

COMPLAINT NUMBER	17/137
COMPLAINANT	C Gunn and M Muir
ADVERTISER	Douglas Pharmaceuticals Ltd
ADVERTISEMENT	Douglas Pharmaceuticals Ltd, Television
DATE OF MEETING	13 June 2017
OUTCOME	Not Upheld

SUMMARY

The 30-second Douglas Pharmaceuticals television advertisement was for Clinicians Health Fix Flora Restore described in the advertisement as “a unique female natural probiotic that helps support both vaginal and bladder health.” The product was promoted by a woman presenter and contained an outline of a woman's lower body overlaid with an image of the product's package.

The two Complainants were concerned that the television advertisement had been inappropriately placed. The first Complainant was concerned the advertisement had been played at 2pm on a public holiday during a family movie which children would have been watching. The second Complainant's concern was that the advertisement was played just before the sports news on TV1, at dinner time and when men and children would have been watching.

The Complaints Board noted the Complainants' views that the advertisement was not placed for its target audience. The Complaints Board disagreed. The Complaints Board said there was nothing in the content of the advertisement that made it inappropriate to screen during PG rated programmes included the movie Oz the Great and the Powerful and a 6pm news bulletin. The Complaints Board said the advertisement had been prepared and placed with a high standard of social responsibility and was not in breach of Principle 1 of the Therapeutic and Health Advertising Code.

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

[No further action required]

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

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Principle 1 of the Therapeutic and Health Advertising Code. The 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 wellbeing.

The Complaints

The Complaints Board first turned to the concerns of the two Complainants.

The first Complainant stated they were not complaining about the advertisement itself but its programming in advertisement breaks in a family movie. The Complainant said an advertisement for specifically addressing the issue of vaginal health was “well and good when played with adults programming. However, at 2pm on a public holiday when children under 10 years old are watching a family movie I think the timing of this ad scheduling is inappropriate and ill thought out.”

The second Complainant said the slot before the sport news on TV1 was probably not the best time for the “vaginal health” target market. The advertisement was inappropriate for children watching at 6.30pm and was probably not appreciated by the mostly male demographic waiting to watch sport news. The Complainant stated: “Could this advert not be played earlier during daytime (stay at home mums) or after 8.30pm? Children, men and women do not need to see adverts about vaginal health at 6.30pm (dinner time!).”

The Advertiser's response

The Complaints Board then considered the response from the Advertiser, Douglas Pharmaceuticals Ltd. The Advertiser said they did not consider there had been any breach of Principle 1 of the Therapeutic and Health Advertising Code in the advertisement for Flora Restore but that the essence of the complaints seemed to be that the advertisement “is directed specifically at women, and that it is 'inappropriate' that it be viewed by men or children.” The Advertiser disagreed and said the product was potentially suitable for a large section of the adult population, that is all adult women, and the screening times were selected with that demographic in mind. The Advertiser did not accept that it was inappropriate for men to see an advertisement for a product specifically for women and that while it was inappropriate for children to see products of a sexual nature aimed at adults, Flora Restore was not such a product.

The Advertiser said the first Complainant's concern seemed to be that children would have seen the advertisement during an Easter Monday afternoon screening of Oz the Great and Powerful. The Advertiser said the advertisement had a Commercial Approvals Bureau (CAB) rating of GXC (General Except Children) and was able to be broadcast at any time except during programmes intended specifically for children under 13. The Advertiser contended the movie was rated PG-SS (Parental Guidance - Scary Scenes) and was thus not intended specifically for children under 13.

The Advertiser said, in relation to the concerns of the second Complainant, that the evening news was not a programme intended specifically for children under 13. The Advertiser said though it might be correct that male viewers might not appreciate the advertisement or find it relevant, that was no reason for not showing an advertisement relevant to the large number of female viewers also watching at that time.

The Media's responses

The Complaints Board then considered the response from CAB on behalf of the Media. CAB said the advertisement had a GXC classification meaning it could not play during programming allocated to child viewers.

CAB said the advertisement clearly met the requirements of Principle 1 of the Therapeutic and Health Advertising Code. It presented clear information and accurate claims for a defined audience including women who might be pregnant or breastfeeding.

CAB noted that, in a general issue of taste and decency, the Complainants viewed the commercial during One News and Oz the Great and Powerful, both with “PG” parental

guidance guidelines, meaning a parent must supervise any child watching.

The Complaints Board then turned to the response from the broadcaster, TVNZ. TVNZ said though they could understand offence at the advertisement being aired in a movie with a youth and family audience, the advertisement was low key with a woman speaking about the product in a clinical manner with no explicit or detailed visual element. Vagina was a proper term for that part of the body and was not a word only appropriate for adults. TVNZ cited a “Keeping Ourselves Safe Programme Parent workshop questions” paper used for primary school students and which stated: “It is important to teach children to use the correct term for genitals.”

