



Case Report

1	Case Number	0350/12
2	Advertiser	Advanced Medical Institute
3	Product	Professional services
4	Type of Advertisement / media	Transport
5	Date of Determination	22/08/2012
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

Writing on the side of a car which reads, "Want Longer Lasting Sex. Call or SMS Oral Strip to 1800 511 511". The car is yellow and the writing is in bold red and black text.

THE COMPLAINT

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

It is not appropriate for young children to have to read things that aren't relevant for them or for their parents to have to try and explain to them before their time what this word means, let alone why it needs to last longer! Sex education should not be taking place when they are just learning to read.

They are also driving around in three yellow cars one behind the other brazenly advertising it also.

We are all wondering why the young are losing their morals and showing such disrespect but it is the next generation above them that is dragging us into the gutter.

THE ADVERTISER'S RESPONSE

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

As you know, NRM Corporation is the new owner of AMI's business.

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 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 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 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 2.5 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 2.3 of the Code below.

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.

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 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.

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.

As you are aware, AMI has previously commissioned an independent market research report by Galaxy Research on these issues. 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;

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.nine11sn.com.au/article.aspx?id-663170&source-cmailcr>

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 opposes 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/2008/08/26/2346336.htm>

• PerthNow: <http://www.news.com.au/perthnow/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.

We are aware that the board has separately commissioned its own research in relation to these matters. Whilst we understand that the Board's research indicates that a section of the community do not like AMI's advertising we believe that a significant portion of these concerns are related to the size and extent of AMI's advertising rather than the content of them.

As a result, we submit that whilst the advertisement might be considered to portray issues of sex and sexuality, we submit that it does so with the appropriate level of sensitivity having regard to the audience and medium in which it has been presented. In particular, we note that the advertisement does not contain any nudity and we believe that the imagery and language used on the cards is conservative and appropriate for the market in which it appears.

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 audience and that there is accordingly no breach of section 2.3 or section 2.5 of the Code.

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 complainants' concerns that the advertisement raises the issue of sex to children and is offensive and inappropriate for outdoor display.

The Board viewed the advertisement and noted the advertiser's response.

The Board noted that some of the level of concern about the advertisement is concern over the product and the fact that it can be advertised. The Board stated that this issue has to be

separated from the content of the advertisement as it is not an issue that is within the jurisdiction of the Board. The Board noted that the advertiser is currently able to advertise their product, provided that such advertisements are within the Code.

The Board 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 it had previously upheld complaints about advertisements containing the phrase "longer lasting sex" in outdoor media (case reference 0278/08) and in print media through mail box drops (case reference 414/09).

The Board considered that the placement, size, and bold colours of the current advertisement do make the advertisement very visible and the nature of the advertisement (covering a car in a convoy of identically covered cars) makes it available to a broad community which would include children. The Board noted that recent research on community standards (ASB Community Perceptions 2012) which was undertaken by Colmar Brunton Social Research earlier this year indicated that the community is more conservative regarding advertising relating to sex, sexuality and nudity particularly where children may be exposed to such advertising.

The Board considered that consistent with its previous determinations in cases 278/08 and 414/09, the phrase "longer lasting sex" is not medical or clinical but is a blatant message about the sexual act and is a message which is not appropriate for a broad audience.

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

The Board also considered 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 the reference to 'language' is a reference to all of the words and phrases used in the advertisement and takes into account actual and implied meanings of the words and phrases.

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. 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 displayed will affect whether or not the use of language suggestive of sex is 'appropriate'.

The Board considered that the reference to longer lasting 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 referring to sex. The Board considered that the language in this advertisement is not appropriate in the circumstances of a mobile, transport advertisement and large attention grabbing format.

The Board considered 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 on the vehicle was not obscene, although the allusion to sex is a topic that some members of the community consider strong. The Board considered that the phrase 'longer lasting 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 determined that the advertisement did breach Section 2.5 of the Code.

Finding that the advertisement breached Sections 2.4 and 2.5 of the Code, the Board upheld the complaints.

ADVERTISER RESPONSE TO DETERMINATION

AMI have complied with the Board's findings and have covered the word, "Sex" with a sticker reading, "censored" as an interim solution.