poisons Standard which means it is available by prescription only. There is no intent by the disease awareness education for men to seek this specific product. Health care

professionals may prescribe any of the current treatments (made by Lilly and other pharmaceutical companies) available for erectile dysfunction.

4. Allegation re breach of Section 2 AANA Code of Ethics

4.1 According to Section 2 of the AANA Code of Ethics, under the section titled "Receipt of complaints":

"Complaints are not forwarded to the Board if:

- (sic).
- The commercial communication complained about does not constitute an

Advertising or Marketing Communication for the purposes of one of the codes ASB administers being section 2 of the AANA Code of Ethics, the AANA Food & Beverages Advertising & Marketing Communications Code, the AANA Code for Advertising & Marketing Communications to Children or the Federal Chamber of Automotive Industries' Voluntary Code of Practice for Motor Vehicle Advertising (Codes).

- *(sic)*
- *The complaint is about highly technical issues.*
- *(sic)*
- *The complaint involves issues covered by specific industry codes, such as:*
 - a (sic);*
 - a therapeutic goods;*
 - o (sic)".*

Further, the AANA Code defines Advertising or Marketing Communication to mean: "(a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or

(b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct, but does not include Excluded Advertising or Marketing Communications"

4.2 Lilly contends that the Complaint has been incorrectly referred to the Advertising Standards Board (ASB) for the following reasons:

(a) The Communication is a disease state education awareness campaign which does not draw the attention of the public to a specific product, service, person, organisation or line of conduct and is therefore arguably not an "Advertising or Marketing Communication"

(b) The Complaint involves issues covered by a specific industry Code, namely the MA Code. The MA Code permits its disease state awareness education. The TG Act and the MA Code prohibit the promotion of prescription only products to the general public.

4.3 In the event that the ASB determines that the Communication does meet the definition of an "Advertising or Marketing Communication", Lilly submits that:

(a) Section 2.3: 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 Communication is not about sex or sexuality. Rather the Communication is about an important medical condition, erectile dysfunction. Erectile dysfunction has been linked to serious illness including diabetes and heart disease. The Communication has the important purpose of providing information, promoting awareness and educating the public about the disease and its management.

As referred to above, it is only recently that the condition of erectile dysfunction has been able to be adequately treated with the class of medicines known as phosphodiesterase 5 inhibitors. The Communication plays an important role in actively encouraging adult males to speak with their doctor about erectile dysfunction.

The Communication was rated as PG, which permits the screening of such items after an 8:30PM timeslot.

As acknowledged by the Complainant, the pictures in the Communication are not offensive. Lilly contends that the Communication deals sensitively with an important medical condition and was aired at an appropriate time to effectively reach the adult male audience.

(b) Section 2.4: Advertising or Marketing Communications to Children shall comply with the AANA 's Code of Advertising and Marketing to Children and section 2.6 of this Code shall not apply to advertisements to which the AANA 's Code of Advertising and Marketing to Children applies.

The Communication is not directed to Children so the AANA's Code of Advertising and Marketing to Children does not apply. In the event that this assumption is incorrect, we have addressed the AANA's Code of Advertising and Marketing to Children in the attachment to this letter.

*(c) Section 2.5: Advertising or Marketing Communications only use language which is appropriate in the circumstances and strong or obscene language shall be avoided
No strong or obscene language is used in the Communication. The Communication uses language which is appropriate in the context of a disease state awareness communication encouraging adult men to seek treatment from their healthcare professional for an important medical condition, erectile dysfunction. The word "erection" and hearing information about erectile dysfunction is not offensive. Any sensitivity to hearing references to ' erection' and 'erectile dysfunction ' is no greater than the sensitivity that some viewers/listeners may have in response to hearing references to breast enlargement, menstruation or incontinence made in television and radio media advertisements.*

(d) Section 2.6: Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety

Lilly submits that the Communication is aligned with community standard s. As acknowledged by the Complainant the images in the Communication are non offensive.

Community standards encourage the right of the community to seek health related information. This is supported by the fact that the MA Code, which governs the pharmaceutical industry, permits companies to carry out disease education activities to provide information, promote awareness and educate the public about health, disease and their management.

(e) Section 2.8: Advertising or Marketing Communications for food and/ beverage products shall comply with the AANA 's Food & Beverages Advertising and Marketing Code as well as to the provisions of this Code.

5. Summary

The Communication does not refer to a food or beverage. Accordingly, the AANA's Food & Beverages Advertising and Marketing Code does not apply. In the event that this assumption is incorrect, we have addressed the AANA's Food & Beverages Advertising and Marketing Code.

For the reasons outlined in the sections above, Lilly contends that the Communication is not subject to the AANA Code of Ethics and therefore has been incorrectly referred to the Advertising Standards Board. If

the AANA Code of Ethics is considered to apply, Lilly respectively submits that the Communication is in compliance with all aspects of the AANA 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 complainants' concerns that the advertisement is inappropriate as it is shown when children are watching and is for a sex related product.

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

The Board 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 the advertisement features a middle aged couple working in their garden, putting up a tent or sitting at a camp fire whilst a male voice over talks about how Eli Lilly's product could help men with erection problems.

The Board noted that whilst the word 'erection' is used frequently throughout the advertisement there are no other references to sex made, and the couple are not shown engaging in any sexual activity.

The Board noted that the advertisement has been classified PG by CAD and that the advertisement was placed in PG rated timeslots.

The Board noted that this product is legally able to be advertised and that whilst some members of the community would prefer that this product not be advertised on television the Board considered that the advertisement was very mild and not likely to be offensive to most of the community.

The Board noted that it has in the past considered complaints about similar advertisements for products of this nature and considered that in this instance the subject matter has been handled with tact and sensitivity for the relevant 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 2.3 of the Code.

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