



Case Report

1	Case Number	0476/14
2	Advertiser	Advanced Medical Institute
3	Product	Professional Service
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	26/11/2014
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

Complainant's description: Depicts three separate couples in bed and the women get out of bed and are seen yelling from the balcony about the men's lack of performance.

THE COMPLAINT

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

Have seen this advert 3 times between 11.15pm-11.30pm which I find absolutely unacceptable.

inappropriate and crude. Can be advertised more tastefully and not so early. Watching this in front of 13 year old is uncomfortable especially during a family movie. Commercials such as these refrain our kids from spending time in front of the tv or leaving embarrassed at watching this content with us. We were watching the man in the iron mask.

I'm my opinion the add implies that the men are at fault over a very serious physical and psychological issue

THE ADVERTISER'S RESPONSE

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

This advertisement is a modified version of the advertisement the subject of determination 0343/14.

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*
- 1. 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 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. It is predominantly broadcast between midnight and dawn with some limited airing between 9:30pm and midnight during appropriately rated and themed shows as set out in the attached broadcast schedule. These shows are aimed at adults and usually have an adult theme.

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 tie 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.

We note that the board found that 0343/14 discriminated against or vilified a part of the community in that the tone and language used in the advertisement was suggestive of intolerance. The current advertisement is a significantly toned down version of the prior advertisement. The ad is not seeking to be critical of persons in any way - on the contrary it is trying to encourage people to seek assistance for this important issue. The advertisement is broadcast during shows like "Two and a Half Men", "Anger Management", "Big Brother", "Sex and the City", "Embarrassing Bodies" and "Rude Tube" which use language and sexual innuendo (or outright sexuality) in a much more confronting and fundamentally less sensitive manner than this advertisement. The material used in those shows is much more confrontational and significantly more discriminatory than the terminology and language used in this advertisement. The term vilification is defined to mean to defame or slander. We submit that the modified advertisement does not vilify or discriminate against any person.

We accordingly submit that the advertisements do not infringe section 2.1 of the code in any way.

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 as

it implies men are at fault over a serious physical and psychological issue.

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 is a modified version of a previously upheld advertisement for the same advertiser (ref: 0343/14) and features women expressing their frustration at their partners' performance issues in bed and then getting out of bed to broadly announce these frustrations from the balcony.

The Board noted that some people may consider the discussion of a man's erectile dysfunction to be inappropriate and that the product should not be allowed to be advertised. The Board noted that the product is legally allowed to be advertised and that the matter of product suitability is not a matter for the Board.

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.

“The Board noted it had previously dismissed an advertisement for the same advertiser (0296/14) and 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”.

In the current advertisement the Board noted that the women are vocal in their disappointment with their partners' sexual performances and considered that the tone and text of the advertisement (in particular each woman's apparent frustration) were suggestive of intolerance towards these men.

The Board considered that the advertisement was not sufficiently different in impact to the previously upheld case 0343/14. 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 to their partners and 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 condition.

Consistent with its previous decision in the original version of this advertisement, the Board considered that the current advertisement was denigrating and demeaning towards a section of the community who are experiencing or have experienced premature ejaculation or trouble sustaining an erection and it goes 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.”

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 the product is a sex related product and that the references to sexual activity used in the advertisement includes statements such as ‘take control’, ‘last longer’ and ‘get help with premature ejaculation problems.’ 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

This advertisement has been discontinued.