



## CASE REPORT

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| 1. Complaint reference number | 278/08  |
| 2. Advertiser                 | Advanced Medical Institute                      |
| 3. Product                    | Professional Services                           |
| 4. Type of advertisement      | Outdoor   |
| 5. Nature of complaint        | Portrayal of sex/sexuality/nudity – section 2.3 |
| 6. Date of determination      | Wednesday, 13 August 2008                       |
| 7. DETERMINATION              | Upheld – discontinued or modified               |

## DESCRIPTION OF THE ADVERTISEMENT

This outdoor advertisement featured red words on a yellow background, which read "Want longer lasting sex? Nasal Delivery Technology. Call the doctors at Advanced medical Institute 1800 20 10 10."

## THE COMPLAINT

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

*We are constantly having to explain health and sexual issues to our children, thanks to advertising, even though the child's age may not be appropriate to be exposed to such advertising. I can turn off a radio but a massive billboard is slightly different. A child is exposed to this as are adults and in my opinion it raises issues of undermining the authority of parents or carers. I do not give permission for this company/institute to advertise to my children.*

*I have two young children, both are school age (and can therefore read) and I get constant questions about what the ad means. I don't think that I need to be explaining this concept to an 8 and 6 year old just yet, but it is very hard to avoid the billboard as the words are huge. There are quite a few schools in the area and I am sure that many children would see it. It is just not appropriate advertising.*

*If this ad is aimed to get one's attention, it works. Even to the extent of distracting the driver from their attention to the road. My main criticism however, is the effect on children. A friend of mine was travelling with a seven year old who quizzed her at length over why this word was on this big sign. The parents were not ready, and nor should they have too, explain the bedroom activities to a seven year old. There are some things in life that do not need to be "in your face" and this is one of them. There is a time for everything, and explaining to young children the difficult to comprehend adult concepts of sex (let alone performance) is not the correct time in their young lives. Let them have their childhood. If we saw the ad on TV we could do something about it, however when it so graphically displayed on a publicly displayed billboard one has no control over it's content. I was so angry I felt like defacing it.*

*This billboard stands out and is not appropriate for young children to enquire about - not to mention a group of African pilgrims we took on a tour to see our beautiful south coast!*

*I feel that the advertisement does not explicitly deal with the product they are trying to sell. There is no direct association with product. The billboard is also distracting and takes attention from drivers attention off the road.*

*Inappropriate material for general viewing. This is an adult matter and children need not be exposed to it.*

*I strongly object to this ad because I have a car load of young children who are subjected to witnessing the enormous, prominent vulgar ad, 5 times a week, as I drive them to and from school. I believe this message is completely inappropriate for general public viewing. These children have attended standard government approved sex education at school but this add goes far and beyond what they need to know.*

*I'm no prude but I feel there's a time and place for everything. I don't need signs like that "thrown" at my kids (who, by the way, think it's hilarious and constantly repeat it for the rest of the day!!!) It's hard enough to keep the boys grounded without huge signs like that on the highway (where how many people with kids pass every day?)*

*This advertisement is not appropriate for public consumption, especially young children who should not have male sexual dysfunction raised or discussed outside the family or school. The ability for parents control timing such information is completely obliterated and this information is patently unnecessary. It reinforces the notion of stereotypical male functions, exaggerates the perception of the issue and while for some males in the appropriate forum such information would be deemed necessary. The concept of capturing the target audience has completely failed. I can barely look at the ad, hence I have no idea who advertises it and I feel extremely uncomfortable when driving in the car with my 8 year old. I am quite happy to discuss with him the reproductive aspects of humans as he asks in his own time but it is really not on my agenda or should it be on his to discuss why men would want sex longer. While there are no images in this ad ( I don't believe) ( a small concession), young minds who are eager to read anything DO NOT NEED TO READ SUCH ADVERTISING. This advertisement has annoyed me for a long time, it is completely inappropriate in the public areas it is shown. By all means advertise, in Men's magazines, medical Mags but not on the street.*

*The billboard ad for this product is targeting men, so why the brand is wasting marketing dollars on this form of advertising that is clearly not targeted at all, makes no sense...Simply put, it belongs in publications targeted to the specific audience - (clearly targeting your audience is a hallmark of all successful marketing campaigns) not that this product shouldn't be advertised - heaven forbid any 'advertising censorship' or for that matter simple logical common sense.*

*I cannot see why this company has the right to make my child aware of and think of what this phrase "Want longer lasting sex?" means. Who gives them this right? The advert is unavoidable unless you are blind or looking with intention towards the other side of the road. This advert increases the sexualisation of our children. I am disgusted that it is allowed. This billboard has been banned in New Zealand.*

