



## **CASE REPORT**

1. Complaint reference number	289/09
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, 8 July 2009
7. DETERMINATION	Dismissed

## **DESCRIPTION OF THE ADVERTISEMENT**

This outdoor advertisement for Advanced Medical Institute (AMI) features large red writing and smaller black writing on a bright yellow background. The text reads: “Making love? Do it...longer! Call or SMS “Doctor” 1800 500 200”. The AMI logo appears in the bottom left corner.

## **THE COMPLAINT**

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

*This add is located in an inappropriate place, close to schools and a baseball field where young children and teenagers attend.*

*Colours of sign, size of sign, placement of sign, content of sign, money grubbing attitude of advertiser.*

*I find the billboard to be too large, too stark and a blight on the landscape of my suburb. It is offensive to the senses. No family would want this sign in their neighbourhood.*

*I object because the sign is in a narrow part of the road surrounded by concrete (being an underpass) this is distracting and has the potential to cause a serious accident if the motorist gets distracted.*

*There prolific advertising during daytime television and radio (which the Bureau has allowed) means that they should not require advertising in public space/roads where children may see this. Children may become sexually aware through these adds despite lies or distractions that parents may have to stumble through in order to avoid making kids sexually aware. School age children have access to the internet, dictionaries etc and it is not hard for children to find out what this words. "Advanced medical institute believe the words "making love do it longer" are not offensive - try putting that phrase in your internet search engine and see what you find! It isn't hard for kids to find out.*

*This bill board is also within close proximity to a number of schools/bus stops.*

*AMI - I also take offence to this name as it does not describe what they do, it could quite easily be mistaken for a drug company/doctors office. It is also a persons name (someone close that I know who has been around a lot longer then the company has) being another version of Amy.*

*St David's Anglican Church Moorabbin stands on the corner of Nepean Highway & Redholme Street Moorabbin. 1001 Nepean Highway is a four storey building on the opposite corner of Nepean Hwy & Redholme St. In 2005 Kingston City Council Planning Dept sent our Church an application from Media Puzzle advertising agency, requesting a permit to erect a large floodlit billboard on the southern blank wall of this building which faces Redholme St. The Vestry of St David's raised no objection to the billboard on the condition that no inappropriate or offensive advertising was displayed as the sign faced the Church, the adjoining hall and the parking area.*

*Last week a very large billboard was erected with the words,  
MAKING LOVE?  
DO IT LONGER!  
Australian Medical Institute (contact details were proved below)*

*The background is bright yellow with bold black letters and is impossible to miss (the obvious aim of the agency). On behalf of the parishioners of St David's, I am writing to object very strongly to the positioning of this billboard. We have children attending the church premises during the week as well as parishioners who find the sign quite inappropriate and offensive as it cannot be avoided each time they come to the church. In fact, the wife of the archbishop of Melbourne addressed a gathering of ladies on Tuesday afternoon and expressed her concern at the insensitivity of the media company in placing such an advertisement directly opposite the Church. The ladies sitting in the Church hall facing the window were unavoidably confronted by the signage which was in full view.*

*I have contacted Kingston City Council but they informed me that although a permit was granted for the erection of the sign, they have no control over the content. They advised me to write to your organisation voicing the concern of our Parish.*

*The agency that now owns the site is Ooh Media. When contacted, they could not see that the sign was inappropriate for that position.*

*I am enclosing a map showing the exact location of St David's Church and the building on which the offending billboard has been placed.*

*The parishioners of St David's urge that action will be taken to remove this signage and that the agency is advised to consider the appropriate type of product and style of advertising place on this site.*

## **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 AMI's Making Love billboard advertisement. We attach a copy of the advertisement as requested.*

*We note that several of the complaints relate to the location of the billboard. In particular, several complaints relate to the narrowness of the streets where the billboards are located as well as the illumination of the billboards. As you will appreciate, AMI is not the owner of the billboard sites and was not involved in the planning processes involved in obtaining approval to these billboard locations nor to the planning issues relating to the illumination of those billboards. In any event, such matters are not regulated by the Code and we accordingly submit that such matters should not be considered by the board in considering these issues as they are more appropriately addressed by regulators with planning law responsibilities.*

