



Case Report

1	Case Number	0493/15
2	Advertiser	Advanced Medical Institute
3	Product	Professional Service
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	20/01/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.5 - Language Inappropriate language

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on a man and woman lying in bed. The woman has her back to the man and the man looks worried about something. A male voiceover says, "If you're a guy with premature ejaculation seek medical help - don't turn away". We then see a different couple sitting up in bed and embracing while text appears on screen which reads, "You could enjoy longer lasting sex". The voiceover then continues to say that you can call the doctors at AMI for a free consultation on 1800 211 311.

THE COMPLAINT

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

*I object to the timing of an advertisement at 5:58 in the morning that contains explicit language. At this time of the morning most families are hoping to watch the news and not broach the subject of "what is sex?" with their young children.
My 11 year old daughter was extremely offended to have exposure to the longer lasting sex advertising as she waited for Saturday Disney, as was I to hear that she had seen this as I briefly left the room. My complaint is specifically concerned with the timing of this advertising which fails to consider the rights of children. Parents also do not anticipate that such content is on prior to a children's show during daylight hours. I hope that many other parents respond as many hundreds if not thousands of children would have felt the distress that my child felt on being exposed to the advertising at this time of DAY.*

THE ADVERTISER'S RESPONSE

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

The TV advertisement has CAD approval.

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 2.4 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 this advertisement. 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 advertisement does 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 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 2.4 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. AMI contracts with networks to broadcast the advertisement from 10:30pm to 2am during appropriately rated and themed shows. Occasionally the network provides bonus broadcasts of the

advertisement timed from 10:30pm to 5:45am, also during appropriately rated and themed shows.

These times permit broadcast of M rated advertisements. These shows are aimed at adults and usually have an adult theme. The complaint which has been made relates to a broadcast which was made at 5:43am and comments that the broadcast was made just prior to the broadcasting of Saturday Disney. The show which was being aired at 5:43am on the day in question was the NBC news. The NBC news often contains graphic content of violent events which are newsworthy and are not suitable for viewing by children. The show in which it was broadcast is aimed at adults and has an adult theme. AMI believes that the broadcast was in accordance with the code and appropriate but is prepared to restrict broadcast of the advertisement to before 5:30am to avoid any future issues.

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 does not contain any nudity. AMI believes that the phrases used in this advertisement are appropriate having regard to the timing of broadcast however as set out above AMI is prepared to voluntarily restrict broadcasts to before 5:30am to avoid future issues.

In the circumstances we submit that the advertisement treats 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 one complaint has 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 also 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 contains sexual references and language and is not appropriate for children to view.

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 this television advertisement features a male voiceover promoting the advertiser’s erectile dysfunction product. The Board noted that the advertisement is presented in a factual manner and considered that there is no suggestion that all men suffer from erectile dysfunction or that those who may suffer from this condition are inferior to those who don’t.

The Board noted it had previously dismissed similar advertisements for the same advertiser, in particular 0145/13, 0296/14, 0035/15 and 0216/15, and consistent with its previous determinations 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 which is discriminatory of any people with a disability or to a particular identifiable group of men.

The Board determined that the advertisement did not 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 that the advertisement features still images of different couples embracing on beds or on a beach.

The Board noted the complainants' concerns that the advertisement was aired during children's viewing time, for example just before Saturday Disney began at 6am in the morning, as well as at 8.15pm.

The Board noted the advertisement had been rated 'M' by CAD. The Board noted the Commercial Television Industry Code of Practice and that the new Placement Codes for advertisements came in to effect on the 1st December 2015. The Board noted that the 'M' rated time zone has changed so that M-rated advertisements can now be aired between 7.30pm and 6am (previously it was 8.30pm to 5am) and considered that the placement of the advertisement just prior to 6am during December was not a breach of the CAD time zones.

The Board noted the complainants' concerns that the advertisement aired at 8.15pm during December. The Board noted that the old Placement Code provided that M-rated advertisements only be aired after 8.30pm. The Board noted that the advertiser had previously confirmed that the advertisement had aired in the incorrect time zone as a result of a scheduling error by the TV network and considered that the advertiser had taken the appropriate steps to ensure that this error was not repeated.

The Board noted the content of the advertisement. The Board noted that in the bedroom scenes the women are wearing singlets and undies and considered that although in one image we can see most of a woman's naked leg as well as a man's naked torso the overall level of nudity is relatively mild. The Board noted that the couples are shown on beds in some scenes but considered that their actions are not overtly sexualised and that although the product is for a sexual performance product the couples are not shown to be engaging in inappropriately sexualised activity.

Consistent with a previous determination for a similar complaint in case 0216/15, the Board considered that in this instance the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant M rated audience and did not breach Section 2.4 of the Code.

The Board then considered whether the advertisement was in breach of 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 product is a sex-related product and considered that it is reasonable for the advertisement to make reference to sex provided it does so in a manner which is appropriate for the relevant audience.

The Board noted that the male voiceover says the phrases "premature ejaculation", "love-making" and "longer lasting sex" twice during the advertisement.

The Board noted that "premature ejaculation" is the correct medical term for a sexual performance issue and considered that in the context of the advertised product the use of this term is appropriate. The Board noted the references to "love-making" and "sex" and

considered that whilst some members of the community would prefer these terms to not be used on television in the Board's view most members of the community would not consider "love-making" and "sex" to be strong language in the context of an advertisement for a sexual performance product aimed at adults and aired during 'M' rated time zones.

Overall the Board considered that the language used in the advertisement was not inappropriate in the circumstances and was not strong or obscene.

The Board determined that the advertisement 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 complaints.