## **THE ADVERTISER'S RESPONSE**

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

*Advanced Medical Institute is a medical service provider specialising in the treatment of male sexual dysfunction and has enormous experience in providing treatments for these conditions and in marketing these treatments. The business has been operating in Australia for approximately 15 years, is a publicly listed company, has more than 280 staff and has treated well over 400,000 patients with sexual dysfunction conditions. The company is aware of its civic and legal responsibilities and has not had any significant regulatory issues in the last 4 years since the company became publicly listed.*

*Male sexual dysfunction has two forms - premature ejaculation and erectile dysfunction.*

*Premature ejaculation is a condition which affects approximately 30% of males worldwide, and it affects men of all age groups (ie effectively 18 years plus). In other words it is unfortunately not just an older person's condition.*

*Erectile dysfunction on the other hand tends to affect older men but may affect younger men with particular medical conditions such as diabetes, prostate problems, spinal cord injuries and so on. Medical literature reports that over 50% of men over the age of 50 have erectile dysfunction, and the rate for other groups (such as diabetics) is much higher.*

*Unfortunately, premature ejaculation and erectile dysfunction, if left untreated, can lead to major medical and personal catastrophes, which can include severe depression, alcoholism, violence,*

*sexual abuse, marriage breakdown and suicide in extreme cases. The reason these conditions can lead to these serious concerns is that sexual health is a core component of male self-esteem and can have a very major impact on a man's relationship with his spouse. Similarly, as was widely reported in general literature last year, erectile dysfunction is often a precursor of serious cardiovascular disease as has been confirmed in a number of leading medical studies.*

*In other words, male sexual health fundamentally affects male self-esteem and can lead to extremely serious general health and social issues and concerns.*

*Despite the seriousness of these conditions, medical literature reports that only 11% of men with sexual dysfunction conditions make themselves available to the medical profession for treatment (European Urology Journal No. 8, November 2002). Similarly, medical literature also reports that only a fraction of those that do take the first step are then willing to follow up and obtain treatment. Research indicates that the reason for this is that in many cases men are either simply too embarrassed to talk to doctors about these issues or to go into a pharmacy to collect medication to treat these conditions. This lack of people seeking treatment is despite the widespread advertising and publicity of these conditions since the launch of Viagra in this part of the world in 1999.*

*The aim of the Company's advertisements is to raise awareness of what is unfortunately a very common medical condition amongst men and to hopefully assist in destigmatising these conditions. The company believes that the public awareness generated by such advertising enables men to feel less isolated, embarrassed and ashamed of their sexual health problems and more motivated and empowered to seek medical assistance.*

*The company's extensive experience in marketing treatment of these conditions clearly demonstrates that unless directly worded advertisements are used with appropriate placement then the relevant advertising is ineffective with patients remaining untreated. On the other hand, the company understands that in planning and undertaking advertising campaigns it needs to be sensitive to community attitudes. With this in mind, AMI have placed the Billboards away from schools and endeavours to aim this advertising at its core target market – men and their partners.*

*The company appreciates that, as a society, we must find a balance between public concerns for the appropriate protection of our children, and the communities right to be informed, particularly about important health services such as those offered by Advanced Medical Institute.*

*We believe that the above issues are relevant to the code issues raised in your letter and turn now to those code issues.*

*Section 2.3 of the Code and Section 2.5 of the Code which relates to the treatment of sex (2.3) and appropriate language (2.5)*

*Advanced Medical Institute is not advertising SEX – it is advertising a treatment for men's sexual dysfunction and as set out above, the Company operates a legitimate business of providing treatments for men with sexual dysfunction. Its extensive research into marketing these treatments demonstrates that the key word to get men to focus on these medical conditions is SEX, which is not surprising given the medical condition relates to sexual health issues. Its advertising directly relates to the type of business it operates, a business relating to a serious health issue. The advertising is not gratuitous and is essential to enable the promotion of an important men's health service.*

*The word SEX has also been used in other advertisements approved by the board, such as the extensive public billboard campaign undertaken to promote the movie "Sex in the City", a matter which the Company believes is relevant in assessing this issue.*

*Whilst the Company's billboard does use this word, it should be noted that its billboard advertising does not use nudity, swear words, women in suggestive poses, provocative images or any of the other sexual references that abound on billboards for cars, alcohol, sunglasses, clothing and numerous other goods, which appear to be permitted. We submit that the word "SEX" is not inappropriate and cannot fall into the category of "strong or obscene language".*

*We accordingly believe that the Company's advertising does not breach sections 2.3 or 2.5 of the Code.*

*Section 2.4 of the Code, which covers the issues of advertising and marketing to children*

*Whilst it is obvious that the Billboards are not advertising or marketing a product that relates to children, it is clear that children will have some exposure to this advertising. In planning media campaigns our client is always sensitive to community attitudes and has always worked with the Advertising Standards Bureau to address and rectify any complaints or issues. The Billboards occupy only minute parts of most children's time and, importantly, when questions arise in relation to the outdoor content it normally takes place when a child is chaperoned by an adult motor-vehicle driver. Such situations, when they occur, should be taken as a positive opportunity for a responsible adult to constructively engage a child with an age-appropriate response. Shame and embarrassment have no place in either the sex education of children or the conveying of an important health message to the wider community.*

