



## **CASE REPORT**

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| 1. Complaint reference number | 512/09   |
| 2. Advertiser                 | Advanced Medical Institute   |
| 3. Product                    | Professional Services  |
| 4. Type of advertisement      | Radio  |
| 5. Nature of complaint        | Other - Causes alarm and distress<br>Discrimination or vilification Disability – section 2.1 |
| 6. Date of determination      | Wednesday, 11 November 2009  |
| 7. DETERMINATION              | Dismissed  |

## **DESCRIPTION OF THE ADVERTISEMENT**

My name is Dudley, for years now my wife has been calling me Dud and I can tell you that it does not feel great. I am not alone, apparently over 50% of men suffer from erectile dysfunction. But thanks to AMI's nasal delivery technology, now my now my nickname starts with an "S." My relationship with my wife is back what it used to be in the good old days ... call TRY ...".

## **THE COMPLAINT**

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

*I get very angry when I hear advertisements for this type of product on the radio. If males have these problems, they should have enough brains to go see their doctor, not rely on advertisements. I listen to the radio for pleasure and to try to keep up with the latest news of the world and strongly object to such disgusting advertising.*

## **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. 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 however to the extent that you consider that section 2.5 covers broader issues we submit that in the case of this advertisement it is limited to the same issues as those arising under section 2.3 of the code.*

*The advertisement does not use 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. 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 involves 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. To the extent that section 2.5 of the code is considered to have a broader application than coarse or obscene language the submissions relating to section 2.3 also apply to section 2.5.*

*AMI is a high profile and well known radio advertiser. It has been one of the largest radio advertisers in Australia for the last 4-5 years with the Company frequently being rated as a top 5 radio advertiser in each capital city during many of the weekly ratings conducted during this time. AMI's extensive profile of using radio advertising to promote its treatment options is well known in the community and the likelihood that an AMI advertisement would be heard if a consumer listened to a particular radio station would not be any surprise to members of the public given AMI's longstanding and well established public profile of advertising on particular commercial radio stations.*

*AMI's advertising is confined to certain radio stations with those radio stations being selected on the basis of their demographic audience and the level of enquiry generated by advertising on the relevant station. In this respect we note that AMI owns more than 100 toll free telephone numbers and uses different telephone numbers for each station. AMI also uses call counting software licensed to it by one of Australia's leading telecommunications companies. This system and technology enables AMI to track whether its advertising is effective and has been aimed at the correct target audience.*

*In terms of the advertising on particular stations, each of the radio stations used by AMI have restrictions regarding the nature of the advertisements which may be run on those stations as well as time restrictions as to when those advertisements may be run. Those restrictions have been developed by the program director and are in addition to restrictions applicable under the code. For example, NOVA and AUSTereo do not permit the use of phrases like "premature ejaculation", "bonking" and so on during breakfast (6am to 9am) and kids pick up time (2:30pm to 4pm). At these times AMI's advertising is confined by these stations to the use of softer terms such as "making love" and so on. These restrictions have been developed by the relevant program directors as a result of complaints received by them in relation to AMI advertisements and based on the program directors assessment of the nature of advertising which they believe is appropriate having regard to their station, the program time zone and the target audience for that station and program time zone.*

*Whilst AMI acknowledges that some members of the community do not like AMI's advertisements, we believe that the advertisements comply with the code by treating sex and sexuality sensitively having regard to the relevant audience and the relevant programme time zone. As set out above, more confronting advertisements are restricted by relevant stations to time zones when children are less likely to be in the car with softer advertisements being run in those times.*

*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.*

*This particular advertisement uses the term "Erectile Dysfunction". It does not use the phrase "want longer lasting sex" and AMI believes that the term "Erectile Dysfunction" is less confronting than the term "want longer lasting sex". However, in the event a significant portion of the community disagrees with AMI's assessment that the phrase is not offensive then it is likely that such difference of opinion will result in a large number of complaints being made to the relevant radio stations with the stations then contacting AMI and asking it to change its advertising. We note that this has not occurred. The choice of radio stations by members of the public is voluntary and the prevalence of AMI's advertising on certain stations is well known. If particular members of the public do not want to listen to AMI advertisements then they have the option of selecting alternate stations.*

*For each of the reasons set out above we submit that the advertisements do not breach section 2.3 or section 2.5 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 is inappropriate.

The Board noted the advertiser's response and that the advertiser has framed its advertising towards men with a particular health/medical 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 able to be advertised provided that it complies with the Code.

The Board considered whether the advertisement was in breach of section 2.1 and 2.3 of the Code.

Section 2.1 of the Code states:

*"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 discussed the reference in the advertisement to the man called 'Dud'. The Board considered that the advertisement singled out an identifiable section of the community - men suffering premature ejaculation. In relation to this section of the community the minority of the Board considered that description of this man as 'dud' suggested that men who experience premature ejaculation are sexually inadequate. The minority of the Board considered that the advertisement was denigrating and demeaning to a section of the community who are experiencing premature ejaculation and that the advertisement breached section 2.1 of the Code. However the majority of the Board considered that, although the advertisement does identify a section of the community, the focus is on a single person whose nickname is related to his name (Dudley) and that the tone of the advertisement was unlikely to be taken seriously by most members of the community and that the advertisement did not ridicule or

demean men. On this basis the Board determined that the advertisement did not breach section 2.1 of the Code.

Section 2.3 of the Code states:

*"Advertisements shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone".*

The Board noted that the advertisement is for a sexually related product and that mentions of premature ejaculation. The Board noted that this is a radio advertisement and that people can choose the stations that they listen to. The Board considered that the content of this advertisement was not inappropriate to a radio audience noting that some consumer concern is about the advertising of the product itself rather than the content of the advertisement. The Board noted that this form of media is able to be chosen by consumers, that this type of advertising is well known to be included on particular stations, and that much of the content on those stations is also not directed towards younger children. The Board therefore found the treatment of sex was not inappropriate to the relevant audience and did not contravene Section 2.3 of the Code.

The Board also considered the advertisement under section s.2.5 of the Code in relation to language. In relation to section 2.5 the Board considered that the use of the language 'premature ejaculation' is not of itself language that is generally considered offensive or would be considered strong or obscene. The Board also considered that the use of the term premature ejaculation was appropriate to the advertised product and the media concerned.

Finding that the advertisement did not breach sections 2.1, 2.3 or 2.5 of the Code or on other grounds, the Board dismissed the complaint.