



Case Report

1	Case Number	0192/16
2	Advertiser	Advanced Medical Institute
3	Product	Professional Service
4	Type of Advertisement / media	Billboard
5	Date of Determination	11/05/2016
6	DETERMINATION	Dismissed

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

This billboard advertisement features an image of a champagne cork popping from a bottle. The bottle is labelled 'AMI' and the text reads, "Men...Going off too quickly? Call the doctors on 1800 711 711".

THE COMPLAINT

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

Use of words going off - crass words especially when the words prompt questions from mid age children about what the ad is for. Inappropriate for a very large billboard - may be appropriate for a men/health magazine.

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 the advertisement 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 this advertisement.

Without limiting the foregoing, we note that the communications are not directed to or targeted at children. We accordingly submit that the ASB's code relating to advertising and marketing to children is not relevant.

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.

The advertisement does not use discriminatory language of any kind. It does not seek to be critical of persons in any way. We accordingly submit that the advertisement does not infringe section 2.1 of the code.

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 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 2.4 also apply to section 2.5.

As you are aware, AMI has previously commissioned an independent market research report by Galaxy Research on these issues. 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;*

This research is also supported by an analysis of online commentary in relation to these issues. For example, attached is a link to a news story that ran on ninemsn.com, that attracted nearly 200 comments from the public:

- *<http://news.ninemsn.com.au/article.aspx?id=663170&source=cmailer>*

As is evident, these responses clearly demonstrate a prevailing community acceptance of such advertising and further, alarm that the ASB feels it must censor the word 'sex' from AMI's advertisements.

While some people in the community may disagree with the word 'sex', a larger section of the community opposes the censorship of the advertising.

Also submitted are two other discussion forums from previous news stories that demonstrate similar sentiments:

- *ABC Online: <http://www.abc.net.au/news/stories/2008/08/26/2346336.htm>*
- *PerthNow: <http://www.news.com.au/perthnow/comments/0,21590,24239765-2761,00.html>*

All of these forums – with comments from hundreds of Australians – show a clear majority of community support for AMI's use of "Sex" in its public advertising.

We believe that each of these forums (and Galaxy's independent research report) clearly indicate that AMI's advertising is in line with prevailing community standards and is appropriate.

We are aware that the board has separately commissioned its own research in relation to these matters. Whilst we understand that the Board's research indicates that a section of the community do not like AMI's advertising we believe that a significant portion of these concerns are related to the size and extent of AMI's advertising rather than the content of them.

In 0419/09 the board held that the phrase "Making Love..... Do It Longer" was at the upper end of acceptability for a billboard on the basis that children would not know what 'Do It' referred to. In 0272/13 the board held by majority decision that a billboard stating "Making Love.....Make It Bigger and Last Longer" was on the other side of acceptability.

The current advertisement uses the term "Going Off Too Quickly" and a champagne bottle. The words "sex" and "love" do not appear. Whilst AMI provides treatment for sexual related medical conditions and many adults would be aware of this because of AMI's reputation, there is nothing in the advertisement which is directly related to sexuality and a child looking at the advertisement is more likely to think it relates to person's consuming too

much alcohol than thinking it relates to sex or sexual related issues.

As a result, we submit that the advertisement deals with sex much more sensitively than either the advertisement in 0419/09 or the advertisement in 0272/13 and has an appropriate level of sensitivity having regard to the audience and medium in which it has been presented. As set out above the advertisement does not contain the words “Sex”, “Love” or any other sexual related language, the advertisement does not contain any nudity and the imagery and language used on the billboard is not directly related to sex. We further note that the board has previously ruled that billboards for other advertisers containing the word ‘Sex’ have been approved by the board.

Consequently, whilst the advertisement indirectly makes an inference relating to issues of sex and sexuality, this would not be understood by young children and we accordingly submit that it does so with the appropriate level of sensitivity having regard to the audience and that there is therefore no breach of section 2.4 or section 2.5 of the Code.

For all of the reasons set out above, we submit that the advertisement does not breach section 2 of the code and that the complaint should be dismissed.

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 contains sexual material inappropriate for children to view.

The Board viewed the advertisement and noted the advertiser’s response.

The Board 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 this billboard advertisement features an image of a champagne bottle popping open and the text, “Men...Going off too quickly?”

The Board noted it had previously upheld complaints about a television advertisement by the same advertiser in case 0343/14 where the Board determined that the advertisement “ridicules men with sexual performance issues and implies that these men should be thought less of as a result of their conditions.”

In the current advertisement the Board noted the reference to men going off too quickly. The Board noted that the image of the champagne cork popping from the bottle is intended to be a visual reference to premature ejaculation and considered that given the advertiser’s services it is not inappropriate to make reference to the problem they claim to be able to help with. The Board noted the advertisement does not suggest that all men suffer from premature ejaculation, or that men who do suffer from this medical condition should be thought less of,

but rather that if you do suffer from this issue then the advertiser may be able to assist.

The Board determined that the advertisement 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 it had previously upheld a complaint about television advertisement featuring a champagne bottle popping open in case 0299/11 where:

“The Board noted the advertisement featured a champagne bottle popping between a woman’s spread legs with the cork heading towards her pubic area.

The Board considered that the visuals of the champagne flowing out of the bottle accompanied by a voice over stating, “it’s coming” were sexually explicit. The Board also considered that the depiction of the champagne cork shooting up between the woman’s open legs was a depiction which was overtly sexual.”

The Board noted that the current advertisement does not feature any men or women and considered that although the visual reference to premature ejaculation would be understood by adults in the Board’s view younger children would not understand this double entendre. The Board noted the reference to men going off too quickly and considered that this reference to premature ejaculation is not explicit and is unlikely to be understood by children.

The Board acknowledged that some members of the community would prefer that this type of product not be advertised in this manner but considered that the actual content of the advertisement was not explicitly sexual and did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience which would include children.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

The Board 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 (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided”.

The Board noted the advertisement features the text, “Men...going off too quickly” and considered that although adults would understand the double meaning in the Board’s view children would not. The Board noted the advertised service is treatment for men who suffer from premature ejaculation and considered that although the language refers to a sexual act, in the Board’s view the language used was not strong or obscene and in the context of the advertised service it was not inappropriate language.

The Board determined that the advertisement 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.

