



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0478/10</b>
<b>2</b>	<b>Advertiser</b>	<b>Advanced Medical Institute</b>
<b>3</b>	<b>Product</b>	<b>Health Products</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Radio</b>
<b>5</b>	<b>Date of Determination</b>	<b>24/11/2010</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

- 2.6 - Health and Safety      within prevailing Community Standards  
2.3 - Sex/sexuality/nudity      Treat with sensitivity to relevant audience

### DESCRIPTION OF THE ADVERTISEMENT

Radio ad with voiceover that describes how the doctors at Advanced Medical are famous for helping men to last longer in lovemaking. What you don't know is how they could help you to get your partner to say, "yes" more often. After all, what's the point of trying to fix your erectile problem if the love of your life is still saying no? To find out how to turn her "no" into a "yes", call 1800 60 60 60, and find the key to having a satisfying bedroom partner. That's 1800 60 60 60, 1800 60 60 60.

### THE COMPLAINT

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

*This company is stating use our methods and by implication their drugs and change "your loved ones" decline for sexual activity into assent. In our community No should mean No. We should never have that it is even remotely OK to use drugs or other manipulations to change a decline of sexual activity into assent whether you are in a loving relationship or not. I find that this ad is is disrespectful of women and their rights to say no in respect to sexual activities.*

### 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 2.3 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 our client is 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. We accordingly submit that section 2.4 of the Code is not relevant to this advertisement. The advertisement does not use discriminatory language of any kind and the tone of the advertisement is encouraging rather than negative. It does not seek to be critical of persons suffering from this problem - on the contrary the advertisements endeavours to deal with this difficult issue in a positive way. We accordingly submit that the advertisement and associated material does not infringe section 2.1 of the code in any way and is in fact encouraging men to deal with women positively and meaningfully.*

*The advertisement does not contain any statements which are factually inaccurate or which involves any dangerous activities. We accordingly submit that the advertisement does not infringe section 2.6 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. Section 2.5 of the code requires that advertisements not contain strong or obscene language and that the advertisement use language which is appropriate in the circumstances.*

*The advertisement does 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 2.3 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 4-5 years with the Company 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, NOV A and AUSTereo do not permit the use of phrases like "premature ejaculation", "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.*

*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 in the car 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.*

*This particular advertisement uses the phrase "premature ejaculation" and does not use the term "sex" or any other more explicit phrase. AMI believes that the phrases used in the 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 advertisement treats 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 and that only one complaint has been received.*

*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 is disrespectful towards woman as it implies their right to say no to sex should be taken away through the use of drugs.

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

The Board noted that it is not within its jurisdiction to consider whether the claims about the product's efficacy are truthful or not.

The Board noted that it has considered a number of AMI advertisements over the years with some upheld and some not. The Board noted that the product is legally able to be sold and therefore able to be advertised provided that it complies with the provisions of the Code.

The Board considered whether the advertisement was in breach of section 2.3 of the Code. Section 2.3 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone".

The Board noted that the advertisement is for a sexually related product and that mentions of sex and enhancement of sexual performance are relevant to the product. The Board noted that the advertisement raised issues of sex and sexuality that some members of the community may find inappropriate for radio broadcast at any time.

The Board considered the advertisement's target audience was adult listeners and noted that programming aimed at this audience could be switched off while children were present. The Board considered that the advertisement's treatment of sex and sexuality was not inappropriate, was mild in tone and sensitive to the relevant audience. While the Board recognised that some members of the community may be offended by the discussion of

certain issues relating to sexual performance in a radio advertisement, the Board determined there was no breach of Section 2.3 of the Code.

The Board also considered whether or not the advertisement complied with section 2.2 of the Code which requires that ‘advertising or marketing communications shall not portray violence unless it is justifiable in the context of the product or service advertised.’ The Board noted that the theme of the advertisement was turning a female’s no into a yes when it came to lovemaking. The Board considered that the intent of the advertisement was to promote a solution for a woman’s lack of interest in sex. The Board noted that the advertisement was not encouraging or forcing a woman to change her mind about sex, and considered that most members of the community would understand this advertisement to be offering a solution to a potential lack of libido and that it is not suggesting that women should not have rights when it comes to sex. The Board considered that the advertisement did not suggest non-consensual sex, was not suggestive of violence and did not breach section 2.2 of the Code.

The Board also considered whether the advertisement complied with section 2.1 of the Code which prohibits discrimination or vilification of people or a section of the community on the basis of a disability. The Board noted that this advertisement is directed to men with a sexual dysfunction condition and that it does target men with a condition and their partners. The Board considered that this particular advertisement suggests that men can obtain assistance with their product and that, in doing so, the advertisement does not demean or ridicule the target audience. The Board considered that this advertisement was not demeaning or vilifying of men and did not breach section 2.1 of the Code.

The Board then considered whether the advertisement was in breach of section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”. Although the advertisement does encourage men to seek assistance if they have the relevant sexual dysfunction, the Board considered that the advertisement made this suggestion in a manner that would not be likely to result in men feeling worse about themselves or intensifying their condition. The Board determined that the advertisement did not depict material contrary to prevailing community standards on health and safety around men’s health issues and did not breach section 2.6 of the Code.

The Board carefully considered the language in this advertisement noting that, as it is a sexual dysfunction or enhancement related product, the nature of the product means that some sexualized language or reference to sexual terms is appropriate. The Board considered that the language in this particular advertisement was appropriate, was not strong or obscene and did not breach section 2.5 of the Code.

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

