



Case Report

| | | |
|---|-------------------------------|-----------------------------------|
| 1 | Case Number | 0513/14 |
| 2 | Advertiser | Advanced Medical Institute |
| 3 | Product | Health Products |
| 4 | Type of Advertisement / media | Radio |
| 5 | Date of Determination | 10/12/2014 |
| 6 | DETERMINATION | Upheld - Modified or Discontinued |

ISSUES RAISED

- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.5 - Language Inappropriate language

DESCRIPTION OF THE ADVERTISEMENT

This radio advertisement features a voiceover which says, "AMI's revolutionary oral strips will help you give her the longest lasting, most passionate, show-stopping sex she has ever had. Get on the phone to hear her moan, moan, moan. Call AMI now...wrap up your premature problems in time for Christmas, 1800 40 40 50."

THE COMPLAINT

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

This advertisement is played on Fox FM during hours that children and teenagers would potentially be listening to the radio in (in the background even) and it exposes them to lewd content and gives them false expectations of what sex is supposed to be like.

The nature of the sound effects and corresponding messages being played at this time is inappropriate given the audience. My 9 year old son heard this and asked 'what is sexual ejaculation?'

This is not a term he hears from us and was asked immediately after this ad.

This offended my wife and I and we believe is totally inappropriate in this time slot.

Aside from being irritating it is explicit and offensive. I have heard the ad at all times during the day - we can no longer listen to that station at our workplace because of it and i know friends who have heard it while their kids are in the car with them. I feel anything that is offensive on that level that you switch off around business or children is not appropriate to air on a commercial station.

The highly sexual content of the advertisement with the narrator's sexualised tone of voice was disturbing, particularly as it was shown in the middle of the day. I don't believe the explicit and sexual nature of the ad was appropriate for the time at which it was played. I would like to be able to listen to the radio at such times without having to hear a woman faux climaxing as she describes the product. If the ad had been presented in a factual/scientific manner with a neutral rather than 'sultry' voice, I would not have been so affected.

I think that this ad is highly inappropriate. Advertising something to make your partner "moan" is very unnecessary. The ad is offensive and makes me very uncomfortable and I think it shouldn't be on the radio.

I had my kids in the car, who asked questions. I think it was far of early in the day to have that kind of ad.

The ad is too verbally graphic for a regular daytime programme. The words contained in the ad and the nature of the ad are inappropriate.

It is reasonable to expect that there will be children hearing the radio in the car at this time of day (10am). This ad is particularly unsuitable for a child audience.

One should be able to trust that a regular day program on a regular radio station would contain appropriate advertising for a family audience.

These ads are on far to early given the content of the ad. Young Kids are listening at that time. Very inappropriate. Ads have come on on the trip home from school. I would have no issues with ads being aired after 8pm.

I drive home listening to the radio and often have my daughter in the car. This advertisement was very coarse in its approach and I regard this as a poor choice of advertisement given the hour of broadcast.

1. It sexually objectifies women

2. Sex is not something that should be discussed so publicly, it makes it seem "ok" to talk about sex openly to everyone when in fact it is NOT ok and promotes promiscuous behavior in young people

7. The time the ad is played is highly inappropriate. at 7am in the morning many people are driving to work or parents are driving the children to school or morning activities. This is my primary concern, children should not be exposed to this, it is not appropriate at all for minors. People that would hear this ad come from all age groups, beliefs and cultural backgrounds and, like me could be offended by this based of their beliefs. For example, I believe that sex is incredibly private, its not only about making each other moan and doing it for hours but an intimate experience of emotional connection and closeness that should not be discussed openly. This ad offended me greatly.

4. I believe this would make men feel uncomfortable if they can't make a woman "moan moan moan" as the ad suggests that is a problem that needs to be fixed.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

We understand that the issues raised in relation to this 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:

section 2.1 of the code which requires that the advertisement not contain material which discriminates against or vilifies a person;

section 2.4 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 advertisements and/or marketing communications to only use language which is appropriate in the circumstances and to not use strong or obscene language; and

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 we are 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 these advertisements. Without limiting the foregoing, we note that the communications are not directed to or targeted at children. We accordingly submit that the ASB's code in relation to advertising and marketing material relating to children is not relevant to this advertisement.

We note that the advertisement does not contain any negative or derogatory language. On the contrary the language is positive.

We accordingly submit that the advertisements do 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 advertisements do not infringe section 2.6 of the code in any way.

Section 2.4 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 advertisements use language which is appropriate in the circumstances. The advertisements do 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 2.4 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 6-7 years with the business 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 "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 listening 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.

