



## **CASE REPORT**

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| 1. Complaint reference number | 136/09  |
| 2. Advertiser                 | Advanced Medical Institute                      |
| 3. Product                    | Health Products                                 |
| 4. Type of advertisement      | TV  |
| 5. Nature of complaint        | Portrayal of sex/sexuality/nudity – section 2.3 |
| 6. Date of determination      | Wednesday, 22 April 2009                        |
| 7. DETERMINATION              | Dismissed                                       |

## **DESCRIPTION OF THE ADVERTISEMENT**

This television advertisement has a voice over which states: “Many men and women ignore the serious implications of premature problems. Premature problems can put a tremendous strain on your relationship. It can make men feel inadequate, extremely embarrassed and it can make them seem like selfish lovers. Call the doctors at AMI now, on 1800 211 211, to see if they can help you. You could make sex last longer and share the experience together. You could satisfy your partner and rekindle that fire. Call AMI now for longer lasting loving, 1800 211 211.” A number of images of unhappy couples appear at the beginning of the advertisement. Images of couples in intimate embraces appear at the end of the advertisement. The advertisement includes superimposed phrases throughout the advertisement.

## **THE COMPLAINT**

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

*This is during the day where some kids may be forced to hear the terms described in the ad. Sitting in the staff canteen while having this product advertised is not on. I do not want to have to explain to my kid what the ad was about but would rather do it on my terms.*

## **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 AMI's premature ejaculation TV advertisements and that the issues raised in relation to the TV advertisement relates to section 2,3 of the code, As you know, 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's premature ejaculation TV advertisement is rated M. AMI's advertisement is only run when network programmes of the same or higher rating are run. In relation to free to air television this restricts the times at which the M rated advertisements are run to between noon and 3pm during weekdays (excluding school holidays) and after 8:30 pm. [n relation to pay TV stations, we are instructed that certain channels on the stations are directed at particular audiences and are aimed at particular audience demographics. These advertisements are only run on these stations when programmes with equivalent rated programmes at'e run on those channels in line with commercial television rating requirements and guidelines. If a lower rated programme is run during these times then the advertisement is not permitted to be run during these times under the commercial television ratings guidelines.*

*This means that the advertisements are only run at times and during programmes when children are unlikely to be watching television as they should either be attending school (in relation to the daytime advertisements) or in bed (in relation to the night Liability limited by a scheme approved under Professional Standards Legislation time advertisements) or not watching the particular programme in relation to pay TV stations (as it is not rated as suitable for children) and the advertisements are scheduled at these times and during these programmes for this very reason. The company does not run advertisements on free to air tv between noon and 3pm during school holidays or prior to 8:30pm for this very reason. From the complaint received, it seems that there were no instances of our client's advertisements being aired outside these times.*

*Furthermore, it appears that the advertisement was run during Oprah, a show which deals with adult themes and which is not suitable for children. Whilst the advertisement portrays issues of sex and sexuality, we submit that it does so with the appropriate level of sensitivity having regard to the relevant audience ordinarily watching TV at this program time zone and rating.*

*As evidence supporting this submission, we also enclose a copy of an independent market research report which was conducted by Galaxy Research on these issues. 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.*

*We do not believe that the phrases used in this particular advertisement are any more offensive than the phrase "want longer lasting sex" and we also note that this advertisement was found not to be offensive in relation to a similar ruling for a free to air audience.*

*Finally, we note that commercial television ratings guidelines have been developed by Commercials Advice Pty Limited (CAD) to regulate the material that may be included in television programs and advertisements at different time zones and that the ratings guidelines provide detailed guidelines as to whether or not material contained within television programs and advertisements treat these issues appropriately. It's important to note that this advertisement was approved prior to broadcast by CAD. During this approval process, this advertisement was given an M rating, which has been accepted and adhered to by the advertiser. The advertisement has only aired in timeslots deemed by CAD to have an M rating. AMI's TV advertisement fully complies with the commercial television rating guidelines relating to the times at which the advertisements are run.*

*For all of the reasons set out above, we submit that the advertisements do not breach section 2.3 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 contained sexual references and was shown at an inappropriate time of day, being around 1.30pm on a weekday. The Board considered the application of Section 2.3 of the Code, relating to sex, sexuality and nudity.

The Board noted the advertisement had received a mature (M) classification and that this classification applies to television programming and advertising between 12.00pm and 3.00pm weekdays (excluding school holidays). The Board noted that the programmes during which these advertisements are broadcast during the day are Mature programmes and that parents should be aware that stronger advertising material can be broadcast during this timezone.

The Board noted that some viewers may find the sexual references in the advertisement offensive, but considered these references were not inappropriate to a mature audience and timezones applying to an M classification. The Board considered the advertisement's treatment of sex and sexuality was sensitive to the relevant mature audience and found no breach of Section 2.3 of the Code.

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