



CASE REPORT

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| 1. Complaint reference number | 563/09 |
| 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, 20 January 2010 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This radio advertisement from Advanced Medical Institute for its professional services opens with a female voice asking: Honey, if there was one thing you could change about yourself, what would it be? A man answers with: Well, I wish I could last longer in bed. The woman then says: You could make it happen right now. The man replies: Are you serious, we can practice now? The woman answers: No. You can call AMI and get some staying power. We can practice after you call them. The man asks: Where's my phone?. The woman then tells listeners to stop the disappointment and that AMI has helped thousands of men perform better in the bedroom. She then repeats the number to call.

THE COMPLAINT

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

Inappropriate time slots, breakfast lunch and dinner times - children don't need to be exposed to that sort of information. Also there is no medical evidence that it even works so its also misleading. It also portrays the fact that relationships are all about longer lasting sex.

Just very inappropriate .

THE ADVERTISER'S RESPONSE

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

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 pro gramme time zone;*
- 3. section 2.5 of the code requires advertisements and/or marketing communications to only use language which is appropriate in the circumstances and to not use strong or obscene language; and*
- 4. 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. We accordingly submit that section 2.4 of the Code is not relevant to this advertisement. The advertisement does not use discriminatory or negative 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 contains positive messages indicating that people who have this problem might improve their situation if they seek treatment.

We accordingly submit that the advertisement does not infringe section 2.1 of the code in anyway. 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.

Section 2.5 of the code requires that advertisements not contain strong or obscene language and that the advertisement use language which is appropriate in the circumstances. The advertisement does not contain strong or obscene language. 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 phrases "lasted longer in bed" and "perform better in the bedroom". It does not use the phrase "want longer lasting sex" and the phrases used in the advertisement are the least confronting of any phrases used by AMI in any of its advertisements over the past 2 years. In the circumstances we submit that the advertisement treats sex and sexuality appropriately and modestly. 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 advertisement does 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 complainant's concerns that the advertisement is inappropriate, that it exposes children to sexual information and promotes that relationships are all about long lasting sex. The Board also noted the complainant's concern that there is no medical evidence that the product works. The Board noted that it is not within its jurisdiction to consider whether the claims about the products efficacy are truthful or not.

The Board considered section 2.1 of the Code. Section 2.1 of the Code prohibits 'advertising or marketing communications ...portraying people or depicting material in a way which discriminates against or vilifies a person or section of the community on account of... sex.'

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 sexual performance in a radio advertisement, the Board found no grounds under Section 2.3 to uphold the complaints.

The Board noted the use of the reference to 'lasting longer in bed' and reference to 'performing better in the bedroom' in the advertisement. The Board considered that the use of these references to sex

were mild and being euphemisms were not explicit. The Board considered that these references were relevant to the product or service being advertised and were not used inappropriately considering the relevant audience. 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.