



## Case Report

1	Case Number	0304/15
2	Advertiser	Advanced Medical Institute
3	Product	Professional Service
4	Type of Advertisement / media	Radio
5	Date of Determination	12/08/2015
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

- 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 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 COMPLAINT

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

*The ad played on Fox this morning was way too far. Sex noises and descriptive voice overs. Inappropriate when children are in the car going to school. I have heard appropriate AMI ads before but this one was not okay!!!!*

### 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 negative or derogatory language. On the contrary the language is positive.*

*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 6-7 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 not broadcast from 8am to 9am or from 3pm to 5pm for these reasons.*

*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 2.3 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 features sex noises and descriptive voice overs that are inappropriate particularly for children to hear.

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

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 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 noted it had previously dismissed similar complaints against radio advertisements for the same advertiser in case 0380/14.

In case 0380/14 the Board noted that “the advertisement makes reference to love making and considered that this is not sexually explicit language or language that is inappropriate in the context of the advertised product. The Board noted that the advertisement is for a sex related product but considered that the content is relatively mild and not inappropriate for the medium or the relevant broad audience which could include children.”

In the current matter, the Board noted that some members of the community would prefer that this product was not advertised at all but considered that as the product is allowed to be advertised it was not the position of the Board to comment on the appropriateness of the product itself.

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 that in contrast to the matter mentioned above, in this advertisement the woman refers to the preference for “average sex” or “mind blowing sex.” The Board noted that although the product is a sex related product the use of the term “sex” increases the impact of the advertisement compared to the term “love making.”

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.

The Board then 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 that in relation to 'language' there are two requirements in section 2.5. The first requirement is that the language used should be appropriate in the circumstances (including appropriate for the relevant audience and medium). What is 'appropriate' is determined by considering the context of the advertisement, the product advertised, the medium used for the advertisement, the audience, and the manner in which the words are used in the advertisement.

The Board noted that the product is a sex related product and considered that it is reasonable for the advertisement to make reference to sex, although the medium in which the advertisement is broadcast will affect whether or not the use of language referring to sex is 'appropriate'.

The Board considered that the reference to ‘average sex’ or ‘mind blowing sex’ is a reference that would not be understood by younger children but that older children may understand the terms and understand that the advertisement is talking about sexual activity.

The Board considered that the language in this advertisement is not appropriate in the circumstances of a radio advertisement aired at this time of day (7.45-08.00am).

The Board considered therefore that the advertisement did not use language that was appropriate in the circumstances and that the advertisement did breach this element of Section 2.5.

The second requirement is that the advertisement should avoid language which is strong or obscene.

The Board noted that this is not a prohibition on language which is strong or obscene but rather a caution against using it - implying again that the Board should consider whether the overall context of the advertisement justifies the use of strong or obscene language.

The Board considered that in this instance, the particular wording in the advertisement was not obscene, although sex as a topic is something that some members of the community consider strong.

The Board considered that the term 'sex' is language that most people in the community would consider is inappropriate but that it is not strong or obscene. The Board determined that the advertisement complied with this element of section 2.5.

The Board noted the term "premature ejaculation" is a medical condition or term that is related to sexual activity but is not of itself language that is sexually explicit, strong or obscene.

On balance, the Board determined that the advertisement did breach Section 2.5 of the Code. Finding that the advertisement did breach section 2.4 and section 2.5 of the Code, the Board upheld the complaint.

## **THE ADVERTISER'S RESPONSE TO DETERMINATION**

The advertiser confirmed the advertisement has been discontinued.