



CASE REPORT

- | | |
|-------------------------------|---|
| 1. Complaint reference number | 466/08 |
| 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, 26 November 2008 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This TV advertisement has a bright yellow screen with red writing and a male voice over. It begins with a voice over and writing, both of which say "Are you finishing too quickly?" The question mark then goes limp. The voice over continues with "Do you want to get up and stay up? Do you want longer lasting sex?" The words "longer lasting sex" appear on the screen in large pulsating letters. The voice over continues "if you answered yes (and then a female voice cries "yes, yes") call the doctors at Advanced Medical Institute to see how you can improve your sex life". The phone number (1800 70 60 60) appears on screen.

THE COMPLAINT

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

Placing sex in front of children.

I don't think this is a subject that all ages need to see through the day. Little children could be home and frankly, I would be embarrassed if anyone were visiting and this ad was shown. It is a personal medical problem that people can explore through the appropriate channels, not with millions of others that don't want to see that. It should have been settled when the billboards were banned, this is much worse!

They are extremely offensive and I had my children watching. Its bad enough watching these rude ads on TV at night late.

They are being shown on Channel 9 also. Please take them off everyone I speak to are saying they are so offensive.

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 this advertisement and that the issues raised in relation to the advertisements appear to relate to sections 2.3, 2.4, 2.5 and 2.6 of the code.

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 this advertisement was approved prior to broadcast by CAD. During this

approval process, the advertisement was given an M rating, which has been accepted and adhered to by the advertiser. The advertisement has only aired in time slots deemed by CAD to have an M rating. AMI's "Want Longer Lasting Sex" TV advertisement fully complies with the commercial television rating guidelines relating to the times at which the advertisement is run.

Section 2.5 of the code prohibits the use of strong or obscene language. The advertisement does not use any obscene or strong language. There are no swear word in the advertisement and terms such as "premature ejaculation" and "sex" are not obscene.

Sections 2.4 of the code relates to advertising to children. The advertisement is clearly not aimed at children and is only screened at times which children are unlikely to be watching TV (see below). As a consequence we believe the advertisement does not breach section 2.4 of the code.

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 advertisement in question is only run between noon and 3pm during weekdays (excluding school holidays) and after 8:30 pm. These are times 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) and the advertisements are scheduled at these times for this very reason. The company does not run advertisements between noon and 3pm during school holidays or prior to 8:30pm for this very reason.

We note that some of the complainants indicated that they were watching the following programmes when they saw the advertisements: Ellen DeGeneres, Days of Our Lives and Mornings with Kerri-Anne. These programs are not aimed at children and contain content which is not suitable for children. They are aimed at adult audiences and we submit that running advertisements of this nature during these programs is appropriate as children should not be watching these programs.

Whilst the advertisements portray issues of sex and sexuality, we submit that they do so with the appropriate level of sensitivity having regard to the relevant audience ordinarily watching TV at these program time zones.

As evidence supporting this submission, we 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.*

This research is also supported by an analysis of online commentary in relation to these issues. For example, attached is a link to a news story that ran on ninemsn.com, that attracted nearly 200 comments from the public:

- <http://news.ninemsn.com.au/article.aspx?id=663170&source=emailer>

As is evident, these responses clearly demonstrate a prevailing community acceptance of such advertising and further, alarm that the ASB feels it must censor the word 'sex' from AMI's

advertisements.

While some people in the community may disagree with the word 'sex', a greater section of the community oppose the censorship of the advertising.

Also submitted are two other discussion forums from previous news stories that demonstrate similar sentiments:

- ABC Online: <http://www.abc.net.au/news/stories/2008/08/26/2346336.htm>

- PerthNow: <http://www.news.com.au/perthnow/comments/0,21590,24239765-2761,00.html>

All of these forums - with comments from hundreds of Australians - show a clear majority of community support for AMI's use of "Want Longer Lasting Sex" in its public advertising.

We believe that each of these forums (and Galaxy's independent research report) clearly indicate that AMI's "Want Longer Lasting Sex" advertising is in line with prevailing community standards and is appropriate. A review of the transcript of the discussion between the Senate Committee and AMI's representatives during the Senate Committee's Enquiry into the Sexualisation of Children also supports this belief and indicates that the committee did not appear to have any major issues with AMI's television, radio or Internet advertising. A copy of this transcript can be provided to the ASB if necessary.

We further note that some of the material which is contained within the advertisement is not dissimilar to material which was contained in the movie "When Harry Met Sally", which movie was not considered to have breached the code. We also note that AMI's advertisement is much less explicit than advertisements for sex related services which are run on late night TV and accordingly submit that if AMI's advertisements were to breach the code then all of these other advertisements should also be considered to be in breach of the code as they treat issues of sex and sexuality much less sensitively than AMI's advertisement.

Finally, we also note that the ASB found in its review of decision 278108 that AMI's billboards with similar messages were not medical or clinical in nature. AMI believes that this decision is factually incorrect. AMI is a medical service provider company and its advertisements are clearly aimed at promoting its medical treatments for those conditions. The medical condition which the advertisements relate to is "premature ejaculation" and the widespread prevalence of this condition is well recognised in medical literature. This particular issue was the subject of lengthy and detailed discussion during the Senate Committee's Enquiry into the Sexualisation of Children conducted in April 2008 which I attended personally on behalf of AMI. The Senate committee expressly stated during its hearings into AMI's advertisements that it accepted that AMI's advertisements related to medical conditions and were medical in nature (please see Senator Kemp's statements pages 31 and 32 of the Hansard transcript of the hearing held on 30 April 2008). A copy of this transcript can be provided to the ASB if necessary.

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

Section 2.6 of the code requires that advertisements not depict material which is contrary to prevailing community standards on health and safety. We submit that the commercial television ratings guidelines provide detailed guidelines on these issues and, as set out above, the advertisements are fully compliant with these guidelines. We also note that the ASB appears to have only received a handful of complaints regarding this advertisement which suggests that the advertisement does not appear to be out of step with prevailing community standards when comparing the relatively low number of complaints to the number of people which have viewed this advertisement.

Finally, we submit that the independent market research report conducted by Galaxy Research and the online forum discussion material included with this submission (as discussed in detail above) clearly demonstrate that the advertisement is not out of step with prevailing community standards. This evidence shows that the community accepts the right of AMI to use the phrase "Want Longer Lasting Sex?" in its advertisements.

For the reasons set out above we submit that the advertisement does not breach 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 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 voiceover 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.