



Case Report

1	Case Number	0284/10
2	Advertiser	Advanced Medical Institute
3	Product	Professional services
4	Type of Advertisement / media	TV
5	Date of Determination	14/07/2010
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

A woman is trying to reach for a cookie jar in a cupboard but cannot reach. She calls to her husband to help. He opens his robe and she looks over him responding with with shock and awe at what she sees. She then appears to stand on his erect penis to obtain the required height to reach the jar.

THE COMPLAINT

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

This is disgusting. It should not be on TV at all

I was quite shocked to see the content of this advert. Even though this advert did not contain any nudity its content was offensive to me. I was extremely surprised to see this advertisement on during the day - it is more suited to late night television during bad movies. I found this advertisement to very tacky and in bad taste.

It was perfectly disgusting even though you couldn't see him display 'anything' on the television I find the subject matter distasteful and it should be removed immediately from television. I hope you will advise the relevant company that these types of advertisements not only cause utter offense but result in people immediately changing the channel and not watching it again.

I am a person who has a very open mind etc but I found this ad to be disrespectful to the male gender and something that just should not be aired on TV, especially in this way. Keeping in

mind it was the first day of school holidays here in NSW and a lot of children aged from 12yrs up are sitting up later for this reason. We saw the ad twice over a couple of days and both times I found it disgusting and with very little taste at all. This is an issue that needs to be addressed but not with sleazy ads like this one. I would find it hard to believe that very many people that would be comfortable with the way it was advertised. You need to think not only are younger people sitting up later these days but you also have the older generation who are not as open minded and would/do take offence to this type of ad. Like I said it's not the product that was offensive it was the way in which it was advertised that needs to be addressed.

I was absolutely disgusted. Please take this seriously. Shame on the station for viewing this dreadful advertisement. The piano ad was bad enough but this... In fact both are as bad as one another. Please do something.

I'm no prude but seriously - a woman using her bloke's erection as a stepladder? I'm actually offended.

It was an explicit advertisement which was screened during the school holidays at a relatively early time slot.

It is school holidays and we were watching tv with our teenage children. We were all stunned and disgusted with the ad and I think that it is appalling that this advertisement is allowed on at this time slot. I do not think that I am a prude but when both the adults and the teenagers in our household comment how disgraceful the ad is I feel that perhaps it is time to show our younger generation that there are still things that they should not tolerate and that there are avenues that they can use to let us have a voice.

Just not appropriate to see this on tv. It is disgusting - children do not need to see this sort of thing and neither do adults. Just the way that she stands on it - whatever next!

I have seen several variations on these type of advertisements relating to erectile dysfunction, and while I concede that it is of concern to some people in the community the issue should be between medical professionals and the person/persons concerned. It is, in my opinion, not a subject that should be made lightly of as most of the advertisements do. The appearance of these type of advertisements has been becoming more common as time goes by but this particular one is by far the most obnoxious yet.

I am not usually offended by ads I just found this one very crude and quite unnecessary.

There is a discreet and dignified way to advertise for erectile dysfunction and this ad is just tacky and disgusting. Also adding I had to explain to my daughter who was home sick for the day that she was standing on his knees. I then asked her to close her eyes everytime that ad came on. Not something I feel you should have to do for daytime tv.

I feel this is not appropriate to advertise such explicit sexual depictions on tv and the ad is seen at all times of day and night where children are exposed to it. The word to be texted to the sms reply is ""Hard"" which I find totally morally offensive.

I found this ad tasteless, crude and watching it made me cringe. Those are not images I want in my head. This ad is not appropriate to be shown on tv.

This ad is so offensive, just appalling to display such interaction between a man and women publicly. It is sexually explicit. Further, to claim that the advised product causes such a strong erection that a penis can be used as a ladder is factually inaccurate.

I found the advertisement embarrassing inappropriate and quite disgusting. These are private matters that should be dealt with discretely not made a joke of on television.

I feel this advertisement is so distasteful. The clear indication of the opening of the dressinggown and the wife using the penis as a stepladder of sorts is so repulsive it makes me want to vomit. It's bad enough having to listen to these erectile dysfunction clinic ads on the radio but to have one so in your face is appalling.