The Complaints Board discussion

The Complaints Board noted that the main issues raised by the Complainants related to placement. It took into account that the advertisement had a GXC classification and could not play during children’s programmes. It noted that both the movie and One News, had “PG” or parental guidance ratings.

The Complaints Board noted the Complainants’ views that the advertisement was not placed for its target audience. The Complaints Board disagreed. The Complaints Board said there was nothing in the content of the advertisement that made it inappropriate to screen during PG rated programmes included the movie Oz the Great and the Powerful and a 6pm news bulletin. The Complaints Board accepted that some consumers would not be interested in the product or vaginal health but this did not mean the Therapeutic and Health Advertising Code had been breached. The Board accepted that the advertisement presented clear information and used appropriate language.

The Complaints Board said the advertisement had been prepared and placed with a high standard of social responsibility and was not in breach of Principle 1 of the Therapeutic and Health Advertising Code.

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

DESCRIPTION OF ADVERTISEMENT

The 30-second Douglas Pharmaceuticals television advertisement was for Clinicians Health Fix Flora Restore. It opened with the Clinicians and Health Fix logos and music. A woman presenter on a couch said: “While we might not talk about vaginal health, an imbalance of friendly bacteria is a common issue one in four of us may experience in our lives.”

An image of the mid-part of a woman's body with an image of the product's package over the covered mid-section appeared and the woman's voice continued: “Clinicians Flora Restore is a unique female natural probiotic that helps support both vaginal and bladder health. Just take one capsule once daily.” This message was reinforced by printed graphics and the presenter returned to the screen to say: “Flora Restore is suitable for all women including those pregnant or breastfeeding.”

The advertisement ended with an image of the packet and the presenter saying: “Flora Restore and a wide range of other women's health products from Clinicians are available at your local pharmacy and health store.” A disclaimer said: “Always read the label and use as directed. If symptoms persist see your healthcare professional. Douglas Pharmaceuticals, Auckland.”

COMPLAINT FROM C GUNN

I am complaining not due to the movie itself, but the programming of adbreaks within this movie - at 2pm an ad for clinicians specifically addressed the issue of vaginal health, which is well and good when played within adults programming however at 2pm on a public holiday when children under ten years old are watching a family movie I think the timing of this ad scheduling is inappropriate and ill thought out.

COMPLAINT FROM M MUIR

An advert for women's vaginal health was played just before the sport news on TV1. Probably not the best time for the "vaginal health" target market! Inappropriate for children watching at this time - 6.30pm and probably not appreciated by the mostly male demographic waiting to watch the sports news!. Could this advert not be played earlier during daytime (stay at home mums or after 8.30pm? Children, men and woman do not need to see adverts about vaginal health at 6.30pm (dinner time!!!) Please re-schedule these adverts for a more appropriate time.

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.

RESPONSE FROM ADVERTISER: DOUGLAS PHARMACEUTICALS LTD

We refer to your letters of 9 and 11 May 2017, citing the above complaint number regarding complaints received from C Gunn and M Muir in respect of a television advertisement for Flora Restore, a product marketed by Douglas Pharmaceuticals Limited ("Douglas") under its "Clinicians" brand.

We note that although two complaints have been received, they are in respect of the same advertisement and are being considered together under the same complaint number, although they do relate to different screening times.

You indicate in your letters that the relevant section of the Advertising Codes of Practice is Therapeutic and Health Advertising Code — Principle 1.

Douglas does not consider that there has been any breach of Principle 1 in the screening of the advertisement for Flora Restore.

Principle 1 is reproduced below:

PRINCIPLE 1: SOCIAL RESPONSIBILITY 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.

Guidelines

- 1(a) Advertisements shall contain the following mandatory information to encourage responsible prescribing, recommendation, sale and use. This information shall be set out in a way (legible / audible) that ensures it can be readily understood by the audience to whom it is directed.

...

Natural Health Products and Dietary Supplements

Any mandatory information as required by the applicable legislation and the following statements;

- Name and address of the advertiser
- *Always read the label and use as directed.*
- For products that contain vitamins and / or minerals, the following additional statement (or words to this effect).

Vitamins and minerals are supplementary to and not a replacement for a balanced diet.

- For products that may be used for a short time, after which the consumer should seek medical advice, the following additional statement (or words to this effect).

If symptoms persist, see your healthcare professional.

...

1(b) Advertisements shall not contain any claim, statement or implication that the products, devices or services advertised;

- are safe or that their use cannot cause harm or that they have no side effects or risks.
- are effective in all cases
- are infallible, unfailing, magical, miraculous, or that it is a certain, guaranteed or sure cure
- are likely to lead persons to believe that;
 - they are suffering from a serious ailment, or
 - harmful consequences may result from the therapeutic or health product, device or service not being used

1(c) Advertisements should not portray unrealistic outcomes or prey on or misrepresent vulnerable audiences (e.g. sick, elderly, pregnant women, overweight people).

1(d) The use of scientific language in advertisements is acceptable providing that it is appropriate to, and readily understood by, the audience to whom it is directed.

