



CASE REPORT

1. Complaint reference number	414/09
2. Advertiser	Advanced Medical Institute
3. Product	Professional Services
4. Type of advertisement	Mail
5. Nature of complaint	Portrayal of sex/sexuality/nudity – section 2.3
6. Date of determination	Wednesday, 16 September 2009
7. DETERMINATION	Upheld – discontinued or modified

DESCRIPTION OF THE ADVERTISEMENT

Print advertisement/leaflet of a man and a woman lying down and the woman has her eyes closed. The caption in bold: "WANT LONGER LASTING SEX". Followed by 'Do you suffer from premature ejaculation, problems gaining an erection? 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. Call or SMS 'Try'.' The advertisement was placed in a sealed envelope containing advertising material addressed to 'The Householder'.

THE COMPLAINT

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

I strongly object to this leaflet being included in the Yellow Envelope which is placed in my mail box without my permission. This type of ad should be restricted to men's magazines or if men have this problem they should go see their doctor. The Yellow Envelope is often opened by children and I believe it's disgusting that they should be faced with such a subject. Personally I will never open the envelope again, it will go straight in the recycle bin.

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 print advert advertisement in the "Yellow Envelope" 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. 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 is relevant to this advertisement. The advertisement 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 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 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 Yellow Envelope is a publication which is delivered to houses in a sealed envelope. It is addressed to "The Householder" and is aimed at the head of the relevant household. The publication contains advertising material only (no editorial or other information) and AMI's advertisements have been included in the Yellow Envelope since May 2008. Horizon Media, the owner of the publication, have advised us that media research conducted by AC Nielsen on their behalf indicates that 83% of the audience of this publication is aged 35 plus (45% aged 35-54 and 38% aged 55 plus) with the remainder being aged 18-35. Horizon Media has advised us that more than 30 million envelopes have been delivered to households in this period with Horizon Media receiving fewer than 10 complaints regarding AMI advertising during this period. This publication is clearly not aimed at children and the complainant's allegation that this publication is opened by children is not consistent with Horizon Media's research. Horizon Media has advised us that the sealing of the envelope by them and the addressing of the publication to the Householder is undertaken to ensure that this publication is only read by adults. Whilst this advertisement contains sexual references, those references simply ask men to contact AMI if they have sexual problems. Furthermore, the audience of the publication is limited to adults. 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 publication and we consider that this submission is supported by the fact that only one complaint appears to have been received by you in relation to this advertisement with fewer than 10 complaints being received by the publisher despite its very broad distribution. 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 treats sex without regard to the likely child audience of the media.

The Board noted the content of the advertisement 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 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 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

'premature ejaculation' and 'problems gaining an 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 advertising material delivered direct to households. The Board noted the media distributors information, as provided by the advertiser, that 85% of the readers of this material are aged 35 and over, with the remaining audience between 18 and 35.

The Board recognised that, as the advertiser's statistics demonstrate, the overwhelming number of these envelopes would be opened by adults. However, the Board noted that regardless of this the advertising material is unsought and there is no indication that the content of the envelope may contain sexually related material. The Board distinguished this style of media from the television environment where consumers are clearly aware of the classification of programs and of the type of material that can be broadcast in particular timezones.

The Board considered that the enclosed material would in many cases spend some time in the home, and in enough cases raise questions parents would not be at ease answering. 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. Finding that the advertisement was in breach of the Code the Board upheld the complaint.

ADVERTISERS RESPONSE TO THE DETERMINATION

Comments which the advertiser made in response to the determination regarding this advertisement included the following:

As discussed, our client always acts in compliance with rulings made by the ASB.

The Yellow Envelope is a monthly publication. The contents of the publication for October have already been set and printing undertaken. As a result, the earliest that our client will be able to comply with the Board's ruling is for the month of November.