

<b>COMPLAINT NUMBER</b>	17/096
<b>COMPLAINANT</b>	F. Cameron
<b>ADVERTISER</b>	NZfulvic
<b>ADVERTISEMENT</b>	NZfulvic, Digital Marketing
<b>DATE OF MEETING</b>	9 May 2017
<b>OUTCOME</b>	Upheld, in part and Settled, in part

## SUMMARY

The website advertisement for NZfulvic ([www.nzfulvic.com](http://www.nzfulvic.com)) promoted the various health benefits of consuming the “mineral rich” dietary supplement. The NZfulvic Benefits page ([www.nzfulvic.com/benefits](http://www.nzfulvic.com/benefits)) shows a bottle of the product surrounded by several health benefit claims. The website also included a testimonial about weight loss.

The Complainant said the advertisement was misleading because it contained various therapeutic claims that were unable to be substantiated and used scientific language that was confusing.

The Advertiser provided some substantiation to support the health benefit claims made about NZfulvic and removed the testimonial about weight loss subject to complaint.

Noting the removal of the testimonial from the website, the Complaints Board ruled this part of the complaint was Settled.

The Complaints Board found the remaining claims were not supported to the level required for health benefit claims and were likely to mislead consumers. The claims were also found to use scientific language which was unlikely to be clearly understood by the general consumer and the advertisement had not been prepared with the high standard of social responsibility to consumers and society required of therapeutic and health advertisements.

The Complaints Board ruled the complaint was Upheld, in part and Settled, in part.

### Advertisement to be removed

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

---

## COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the complaint with reference to Principles 1 and 2 and Guidelines 1(d), 2(a) and 2(f) of the Therapeutic and Health Advertising Code.

The Complaints Board was required to consider whether the advertisement was truthful, balanced and not misleading, likely to mislead, deceive or confuse consumers, abuse their

trust, exploit their lack of knowledge or without justifiable reason, play on fear, including by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole. The Board noted therapeutic claims should be accurate and statements and claims should be valid and able to be substantiated and the use of scientific language should be appropriate to, and readily understood by, the audience to whom it is directed. The Board were also required to consider whether patient testimonials in the advertisement were authentic, genuine, current, and typical and acknowledge any valuable consideration.

The Board noted that therapeutic and health advertisements should observe a high standard of social responsibility particularly as consumers often rely on such products, devices and services for their health and wellbeing.

**The Complaints Board ruled the complaint was Upheld, in part and Settled, in part.**

### **The Advertisement**

The website advertisement for NZfulvic ([www.nzfulvic.com](http://www.nzfulvic.com)) promoted the various health benefits of consuming NZFulvic a “mineral rich” dietary supplement. The NZfulvic Benefits ([www.nzfulvic.com/benefits](http://www.nzfulvic.com/benefits)) page shows a bottle of the product surrounded by several statements. These were:

- Antioxidant and Detoxifier – Reduces cellular damage by neutralizing free radicals, and binding to and clearing heavy metals and toxins from the body.
- Anti-wrinkle -Provides natural anti-wrinkle action, by helping to prevent collagen degradation.
- Bioavailability – Scientifically increases bioavailability of minerals nutrients delivered to your cells.
- Blood Oxygenation – Enhances the supply of oxygen to organs and muscle tissues by supporting the oxygenation of blood.
- Brain Function – Supports healthy brain function, mental alertness, and a calm state of mind.
- Sex drive – Invigorates sex life by supporting a healthy libido.
- Electrolyte – A poly-electrolyte that supplies cells with a super charged electrical current – awakening and energizing the cell.
- Immunity – Supports the body’s immune system and the response to allergens.

The advertisement also contains testimonials which claimed the product could cause weight loss which appeared on the Consumer Feedback page ([www.nzfulvic.com/consumer-feedback](http://www.nzfulvic.com/consumer-feedback)).

### **The Complaint from F. Cameron**

The Complainant said the NZfulvic advertisement contains misleading claims which are not able to be substantiated, uses scientific language that is confusing and was socially irresponsible as it was appealing to vulnerable audiences.

### **The Advertiser’s response**

The Advertiser responded to the Complaint, providing substantiation for the claims and making some amendments to the website.

The Complaints Board reviewed the changes made by the Advertiser.

The Complaints Board acknowledged the removal of the testimonial subject to complaint which promoted the supplement for weight loss. The Advertiser said “NZfulvic does not claim to be a weight management programme – NZfulvic is a dietary supplement. We included

weight management only on the testimonials page based on consumer feedback and had sought approval from the Therapeutic Advertising Pre-Vetting System (TAPS). However, based on this complaint and keeping up the principle of social responsibility as well as being as responsible advertiser, we have withdrawn this testimonial from our website.”

