

<b>COMPLAINT NUMBER</b>	17/251
<b>COMPLAINANT</b>	F Williamson
<b>ADVERTISER</b>	Endeavour Consumer Health
<b>ADVERTISEMENT</b>	Endeavour Consumer Health, Radio
<b>DATE OF MEETING</b>	22 August 2017
<b>OUTCOME</b>	Not Upheld

## **SUMMARY**

The radio advertisement for the Red Seal toothpaste range states it uses natural ingredients for healthy teeth, gums and fresh breath, which are safe and effective.

The Complainant said the advertisement breached the Therapeutic and Health Advertising Code because the toothpaste did not contain fluoride and as such the Advertiser should not be making claims about the oral health benefits of its products.

The Complaints Board agreed that the statements made by the advertiser were low-level claims and that it had provided sufficient substantiation to support the oral health benefit claims of its natural ingredients.

The Complaints Board confirmed that the Advertiser was not required to declare whether fluoride was present in its toothpaste and the Complaints Board did not regard this as being misleading or confusing.

The Complaints Board agreed the advertisement had observed a high standard of social responsibility and was not in breach of the Therapeutic and Health Advertising Codes.

**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 complaint with reference to Principles 1 and 2 and Guidelines 1(c) and 2(a) 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 also needed to consider that therapeutic advertisements should not portray unrealistic outcomes or prey on or misrepresent vulnerable audiences (e.g. sick, elderly, pregnant women, overweight people). 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 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 Complaint**

The Complainant said the Advertiser should not be making claims about the oral health benefits of its product, when it did not contain fluoride.

### **The Advertiser's Response**

The Advertiser stood by its claim that the toothpaste product was natural, safe and effective and can help with consumer's oral health. The Advertiser provided substantiation about the properties of their natural ingredients and how these can aid oral health.

### **The Complaints Board Discussion**

The Complaints Board agreed that the Advertiser had made low-level claims about its product, stating that it was 'safe and effective'. It noted the advertisement did not make claims of being better than other toothpaste brands.

The Complaints Board were satisfied with the substantiation provided by the Advertiser which provided information on natural products that could aid oral health, including Calcium Carbonate, Dolomite & Silica; Baking Soda; Zinc Oxide and essential oils.

The Complaints Board considered that consumers who purchase this produce were unlikely to be misled by its natural properties. It noted that the packaging of Red Seal toothpaste stated "No added Fluoride."

The Complaints Board said that the Advertiser was under no obligation to declare ingredients not contained in its product and as such would not be expected to highlight the absence of fluoride in a 30 second advertisement aimed at promoting the 'natural' ingredients contained in its products.

The Complaints Board said the advertisement was not misleading and the low-level claims had been substantiated. The advertisement had not presented unrealistic outcomes and had observed a high standard of social responsibility. The Complaints Board said the advertisement was not in breach the Therapeutic and Health Advertising Code.

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

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### **DESCRIPTION OF ADVERTISEMENT**

The radio advertisement for Red Seal states that Kiwis like the idea of a more natural lifestyle and questions what chemicals may be in the toothpaste used twice a day. It describes Red Seal toothpaste as being paraben free with natural ingredients for healthy teeth, gums and fresh breath. The advertisement ends with the statement "It's the science of nature, safe, effective and they're in your supermarket now."

## COMPLAINT FROM F WILLIAMSON

I feel this advertisement breaches the therapeutic and health advertising code. This product is a toothpaste that does not contain fluoride. Fluoridated toothpaste is endorsed by the MOH (<http://www.health.govt.nz/your-health/healthy-living/teeth-and-gums/fluoride>) and the NZ dental association (<http://www.healthysmiles.org.nz/your-oral-health/oral-health-topics/fluoride/#m:106>)

I feel the advertisement is in opposition to the following:

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

PRINCIPLE 2: TRUTHFUL PRESENTATION 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.

Rule 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).

I feel that nowhere in this ad was it stated that the product did not contain fluoride and implied it was good for your oral health. Without fluoride, there is no evidence to support this. This should not be allowed to be advertised on mass media as being beneficial to oral health.

