



CASE REPORT

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| 1. Complaint reference number | 118/09 |
| 2. Advertiser | Advanced Medical Institute (Valentines Day) |
| 3. Product | Professional Services |
| 4. Type of advertisement | Radio |
| 5. Nature of complaint | Portrayal of sex/sexuality/nudity – section 2.3 |
| 6. Date of determination | Thursday, 14 May 2009 |
| 7. DETERMINATION | Upheld – discontinued or modified |

DESCRIPTION OF THE ADVERTISEMENT

Radio Commercial “Great Sex. This Valentine’s Day, thousands of Australian women are going to get great sex. Something they haven’t had for years and it will be all thanks to AMI’s nasal delivery technology. So guys, if your doodle’s been jumping the gun, make the call to AMI, because if you don’t fix the problem, it’s only going to get worse. Call AMI now on 1800 20 20 40, that’s 1800 20 20 40 and give her the gift that goes on and on and on.”

THE COMPLAINT

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

It is inappropriate! Not just for children, but also for general listeners!! The radio is often on when this ad and other ads by this company come on and they are always inappropriate! They do not need to be asking men or women for "great sex"!

THE ADVERTISER’S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

As you know, we act for Advanced Medical Institute. It is our understanding that one complaint has been received in relation to this advertisement and that the issues raised in relation to the advertisement appear to relate to section 2.3 of the code.

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. 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, NOVA 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 term "great sex". AMI does not believe that the phrase "great sex" is any more offensive than the phrase "want longer lasting sex".

However, in the event a significant portion of the community disagrees with that assessment 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.

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 advertisements do not breach 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 concern that this advertisement is inappropriate.

The Board noted that the advertiser has framed its advertising towards men with a particular medical/health issue relating to premature ejaculation. 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 further noted that this advertisement is almost identical to an earlier advertisement it considered (Number 49/08), in fact that the only difference between the two advertisements is the number to call. In relation to 49/08 the Board had upheld the complaints on the basis that:

'The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code"). In particular the Board considered whether this advertisement portrayed sex or sexuality with insensitivity to the relevant audience and relevant programme time zone.

As the advertisement was a radio advertisement, the Board noted that there no listening time classifications existed. The Board further noted that the advertisement had been heard right throughout the day. The Board considered that the language used in the advertisement and in particular the use of 'doodle', represented language used by children and that as a result the advertisement was inviting kids listening to the advertisement to ask parents what the advertisement was about and that parents may feel uncomfortable about having to explain the advertisement.

If the advertisement had only been broadcast after 8.30 at night on the relevant radio stations, the Board considered that the portrayal of sex and sexuality in the advertisement would not have offended the Code. However, given that the advertisement could and was broadcast at all times of the day and night, the portrayal of sex and sexuality was inappropriate considering that the audience listening to the advertisement may include children.

The Board therefore upheld the complaint.'

Following this determination the advertiser advised that the advertisement had been discontinued.

Noting that this advertisement is practically identical to 49/08 the Board upheld the complaints for the same reasons as those stated above.

The Board considered the advertisement under section 2.3 of the Code which states:

'advertising and marketing communications shall treat, sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate the relevant programme time zone.'

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The Board noted that as the advertisement had been resubmitted to the Board it is free to consider all other sections of the Code. The Board considered section 2.1 of the Code. Section 2.1 provides that:

'advertising or marketing communications shall 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, sex, age, sexual preference, religion, disability or political belief.'

The Board noted that the current advertisement refers to a man's penis as a 'doodle' and to a man 'jumping the gun'. 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. In relation to this section of the community the Board considered that the tone and text of the advertisement was demeaning to those men. 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 and in fact 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 section 2.6 of the Code which states:

'advertising or marketing communications shall not depict material contrary to prevailing community standards on health and safety.'

The Board considered whether the advertisement depicted material contrary to community standards on health. The Board noted that the advertisement states 'if you don't fix the problem it's only going to get worse.' The Board considered that the suggestion that the problem will get worse without seeing the advertiser does have the potential to cause mental anguish to individuals who had experienced issues associated with premature ejaculation, or to men generally, in contravention of prevailing community standards on health and safety. The Board considered the tone and content of the advertisement clearly had the potential to impact on men's self-esteem and cause shame, embarrassment and undue distress, particularly for those men who had ever experienced issues with premature ejaculation. The Board therefore determined that the advertisement was contrary to prevailing community standards on men's health in contravention of Section 2.6 of the Code.

Finding that the advertisement breached the Code, the Board upheld the complaints.

Advertiser response to determination

Comments which the advertiser made in response to the Board determination include:

Our client has ceased the two advertisements which were current. Our client was unaware that the particular Valentine's Ad had been run. It believed another ad had been run and is not certain whether the issue arose due to an internal error by a staff member or an error at the relevant radio station.