



ADVERTISING
STANDARDS
BUREAU

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Case Report

1	Case Number	0419/13
2	Advertiser	Menarini
3	Product	Health Products
4	Type of Advertisement / media	Print
5	Date of Determination	11/12/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

This is a full page print advertisement of a medical condition awareness and education program printed in the Good Weekend (SMH, November 9, 2013, pg 30). The advertisement shows a couple in an acro-yoga pose on a bed which is made. The man wears shorts and the woman wears a bikini-style top and bottom.

The text on the advertisement specifically refers to a medical condition and provides scientific reference to the fact that this condition has been shown to affect up to 1 in 3 men. The text directs the relevant audience to contact their doctor for more information.

THE COMPLAINT

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

I object to the selling of adults only services and products in an easily accessible publication, as my daughters age 13 and 10 read this magazine. Completely inappropriate way for young people to be 'educated' before they have the maturity to understand the context, meaning and implications of the advertisement. As a teacher I believe this publication is out of step with parental and community standards in this regard.

THE ADVERTISER'S RESPONSE

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

RE: Complaint reference number: 0419/13; Advertiser: Menarini

We are in receipt of your letter dated 22 November 2013, in which you inform us of a complaint received by the Advertising Bureau about one of our advertisements.

A.Menarini Australia Pty Ltd (Menarini) would like to express its regret that an advertisement aimed purely at increasing awareness of an important health-related matter in our community has caused concern to the complainant. Menarini is an ethical company that abides by several Codes of Conduct, including The Therapeutic Goods Advertising Code (TGAC) and the Medicines Australia Code of Conduct (MACoC), to ensure the provision of accurate and balanced information in an ethical and respectful manner. As such, the company has rigorous internal review protocols and procedures, undertaken by trained staff, who are also members of the same community as the complainant.

Below we provide information as requested in your letter, we address concerns raised by the complainant, and we also address all sections of the AANA. We also reference other relevant Codes where appropriate.

The text on the advertisement specifically refers to a medical condition and provides scientific reference to the fact that this condition has been shown to affect up to 1 in 3 men. The text directs the relevant audience to contact their doctor for more information. Again, there is nothing suggestive, distasteful or offensive in the text.

Both the advertisement and the text have been prepared in compliance with the requirements of the TGAC and the MACoC for the provision of information on medical condition awareness and education.

The advertisement subject to this complaint was submitted to Fairfax in accordance with their advertising Terms and Conditions: <http://adcentre.com.au/fairfax-advertising-terms/> We specifically point out the following section of the Fairfax Terms and Conditions:

2. Right to Refuse Advertising

2.1 Neither these Terms nor any written or verbal quotation by Fairfax represents an agreement to publish Advertising. An agreement will only be formed between Fairfax and Customer when Fairfax accepts the Advertising in writing or generates a tax invoice for that Advertising.

2.2 Fairfax reserves the right to refuse or withdraw from publication any Advertising at any time without giving reasons (even if the Advertising has previously been published by Fairfax).

At no time did McCann Healthcare, PHD, or Menarini receive any communication from Fairfax that the submitted advertisement was not acceptable for publication.

In view of the fact that Fairfax proceeded with publication of the advertisement indicated to McCann Healthcare, PHD and to Menarini that the advertisement and subject matter were suitable for publication.

Response to Complaint:

AANA Code Sections – Section 1:

Whilst the complaint is not a competitor complaint we address the following:

1.1 The information provided in this advertisement has been done so in good faith to comply with relevant Commonwealth and State law, in addition to the requirements of the TGAC and the MACoC for medical condition awareness and education. The information refers to a condition which has been scientifically shown to affect up to 1 in 3 men. The information refers to the fact that effective treatment options are available and relevant individuals are encouraged to seek further information from their doctor and from the relevant website.

