

<b>COMPLAINT NUMBER</b>	17/123
<b>COMPLAINANT</b>	G Neilson
<b>ADVERTISER</b>	Pharmabroker Sales Ltd
<b>ADVERTISEMENT</b>	Pharmabroker Sales Ltd, Radio
<b>DATE OF MEETING</b>	9 May 2017
<b>OUTCOME</b>	Not Upheld

## **SUMMARY**

The 30-second Pharmabroker Sales Ltd radio advertisement was for Buccaline, an oral vaccine product for immunisation against the bacterial complications of the common cold. The advertisement included the words: “The following is a public health warning. Winter Colds will be severe.” and “Immunise your family today with Buccaline tablets.” The advertisement included a disclaimer statement and a jingle, which were both played before the words: “The following is a public health warning.” The words of the jingle were: “Buccaline, Buccaline. Immunise with Buccaline.”

The Complainant was concerned that the advertisement implied it contained official advice from the Government and that it also implied that taking Buccaline would result in immunity, which was impossible.

The Complaints Board said the Advertiser was technically correct to use the word “immunise” in relation to Buccaline because this product is an approved medicine for oral vaccination and it can only be bought from a pharmacist. A majority of the Complaints Board believed adults would not think the words “What follows is a public health warning” which was preceded by a jingle and followed by the words: “Winter colds will be severe” was an official health warning. A minority of the Complaints Board was concerned some adults and children would misinterpret the advertisement as official.

In accordance with the majority the Complaints Board ruled the complaint was Not Upheld.

### **[No further action required]**

Please note this headnote does not form part of the Decision.

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## **COMPLAINTS BOARD DECISION**

The Chair directed the Complaints Board to consider the advertisement with reference to Principles 1 and 2 of the Therapeutic and Health Advertising Code. This required the Complaints Board to consider whether the advertisement had observed a high standard of social responsibility particularly as consumers often relied on such products, devices and services for their health and well-being and whether it was truthful, balanced and not misleading or likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason play on fear. That included by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

The Complaints Board was not required to consider Guideline 2(d) because the advertisement did not contain reference to the advertiser's sponsorship of any government agency, hospital or other facility providing healthcare services.

### **The Complaints Board ruled the complaint was Not Upheld**

The Complaints Board first turned to the Complainant's concerns. The Complainant said the advertisement was misleading in two ways. These were, firstly, that the advertisement was "prefaced with a deep-throated male voice stating that "What follows is a public health warning" and that: "Given that public health is the responsibility of the Government, this wording implies that what follows is official advice from the Government." The Complainant said, secondly, that the jingle said "immunise with Buccaline" and that the word "immunise" implied that the product results in immunity which "is, of course, impossible."

### **The Advertiser's reply**

The Complaints Board then considered the reply from the Advertiser, Pharmabroker Sales Ltd. The Advertiser said, in relation to the complaint that immunising with Buccaline was impossible, that Buccaline was a registered Pharmacist medicine for the prophylaxis of the complications of colds and the radio script said "protect your family now from the complications of colds." The Advertiser submitted a Medsafe data sheet that said Buccaline was an oral vaccine which stimulated the immune system to build up a systemic, specific immunity.

The Advertiser said, regarding the complaint related to the wording "The following is a public health warning. Winter colds will be severe," that the wording had been approved by the Therapeutic Advertising Pre-vetting Service" (TAPS) and that the Advertiser was not imitating the New Zealand Government or other agencies that issued official public health warnings. The Advertiser said the wording was "very general" and intended to alert people to coming winter weather when colds were more prevalent and severe.

### **The Media Response**

The Complaints Board then turned to the response from New Zealand Media and Entertainment (NZME) on behalf of the media. NZME said the advertisement was written and recorded by a third party outside of NZME and had been approved by TAPS. The NZME policy "at this point" was to accept TAPS-approved material for play.

### **The Complaints Board discussion**

The Complaints Board considered the Complaint's concern in two parts, firstly their concern that the advertisement came across as an official public health warning and secondly that the advertised product had an immunising effect.

#### **Did the advertisement imply an official public health warning?**

A minority of the Complaints Board said that young people and some adults listening to the advertisement could take from it that the Government was recommending people immunise against winter colds by taking Buccaline tablets. The use of the words: "What follows is a public health warning." made the advertisement sound as if it was an official governmental warning. A parent then had the difficult task of explaining to a child that had asthma, for example, that the advertisement did not come from the Government and that Buccaline tablets were not necessary in the child's case.

The majority of the Complaints Board did not believe adults, who would be responsible for buying the product, would take the advertisement with its accompanying jingle as an official

public health warning. A serious public health warning would not come preceded by a jingle. As well, the words "public health warning" were followed by the words "winter colds will be severe." The Complaints Board said a public health warning would not be issued in isolation before winter, predicting colds would be severe, since children tended to have six to ten colds spanning a year. The Complaints Board did, though, believe that it was unfortunate that the Advertiser had included the words: "What follows is a public health warning." The Complaints Board also noted that disclaimer statements were read out prior to the advertisement jingle and these statements included the advertisers name and address.

