



## CASE REPORT

1. Complaint reference number	418/09
2. Advertiser	Advanced Medical Institute
3. Product	Professional services
4. Type of advertisement	TV
5. Nature of complaint	Portrayal of sex/sexuality/nudity – section 2.3
6. Date of determination	Wednesday, 23 September 2009
7. DETERMINATION	Upheld – discontinued or modified

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement has big, bold writing on the whole screen: **HEY, WANT LONGER, LASTING, SEX?** That's right **LONGER LASTING SEX.** "If you are finishing too soon" then there is a woman's voice which says in the background: "is that it!" **HAVING TROUBLE MAINTAINING A GOOD ERECTION ...** (accompanied by a graphic suggestive of an erection) "... the doctor's at AMI may be able to help. Call or SMS **"TRY"**."

## THE COMPLAINT

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

*This subject is absolutely everywhere you go! Our children are bombarded by it. They don't even have the opportunity to learn about normal sexual behavior before hearing about all the problems!! They do not understand and are scared by it and confused. Please, give our children time to be children!!! Our men know by now what to do about the problem!!*

*Channel 9 (Win TV) 12.45pm - 1pm Impotence ad not sure of company name - heaps of pictures of couples and very offensive positions and wording for lunch time TV - please get this crap off TV. Channel 10 1.15pm - No brand name just the phone number 1800 211 211 - SEX in bold over and over again regarding impotence problems. Very offensive and unnecessary for this time of day, not only are we are trying to eat our lunch but also some of us have children and don't needs the works SEX SEX SEC coming up. Please investigate and take off.*

*It is pornographic, it promotes sex as an activity or past time instead of an act of love and children may have seen it-these ads have the effect of desensitising the viewers to the actual vulgarity of its actual underlying message, which is, as I said a promotion of pornography. I object to the ad being on TV at all, in any timeslot. There is no justification for allowing this sort of material on TV.*

## 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 premature ejaculation TV advertisements that requests people to SMS "TRY" to the AMI hotline.*

*It is also our understanding that the issues raised in relation to the TV advertisement relate to section 2.3 of the code. We do, however, note for completeness that the advertisement does not contain any material which discriminates against or vilifies any person, that the advertisement is*

*not aimed at children and that the advertisement does not contain any material which is contrary to prevailing health standards. We accordingly submit that sections 2.1 and 2.6 of the code are not relevant to this advertisement.*

*We also note that the complaint refers to a longer penis. We attach a copy of the advertisement as requested. As you will see the advertisement does not make any such reference or provide any suggestion that such services are offered by AMI.*

*As you know, 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. The attached TV advertisement is rated M.*

*AMI's advertisement is only run when network programmes of the same or higher rating are run. In relation to free to air television this restricts the times at which the M rated advertisements are run to between noon and 3pm during weekdays (excluding school holidays) and after 8:30 pm. These advertisements are only run on these stations when programmes with equivalent rated programmes are run on those channels in line with commercial television rating requirements and guidelines. If a lower rated programme is run during these times then the advertisement is not permitted to be run during these times under the commercial television ratings guidelines.*

*This means that the advertisements are only run at times and during programmes when children are unlikely to be watching television as they should either be attending school (in relation to the daytime advertisements) or in bed (in relation to the night time advertisements) or not watching the particular programme in relation to pay TV stations (as it is not rated as suitable for children) and the advertisements are scheduled at these times and during these programmes for this very reason. The company does not run advertisements on free to air tv between noon and 3pm during school holidays or prior to 8:30pm for this very reason. From the complaint received, it seems that there were no instances of our client's advertisements being aired outside these times. Furthermore, it appears that the advertisement was run during Dr Phil, a show which deals with adult themes and which is not suitable for children.*

*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 watching TV at this program time zone and rating.*

*As 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 note that the advertisements used in this advertisement are "want longer lasting sex" and a reference to "better erections". We do not believe that the phrases used in this particular advertisement are any more offensive than the phrase "want longer lasting sex". We also note that this advertisement is less explicit than other tv advertisements which have previously been reviewed by the board and found to be in compliance with the code.*

*Finally, we note that commercial television ratings guidelines have been developed by*

*Commercials Advice Pty Limited (CAD) to regulate the material that may be included in television programs and advertisements at different time zones and that the ratings guidelines provide detailed guidelines as to whether or not material contained within television programs and advertisements treat these issues appropriately.*

*It's important to note that this advertisement was approved prior to broadcast by CAD. During this approval process, this advertisement was given an M rating, which has been accepted and adhered to by the advertiser. The advertisement has only aired in timeslots deemed by CAD to have an M rating. AMI's TV advertisement fully complies with the commercial television rating guidelines relating to the times at which the advertisements are run.*

*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 complainants’ concerns that the advertisement was offensive and promoting pornography.

