

CASE REPORT

1. Complaint reference number	219/09
2. Advertiser	Advanced Medical Institute
3. Product	Professional services
4. Type of advertisement	Print
5. Nature of complaint	Portrayal of sex/sexuality/nudity – section 2.3
6. Date of determination	Wednesday, 10 June 2009
7. DETERMINATION	Upheld – discontinued or modified

DESCRIPTION OF THE ADVERTISEMENT

This print advertisement has four panels. Top left has the words “WANT LONGER LASTING SEX?” in red letters on yellow background. Bottom Left panels has the picture of a man and women with the words “NASAL DELIVERY TECHNOLOGY Could get you Performing at your PEAK – SO GO FOR IT—Call the Doctors at AMI to see how you could improve your Sex Life.”

Top Right has the words “DO YOU SUFFER FROM: Premature Ejaculation, Problems gaining a good Erection” in white writing on purple background. Bottom Right “Call NOW! Toll Free 7 Days a Week. Men Call 1800 20 20 70 Women Call 1800 20 20 80”. AMI company information, website and logo displayed below this panel.

THE COMPLAINT

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

It is bad enough that this advert appears on billboards but now it is in the weekly television guide viewed by all members of the family. The tv guide is open at a page for the day that it is relevant to and I strongly object to having this advert there for all members of the family to see. Why should my young children have to see this. If men want longer lasting sex surely they have seen your other ads and go to see their doctors. This type of product needs to be advertised in mens magazines and other adult places not in magazines, newspapers and billboards where it affects children and people who don't want to read it.

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 one complaint has been received in relation to AMI's Sun Herald advertisement and we attach a copy of the advertisement as requested.

We understand that the issues raised in relation to the 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; and 3. 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.

The advertisement contains factual language. It does not use humour or discriminatory language of any kind. It does not seek to be critical of persons in any way and simply invites people to call AMI if they have a problem.

We accordingly submit that the advertisement does not infringe section 2.1 or section 2.6 of the code in any way.

The advertisement contains several sexual related references being "Want Longer Lasting Sex", "Premature Ejaculation", "Erection" and "improve your sex life". None of these references are alarmist nor do any of these references seek to do anything other than invite calls from people who may have a sexual related problem to call a doctor.

The section of the paper in which the advertisement appears often promotes films and other shows which are of a sexual nature or have a sexual term in their title. In addition, the entertainment section of the paper often contains large advertisements for movies which have sexual references or have the word "sex" in their title eg "Sex in the City" or "Zac and Miri make a porno". The picture contained within the advertisement is not sexually explicit and is tasteful and the text of the advertisement makes it clear that the advertisement is aimed at adults rather than children. We also note that there are numerous magazines aimed at teens and pre-teens which contain articles on sexual related issues such as Girlfriend and Total Girl, the content of which is much more sexually explicit than the content of this advertisement (these matters were discussed in detail in the recent senate committee report on the sexualisation of children, a copy of which can be sent to you if needed). The contents of these articles included articles on how to perform oral sex with braces which are obviously much more sexually explicit than this advertisement but which articles were considered appropriate despite the magazines being aimed at a readership of girls aged 11 to 16.

Furthermore whilst this advertisement may have been contained in the magazine it was not contained on the comic pages or a section directed at children and we believe it is unlikely that significant numbers of pre-teen children read the tv guide. However, in the event you disagree with this submission we do not believe that the advertisement is overly sexually explicit or inappropriate given the matters referred to above.

As further 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".

In the circumstances, we submit that 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 reading this magazine and we consider that this submission is supported by

the fact that only one complaint appears to have been received in relation to this advertisement.

For all of the reasons set out above, we submit that the advertisements do not breach section 2.3 of the code.

In the event that the board determines that the particular location of this advertisement does breach section 2.3 of the code despite the submission listed above, then we submit that the board's decision should make it clear that the decision is limited to the particular magazine and does not prohibit the company from placing the advertisement in other publications such as other sections of the Sun Herald or the Daily Telegraph which have a different readership or focus.