The Complaints Board also noted the amendments to the disclaimer on the website after the Advertiser said, in part: “since receiving this complaint and pursuant with this principle, we have now added the mandatory information, “NZfulvic, Tauranga” to every page of our website.” However, the Complaints Board reiterated that a disclaimer did not absolve the Advertiser of its duty to ensure the information presented is accurate and unlikely to mislead consumers.

The Advertiser said no specific examples of scientific language were provided by the Complainant but were of the view its advertisement “use[s] layman terms that are all approved by the TAPS before they are released to any public platform. We acknowledge it is challenging for a product that is scientific in nature, such as ours, to use absolute everyday terms. If any such statement is highlighted to us, we will only be too delighted to amend, replace or remove the same.”

The Complaints Board confirmed that while the Advertiser was concerned the claims as articulated by the Complainant were not exact, it was clear what claims were being challenged.

The Complaints Board then discussed the substantiation presented by the Advertiser to support the claims about the efficacy of the supplement and evaluated each in turn.

**Electrolyte – A poly-electrolyte that supplies cells with a super charged electrical current – awakening and energizing the cell.**

The Complainant said the claim was “marketing spin extrapolated from studies done on the product in a test tube.” The Complaints Board said the claim was a strong health benefit claim and the level of substantiation needed to be robust.

The substantiation supplied by the Advertiser explains how the components of NZfulvic may work in an electro-chemical way using laboratory examples, theory and a study on amoeba. The Board noted there was no evidence of the effect of NZfulvic on human cells or of “awakening and energizing the cell” once the product is ingested. The Complaints Board noted some of the references were not supplied in full and as such, it was challenging to identify any substantiation NZfulvic was able to ‘awaken and energise the cell’.

As the research provided did not clearly support the strong health benefit claim the Complaints Board said it was likely to mislead consumers in breach of Principle 1 and 2 and Guideline 2(a) of the Therapeutic and Health Advertising Code.

**Anti-wrinkle – Provide natural anti-wrinkle action, by helping to prevent collagen degradation.**

The Complainant said the advertisement claims to “reduce wrinkles” which is unable to be substantiated.

The Complaints Board noted the claim in question was “provide natural anti-wrinkle action, by helping to prevent collagen degradation” but a likely general consumer takeout of the claim could be to “reduce wrinkles”. The Complaints Board agreed that the claim of ‘preventing collagen degradation’ was a strong health benefit claim due to its suggested effect on a physiological function and required robust substantiation to support it.

Turning to the substantiation, the Complaints Board noted the Advertiser supplied the eBook *The Role of Fulvic Acid in Skin Health: Complete Nutrition Ireland* to support the prevention of collagen degradation claim. The ebook explained Fulvic acid can dissolve silica into a form that is very easy for skin cells to use and silica is vital for collagen structures in skin to remain elastic, however there was no reference provided in the book to identify the source of this information.

The Complaints Board noted the Advertiser had not supplied any other references in full and of those listed none appeared to relate specifically to substantiating the claim of Fulvic acid 'helping to prevent collagen degradation'.

The Complaints Board said the research provided did not clearly support the strong health benefit claim and it was likely to mislead consumers in breach of Principle 1 and 2 and Guideline 2(a) of the Therapeutic and Health Advertising Code.

### **Sex drive – Invigorates sex life by supporting a healthy libido.**

The Complainant said the product claimed to “improve sex lives” which was misleading.

The Complaints Board agreed that the claim the product “invigorates sex life by supporting a healthy libido” was low level health benefit claim. It noted the Advertiser provided a study about a substance called “Shilajit” and its possible effect on testosterone levels. The Complaints Board noted there were no results published with the study or any evidence supplied to support the extrapolation of the substance as similar to Fulvic acid or the NZfulvic supplement.

The Complaints Board said while the claim was low level, the evidence provided did not go far enough to support it and was likely to mislead consumers in breach of Principle 1 and 2 and Guideline 2(a) of the Therapeutic and Health Advertising Code.

### **Antioxidant and Detoxifier – Reduces cellular damage by neutralizing free radicals, and binding to and clearing heavy metals and toxins from the body.**

The Complainant challenged whether the product could neutralise free radicals and remove heavy metals and toxins from the body.