I am offended by this ad (and generally all AMI ads) because of its topic and its suggestion that is unrealistic not proven. The mention of erection problems is also offensive. I know that time slots are not under this jurisdiction but it is the school holidays and children are more likely to be watching than at other times because parents are more relaxed with bedtimes during holiday periods.

This is offensive to myself and my wife due to the very crude use of a sexual object to sell a product/service. It was shown at 9pm in Victoria but I viewed it in Mt Gambier, SA and therefore was viewed at 8.30pm. Many children are still up at this hour. The ad should preferably not be on TV at all, or put on after 11pm. however with recording/playback facilities young people can tape a show it and view the ad inadvertently the next day. I am certainly not a prude but I get very annoyed with this creeping use in prime time viewing of very sexual suggestive images to sell a sex service. A TV station should not be able to advertise a product without a business name.

I don't think that this is appropriate given the fact that we are watching a cooking show with our children. My kids thought it was very inappropriate and asked me why they were showing these kind of advertisements.

I couldn't believe my eyes when I first saw this stupid ad. I am fed up with this company's ugly ads that are very offensive to see and listen to. They have no respect for the viewers who are watching a decent TV show only to be interrupted by stupid and offensive ads. No way do I consider it a joke and it certainly is an untruthful ad in that it is impossible for someone to climb and stand on an erection. Everyday I see one of their offensive billboard signs when I drive up the road and when I am reading the paper I see their offensive ads. It is time that this company is banned from advertising in Australia.

I consider myself to be a very broadminded person and I really enjoy a bawdy joke but this was way too confronting to see this in my kitchen at lunch time. I am so pleased that my grandchildren were not with me at the time.

It is implied that as a result of using AMI's product the man is able to have an erection which his wife is then able to stand on. This is not something that needs to be illustrated in any way. While the advert is supposed to be humorous it is very insensitive, and frankly, very tasteless and offensive. I understand that AMI advertisements usually use "shock" tactics but do they really need to advertise at all? If someone is experiencing the problems that AMI treat, they will probably research treatments themselves. Are these products something that need to be advertised on TV at all?

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 2.3 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 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 does not contain any obscene or coarse language. We accordingly submit that section 2.5 of the Code is not relevant to this

advertisement, however to the extent that section 2.5 of the Code is considered to encompass general community attitude issues we refer you to our comments relating to section 21.3 of the Code below.

The advertisement does not use discriminatory language of any kind. It does not seek to be critical of persons in any way and deals with these legitimate medical problems in a positive, albeit humorous, way. In making these comments the advertisement makes an inference that people who have this condition are not uncommon and should not be embarrassed about their condition. We accordingly submit that the advertisement does not infringe section 2.1 of the code in any way.

The advertisement does not involve any dangerous activities. We accordingly submit that the advertisement does 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. The advertisement in question is only run between noon and 3pm during weekdays (excluding school holidays) and after 8:30 pm.

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 for this very reason. The company does not run advertisements between noon and 3pm during school holidays or prior to 8:30pm for this very reason.

As you know, commercial television ratings guidelines have been developed by Commercials Advice Pty Limited (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's 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 times lots 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. Consequently, whilst the advertisement portrays issues of sex and sexuality, we submit that it does so with the appropriate level of sensitivity having regard to the relevant audience ordinarily watching TV at this program time zone and that there is accordingly no breach of section 2.3 or section 2.5 of the Code.

As further evidence supporting this submission, we also enclose a copy of an independent market research report which was conducted by Galaxy Research on these issues. Galaxy Research is an independent Australian marketing research and strategy planning consultancy.

Galaxy Research's credentials are widely recognized 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 oppose 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/2008/08/2612346336.htm>
- *PerthNow:* <http://www.news.com.au/perlmow/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.

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 complainants’ concerns that the advertisement is: in bad taste; inappropriate for viewing by children; concerns a subject that should not be made lightly of; uses the word ‘hard’ which is inappropriate; and is factually inaccurate.

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 provided that it meets the requirements of the Code.

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 some 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 is suggestive of a man having a strong erection as a result of using the product. 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 did not portray any nudity and that the images were not overly graphic in that they did not expose the genitals in any way. The Board agreed that many people would find the advertisement tasteless however noted that the Board's role 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 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.