



CASE REPORT

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| 1. Complaint reference number | 170/09 |
| 2. Advertiser | Advanced Medical Institute |
| 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 with female voices “I’ve got a two minute man and he always finishes first”. Next voice “my guy’s two and a half minutes - I’m so over it”, next voice “Well mine’s a minute thirty, it’s time for a new man.” Female voice over “Half of all men suffer from premature ejaculation, they’re sick of it, and so are their partners, but the smart ones are calling AMI about their nasal delivery technology. So if you want a love session that lasts longer than it takes to cook noodles, stop being a two minute man, call AMI now on 1800 60 60 20, 1800 60 60 20”.

THE COMPLAINT

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

These ads have been on our local radio station (star fm) recently. They have embarrassed me and I think they are inappropriate for the radio and I have ceased listening to Star FM. Now they are appearing on the TV! What do I do now? Stop watching the TV? These ads are for adults but not all want to listen to them. I really object to the inference in them. The one with the commentator said that this will improve the sex life for singles as well as married people. Really inappropriate for TV and radio and I,m sick of feeling awkward every time they come on the TV. Maybe they are being classed as medical ads but, put plainly, I just don't like them at all and would be very happy not to hear or see them again. Thank You.

They insinuate that no woman has a loving relationship and they should get men to seek help by contacting AMI. These ads are discriminating against men; they are distasteful and with the frequency and make it impossible to hide from children.

I think it is degrading to both men and women. It makes women appear superficial and men appear that their worth inside a relationship lies in their ability to provide sexual gratification. It is socially detrimental for young people to grow up with this kind of message being constantly repeated.

Half of all men suffer from premature ejaculation? Is there statistical evidence to back this claim? What is defined by 'premature ejaculation'? How do we know when how long is not long enough? AMI are merely inventing a medical condition to sell their products, tapping into the unconscious minds of listeners and forcing them to think that their sexual performance is not good enough for their partners. It also forces partners to believe that they could be getting better, and should NOT be satisfied with what they have now. This advertising, slowly, but surely will destroy society. Relationships are meant for much more than just sex. This advertising, this company is making people think that if they are not getting good sex out of a relationship, then they should leave and find another partner. What do you think this will turn our country into? You may not see the reason behind my writing this, but sex is something much more than physical. In marriage, it is the act of showing your partner how much you love them. It doesn't matter whether they last 1 minute or 1

hour, because people don't think about that. However, it's these ads which are making people think that they should be getting better. Think of it this way, it's like saying "if you're not getting A++ grades in school, then you have a problem". Is it really a problem that you're only getting A's and cannot reach A++? Are you suffering from mental dysfunction??? Help make this world a better place, and stop AMI from advertising full stop. If they want to advertise at 2am then that's fine.

A lot of premature ejaculation issues are confounded by anxiety - ie. being anxious about it makes it worse. My background and training is in Counselling and Psychology and I find this add offensive because it could make a lot of men out there feel really bad about their sexual performance. Especially having women 'bitch' about their mans sexual performance and then say its time to get a new man. If I ever find a man who has this problem I will never recommend this nasal delivery spray I don't care how effective it might be.

THE ADVERTISER'S RESPONSE

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

It is our understanding that several complaints have 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. AM'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 AUSTERE0 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 confirmed 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. Contact ASB for information. 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 "two minute men". AMI does not believe that the phrase "two minute men" 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 complainants' concerns that the advertisement treated sex and sexuality inappropriately, was offensive, demeaning and discriminatory towards men who may have issues with premature ejaculation, and caused unnecessary distress and anxiety for those men and men generally, with claims that are not accompanied by statistical evidence.

The Board considered the application of Section 2.1 of the Code, relating to discrimination and vilification on the basis of sex and/or disability (medical condition); Section 2.3, relating to the treatment of sex, sexuality and nudity; and Section 2.6, relating to prevailing community standards on health and safety.

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 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 the time within which a man reaches sexual climax and that the women talking in the advertisement are disparaging of their partners and say that they need to find a new partner.

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 (in particular the dismissive comparisons to time and the suggestion of getting a new man) were suggestive of intolerance towards 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 2.3 of the Code which specifies that:

'advertising or marketing communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant 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 considered however that this advertisement went beyond information about sexual dysfunction and treated sexual dysfunction and sexuality in an overt and negative manner that it considered even a broad minded relevant radio audience would find inappropriate and offensive. The Board therefore found the depiction was not sensitive to the relevant audience in contravention of Section 2.3 of the Code.

The Board considered the advertisement under section 2.5 of the Code in relation to language. In this respect the Board noted that *AMI does not believe that the phrase "two minute men" is any more offensive than the phrase "want longer lasting sex"*. In relation to section 2.5 the Board considered that the use of the language 'two minute man' is not of itself language that should be avoided or that would be considered strong or obscene.

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 one complainant's concern that the advertisement would make men feel bad if they suffer from this problem. The Board considered that the repetition and focus on the suggestion that men who suffer from premature ejaculation have a problem that is causing partner dissatisfaction with a relationship 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.