1.2 *The information provided is not misleading or deceptive or likely to be misleading or deceptive as it is factual and scientifically referenced. The information refers to an established and identified medical condition that has been scientifically shown in extensive clinical research to affect up to 1 in 3 men, and this statistic is established in peer-reviewed and published scientific and medical literature.*

1.3 *The information provided does not refer to competitors. Reference is made to “treatment options” and the reader is encouraged to speak to their doctor for more information.*

1.4 *The information provided does not exploit community concerns in relation to protecting the environment, and makes no reference to the environment in any way. The subject matter is related to medical condition awareness and education.*

1.5 *The information provided does not make claims about the Australian origin or content of products advertised in a manner which is misleading, and in fact makes no reference to any product or the content thereof. The subject matter is related to a medical condition awareness and education.*

AANA Code Sections – Section 2:

2.1 *The information provided does not portray people 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 information provided refers to a medical condition which has been scientifically shown to affect up to 1 in 3 men, and refers to the fact that effective treatment options are available. The information is provided in accordance with the TGAC and the MACoC, and educates affected individuals that information and assistance is available by speaking to a doctor and referring to the relevant website.

It is common for many men not to speak freely about their health, and especially about sensitive health-related matters. The advertisement is aimed at de-stigmatising men’s health-related matters and empowering men to feel comfortable about talking to their doctor. The information therefore has the intention of supporting relevant members of the community to seek appropriate medical information and assistance.

2.2 *The information provided does not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people. The information in fact shows a couple in an acro-yoga pose in an environment related to the subject matter and which is presented in a tasteful, non-sexual and sensitive manner so not to cause offense or be seen to be disrespectful to community standards or to men affected by this condition.*

2.3 *The information provided does not present or portray violence in any way whatsoever. The subject matter is related to medical condition awareness and education.*

2.4 *The information provided treats sex, sexuality and nudity with upmost sensitivity, and completely within the context relevant to the medical condition referred to and to the relevant audience. The information provided refers to the medical condition as it is known in the medical literature, it provides reference to the scientifically established frequency of occurrence of the condition, and it directs the relevant audience to seek further information by speaking to their doctor. The visuals are relevant to the subject matter and portray a dressed couple, in a tasteful and relevant environment. The visuals treat the subject matter, the depicted individuals, and the readers in a tasteful, factual and sensitive manner.*

2.5 *The information provided uses language which is appropriate in the circumstances (including appropriate for the relevant audience and medium) and is not strong or obscene in any way. The language used describes a medical condition as it is referred to in medical literature, by healthcare professionals and by the community. It is not euphemistic, insensitive, distasteful or inappropriate in any way. It is factual, relevant and appropriate, describing the medical condition as it is known.*

2.6 *The information provided does not depict material contrary to Prevailing Community Standards on health and safety. The material in fact raises awareness of a medical condition affecting up to 1 in 3 men, and educates men that assistance and information are available by talking to their doctor. The information is provided as required by the TGAC and the MACoC. Other Codes – Section 3:*

3.1 *The information provided is not aimed at children and is published in a magazine aimed at adult readership.*

We are informed by the media buyer that the total readership of this publication is 1,441,000 – of which, 1.9% of the readers are <18 years of age (see Attachment 2 – GW Readership Data).

A review of the subject matter in the SMH Good Weekend on the day (November 9, 2013) the advertisement the subject of this complaint appears, shows adjacent articles on page 31 covering: middle-aged, middle-class alcoholic mothers; adult products such as handbags and facials; and a restaurant featuring wine service; reinforcing the adult nature of this publication (see Attachment 3 – Adult Themes).

The primarily adult nature of this publication is again reinforced when one further reviews this same November 9, 2013 edition.

- *Page 10 includes an article entitled, “White women can’t rap” and shows a young topless girl with hair falling over both breasts (see Attachment 4 – Topless Girl)*
- *Page 16 shows a photo of two adult male boxers in a violent pose as part of an article entitled “The hitman” (see Attachment 5 – Violence)*
- *Page 18 provides an article on the excommunication of a catholic priest because of his support of the ordination of women (see Attachment 6 – Adult Themes)*
- *Page 22 covers an article on “The lost town” and displays the headlines “Break and enter. Sexual assault. Arson...” (Attachment 7 – Adult Themes)*

It is clear that the subject matter in toto in this magazine is likely to be considered appropriate for children, and certainly not without parental guidance and explanation. It is can therefore be considered selective and inappropriate to identify one advertisement in this publication as “...selling of adult only services...in an easily accessible publication...”.