*Subject to our comments above, 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. Without limiting the foregoing, we note that the communications are not directed to or targeted at children and does not contain any obscene or coarse language. We accordingly submit that neither section 2.4 nor section 2.5 of the Code are relevant to this advertisement.*

*The advertisement does not use humour or discriminatory language of any kind. We accordingly submit that the advertisement does not infringe section 2.1 of the code in any way. The*

*advertisement does not contain any statements which are factually inaccurate or which involves any dangerous activities. We accordingly submit that the advertisement does not infringe section 2.6 of the code in any way.*

*The only part of the advertisement which could be considered to have a sexual reference is the phrase "Making Love". Whilst the phrase "Making Love" may be considered to relate to sexual love, it may also be considered to involve an emotional connection. In any event, the phrase "Making Love" is a phrase which is commonly used by adults to discuss sexual topics with children and the phrase is not alarmist or offensive. We believe this is reflected by the relatively low number of complaints which have been received by the Board notwithstanding the widespread use of this billboard by our client.*

*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. The phrase "Making Love" is much less direct than the phrase "Sex" and we submit that, as a result, a significantly lower proportion of Australians are likely to find the phrase "Making Love" offensive than the phrase "Sex". The phrase is also relevant to the services provided by our client and has not been selected gratuitously.*

*As a result, we submit that whilst the advertisement might be considered to portray issues of sex and sexuality, we submit that it does so with the appropriate level of sensitivity having regard to the audience and medium in which it has been presented. We also note that it has considerably less sexual references than many other billboards which have been approved by the board.*

*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 complainants' concerns about the size, colour and placement of the billboard and inappropriate references to sex.

The Board noted that the size and colour of a billboard are not matters that are, of their own, within the jurisdiction of the ASB. The Board also noted that the advertiser is currently able to advertise their product, provided that such advertisements are within the Code, and that some complaints are directed to the size of the advertisement for this particular product, which is not a matter for the Board.

The Board noted that this billboard is a mixture of a number of phrases that have been used by the advertiser in the past. In particular the phrase 'want longer lasting...' was used as part of a billboard that had complaints upheld against it in 2008 - although that billboard also used the word 'sex'. At that time the Board considered that the reference to 'sex' in conjunction with the size and placement of the advertisement did bring the issue of sex before children and was inappropriate. At the time the Board also determined that '... 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 noted that it has previously considered the use of the words 'do it longer' and had considered that the advertisement does not use any direct or overt references to sex or sexuality, using only the words "Do It" to direct adults to the relevant meaning. The Board previously considered that children would not be aware of what 'do it' was supposed to refer to.

Turning to the current advertisement, the Board noted that the placements, size, and bold colours of the current advertisement do make the advertisement very visible. However in contrast to the previous advertisement, this version of the advertisement was not so blatant - with 'longer lasting love' and 'do it longer' being more subtle references to sex.

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 again 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 some of the level of community concern about the advertisement is concern over the product and the fact that it can be advertised. The Board stated that this issue has to be separated from the content of the advertisement as it is not an issue that is within the jurisdiction of the Board.

The Board agreed that some members of the community will argue that this billboard is not much more subtle than the previous billboard, and that it does not treat the issue of sex with sensitivity to the relevant audience. A minority of the Board also considered that the Billboard did not treat the issue of sex with sensitivity to the relevant audience.

The majority of the Board considered however that the references do not mention sex, are, at the most, ambiguous about mentions of sexuality and do not bring the issue of sex to the attention of children. Again the Board considered that the prominent location, size and visual impact of the advertisement contributes to the impact that the advertisement has and to the extent to which it can be said to treat the issue of sex 'with sensitivity to the relevant audience.' The Board considered that this advertisement is at the upper end of acceptable but that it does not breach section 2.3 of the Code.

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