#### **Was the word "immunise" misleading?**

The Complaints Board said the Advertiser was technically correct in saying that Buccaline had an immunising effect. The advertiser had provided substantiation in the Medsafe Data Sheet that Buccaline is an oral vaccine with clinically proven immunisation action. Consumers could not buy the product without talking to a Pharmacist and the Complaints Board said most Pharmacists would tell people who wanted it that it did not replace the influenza flu vaccine, but was an adjunct to it.

The Complaints Board said the advertisement had observed a high standard of responsibility and was truthful, balanced and not misleading and had not breached Principles 1 and 2 of the Therapeutic and Health Advertising Code.

In accordance with the majority the Complaints Board ruled the complaint was **Not Upheld**.

### **DESCRIPTION OF ADVERTISEMENT**

The 30-second Pharmabroker Sales Ltd radio advertisement was for Buccaline, an anti-bacterial medication for colds. The advertisement began with a male voiceover saying: "Buccaline contains inactivated bacteria. Always read the label. Use as directed. Should not replace flu vaccinations. Pharmabroker Sales Auckland. This was followed by a jingle, repeated at the end of the advertisement, which contained the words: "Buccaline, Buccaline, immunise with Buccaline." Following the first airing of the jingle the voiceover said; "The following is a public health warning. Winter colds will be severe. Protect your family now from the bacterial complications of colds. Immunise your family today with Buccaline tablets. Ask your pharmacist for Buccaline while stocks last."

### **COMPLAINT FROM G NEILSON**

This advertisement is misleading in two ways:

- It is prefaced with a deep-throated male voice stating that "What follows is a public health warning." Given that public health is the responsibility of the government, this wording implies that what follows is official advice from the government.
- The jingle states "immunise with Buccaline." The word "immunise" implies that the product results in immunity. This is, of course, impossible.

### **THERAPEUTIC AND HEALTH ADVERTISING CODE:**

**PRINCIPLE 1:** Therapeutic and Health advertisements shall observe a high standard of social responsibility particularly as consumers often rely on such products, devices and services for their health and wellbeing.

**PRINCIPLE 2:** Advertisements shall be truthful, balanced and not misleading. Advertisements shall not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear.

This includes by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

**Guideline 2(d):** Advertisements may include reference to the advertiser's sponsorship of any government agency, hospital or other facility providing healthcare services, provided that sponsorship is explicitly acknowledged and cannot be misconstrued as an endorsement of the product, device or service being advertised.

#### RESPONSE FROM ADVERTISER: PHARMABROKER SALES LTD

A basic, neutral description of the advertisement	Radio Advertisement for Buccaline
Date advertisement began	April 3 <sup>rd</sup> 2017
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	Radio
Is the advertisement still accessible – where and until when?	The Radio advertising finishes on 28 <sup>th</sup> April 2017
Who is the product / brand target audience?	People that wish to have additional protection against the bacterial complications of colds. Buccaline is a Pharmacist Medicine and in the advertisement we direct the consumer to talk to a pharmacist.
Pre-vetting Approval number if applicable	PP8938
Clear substantiation on claims that are challenged by the complainant.	<p><b>Complaint</b> “immunise with Buccaline”, this is of course impossible”.</p> <p>Buccaline is a registered Pharmacist Medicine for the Oral antibacterial prophylaxis of the complications of colds. Medsafe Data Sheet attached. The radio scripts states “protect your family now from the bacterial complications of colds”. The data sheet confirms that Buccaline is an oral vaccine with a clinically proven immunisation action. The jingle “Immunise with Buccaline” is qualified by the advertisement’s content.</p> <p><b>Complaint:</b> “The following is a public health warning, winter colds will be severe.”</p> <p>TAPs approval was granted for this wording. We did not purport to imitate the NZ Government or one of the many agencies that issue official public health warnings. The wording was very general with the intent to alert people to the fact that winter is coming and colds are more prevalent and severe when the cold weather begins. Accuweather</p>

	states that “common cold” weather begins on May 10 <sup>th</sup> .
A copy of the script	<p>MVO Buccaline contains inactivated bacteria.</p> <p>Always read the label – Use as directed. Should not replace flu vaccinations. Pharmabroker Sales, Auckland.</p> <p>MUSIC IN VOCALS Buccaline – Buccaline Immunise with Buccaline</p> <p>MVO The following is a Public Health Warning.</p> <p>Winter COLDS will be severe.</p> <p>Protect your family now from the bacterial complications of colds.</p> <p>Immunise your family today With Buccaline Tablets.</p> <p>Ask your pharmacist for Buccaline. While stocks last.</p> <p>FVO Buccaline – Buccaline Immunise with Buccaline</p>

#### RESPONSE FROM MEDIA: NZME

The advertisement was written and recorded by a third party outside of NZME and came with evidence of TAPS approval when we requested it (attached).

We sought confirmation that this approval was genuine and current, and it is. It is our policy at this point to accept TAPS approved material for play, but we await the ASCB Decision on this case with interest.