The Advertiser provided references but only one paper in full relating to the claim NZfulvic reduces cellular damage by neutralizing free radicals. The Complaints Board noted the paper appeared to provide some support for the claim that NZfulvic was possibly an antioxidant in vitro, however, it did not go far enough to support the claim that it “reduces cellular damage by neutralising free radicals”. The Complaints Board noted there was no evidence supplied which supported the claim that NZfulvic could have the claimed effect.

Turning to the claim NZfulvic could “clear heavy metals” the Complaints Board noted the references were not supplied in full and were animal and laboratory studies with no results provided by the Advertiser. The Complaints Board said the claim was high level and noted animal studies were unlikely to be sufficient to support the claim to ‘clear heavy metals from the body’ if the product was classed as a medicine.

The Complaints Board said the substantiation provided did not clearly support the strong health benefit claim and it was likely to mislead consumers in breach of Principle 1 and 2 and Guideline 2(a) of the Therapeutic and Health Advertising Code.

### **Blood Oxygenation – Enhances the supply of oxygen to organs and muscle tissues by supporting the oxygenation of blood.**

The Complainant questioned whether it was possible to neutralise free radicals and “oxygenation of blood” and questioned the validity of the claim.

The Complaints Board noted the claim was low level, however only a list of references was supplied and therefore it was difficult to establish which applied to the claim about blood oxygenation. Of the references supplied, it appeared they were either about studies in animals like rats, or appeared to be scientific papers from environmental or laboratory studies.

The Complaints Board said while the claim was low level, the evidence provided did not go far enough to support it and was likely to mislead consumers in breach of Principle 1 and 2 and Guideline 2(a) of the Therapeutic and Health Advertising Code.

### **Brain Function – Supports healthy brain function, mental alertness, and a calm state of mind.**

The Complainant questioned how the product could provide both mental alertness and a calm state of mind.

The Complaints Board noted the advertisement claimed the dietary supplement could *support* healthy brain function which it said was different to the Complainant's interpretation that it "provides" mental alertness and a calm state of mind. Irrespective, the evidence provided in full did not show NZfulvic, or any other similar agent, had any effect on mental alertness or brain health. Of the evidence not provided in full, there was no way of determining if there was substantiation to support the health benefit claims of 'mental alertness' and 'a calm state of mind'.

The Complaints Board said while the claim was low level, the evidence provided did not go far enough to support it and was likely to mislead consumers in breach of Principle 1 and 2 and Guideline 2(a) of the Therapeutic and Health Advertising Code.

### **Immunity – Supports the body's immune system and the response to allergens.**

The Complainant was concerned the claim the product reduces the effect of allergens was misleading.

The Complaints Board noted the claim said it *supports* the immune system and the response to allergens, which was a low level health benefit claim. The Advertiser supplied some substation for the claim but none supported its effect in the human body through ingestion of NZFulvic or any other similar agent.

The Complaints Board said while the claim was low level, the evidence provided did not go far enough to support it and was likely to mislead consumers in breach of Principle 1 and 2 and Guideline 2(a) of the Therapeutic and Health Advertising Code.

### **Amendments to website**

The Complainant was concerned the testimonials related to weight loss specifically were misleading.

The Complaints Board acknowledged the removal of the testimonial which promoted the NZfulvic supplement for weight loss. The Advertiser said "NZfulvic does not claim to be a weight management programme – NZfulvic is a dietary supplement. We included weight management only on the testimonials page based on consumer feedback and had sought approval from the Therapeutic Advertising Pre-Vetting System (TAPS). However, based on this complaint and keeping up the principle of social responsibility as well as being as responsible advertiser, we have withdrawn this testimonial from our website."

Given the Advertiser's co-operative engagement with the process and the self-regulatory action taken in removing the testimonial and weight loss claim, the Complaints Board ruled this part of the complaint was settled.

### **Disclaimer**

While not raised in the complaint, the Complaints Board noted the Advertiser had made amendments to the disclaimer on the website to include the name and location as required. The Advertiser said, in part: "since receiving this complaint and pursuant with this principle, we have now added the mandatory information, "NZfulvic, Tauranga" to every page of our website." However, the Complaints Board reiterated that a disclaimer did not absolve the Advertiser of its duty to ensure the information presented is accurate and unlikely to mislead consumers.

### **Inappropriate scientific language**

The Complainant said the advertisement was "using scientific sounding language to confuse people."

The Advertiser said no specific examples of scientific language were provided by the Complainant but were of the view its advertisement "use[s] layman terms that are all approved by the TAPS before they are released to any public platform. We acknowledge it is challenging for a product that is scientific in nature, such as ours, to use absolute everyday terms. If any such statement is highlighted to us, we will only be too delighted to amend, replace or remove the same."