Douglas does not consider that the advertisement failed to observe a high standard of social responsibility. The required mandatory information was included (Rule 1(a)). The claims regarding the product did not contravene Rule 1(b). The advertisement did not portray unrealistic outcomes or prey on or misrepresent vulnerable audiences (Rule 1(c)). The language used was not overly scientific and was appropriate to the audience to whom it was directed (Rule 1(d)).

The essence of the complaints seems to be that the advertisement is directed specifically at women, and that it is "inappropriate" that it be viewed by men or children. Douglas disagrees with this view.

The product is potentially suitable for a large sector of the general population, i.e. all adult women including those who are pregnant and breastfeeding. The screening times for the advertisement were selected with this target demographic in mind.

We do not accept that, just because a product is specifically for women, it is "inappropriate" that men should also see an advertisement for it. While it is not appropriate for children to see advertisements for some products that are aimed at adults (notably those of a sexual nature), Flora Restore is not such a product. Analogous products to Flora Restore are sanitary products such as tampons and pads — they are female-specific but not products

used in a sexual context. We submit that there is nothing inappropriate about such products being advertised during an afternoon movie or the evening news. We comment below specifically in relation to each complaint.

Complaint by C Gunn (ASA letter of 9 May 2017)

C Gunn's concern seems to be that children would have seen the advertisement which screened during a movie shown on Easter Monday (17 April 2017) during the afternoon.

The advertisement has a CAB rating of GXC (General Except Children) so may be broadcast at any time except during programmes which are intended specifically for children under the age of 13. The movie *Oz the Great and Powerful* during which the advertisement played is rated PG-SS (scary scenes). As such we submit that the movie is not intended specifically for children under 13 years, and that it was not inappropriate to screen a GXC-rated advertisement at this time.

Complaint by M Muir (ASA letter of 11 May 2017)

M Muir saw the advertisement at 6.30pm during TV1 news and was concerned that it would be seen by children or "the mostly-male demographic waiting to watch the sports news!" In line with our submission above, it was not inappropriate to screen a GXC-rated advertisement during the evening news, which is not a programme intended specifically for children under the age of 13. We disagree with the generalisation that viewers waiting to watch the sports news would be mostly male — after all, women are interested in and often present and feature in the sports news. While M Muir might be correct in that male viewers may not "appreciate" the advertisement or find it relevant, that is not a reason for not showing an advertisement that is relevant for the large number of female viewers also watching at that time.

Douglas takes adhering to ASA Codes of Practice and other guidelines for promoting therapeutic products very seriously and works closely with TVNZ and other broadcasters and publishers to make sure that they are followed.

RESPONSE FROM MEDIA: COMMERCIAL APPROVALS BUREAU

We have been asked to respond to this complaint under the following codes:

Therapeutic and Health Advertising Code – Principle 1

CAB approved this commercial on 12/04/17 with a GXC classification.

The GXC classification indicates a 'general except children' airtime, meaning the commercial cannot play during programming that is allocated to child viewers.

This commercial for Clinicians Flora Restore clearly meets the requirements of Principle 1 of the Therapeutic and Health Advertising Code.

The commercial presents clear information about the product, accurate claims of its functions and efficacy, a realistic expectation of outcomes, and a defined audience including women who may be pregnant or breastfeeding whom often have delicate medical restrictions.

The issue appears to be the placement of the advertisement, which is not addressed in whole or in part by any section of Therapeutic and Health Advertising Code – Principle 1, or any of the subordinate principles, rules or guidelines.

As a general issue of taste and decency, CAB notes that the GXC classification prevents play during children's programming, and that the times the commercial was viewed by the complainants (One News, Oz The Great and Powerful) both have 'PG' parental guidance guidelines, meaning a parent must supervise any children who are watching.

The advertiser has met every applicable standard and satisfied a high standard of social responsibility in the preparation of this therapeutic advertisement and should not be penalised in kind.

RESPONSE FROM BROADCASTER: TVNZ

The movie was rated PGR, Parental Guidance Recommended and the ad has a CAB rating of GXC. While we understand that the complainant was offended that the ad aired in a movie that would have a youth and family audience, we consider that the ad is very low key and simply involves a woman speaking about the product in a clinical manner, there is no explicit or detailed visual element to the discussion. Vagina is a proper term for that part of the body and is not a word that is only appropriate only for adults. Please refer to the Keeping Ourselves Safe Programme Parent workshop questions (attached) which is used for Primary School students and which specifically states:

It is important to teach children to use the correct terms for genitals.

It is important to use correct terms for the genitals, such as penis, vagina and vulva, just as correct names are used for other parts of the bodies. Calling these parts by pet names, not referring to them at all, or telling children it is 'dirty' to talk about them, can make children think about genitals in a negative way, and make them reluctant to tell others. If they ever need to report abuse, or tell a doctor where they are sore, it is important that they can use the correct words.

This same course for the 0-3 year old age group has a focus on teaching children the proper names for genitals (attached).