



Case Report

1	Case Number	0219/16
2	Advertiser	Advanced Medical Institute
3	Product	Professional Service
4	Type of Advertisement / media	Radio
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 radio advertisement features a female voiceover stating that, "For most couples the fun between the sheets can last all night...But a small group of us only enjoy a few minutes of sex because of your premature problems. Boys, if you want to bring the intimacy back to the bedroom, try new oral strips from AMI. It's one easy call!"

THE COMPLAINT

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

My 6 year old and 8 year old were in car listening and wanted to know what sex was and why it should last longer and how long it lasts for, after hearing the ad. This ad is not something children should hear at a young age. Absolute disgrace.

I'm offended that on two occasions before six pm this ad was advertised on radio. That is not right for children to hear. This should be broadcasted later on in the evening not at a time of day where it should be expected that children would be listening.

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 this 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 these advertisements. 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 in relation to advertising and marketing material relating to children is not relevant to this advertisement.

We note that the advertisement does not contain any discriminatory or derogatory language. On the contrary the language is positive and encouraging.

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 2.4 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 10 years with the business 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 "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 time zone.

This particular advertisement is only evenings from Saturdays to Wednesdays (ie no Thursday or Friday broadcasts) with broadcasts on Saturdays and Sundays starting from 5pm and broadcasts on Monday to Wednesday being from 7pm.

If you look at the complaints you will see each relates to a broadcast made after 5pm on a weekend. These times have been selected to avoid key drive times (like weekday mornings and weekdays prior to 7pm) when children are more likely to be in the car. Broadcasts are also only being made on stations which have traditionally run AMI advertisements.

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 listening 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.*

While this advertisement uses the term "sex", it does so in a positive and non-confrontational way and, as set out above, most Australians do not find this term offensive. In addition, 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 162/10).

In the circumstances we submit that the advertisements treat 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 2.4 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 complainants' concerns that the advertisement features sexualised language and is not appropriate for a radio advertisement which children can hear.

The Board reviewed 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 radio advertisement features a female voiceover talking about premature problems and sex.

The Board acknowledged that some members of the community would prefer that this type of product not be advertised on the radio but considered that as the product is legally allowed to be advertised the Board can only consider the content of the advertisement.

The Board noted the advertiser's response that radio stations themselves apply certain restrictions to the advertisements for these types of adult products and that the advertisement was aired appropriately within the restrictions of the particular stations.

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 'your premature problems' and considered that the advertisement is directed at men. The Board noted that the advertisement does not suggest all men suffer from premature ejaculation and considered that the advertisement provides information for men who might need this product and does not suggest that those men are inferior to men who don't need the product.

The Board noted the reference to men as 'boys' and considered that similar to advertisements where women are referred to as 'girls' the advertisement is using a commonly used descriptor of the male gender in a manner in this advertisement which the Board considered was not demeaning of men and does not suggest that men should be thought less of.

The Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender.

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 similar complaint for a radio advertisement by the same advertiser in case 0304/15 where:

"The Board noted that this radio advertisement features a female voiceover asking if "you

would prefer average sex or mind-blowing sex, a few moments of forgettable, or passionate room shaking, show-stopping love making that lasts and lasts". She then goes on to say that you shouldn't let premature ejaculation spoil things for you and that AMI has the answer: revolutionary oral strips...

... The Board considered that while the advertisement does not use other sexually explicit language the repeated use of the word "sex" does add a level of sexualisation to the advertisement and puts the idea or notion of sex and premature ejaculation in an environment such as the family car that may then mean the subject needs to be discussed.

The Board noted that the advertisement was aired at varying times throughout the day and considered that the times provided were times that would likely include children in the car being driven to and from school and to other activities.

The Board considered that the sexualised content of the advertisement was inappropriate considering the likely audience and does not treat the issue of sex with sensitivity to the relevant audience and did breach section 2.4 of the Code."

In the current advertisement the Board noted that the advertisement makes references "longer lasting sex" and to "a few minutes of sex". The Board noted that unlike in case 0304/15 the advertisement does not use descriptions of the type of sex that can be enjoyed and considered that the references to 'longer lasting sex' and 'a few minutes of sex' are directly relevant to the nature of the product advertised.

The Board noted the advertiser's response that radio stations themselves apply certain restrictions to the advertisements for these types of adult products and that the advertisement was aired appropriately within the restrictions of the particular stations. The Board noted the advertisement had been heard after 5pm on a Saturday afternoon and considered that the content of the advertisement was not sexually explicit or inappropriate in the context of a broad listening audience which could include children.

The Board considered that the advertisement did treat the issue of 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.

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 audio, 'longer lasting sex' and '...a small group of us only enjoy a few minutes of sex because of your premature problems...' and considered that whilst some members of the community may be uncomfortable with the word 'sex' in the Board's view this word is not strong or obscene.

The Board noted the advertised service is treatment for men who suffer from premature ejaculation and considered that the language used was not inappropriate in the context of the advertised service.

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 complaints.