*It should be noted that AMI's billboard advertising does not use nudity, swear words, women in suggestive poses, provocative images or any of the other sexual references that abound on billboards for cars, alcohol, sunglasses, clothing and numerous other goods. Many of these are far more overtly sexual than anything used by AMI. More importantly, we do not use anything even remotely connected with children.*

*Although AMI's billboard advertising does not use gratuitous material, our client understands that it does provoke a strong response from some sections of the community. AMI did attempt to change the ad and replaced the word "SEX" with "XOX" in one of its locations in Queensland. Unfortunately the changes were not successful and the call rates dropped dramatically, resulting in many men with these significant health issues not taking appropriate action to address their medical issues.*

*In any event, as set out above, AMI's advertisements are no more visible to children than the billboard advertisements for "Sex in the City" which have been widely displayed on public buses and in numerous other billboard locations. The Company also believes that they involve significantly less impact than promotions of women's magazines which frequently discuss sexual issues and are promoted using suggestive poses of semi-naked women in suggestive poses and which are widely displayed in public places and in any event are readily visible to children on entering or approaching newsagencies.*

#### *General*

*Each of the above issues was considered in detail by the recent Senate Committee Inquiry into the Sexualisation of Children in the Media. The Committee's inquiry provided parliament with a broad ranging forum to consider whether the existing form of regulation of this area was appropriate and whether particular advertisements were in breach of those requirements.*

*Advanced Medical Institute attended the committee's hearings into these issues at the committee's request as approximately 50% of the submissions made to the Committee related to the Company's billboards. The Committee questioned the Company in detail relating to these matters and asked the Company to provide some further information regarding these matters including full details regarding the number of complaints which had been made to you (and the Company) regarding the billboards which are the subject of this review.*

*All of this information was provided to the Committee by way of supplementary submission and was considered by the Committee in detail in finalising its report.*

*Attached for your information is a copy of AMI's original and supplemental submissions to the Committee as well as a copy of the Committee's final report.*

*As you will see from reviewing the report the Committee did not make any adverse findings regarding the Company or its billboards and formed the view that it did not need to make any changes to the laws in this particular area. It was obviously open to the Committee to have reached an alternate conclusion and/or to have required significant changes to be made. As is evident from the material enclosed with this submission, the Committee was on notice of the level of complaints which had been made in forming its view.*

*In the circumstances, the Company disagrees with the suggestion that the level of complaints which have been received by the board indicate some changing in community attitudes or that the advertisements breach the Code. The Company believes that if such view was correct then a*

*different conclusion would have been reached in the Committee's recent report. It also believes that in assessing the level of complaints the board should have regard to the extent of billboard advertising undertaken by the Company and the number of people who pass those billboards each day, matters which were taken into account by the Committee in forming its view.*

*The current locations, which display the AMI billboards, are attached hereto. Our client's Advertising Agency in relation to the Billboards is the Big Brand Investment Group located at Pymont. Our client also has a further 24 sites in Melbourne through another Media Company.*

*Finally, the Company notes that any adverse determination by the board is likely to result in the Company being liable for more than \$1 million in billboard space which the Company will no longer be able to effectively utilise. This space was contracted by the Company in reliance on the board's initial determination and the Company will obviously need to consider its legal rights if an adverse determination is made.*

*The Company believes that its advertisements are fully compliant with the code and that the suggestion that its billboards are out of step with community attitudes is inconsistent with the recent report released by the Committee on these issues.*

## **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 billboard and reviewed this 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.*

The Board acknowledged that they had previously considered this advertisement in February 2007 and dismissed the complaints.

However during the 18 month period since that decision the billboard has appeared more widely in many locations across several States.

The Board agreed that the placements, size, bold colours and blatant message of the advertisement make it very confronting to a large section of the community, a fact that is evidenced by the number of complaints the Advertising Standards Bureau continues to receive in relation to this advertisement.

The Board noted that the billboard format means that the entire community may be exposed to it, with its messaging reaching beyond that of the target audience. Whereas advertisements in other mediums may limit the relevant audience, the nature of billboards means that there is no practicable way for the community to control their exposure, or their children's exposure, to their content.

The Board further acknowledged that in the time since the original decision there has been greater community discussion and debate about the sexualisation of children. The Board considered 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 noted that when it previously considered this advertisement it was identified as being at the upper limit of what the community considered acceptable. The Board agreed that there has been a shift in community standards and that the content of this billboard is no longer acceptable.

The Board also considered the advertiser's statement that the advertisement was dealing with a medical disorder or a male health issue. 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 acknowledged that recent 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 and as such the Board agreed that the advertisement was in breach of Section 2.3 of the Code.

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

**ADVERTISER'S RESPONSE TO DETERMINATION**

The advertiser will comply with the Board's decision and replace all 120 billboards by 12 September.