



CASE REPORT

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| 1. Complaint reference number | 588/09 |
| 2. Advertiser | Advanced Medical Institute |
| 3. Product | Professional Services |
| 4. Type of advertisement | Print |
| 5. Nature of complaint | Discrimination or vilification Gender - section 2.1
Portrayal of sex/sexuality/nudity – section 2.3 |
| 6. Date of determination | Wednesday, 9 December 2009 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This print advertisement has the heading “MEN” in bold lettering. Next words are “You wouldn’t believe what your partner could be saying...about your performance in the bedroom”. Displayed adjacent to these words is the image of two women, with one whispering something behind her hand, to the other.

Remainder of poster provides details of the product, services and treatments available. Call to action is Call or SMS TRY to 1800 20 10 10.

THE COMPLAINT

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

I enclose an advertisement from “The Advertiser” in Adelaide. It also appeared in the Adelaide “Sunday mail” and also again on Monday 24th November. I find it offensive, sexist, demeaning to men who have this sort of medical condition. To have two young women making a joke of it is disgusting, and the ad says it is causing distress to women. I hope you condemn this type of advertising and I wish I could sue them or bring them to account.

It portrays men as being subject to ridicule by their partner if they suffer from this common problem. It suggests that women laugh about this problem between themselves therefore not being interested in helping their partner overcome the problem or finding other solutions and it suggest to men that their partner cannot be trusted. It also gives the impression that purchasing and taking the drugs available via the institute is the only method of achieving a sexual performance that does not cause women to suffer 'frustration, dissatisfaction and distress'.

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 one complaint has been received in relation to AMI's Sunday Telegraph advertisement and we attach a copy of two similar advertisements which have run in the relevant publication (we are unsure which one has been complained about but note they are similar in nature).

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;*
- 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.

The advertisement contains factual language. We accordingly submit that the advertisement does not infringe section 2.6 of the code in any way.

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. We note that the complainant appears to believe that the image used in the advertisement suggests that people are laughing about this kind of problem. That is not the intention of the imagery - the imagery was included in the advertisement to indicate the positive commentary which is likely to be made if men are treated.

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

The advertisement contains several sexual related references being "Erectile Dysfunction" and "PE". None of these references are alarmist nor do any of these references seek to do anything other than invite calls from people who may have a sexual related problem to call a doctor.

The section of the paper in which the advertisement appears is in a news related area which is unlikely to be viewed by children. The picture contained within the advertisement is not sexually explicit and is tasteful and the text of the advertisement makes it clear that the advertisement is aimed at adults rather than children.

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;*
- 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.

We do not believe that the phrases used in this particular advertisement are any more offensive than the phrase "want longer lasting sex". In fact, we believe the advertisements contain phrases which are much more subtle and indirect than this phrase.

In the circumstances, we submit that 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 reading this magazine and we consider that this submission is supported by the fact that only one complaint appears to have been received in relation to this advertisement.

For all of the reasons set out above, we submit that the advertisements do not breach section 2.3 of the code.

Similarly, we do not believe that the advertisement contains coarse 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 and we submit that the language used in the advertisement is appropriate given the audience. For these reasons we submit that the advertisement does not breach 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 content of the print advertisement and noted the complainant's concerns that the advertisement is sexist and demeaning to men.

The Board noted that advertising a sex related product is not prohibited in Australia but that such advertisements must comply with the Code of Ethics.

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 depiction of one woman whispering to another and the reference to 'Men - you wouldn't believe what your partner could be saying about your performance in the bedroom.' 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 reference to women talking about their partners and the depiction could be read either as a reference to women talking about their partner's problem with premature ejaculation or could be read, and in the Board's view is more likely to be read, as a reference to a woman telling her friend how her partner is performing well intimately. The Board considered that, although the advertisement does identify a section of the community, the more likely connotation from the advertisement is a focus on the positive outcomes that the advertiser says they can deliver. The Board considered 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.

The Board considered this advertisement in relation to Section 2.3 of the Code which states:
Advertising and 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 features a reference to 'interrupted intimacy', 'premature ejaculation' and refers to calling the doctor 'to improve your sex life'.

The Board noted that these references to sexual performance were not of themselves necessarily unable to be used in advertising, and that advertisements dealing with a medical disorder or a male health issue may require some of this content. The Board determined that the words *improve your sex life* were not medical or clinical in nature and were in fact a blatant message about a sexual act. The Board also noted that section 2.3 of the Code does require that sexual references are treated with

sensitivity to the relevant audience.

The Board noted that this advertisement had been placed in a general section of a Sunday newspaper and considered that this media is targeted to and mostly read by adults. The Board determined that this advertisement did treat sex, sexuality or nudity with sensitivity to the relevant audience and that the advertisement did not breach 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' and 'sex life' 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 and 'sex life' was appropriate to the advertised product and the media concerned.

The Board noted that the advertiser's claims about the product, and whether or not the same results can be achieved by other means, are not matters within the jurisdiction of the Board.

Finding that the advertisement was not in breach of the Code the Board dismissed the complaints.