While this advertisement uses the term “sex”, it does so in a positive and non-confrontational way and, as set out above, most Australians do not find this term offensive. In addition, AMI believes that the phrases used in this advertisement are less confronting than other phrases used by AMI in other advertisements which have been found by the board to be in compliance with the code (eg the phrase “do it like an animal” which was used in 162/10).

In the circumstances we submit that the advertisements treat sex and sexuality appropriately having regard to the relevant timeslot. However, in the event a significant portion of the community disagrees with AMI’s assessment that the phrases are 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 includes language that is of a sexual nature and is inappropriate for a listening audience that includes children. The Board reviewed the advertisement and noted the advertiser’s response.

The Board noted the complainant’s concern that men would feel uncomfortable hearing this advertisement suggesting that they have a problem if they can’t make a woman “moan, moan,

moan.”

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted that the advertisement features a female voiceover talking about giving her a “Christmas gift she won’t stop moaning about” and how the oral strips will help you give her “ the longest lasting, most passionate, show stopping sex she has ever had...” The voiceover suggests the listener should get on the phone to hear her moan, moan, moan and then provides the contact details for AMI to assist with premature ejaculation problems in time for Christmas.

The Board noted that some people may consider the discussion of a man’s erectile dysfunction to be inappropriate and that the product should not be allowed to be advertised. The Board noted that the product is legally allowed to be advertised and that the matter of product suitability is not a matter for the Board.

The Board considered the requirements for discrimination and vilification. In particular the Board considered that this advertisement did single out an identifiable section of the community – men experiencing premature ejaculation or having trouble sustaining an erection.

The Board noted it had previously upheld a television advertisement for the same advertiser (0476/14) where it showed women yelling from their balconies about the poor performance of their partners. In this case the Board considered that the tone and text of the advertisement (in particular each woman's apparent frustration) were suggestive of intolerance towards these men and that it did breach section 2.1 of the Code.

In the current radio advertisement however, the Board considered that the emphasis is not drawing so heavily on the performance of men or any apparent frustrations of unsatisfied women. In the current matter the Board considered that the advertisement does not vilify a person or section of the community on account of gender and did not breach section 2.1 of the Code.

The Board then considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: “Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.”

The Board noted the complainant’s concern that the advertisement sexually objectifies women.

The Board noted that in order to breach this Section of the Code the images would need to use sexual appeal in a manner that the Board considered both exploitative and degrading. The Board considered that the use a woman’s voice talking about “making her moan” in the context of the advertised product does not present women in a manner which degrading. The Board noted the voice of the women is confident. The Board considered that the advertisement did not employ sexual appeal in a manner which is exploitative and degrading to women.

The Board determined that the advertisement did not breach Section 2.2 of the Code.

The Board then considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”.

The Board noted it had previously dismissed a similar advertisement for the same advertiser (ref: 0145/13) which referred to men calling AMI about their oral strips. In this case the Board considered that

“... the advertisement’s target audience was adult listeners and noted that programming aimed at this audience could be switched off while children were present. The Board noted that the advertisement is for a sexually related product and that mentions of sex, erections and enhancement of sexual performance are relevant to the product.

The Board noted that the advertisement raised issues of sex and sexuality that some members of the community may find inappropriate for radio broadcast at any time. 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 however, the Board considered that the advertisement’s treatment of sex and sexuality was not inappropriate to an after 8.30pm audience...”

In the current advertisement, the Board noted the advertiser’s response that radio stations themselves apply certain restrictions to the advertisements for these and like products and that the advertisement was aired appropriately within the restrictions of the particular stations. The Board considered that while the advertisement does not use sexually explicit language the repeated use of the word “moan” and the sultry tone of the presenter’s voice does add a level of sexualisation to the advertisement and puts the idea or notion of sex in an environment such as the family car that may then mean the subject needs to be discussed. The Board noted that the advertisement was aired at varying times throughout the day and considered that the times provided were times that would likely include children in the car being driven to and from school and to other activities.

The Board considered that although the product is a sex related product, and is legally able to be advertised, the sexualised content of the advertisement means the advertisement is not appropriate for the medium and does not treat the issue of sex with sensitivity to the relevant audience and did breach section 2.4 of the Code

The Board then considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: “Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided”.

The Board noted the use of the word “moan” and other descriptors use to mention the type of sex that could be “given” for Christmas. The Board considered that although the reference to “make her moan” in the context of the advertised product is likely to suggest that women want sex, it is a word that is measured at the low end of offensive.

The Board considered that the advertisement did not use language which was strong or obscene and did not breach section 2.5 of the Code.

Finding that the advertisement did breach section 2.4 of the Code, the Board upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

I advise that the advertisement has been discontinued.