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

**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).

**RESPONSE FROM ADVERTISER: ENDEAVOUR CONSUMER HEALTH**

A basic, neutral description of the advertisement	30 second radio advertisement for Red seal's toothpaste range
Date advertisement began	2 July 2017
Where the advertisement appeared	MediaWorks radio stations (More, The Edge, Breeze, The Sound, Live, Mai, Tarana, Magic, The Rock)
Is the advertisement still accessible	No
Who is the product/brand target audience	Females 18-49

The complainant states that the advertisement implied that Red Seal toothpastes are good for oral health. Endeavour notes that its claim is that its toothpastes are natural, safe and effective. Endeavour stands by this claim. Our toothpastes include a range of ingredients that together are effective in helping a consumer with their oral health. For example, our toothpastes include the following (dependent on the particular toothpaste in the range/ we note that this is not a full list of ingredients):

- calcium carbonate, dolomite & silica - in combination with brushing, these abrasives help remove plaque and bacteria build-up;
- baking soda - neutralises plaque acids;
- essential oils (such as peppermint, eucalyptus, thyme and clove oil) — have various antimicrobial, antioxidant and antifungal properties. Further information can be provided if required; and
- zinc oxide — helps prevent the growth of bacteria and the build-up of plaque.

The complainant contends that Endeavour cannot make this claim as the toothpaste does not contain added fluoride. Endeavour does not agree that this is the case, as is demonstrated by the information above, various ingredients in the toothpastes can assist with oral health. We note that the complainant has not provided evidence that toothpaste without added fluoride has no oral health benefits.

We also note that a large toothpaste brand, Colgate, recognises that 'fluoride-free' toothpastes can play a valid role in oral healthcare. For instance, <http://www.colgate.com/en-us/oc/oral-health/basics/fluoride/article/why-use-a-fluoride-free-toothpaste-0414>. (attached)  
The complainant also refers to Red Seal failing to make a claim, being that Red Seal toothpastes do not contain added fluoride. We note that all packs of Red Seal toothpaste state 'no added fluoride'. The fact that Endeavour has not used the claim 'no added fluoride' is not a breach of the Code — Endeavour is not required to use the claim in each and every advertisement regarding Red Seal toothpastes.

Script:

“Us kiwis like the idea of a more natural lifestyle.”

SFX: Cycling noises.

“Heaps of us cycle to work...”

SFX: Supermarket 'Muzak' and trolley squeaking.

“...we take recyclable bags to the supermarket... and check labels to avoid nasty chemicals.”

SFX: Back to Supermarket Muzak.

“But then I read the back of a toothpaste pack and wondered what do we brush onto our teeth twice a day?”

SFX: Muzak comes to a halt with a stereo needle SFX.

Red Seal's toothpastes are paraben free with natural ingredients for healthy teeth, gums and fresh breath.

It's the science of nature, safe, effective and they're in your supermarket now.

Try Red Seal toothpastes..."

SFX: Brush brush brush 'TING!'

"They even come with a 'ting!'"

## **RESPONSE FROM MEDIA**

This was supplied audio that we played in good faith.

The contract ended July 30 and there are no further contracts with Mediaworks at this time.

To the specifics of this complaint:

### **Rule 1(c) 'should not portray unrealistic outcomes or prey on or misrepresent vulnerable audiences'**

This commercial is not addressing any audience more specific than "us kiwis". And is it an unrealistic outcome to expect that regular brushing of your teeth will help with oral health?

### **Principle 2 'Advertisements shall be truthful, balanced and not misleading'**

This commercial is quite clear in stating that it has natural ingredients only. In our opinion the fact that it doesn't mention it doesn't contain fluoride is no more misleading than a car manufacturer not mentioning a model doesn't have a certain feature.

We consider that this commercial makes a health benefit claim rather than a therapeutic claim. The Therapeutic Code differentiates between a therapeutic claim and a "health benefit".

Health benefit is defined as:

- (a) the maintenance or promotion of health or wellness
- (b) nutritional support
- (c) vitamin or mineral supplementation
- (d) maintaining the normal structure or function of the body

The client would obviously be required to provide substantiation for this health benefit claim.

All of that being said, in our opinion the problematic part of this commercial is the word 'safe'. According to rule 1(b) of the code, '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'.

This complaint does not refer to that section of the code, so there would be no call to make a ruling on it. However as a responsible broadcaster, Mediaworks would require this to be changed before it went to air again.