



CASE REPORT

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| 1. Complaint reference number | 535/08 |
| 2. Advertiser | Advanced Medical Institute |
| 3. Product | Professional Services |
| 4. Type of advertisement | Radio |
| 5. Nature of complaint | Portrayal of sex/sexuality/nudity – section 2.3 |
| 6. Date of determination | Wednesday, 21 January 2009 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

These three radio advertisements for Advanced Medical Institute's nasal delivery technology use exactly the same text in the monologue, but have different phone numbers at the end of the monologue. The text is: "Are you a bloke who suffers from premature ejaculation? Do you go soft or don't last long? Well guys, you're not alone. AMI are getting thousands of calls each day from guys who want to last longer and improve their stamina in the bedroom. So to stop premature ejaculation and to get out of your bedroom hell, call AMI for their nasal delivery technology." The three phone numbers are: 1800 40 40 80; 1800 60 60 90; and 1800 60 50 50.

THE COMPLAINT

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

I find this ad offensive due to the lengths of the descriptive natural in which they try to engage the listener. I find their choice of words like soft etc in their direct response advertising to be offensive both to adults and children. Their choice of sexual words evokes both shock and an emotional response in the listener. I think this advertising is both offensive to women and children. I understand AMI are trying to help the male population which their apparently huge impotence problems but why should the rest population have to suffer with images of [men's genitalia] burn into our brains every ad break. And how do mothers explain these ads when their children ask?

The AMI ad for erectile dysfunction is played frequently on commercial radio stations such as 101.9FM throughout the day. The language used is lewd, coarse and inappropriate for children and is quite frankly offensive to myself. The frequency of these ads only amplifies the affect. they should be aired at a time that is more appropriate given the target audience.

I am trying to go about my business at work and do not need to hear every hour or so about men who ejaculate prematurely or go soft.

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 these advertisements and that the issues raised in relation to the advertisements appear to relate to section 2.3 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 program time zone. 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 confirmed 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 program 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.

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.

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 about the sexual references in this radio advertisement and the potential for children to be listening. The Board noted that at least some of the complainants' concerns were directed to the product itself.

The Board considered the application of Section 2.3 of the Code, which provides:

"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 that the advertisement's target audience was a more mature audience, having regard to the content that features on the relevant stations and during the relevant timezones when the advertisement played. The Board considered the relevant audience for this radio advertisement was a narrower audience than applies in the case of an outdoor advertisement and noted that programming aimed at adult listeners could be switched off while children were present, as could radio advertising aimed at adult listeners. The Board considered that the advertisement's references to sex and sexuality were mild in tone and sensitive to the relevant audience.

While the Board recognised that some members of the community may be offended by the discussion of certain issues relating to sex in a radio advertisement, the Board found no grounds under Section 2.3 to uphold the complaints.

The Board noted the use of the terms 'premature ejaculation', 'going soft' and 'bedroom hell' in the advertisement. The Board considered that the use of 'premature ejaculation' was relevant to the product or service being advertised and were used factually and not inappropriately considering the relevant audience. The Board considered that use of the terms 'going soft' and 'bedroom hell' were relatively discrete references to a sexual issue and would not be understood by children. The Board considered that the use of these terms was not inappropriate, strong or obscene and did not breach section 2.5 of the Code.

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