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 content of the print advertisement and noted the complainant's concerns that the advertisement treats sex without regard to the likely child audience of the media.

The Board noted that advertising a sex related product is not prohibited in Australia but that such advertisements must comply with the Code of Ethics.

The Board considered this advertisement in relation to 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.

The Board noted that the predominant feature of the advertisement is text in bold colours which states 'Want longer lasting sex'. The Board also noted that the advertisement contains the statements 'Improve your sex life', 'premature ejaculation' and 'problems gaining a good erection'.

The Board noted that these references to sex, erections etc were not of themselves necessarily unable to be used in advertising, and that advertisements dealing with a medical disorder or a male health issue may require some of this content. The Board determined that the words want longer lasting sex were not medical or clinical in nature and were in fact a blatant message about a sexual act. The Board also noted that section 2.3 of the Code does require that sexual references are treated with sensitivity to the relevant audience.

The Board noted that this advertisement had been placed in the television guide component of the particular newspaper. Contrary to the advertiser's view, the Board considered that the TV guide section of the newspaper is part of the paper that is attractive to, and often read by children and that it is likely that pre-teen children will see the advertisement. Given that, the Board noted that while this advertisement does not sexualise children it brings the issue of sex before them. The Board noted that debate within the community about the sexualisation of children has crystallised community concern about the unsolicited exposure of children to advertisements dealing with sexuality. The Board also acknowledged that research conducted into community standards, conducted by the Advertising Standards Bureau, suggested that this treatment of sex in advertising would be unacceptable to the community.

The Board determined that this advertisement did not treat sex, sexuality or nudity with sensitivity to the relevant audience and determined that the advertisement breached section 2.3 of the Code. The Board noted that the effect of this decision is that the advertisement may no longer be used in print media unless it is modified.

The Board noted the advertiser's submission that this part of a newspaper contains other references to 'sex' in program names and content descriptions, and that young children have access to sexually suggestive material in magazines. The Board noted that the materials referred to by the advertiser are not advertising and marketing communications and are not within the jurisdiction of the Board.

Finding that the advertisement was in breach of the Code the Board upheld the complaint.

ADVERTISERS'S RESPONSE TO THE DETERMINATION

Comments which the advertiser made in response to the determination regarding this advertisement included the following:*1. Our client was very disappointed by the decision of the board. In*

particular, our client was disappointed by an apparent inconsistency in the Board's decision in that in assessing the appropriateness of the advertisement the Board had sole regard to the magazine in which the advertisement appeared whereas the ruling issued by the Board seeks to restrict AMI from publishing the advertisement in any print media whether the audience is consistent with the magazine's readership or otherwise. Where decisions are made regarding the time slot and audience at which an advertisement is directed we believe that any order should be limited to similar timeslots or audiences and that differences between these two criteria calls into question the approach and system adopted by the Board. It is our understanding that the underlying purpose of the Board and its rulings should be to uphold the principles set out in the code – if an advertisement is not viewed as appropriate for a particular audience then a ruling should be limited to that audience and should not extend to other audiences. Putting this in context, we fail to see why the Board's ruling should prohibit our client from putting a print advertisement in the Australian Financial Review or another publication which has a different demographic to the Sun Herald Magazine;

2. following issue of the Board's ruling I was advised by our client's media buyer that the readership of the Sun Herald Magazine had recently changed following an editorial decision made by Fairfax to move the comic section from a separate liftout to the back part of the TV Guide. This decision was made after the advertisement order had been placed and no communication was received from the Sun Herald prior to publication. Up until this change the core readership of the magazine was persons aged 55 and over, an appropriate audience for this type of advertisement; and

3. whilst our client will abide by the ASB's determination, it considers that its offer to not publish the advertisement in this publication in the future should have been sufficient to resolve the matter without the need for a general ruling prohibiting publication in any print media.

Our client continues to believe that such a broad order as issued by the Board was unnecessary and not appropriate given the comments on audience and publications referred to in point 1 above.