



Case Report

1	Case Number	0220/10
2	Advertiser	Advanced Medical Institute
3	Product	Professional services
4	Type of Advertisement / media	Radio
5	Date of Determination	26/05/2010
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.3 - Sex/sexuality/nudity Treat with sensitivity to relevant audience

DESCRIPTION OF THE ADVERTISEMENT

Female voiceover tells "guys" that they can improve their sexual performance and give their partners "something to brag about". The voiceover then goes on to say that if men are suffering from premature ejaculation or just want to improve or prolong their performance, they should SMS the word "TRY" to 1800 404080.

THE COMPLAINT

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

I have never liked any of the AMI ads. They tell listeners that intercourse is the only thing that is important and that all women are just begging for it. Now they have gone so far as to say that we all know that it's not really the prolonged intercourse that is important. What REALLY matters is that your partner will be able to brag about your stamina. I see this as a damaging image to portray. It is akin to the promotion of super-skinny models. It sets up an expectation that is stressful for the consumer and gives a very disturbing message to young people. I feel that all of the ads from AMI are designed to lower the self esteem of men and to convince them that women all want and need longer sessions of intercourse. They portray women as sex objects that are all begging for it. In summary they are offensive and degrading to everyone and give a seriously wrong message to young people.

THE ADVERTISER'S RESPONSE

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

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, NOV A and AU STEREO 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 time zone.

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 "sex" and "premature ejaculation". 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 (eg the phrase "do it like an animal" which was used in 162/10). In fact AMI believes that this advertisement is one of the milder advertisements used by it during the last 5 years.

In the circumstances we submit that the advertisement treats sex and sexuality appropriately having regard to the relevant time slot. 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 that the advertisement is inappropriate and demeaning, that it exposes children to sexual information and promotes that relationships are all about longer lasting sex.

The Board noted that it is not within its jurisdiction to consider whether the claims about the product's efficacy are truthful or not.

The Board considered the application of Section 2.1 of the Code, relating to discrimination and vilification on the basis of sex and/or disability (medical condition); Section 2.3, relating to the treatment of sex, sexuality and nudity; Section 2.5 relating to language and Section 2.6 relating to prevailing community standards on health and safety.

The Board noted that the advertiser has framed its advertising towards men with a particular medical/health issue relating to premature ejaculation. The Board noted that it has considered a number of AMI advertisements over the years with some upheld and some not. The Board noted that the product is legally able to be sold and therefore able to be advertised provided that it complies with the provisions of the Code.

The Board listened to the advertisement and noted the advertiser's response that AMI's radio advertising is confined to certain radio stations selected on the basis of their demographic audience and that more confronting advertisements are restricted to these stations and to timezones when children are less likely to be in the car with softer advertisement being run in those times.

The Board considered section 2.1 of the Code. Section 2.1 provides that: 'advertising or marketing communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.'

The Board noted that the advertisement did single out an identifiable section of the community - men experiencing premature ejaculation and considered that the tone and text, in this instance were suggestive of a positive outcome for both men and women. The Board considered that the advertisement was not denigrating and demeaning towards a section of the community experiencing or have experienced premature ejaculation. On this basis the Board determined that the advertisement did not discriminate against or vilify men who suffered from premature ejaculation and was not in breach of section 2.1 of the Code.

The Board then considered section 2.3 of the Code which specifies that: 'advertising or marketing communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant time zone.'

The Board noted that the advertisement is for a sexually related product and that mentions of sex and enhancement of sexual performance are relevant to the product. The Board noted that the advertisement raised issues of sex and sexuality that some members of the community may find inappropriate for radio broadcast at any time. The Board noted the use of the reference "can you get it right" and "giving his partner something to brag about" and considered that the use of these references to sex were mild and being euphemisms were not explicit.

The Board considered the advertisement's target audience was adult listeners and noted that programming aimed at this audience could be switched off while children were present. The Board considered that the advertisement's treatment of sex and sexuality was not inappropriate, were mild in tone and sensitive to the relevant audience. While the Board recognised that some members of the community may be offended by the discussion of certain issues relating to sexual performance in a radio advertisement, the Board determined there was no breach of Section 2.3 of the Code.

The Board then considered the application of Section 2.5 of the Code which states: 'advertising or marketing communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided. '

The Board considered the references to 'sex' and 'premature ejaculation' in the advertisement were mild and not inappropriate or obscene language. The Board determined that the advertisement does not breach Section 2.5 of the Code in relation to language.

The Board also considered section 2.6 of the Code which states: 'advertising or marketing communications shall not depict material contrary to prevailing community standards on health and safety.'

The Board considered whether the advertisement depicted material contrary to community standards on health. The Board noted the complainant's concern that the advertisement would make men feel bad if they suffer from this problem. The Board considered the advertisement could have the potential to cause undue stress but considered, in this instance, the tone and content was positive. The Board therefore determined that the advertisement was not contrary to prevailing community standards on the grounds of men's health of Section 2.6 of the Code.

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