Taking in to account there were no specific examples provided by the Complainant, the Complaints Board considered the language used all of the statements. It had concerns about the following claims:

- Antioxidant and Detoxifier – Reduces cellular damage by neutralizing free radicals, and binding to and clearing heavy metals and toxins from the body.
- Anti-wrinkle -Provides natural anti-wrinkle action, by helping to prevent collagen degradation.
- Electrolyte – A poly-electrolyte that supplies cells with a super charged electrical current – awakening and energizing the cell.

The Complaints Board said the above claims were absolute in nature and coupled with the lack of substantiation provided, used confusing language to explain the suggested effect of the product on the human body. The Complaints Board ruled the advertisement used scientific language in a way that was not appropriate or able to be readily understood by the audience to whom it is directed, in breach of Guideline 1(d) of the Therapeutic and Health Advertising Code.

### **Summary**

The Complaints Board noted that its role was to consider the advertisement from the perspective of its likely audience, and to decide whether, considering the context and type of claim, the evidence provided clearly supported it.

The Complaints Board said the substantiation provided by the Advertiser to support the various health benefit claims on the website was not sufficient to match the type of claims being made. It said the advertisement was likely to mislead consumers as to the efficacy of NZfulvic in delivering the benefits identified. The Complaints Board also said some of the claims used scientific language in a way that was likely to confuse consumers and was unlikely to be readily understood by the audience to whom it is directed. The Complaints Board said the advertisement had not been prepared with a due sense of social

responsibility and ruled the advertisement was in breach of Principles 1 and 2 and Guidelines 1(d), 2(a) of the Therapeutic and Health Advertising Code.

The Complaints Board accepted the removal of the testimonial subject to complaint and found this part of the complaint was Settled.

The Complaints Board acknowledged that the Advertiser had worked with the (Therapeutic Advertising Pre-Vetting Service and encouraged further discussion with TAPS on the matters raised in this decision.

Accordingly, the Complaints Board ruled to Uphold the complaint, in part and Settle the complaint, in part.

## DESCRIPTION OF ADVERTISEMENT

The website advertisement for NZfulvic ([www.nzfulvic.com](http://www.nzfulvic.com)) promoted the various health benefits of consuming NZfulvic a “mineral rich” dietary supplement. The NZ fulvic Benefits ([www.nzfulvic.com/benefits](http://www.nzfulvic.com/benefits)) page shows a bottle of the product surrounded by several claims which said:

- Antioxidant and Detoxifier – Reduces cellular damage by neutralizing free radicals, and binding to and clearing heavy metals and toxins from the body.
- Anti-wrinkle -Provides natural anti-wrinkle action, by helping to prevent collagen degradation.
- Bioavailability – Scientifically increases bioavailability of minerals nutrients delivered to your cells.
- Blood Oxygenation – Enhances the supply of oxygen to organs and muscle tissues by supporting the oxygenation of blood.
- Brain Function – Supports healthy brain function, mental alertness, and a clam state of mind.
- Sex drive – Invigorates sex life by supporting a healthy libido.
- Electrolyte – A poly-electrolyte that supplies cells with a super charged electrical current – awakening and energizing the cell.
- Immunity – Supports the body’s immune system and the response to allergens.

The advertisement also contains testimonials which claim the product can cause weight loss on the Consumer Feedback page ([www.nzfulvic.com/consumer-feedback](http://www.nzfulvic.com/consumer-feedback)).

## COMPLAINT FROM F CAMERON:

My concern is that the website makes a number of absurd claims which they cannot possibly have any back up for. from page: <http://www.nzfulvic.com/benefits>

- it is a "poly-electrolyte which supplies cells with a supercharged electrical current - awakening and energising the cells" - if this was true it is more likely to be dangerous than helpful. I think this is marketing spin extrapolated from studies done on the product in a test tube.

- it claims to reduce wrinkles, improve sex lives, neutralise free radicles and oxygenate the blood (i am not expert in chemistry but i don't think both effects are even possible in the same solution). It removes heavy metals, provides both mental alertness AND a calm state of mind, reduces the effect of allergens and so on.

- it also claims to help in weight loss. it has customer feedback saying that they lost weight on this product without changing anything else about their lifestyle. See Simon's feedback on this page: <http://www.nzfulvic.com/consumer-feedback>

It is using scientific sounding language to confuse people.