3.2 *This section is not applicable as the information provided is not related to motor vehicles.*

3.3 *This section is not applicable as the information provided is not related to food or beverages.*

Other Codes – the Medicines Australia Code of Conduct:

The Medicines Australia Code of Conduct at 13.7 states:

13.7 Disease Education Activities in Any Media

Disease education activities may provide information, promote awareness and educate the public about health, disease and their management.

13.7.1 *Activities must not include any reference to a specific prescription product. The promotion of products covered by the Code of Conduct to the general public via disease education activities would breach Section 13.3 of the Code and the Commonwealth Therapeutic Goods legislation which stipulates that prescription products must not be promoted to the general public.*

13.7.2 *A disease education activity may make reference to the availability of different treatment options (which may include a range of prescription products/classes and/or alternative treatments such as surgery or over the counter products) but this should not be of such a nature that an individual would be encouraged to seek a prescription for a prescription only product.*

13.7.3 *The emphasis of the disease education activity should be on the condition and its recognition rather than on the treatment options. The appropriate treatment for an individual patient is for the healthcare professional to decide in consultation with the patient.*

13.7.4 A disease education activity should cover the key characteristics of the disease. It should ensure that the impact/implications of the disease are realistically conveyed without being alarmist.

13.7.5 If discussed, management options should be presented in a comprehensive, balanced and fair manner that does not unduly emphasise particular options or the need to seek treatment.

13.7.6 The language used should be designed to convey key messages clearly, supported by appropriate design and formatting appropriate for the intended audience.

13.7.7 The name of the pharmaceutical company must be identified on any disease education activity but should not be given prominence.

The advertisement complies with each of the sections stated above as the information contained in the advertisement:

13.7 promotes awareness about a medical condition and its management

13.7.1 no reference is made to a prescription product or any product at all, but only to effective treatments

13.7.2 reference is only made to speaking to a doctor about treatments

13.7.3 the emphasis is on the condition, that something can be done about it, and that information should be sought from a doctor

13.7.4 only the condition, its occurrence and where to seek information are referred to

13.7.5 reference is made to speaking to a doctor for management options

13.7.6 the language used refers to the condition as it is known in medical literature, by the community and is factual and accurate, and not euphemistic or colloquial

13.7.7 – the name of the company is referenced as required.

In summary, whilst we are fully respectful of the complainant's concern about his children reading the SMH Good Weekend, we equally respectfully point out that this is a primarily adult publication, and in reading such a publication children will be exposed to subject matter with Adult Themes that will require parental guidance and explanation, should that publication be made available or accessible to children.

Menarini again expresses its regret that an advertisement aimed purely at increasing awareness and education of an important health-related matter in our community has caused concern for the complainant.

Menarini does however believe that the information provided in its advertisement is scientifically and medically factual, and respectful of the medical condition it raises awareness of and educates about, and is reflective of a high level of respect and sensitivity for community standards and ethics.

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 contains adult material that is inappropriate for viewing by children.

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

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 the advertisement features a man and a woman on a bed. The woman is being held by the man above him in a 'yoga like' pose. The couple are covered by their underwear. The text next to the image describes the product that is for men to assist with premature ejaculation.

The Board noted that the advertisement is for a sex-related product and considered that a reference to sex in an advertisement for a sex-related product was not inappropriate. The Board noted that the advertisement is specifically for a product to assist with premature ejaculation and that references to this matter provided in a clinical and matter-of-fact way was not overtly sexual in nature.

The Board noted that the couple are not naked and that the lighting in the room and the neat presentation of the bed limits the sexualised nature of the image and the text combined and the reference to "control" in the bedroom is related to the image of yoga and not blatantly sexual.

The Board noted that this advertisement is in a publication within the Sydney Morning Herald and although children and young adults may have access to this publication, the overall newspaper and additional material is not of principal appeal to children.

The Board noted that it had previously considered many advertisements for advertisements for similar products for the Advanced Medical Institute and in particular a print advertisement (ref: 0340/10) where the Board considered that

"whilst this advertisement could bring the issue of sex before children, the placement of the advertisement within the classified section of the newspaper would mean the advertisement should not be immediately available to children."

Although not in a classified section as above, the Board considered that in this case, the image of yoga in conjunction with the factual text did not amount to an image that was sexualised and that it did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach Section 2.4 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaints.