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 the application of Section 2.1 of the Code, relating to discrimination and vilification on the basis of sex and/or disability (medical condition) and Section 2.3, relating to the treatment of sex, sexuality and nudity.

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 advertisement was quite explicit in its referring to longer lasting sex and having trouble maintaining an erection. The Board noted that there was a woman's voice broadcast at the end of the advertisement which said in a tone of disapproval: "is that it"!, by implication referring to whether or not a man reaches sexual climax before his partner.

The Board considered this was potentially demeaning towards a section of the community who had experienced issues with premature ejaculation.

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 or having trouble sustaining an erection. In relation to this section of the community the Board considered that the tone and text of the advertisement (in particular the woman's apparent frustration) were suggestive of intolerance towards those men. The Board considered that the current advertisement was potentially denigrating and demeaning towards a section of the community who are experiencing or have experienced premature ejaculation or trouble sustaining an erection and potentially go 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 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 noted that the advertisement raised issues of sex and sexuality that some members of the community may find it inappropriate for television broadcast at any time. However, the Board noted that the advertisement had been given a mature ("M") classification and was broadcast in mature timezones. 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 in late 2008 it had considered a similar television advertisement (466/08) which was similar in tone and content and included references to 'longer lasting sex'. At that time the Board determined that the complaints should be dismissed.

*The Board considered the application of Section 2.3 of the Code, relating to sex, sexuality and nudity. The Board noted the advertisement makes an explicit reference to the sex act, and uses sexualised voice over directing the viewer's attention to the nature of the product.*

*The Board considered the complainant's concerns that the advertisement was broadcast during the middle of the day and noted the advertiser's advice that the advertisement has been rated "M" for a mature audience. The Board noted that in accordance with Commercials Advice Classifications may be broadcast:*

*Weekdays (schooldays)\*:  
12 midnight - 5am  
12noon - 3pm  
8.30pm - 12 midnight (refer below)*

*Weekdays (school holidays) & Weekends\*:  
12 midnight - 5am  
8.30pm - 12 midnight*

*\* not in G or PG programs scheduled to start at or continue past 8.30pm.*

*The Board noted complainant concerns that children may be at home watching television during the day and view the advertisement. However, the Board noted that the timezones applied by Commercials Advice indicated that the relevant audience for the advertisement as well as surrounding programming was a mature audience. The Board considered the treatment of sex and sexuality in the advertisement was appropriate to a mature audience, consistent with the rating provided.*

*The Board noted that the audience for a television advertisement classified by Commercials Advice as "M" rated was narrower than the audience potentially viewing the advertiser's outdoor advertisements forming part of the same campaign and previously considered by the Board. The Board also noted that parents have the option of switching channels or turning off the television, while this option is not available for viewers of outdoor advertising.*

*The Board determined the treatment of sex and sexuality was sensitive to the relevant mature audience and there was no breach of Section 2.3 of the Code.*

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

The Board noted that the current advertisement again uses colourful, bold and explicit imagery and wording to promote its product. The Board noted that since 2008 there has continued to be debate about references to sex in advertising, albeit usually in the context of the sexualisation of children. The Board also noted research into community standards, conducted on its behalf in late 2006, suggested that this treatment of sex in advertising would be unacceptable to the community. Finally the Board noted that since its decision in case 466/08 there have been an additional 100 complaints to the Bureau about 'longer lasting sex' television advertisements. The Board considered the important role that it plays in ensuring that it reflects community standards in its decisions about whether or not advertisements which have been complained about meet the standards set out in the

Code. The Board considered that over the past few years the community's attitude to sexually suggestive or explicit advertising has become more conservative. The Board considered that the community would consider that this advertisement did not treat sex or sexuality with sensitivity to the relevant audience. On this basis the Board determined that the advertisement breached section 2.3 of the Code.

Finding that the advertisement breached the Code, the Board upheld the complaints.

#### **ADVERTISER'S RESPONSE TO DETERMINATION**

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

*The advertisement has been removed from air in accordance with the ruling and AMI's normal practice once a ruling is issued.*