



Case Report

1	Case Number	0192/13
2	Advertiser	Advanced Medical Institute
3	Product	Health Products
4	Type of Advertisement / media	Mail
5	Date of Determination	12/06/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

Black envelope with the words, "Medical Information for ADULTS ONLY" written in white.

Inside there is a yellow leaflet with the text, "World First! Oral Strip technology for longer lasting sex. Call or SMS 'longer' 1800 60 10 10. www.amiaustralia.com.au".

There is also an image of a couple lying in bed. The woman is covered up to her neck and the man's arm and upper chest is visible.

THE COMPLAINT

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

On Wednesday 29 May 2013 I brought the mail in to my house and my 3 year old son opened the "Yellow Mail" envelope and I let him thinking that the contents would contain harmless advertising material. He managed to open the "adults only" envelope and was exposed to what I would call soft pornographic material. The advertisement contained the words "FOR LONGER LASTING SEX". Furthermore the flyer illustrated a man and woman in a bed which has a sexual connotation and this would not have a positive impact on young children. I was absolutely angered that this has entered not only my home, but the homes of many families who have young children.

This advertising is not only inappropriate in a sexual context but has the potential to fall in to

the hands of innocent children and teenagers. The directors of AMI are morally reprehensible in taking the risk of having their sexually suggestive material enter the hands of toddlers. Moreover, this sort of sexual material should under no circumstances be delivered to the doorsteps of residents. It would be more appropriate for AMI to send their advertising material to medical practices and they could be referred by specialist doctors. A reasonable person would come to the same conclusion as I have about this disgusting scenario. Especially if they had toddlers as I do.

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 advertiser. The complainant has admitted that AMI's advertisement was distributed in an envelope which clearly stated that it was only to be opened by adults. It is therefore clear that AMI's advertisement is only targeted at consumers who are over 18 years of age and that AMI (and the Yellow Envelope) have taken reasonable steps to limit the people who see the advertisement to people who are at least 18 years of age.

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

In addition, contrary to the claim that the couple pictured in the advertisement has a sexual connotation, the woman is clearly wearing clothing and the couple are clearly lying separately and not engaged in sexual activity.

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 clear labeling of the envelope circulating the advertisement as being for adults only.

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", the phrase "Erection Problems" and the phrase "For Longer Lasting Sex". Reasonable steps have however been taken to limit access to persons who are over 18. In any event, 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 (e.g. the phrase "do it like an animal" which was used in 16211 0). Finally, we note in any event that it is unlikely that a 3 year old would be able to read and understand the advertisement.

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 AMI and the Yellow Envelope. 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 2.3 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 that the advertisement is inappropriate in a sexual context and not suitable to be delivered to home mail boxes where children could view it.

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 that the advertisement features a pamphlet inside the bulk envelope – the Yellow envelope. The outside envelope has the words "Medical Information for Adults Only" printed on it. The promotional material includes an image of a man and a woman in bed together covered by a sheet and includes the text "Worlds first! Oral Strip technology for longer lasting sex. Call or SMS longer to 1800 60 10 10. www.amiaustralia.com.au"

The Board noted that there are some members of the community who consider the promotion of this type of product is not appropriate and should not be advertised at all. The Board noted that they cannot comment on the suitability of the product itself but only on the way that it is advertised.

The Board noted that the promotional material includes text that relates to a product designed to make sexual intimacy last longer. The Board noted that they had previously considered the use of the term “longer lasting sex” and upheld the complaints (ref 278/08). The Board noted that in the instance of the billboard, the use of the language “longer lasting sex” was not appropriate for the broad audience that would very likely include children.

The Board considered that in relation to the current flyer, the advertiser has taken significant steps to ensure that the likelihood that a child would see the material is lessened by the plain envelope and the indication that the contents are suitable only for adults.

The Board noted that they had previously upheld a mail advertisement by the same advertiser (ref: 0414/09) in a sealed envelope containing advertising material addressed to ‘The Householder’. The Board noted that in that case, the advertiser had made no attempt to indicate that the content of the envelope contained material of a sexual nature whereas in the current matter, the envelope clearly indicated that the material was for “adults only”.

The Board considered that there is direct relevance of the words on the flyer to the product being advertised and that the words used are mildly sexualised due to the nature of the product. The Board considered however that the advertisement did treat the issue of sex with sensitivity to the relevant audience and did not breach section 2.4 of the Code.

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