They do provide links to academic papers - but the studies are in animals or in a test tube. <http://www.nzfulvic.com/resources?page=1>

It is really expensive. A one month supply is \$80.

I was alerted to it when a friend posted about it on Facebook. I know she is a single mum and struggles financially.

#### **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.

**Guideline 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.

**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(a):** Advertisements shall be accurate. Statements and claims shall be valid and shall be able to be substantiated. Substantiation should exist prior to a claim being made. For medicines and medical devices, therapeutic claims must be consistent with the approved indication(s) (for medicines) or the listed intended purpose (for medical devices).

**Guideline 2(f):** Patient testimonials and healthcare professional endorsements in advertisements, where not prohibited by law, shall comply with the Code, be authenticated, genuine, current, and typical and acknowledge any valuable consideration. Exceptional cases shall be represented as such.

#### **RESPONSE FROM ADVERTISER: NZ FULVIC**

Firstly, we apologise for any inconvenience and misinterpretation caused to the complainant.

There are a number of concerns addressed by the complainant. Our response addresses the Advertising Code of Practice, with integration of the complaints: -

**Principle 1, Social Responsibility:** The statement “Always read the label and use as directed. Supplementary to a balanced diet” has been consistent across our website (and all of our marketing collateral) since our inception. Further, since receiving this complaint and pursuant with this principle, we have now added the mandatory information, “NZfulvic, Tauranga” to every page of our website (Appendix 1 (a)).

**Principle 2:** NZfulvic does not claim to be a weight management programme – NZfulvic is a dietary supplement. We included weight management only on the testimonials page based on consumer feedback and had sought approval from the Therapeutic Advertising Pre-



Vetting System (TAPS). However, based on this complaint and keeping up the principle of social responsibility as well as being as responsible advertiser, we have withdrawn this testimonial from our website (Appendix 1 (b)).

Guideline 1(d): This guideline states the use of scientific language in advertisements is acceptable providing that is appropriate to, and readily understood, by the audience to whom it is directed. The complainant has given no specific examples of scientific language used in light of guideline 1(d). You will note that our advertisements use layman terms that are all approved by the TAPS before they are released to any public platform. We acknowledge it is challenging for a product that is scientific in nature, such as ours, to use absolute everyday terms. If any such statement is highlighted to us, we will only be too delighted to amend, replace or remove the same.

Guideline 2(a): All of our product benefits listed are substantiated. The complainant has communicated these to you differently as to how they are communicated on our website. NZfulvic does not claim any outcomes of supplementation. All benefits of NZfulvic are referenced to scientific literature – based all around the world. Please find a reference list of scientific journals directed towards the complainant's concerns at the conclusion of our response (Reference List). You will also note that we have Dr. Aamir Mirza (PhD – Pharmaceuticals & Nanotechnology) on our team who has studied and published peer-reviewed literature on the pharmacological benefits of fulvic acid. Further, Dr. Richard Lamar (PhD – Forest Soils), an expert in the field of humic and fulvic acid, constantly guides us on the bio-chemical properties of fulvic acid. We are also currently conducting laboratory tests on fulvic acid and are deeply committed to fulvic acid research & development. Given the exhaustive list of references, we will promptly supply copies of any relevant literature on request. We have appended a few with this letter:

- Electrolyte Function = Jackson, W, PhD. Fabulous Fulvic Electrolyte: *Environmental Health Foundation*. USA: Colorado.
- Skin Health = Gouge, P. (2009). The Role of Fulvic Acid in Skin Health: *Complete Nutrition Ireland*.
- General = Klocking, R., & Helbig, B. (2005). Medical Aspects and Applications of Humic Substances: *Biopolymers for Medical and Pharmaceutical Applications*. Weinheim.
- General = Schepetkin, I., Khlebnikov., & Se Kwon, B. (2002). Medical Drugs from Humus Matter: Focus on Mumie: *Drug Development Research*. 57: 140-159. Wiley-Liss Inc: Russia.

Guideline 2(f): This guideline is in regards to testimonials, in which we have withdrawn from the website, as explained in Principle 2. Please note all testimonials on our website are genuine, current, verifiable, typical, and approved by the TAPS.

NZfulvic actively seeks advice and approval for all of our marketing and advertising from the TAPS. We recently attended the TAPS conference in Auckland (Feb 16) with an intention to stay up-to-date and informed about regulations as a dietary supplement. Hopefully, we are demonstrating that we have every intention to follow the Advertising Code of Practise.

We would happily receive and action any advice from ANZA from this experience.