



Case Report

1	Case Number	0343/14
2	Advertiser	Advanced Medical Institute
3	Product	Professional Service
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	10/09/2014
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

We see different women announce to their partners whilst in bed that they are not happy with their partners' PE problems any more before getting out of bed and standing on their balconies in their lingerie to shout out that they can't take it any more. We then see a man with a megaphone shout to the women that instead of being mad they should check out AMI's treatment options for PE.

THE COMPLAINT

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

In my personal opinion this advert is sexist, derogatory, emasculating and projects unacceptable and reprehensible behaviour on behalf of the female partners. Premature ejaculation is an emotionally and psychologically sensitive matter and the degradation of the male partners in this ad projects the message that it is ok to yell, scream and demand "better performance" and projects a complete disregard and dismissal of a man's psychological and emotional wellbeing. It is - in short - disgusting behaviour and clearly that is, indeed, not the answer to the problem they are referring to.

My son is sick with the flu so he is laying on the lounge watching TV and I was making a coffee and my son asked why someone would want longer lasting sex. HE IS 8.

I have also seen billboards and other adds from the same company and I do not think it is appropriate for my children aged 13 to 8 years old talking about why can't women have sex for Long and talking about sex AT ALL.

I understand that this sort of thing is for some reason required because some men actually do have a problem but why should my sons be forced to think about this sort of thing at such a young age. This is not expectable. There is no adds about being a homosexuals or a heterosexuals and their sexuality. No Advertisements about condoms.

What about genital warts. Or AIDS. Or any other sexually transmitted disease. Even though those subjects are important. And it would be a good idea to raise people's awareness on the subjects as. They would be able to raise awareness about STD's more effectively if they did use TV or radio. But they don't. Why? Because it is not appropriate to fill the heads of children from the ages of birth to 16 years old with that. Because they shouldn't have to think about that. So if raising awareness about std's is not appropriate then how the heck is this add. I'm not stopping here because we see it on billboards. Hear it on the radio. And see it on TV also if you have airdrop advertisements turned on your smart device (And most people do because 99% of people don't know it's there or how to turn it off). All you have to do is walk past a certain shop or billboard and all of a sudden you have an ad for it popping up on your smart device and how many children use smart phones these days. Millions. So there forced to watch the ads and forced to listen to them and read them. There force fed the stuff. THIS ADD HAS BEEN ON FIR LONG ENOUGH AND EVERYONE KNOWS ABOUT IT. NOW TURN IT OFF

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 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 2.4 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 relating to advertising and marketing to children is not relevant.

The advertisements do not use discriminatory language of any kind. They also do not seek to be critical of persons in any way - on the contrary the advertisements endeavour to deal with this difficult issue in a positive way.

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.

The advertisement is broadcast during shows which have an appropriate rating and which contain adult content and which often have sexual references and language.

The advertisement is accordingly clearly targeted at and limited to age appropriate demographics.

Whilst AMI acknowledges that some members of the community do not like AMI's advertisements, we believe that the advertisement complies with the code by treating sex and sexuality sensitively having regard to the relevant audience taking into account the time of broadcast and the shows in which it is broadcast.

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 "PE" and "lasting longer". The advertisement does not use the term "sex" and does not contain any nudity. AMI believes that the phrases used in this advertisement are some of the least confronting used by AMI in its advertisements. They are also significantly less confronting than phrases used in 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 place and manner of broadcast including the rating of the shows in which they are run. We further note that it appears that only a few complaints have been received in relation to this advertisement and that there does not appear to be widespread complaints about it.

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 is sexist towards men in the way the women treat their partners who have performance issues, and that the sexual content of the advertisement is inappropriate for viewing by children.

The Board viewed 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 the advertisement features women expressing their frustration at their partners' performance issues in bed.

The Board noted it had previously dismissed a similar advertisement for the same advertiser (0296/14) where:

"The Board noted that the advertisement refers to using the product to assist men with the sensitive matter of sexual performance but it is presented in a factual way and is not suggesting that men who may suffer from this are inferior to those who don't.

The Board noted it had previously dismissed a similar advertisement for the same advertiser (0145/13) and similar to that case the Board considered that although some people may consider the discussion of a man's erectile dysfunction to be inappropriate or demeaning, the overall content of the advertisement does not amount to material that is discriminatory of any people with a disability or to a particular identifiable group of men and did not breach section 2.1 of the Code."

The Board noted it had also previously upheld an advertisement for the same advertiser in case 418/09 where:

"The Board noted that the advertisement was quite explicit in its referring to longer lasting sex and having trouble maintaining an erection. The Board noted that there was a woman's voice broadcast at the end of the advertisement which said in a tone of disapproval: "is that it"

by implication referring to whether or not a man reaches sexual climax before his partner. The Board considered this was potentially demeaning towards a section of the community who had experienced issues with premature ejaculation.

The Board considered the requirements for discrimination and vilification. In particular the Board considered that this advertisement did single out an identifiable section of the community – men experiencing premature ejaculation or having trouble sustaining an erection. In relation to this section of the community the Board considered that the tone and text of the advertisement (in particular the woman's apparent frustration) were suggestive of intolerance towards those men. The Board considered that the current advertisement was potentially denigrating and demeaning towards a section of the community who are experiencing or have experienced premature ejaculation or trouble sustaining an erection and potentially go beyond light humour to suggesting ridicule or contempt for this group of men. On this basis the Board determined that the advertisement did discriminate against or vilify men who suffered from premature ejaculation in breach of section 2.1 of the Code.”

In the current advertisement the Board noted that the women are vocal in their disappointment with their partners' sexual performances.

A minority of the Board considered that the advertisement does not suggest that all men suffer from premature ejaculation or that those men who do suffer from it are inferior to those who don't and considered that whilst some members of the community may prefer for this subject matter to not be used in an advertisement in the Board's view it does not discriminate against or vilify a section of the community on account of their gender or medical condition. However, the Majority of the Board considered that the advertisement was similar in impact to 418/09. The Majority of the Board considered that the advertisement does single out an identifiable section of the community and that the women's attitudes of being unhappy with their partners, the tone and language they use and their behaviour in shouting their frustrations from their balconies amounts to a depiction which ridicules men with sexual performance issues and implies that these men should be thought less of as a result of their conditions.

The majority of the Board considered that the advertisement did portray or depict material in a way which discriminates against or vilifies a person or section of the community and determined that the advertisement did 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 the complainants' concerns that sexual references such as those in the advertisement are not appropriate for television advertisements that can be seen by children. The Board noted that the product is a sex related product and that the references to sexual activity used in the advertisement includes statements such as ‘PE problems’, ‘longer lasting performance’, and ‘last longer’. The Board considered that these statements are relatively mild and handle the issue of sexual performance in a manner which is discrete and factual.

The Board noted that the advertisement includes images of the couples in bed and considered that these depictions are not sexually explicit and that when the women leave their beds to stand in their lingerie on their balconies they are not depicted in a sexualised manner and the level of nudity is relatively mild.

The Board noted that the overall tone of the advertisement is mature and clearly aimed at adults and considered that the advertisement would not be of appeal to a young audience. The Board noted the advertiser's response that the advertisement has been rated ‘M’ by CAD and considered that consistent with previous determinations against similar advertisements for sex related products (0266/12, 0331/12, 0158/13) the advertisement did treat the issue of

sex, sexuality and nudity with sensitivity to the relevant 'M' audience which should not include young children.

The Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and did not breach Section 2.4 of the Code.

Finding that the advertisement did breach Section 2.1 of the Code the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

The client is in the process of replacing the advertisement with an alternative advertisement.