



Case Report

1	Case Number	0236/11
2	Advertiser	Advanced Medical Institute
3	Product	Professional services
4	Type of Advertisement / media	TV
5	Date of Determination	13/07/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

A man wearing a pair of white boxer shorts goes in to his bathroom whilst a woman's voice calls out to him that he should come back to bed. The man replies that he wishes he could last longer in bed. A small, female genie then appears and says, "your wish is AMI genie's command". She then steps on to a green mint strip which floats up and lands on the man's tongue.

The voice over says, "Over 50% of men suffer from premature problems....Call or text LONGER to 1800 211 211."

THE COMPLAINT

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

Firstly, it's an ugly, offensive ad. Secondly, ads re sex dysfunction should only be aired after 10pm so children / teenagers do not see them.

The owner of this organisation is a disgraced medic who had to resort to this very sad industry for some income and promotes drugs that (according to professionals and media investigations) have never worked. He has got away with these rather pathetic little ads for years and should not be allowed to continue.

Please find enclosed a letter from Channel 7 in reply to a written complaint I made regarding the content of an advertisement as stated in the enclosed letter (AMI).

As they have explained regarding the law they are in the right.

I have taken my issue further with you because I still strongly believe this is a standards issue regarding children being able to be exposed to very unsuitable adult advertising even though the timing is within allowable times.

I am strongly formally issuing a complaint against Channel 7's programming choice and would appreciate this letter being taken as such.

I would appreciate a reply.

THE ADVERTISER'S RESPONSE

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

NRM Corporation is the new owner of AMI's business.

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 which 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 which 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 our client is 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 and do not contain any obscene or coarse language. We accordingly submit that section 2.4 of the Code is not relevant to these advertisements.

The advertisements do not use discriminatory or negative language of any kind. They do not seek to be critical of persons in any way – on the contrary the advertisement endeavours to deal with this difficult issue in a positive way.

The tone of the advertisements is positive and not disrespectful to any person. We accordingly submit that 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 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 2.3 also apply to section 2.5.

As you know, commercial television ratings guidelines have been developed by Commercials Advice Pty Ltd (CAD) to regulate the material that may be included in television programs and advertisements at different time zones and that the ratings guidelines provide detailed guidelines as to whether or not material contained within television programs and advertisements treat these issues appropriately.

It is important to note this advertisement was approved prior to broadcast by CAD. During this approval process the advertisement was given an M rating, which has been accepted and adhered to by the advertiser. The advertisement has only aired in timeslots deemed by CAD to have an M rating. This TV advertisement fully complies with the commercial television rating guidelines relating to the times at which the advertisement is run.

As you know, M rated programs are programs which are not suitable for children. As a result, the advertisement is only being shown at times when children should not be watching TV.

The timing of these programs and advertisements are generally between noon and 3pm during weekdays (excluding school holidays) and after 8.30pm. These are times when children are unlikely to be watching television as they should either be attending school (in relation to the daytime advertisements) or in bed (in relation to the night time advertisements) and the advertisements are scheduled at these times, and not run outside these times, for this very reason.

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 you are aware, AMI has previously commissioned an independent market research report by 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 "last longer in bed", "premature problems" and "longer lasting loving" and does not use the term "sex" or any other explicit phrase. AMI believes that the phrases used in these advertisements 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 162/10)

and less explicit than other TV commercials which were found by the board not to breach the code (e.g. 284/10 stepladder ad).

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 TV stations with the stations then contacting AMI and asking it to change its advertising. We note that this has not occurred.

The choice of TV 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 complainants concerns that the advertisement is in bad taste and inappropriate for viewing by children and that these products should not be advertised before 10pm.

The Board noted that some of the complaints were about the product advertised and the fact that it can be advertised on television. The Board noted that this is a product that is legally able to be advertised and at any time of the day provided that it meets the requirements of the Code.

The Board noted the complaint concerns that the product does not actually work. The Board noted that it does not have any jurisdiction to consider whether or not the claims made in an advertisement are true or not and that issue cannot be considered.

The Board noted that the advertisement is rated M which means that it is able to be broadcast between midday and 3pm on school days and after 8.30 at night. The Board noted complainants concerns that children view the advertisement during daytime television. The Board noted that the M rated time zone contains material (other than advertisements) which is targeted to a mature audience and not suitable for young children.

The Board noted that the advertisement did not portray any nudity and that the images were not overly graphic in that they did not contain any nudity or sexually explicit behaviour. The Board agreed that many people would find the advertisement tasteless however noted that the role of the Board is to consider whether the advertisement complies with the Code. Of particular relevance is whether the advertisement treats sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone. The Board noted that the M rated advertisement was broadcast in the appropriate time zones.

The Board noted that the woman dressed as a genie was not inappropriate.

The Board was of the opinion that the advertiser had treated sex, sexuality and nudity with sensitivity to the relevant audience and had taken into account the relevant programme time zone. The Board considered that in the context of prevailing community standards, the majority of people would find this advertisement tasteless or humorous but not sexually inappropriate. The Board found that the depiction did not contravene the provisions of the Code relating to the portrayal of sex, sexuality and nudity.

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