



## **CASE REPORT**

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|-------------------------------|---|
| 1. Complaint reference number | 496/09  |
| 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, 11 November 2009                     |
| 7. DETERMINATION              | Dismissed                                       |

## **DESCRIPTION OF THE ADVERTISEMENT**

This Television Commercial commences with images of a man and woman back to back. The voice over says “Over 50% of men and women live with premature problems and failure to climax during intercourse”. “Men who can’t go the distance or females who can’t reach a level of satisfaction during intercourse should call the Doctors at AMI now to see if they can help you.” “Call 1800 211 211”. “You can make sex last longer and share the experience together.” “If you are tired of faking it or making excuses, call or SMS ‘TRY’ to 1800 211 211.”

Images and text appear on the screen reinforcing the voice over commentary with the 'I' from AMI appearing lying down then becoming upright.

## **THE COMPLAINT**

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

*I object to this advertising because I don't think that this material is rated PG as was the show viewing at that time. Near the end of the ad there is suggestive material where the "I" in AMI simulates the erection of a penis. I also object to the advertisers referring to sex or erections at all. Any television viewing during a PG rated show should be appropriate for my under-school-aged children to watch. I find this advertising offensive myself, never mind for my children. I think that the company and its advertisers have shown a talent for suggestive material that proves it could find a way to suggest that its product is for men with erection problems rather than bringing it wholly to my children's attention. I have no interest in teaching my children about erections before they are school aged and nor do I think that I should be forced into trying to have that conversation with a child who is too young to understand but wonders what this word means. Please protect our children and provide an environment where they can grow up without exposure to adult problems/concerns.*

## **THE ADVERTISER'S RESPONSE**

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

*As you know, we act for Advanced Medical Institute.*

*It is our understanding that only one complaint has been received in relation to this advertisement. 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 and would like assistance with that problem. It also emphasises that they are not alone and that problems of this nature are widespread. In making these comments the advertisement makes an inference that people who have this condition are not uncommon and should not be embarrassed about their condition.

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 involve any dangerous activities. We accordingly submit that the advertisement does not infringe section 2.6 of the code in any way.

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 the complainant indicated that she was watching Dr Phil between noon and 1pm when she saw the advertisement. This program is not aimed at children and contains content which is not suitable for children as it discusses sexual and

relationship related issues. Furthermore, contrary to the complainant's submission "Dr Phil" is rated M rather than PG which may be confirmed by reviewing the Channel 10 program guide relating to the program. Contrary to the submission made by the complainant, this program (and programs similar to it) are aimed at adult audiences and we submit that running advertisements of this nature during this program is appropriate as children should not be watching TV whilst this program is on air. Furthermore, AMI has been running advertisements during this program for a very extended period, which policy would be well known to regular viewers of the program.

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. 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; 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.ninensn.com.au/article.aspx?id=663170&source=cmailer>

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 larger 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 "Sex" in its public advertising. We believe that each of these forums (and Galaxy's independent research report) clearly indicate that AMI's advertising is in

line with prevailing community standards and is appropriate.

We also 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 timeslots deemed by CAD to have an M rating. This TV advertisement fully complies with the commercial television rating guidelines relating to the times at which the advertisement is run.

Finally, we note that the advertisement contains less confronting language than other advertisements run by AMI at the same time and on the same program which have earlier been approved by the board as not being in breach of the code. Without limiting the foregoing we note that the advertisement uses the term "premature problems" rather than "premature ejaculation" and that it uses the terms "sexual problems" and "intercourse" rather than "erectile dysfunction" and "sex". We are instructed that our client has used these less confrontational terms rather than the terms used in other approved advertisements in order to minimise the level of complaints arising from its TV advertisements.

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

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Checked with Advertiser regarding the urls referred to on Page 3 of AMI's response as ASB unable to access Ninemsn and PerthNow urls - see below

- <http://news.ninemsn.com.au/article.aspx?id=663170&source=cmail>
- ABC Online: <http://www.abc.net.au/news/stories/2008/08/26/2346336.htm> (attached)
- PerthNow: [http://www.news.com.au/perthnow/comments/0.21590.24239765-](http://www.news.com.au/perthnow/comments/0.21590.24239765-2761,00.html)

2761,00.html

AMI advised (4 November 2009):

*"In terms of the prior news reports we were relying on the prior links (the stories are more than 1 year old). If now disabled we will not be able to send them to you"*

## **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 concern that the advertisement was shown during a television program which was rated PG and was unsuitable for the time-slot or rating because under-school age children may be watching.

The Board noted the advertiser's reply and that the advertisement is rated M and is only shown during appropriately rated timezones.

The Board viewed the advertisement and considered whether the advertisement was in breach of section 2.3 of the Code. Section 2.3 of the Code states:

*"Advertising or 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 the advertisement had received a mature (M) classification and that this classification applies to television programming and advertising between 12.00pm and 3.00pm weekdays (excluding school holidays). The Board noted that the programmes during which these advertisements are broadcast during the day are Mature programmes and that parents should be aware that stronger advertising material can be broadcast during this timezone.

The Board noted that some viewers may find the sexual references in the advertisement offensive, but

considered these references were not inappropriate to a mature audience and timezones applying to an M classification. The Board considered the advertisement's treatment of sex and sexuality was sensitive to the relevant mature audience and found 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.