



CASE REPORT

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| 1. Complaint reference number | 514/08 |
| 2. Advertiser | Totally Natural Products |
| 3. Product | Health Products |
| 4. Type of advertisement | Radio |
| 5. Nature of complaint | Portrayal of sex/sexuality/nudity – section 2.3 |
| 6. Date of determination | Wednesday, 10 December 2008 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This radio advertisement from Totally Natural Products for its ErectOmax product includes the following script.

"Don't have the urge for sex anymore? Now you can help revitalize your sex life and performance in the bedroom with new ErectOmax. Scientifically developed for men, ErectOmax is an aphrodisiac supplement designed to enhance your sexual performance. Get excited about sex again with ErectOmax. ErectOmax is now available from Health Food Stores and Pharmacies near you. If symptoms persist see your doctor. Always read the label and use only as directed."

THE COMPLAINT

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

On Tuesday 11/11/08, whilst listening to the 1395 5AA breakfast show in Adelaide, I heard an advertisement [ad] at approximately 7.16 am, [SA time] that I found rather distasteful. As a regular listener to the program, I was very uncomfortable with the ad and its content, particularly in the presence of my 12 year old son. The ad was for ERECTOMAX, a product designed to improve sexual function. My son listens to the program intermittently whilst our family have breakfast together in the mornings. I do not want to change radio stations, nor do I want to switch off the program, but I feel this type of ad is better suited to a later time slot when children are usually asleep. I therefore request that this ad is re-programmed to a later time slot and not be played when young children are at risk of listening, as I feel my child should have the right to be a child first and not be exposed to adult themes at this young stage of his life. I feel just as strongly about this as the I did about the billboard ad asking the public if they "Want longer lasting SEX". I am pleased to say after complaints from the public this ad has been altered. I will be awaiting a reply to my letter/fax.

THE ADVERTISER'S RESPONSE

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

This response relates directly to the complaint that you have received and also encompasses the sign off and addressing on all other sections of the code including the AANA Advertiser Code Of Ethics. The Code incorporates the AANA Code for Advertising and Marketing Communications to Children (section 2.4) and the AANA Food and Beverages Marketing and Communications Code (section 2.8).

For the ASB's deliberation on this matter, Totally Natural Products has attached for your reference an audio mp3 of the advertisement in question, accompanied by the script for this relevant advertising piece.

Totally Natural Products understands that receipt of the material submitted is taken as consent for its use by the ASB for the Board's use and purpose.

The nature of the complaint is regarding AANA Code of Ethics (Section 2.3) - 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 complaint is specifically regarding – ErectOmax – a complementary medicine listed on the Australian Register of Therapeutic Goods – AUSTL 154372.

The advertisement in question for ErectOmax has been passed and approved by the Australian Self Medication Industry (ASMI) - the peak body representing companies involved in the manufacture and distribution of consumer health care products in Australia. ASMI Code of Practice sets the ethical standards for advertising and promotion of non-prescription consumer healthcare products in Australia. This system of self-regulation complements the co-regulatory advertising controls and the legislative requirements of the Therapeutic Goods Regulations 1990 and Therapeutic Goods Act 1989.

The code is authorised by the Australian Competition and Consumer Commission. It follows the National Medicines Policy which aims to improve health outcomes for all Australians. The provisions of the code are applied to promotional material in below-the-line activity directed to consumers, and to marketing support directed to healthcare professionals.

Acceptance and observance of its provisions are binding and a condition of membership of the Association.

The objectives of the code are to assist members to:

- Responsibly inform consumers about products*
- Make accurate, balanced and objective claims*
- Promote the Quality Use of Medicines (QUM)*

The code is monitored and reviewed by ASMI's Marketing & Ethics Subcommittee. The annual code review process takes into consideration the members' proposals and the views of external stakeholders. For your convenience the code can be reviewed in the following link:

<http://www.asmi.com.au/documents/ASMI%20Code%20of%20Practice%20March%202008.pdf>

As ASMI is the governing body for advertisements in the consumer health care market and by being given their approval, the issue of taste and decency and all other sections of the code, with relation to this product, being a complementary medicine have been addressed.

ErectOmax has been scientifically formulated to address the issue that men face with low testosterone levels. This is a serious condition and as such, Totally Natural Products has addressed this need.

New Scientist has released the following information pertaining to this health issue:

Scientists are now encouraging men to be screened for low levels of testosterone and treated accordingly.

The article states: "In particular, they recommend measuring testosterone in all men who have both type 2 diabetes and symptoms of testosterone deficiency, and in those with erectile dysfunction or low libido. "This is a major change," says Andre Araujo, director of epidemiology at the New England Research Institutes in Watertown, Massachusetts. "That puts a lot of people in the category of being screened for low testosterone."

"However, they also emphasise the role testosterone may play in causing these symptoms. In the case of erectile dysfunction, doctors are realising that drugs like Viagra, which increase blood flow to the penis, may not work if men also have low testosterone. Meanwhile, there is now strong evidence that low testosterone is linked with diabetes and obesity, and some evidence that boosting testosterone can alleviate the symptoms of diabetes."

"In the past two years several studies (see, for example, Archives of Internal Medicine, vol 166, p 1660, and The Journal of Clinical Endocrinology and Metabolism, DOI: 10.1210/jc.2007-1792)

have indicated that men with low levels of testosterone are more likely to die earlier than men with normal testosterone levels - even if they have no other symptoms.”

For further information regarding this released information and low testosterone in men, please see:

<http://www.newscientist.com/article/mg20026803.800#bx268038B1>

Totally Natural Products are regretful for making both the complainant and her son feel uncomfortable with the advertisement. However, given the serious nature of low Testosterone levels in men, Totally Natural Products constructed the attached ad to promote the product and the use of the radio station 1395 5AA, is significant in nature, due to the high listener demographic – the majority of which are adult males. The time slot that the complaint indicates, is the highest rating adult male listener ship slot for this station. This radio station is an adult station, where topical issues are raised and discussed on a continual basis. As outlined, low testosterone is a serious condition and one that Totally Natural Products feels comfortable in promoting to adult men, due to the possible outcomes and serious health effects.

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 advertiser response regarding the intended audience of the advertisement being adult male listeners and the placement of the advertisement. The Board considered the advertisement discussed the topic of erectile dysfunction in a straight-forward medical style.

The Board considered that the advertisement treated sex sensitively to the relevant audience and therefore 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.