

COMPLAINT NUMBER	18/028
COMPLAINANT	M. Wells
ADVERTISER	Intenza NZ Limited
ADVERTISEMENT	Herbal Ignite, Television
DATE OF MEETING	27 February 2018
OUTCOME	Not Upheld

SUMMARY

The television advertisement for Herbal Ignite promoted the men's sexual health supplement to support good sexual health and erections. The advertisement provided information on the product including a two for one offer and details on how to order the product via an 0800 number and online. The advertisement screened on TV One during The Toy Box, a reality show which includes a panel of children comparing new toy ideas and awarding a contract with toy maker Mattel to the winning inventor.

The Complainant was concerned an advertisement for a men's sexual health supplement screened during a programme which featured children and which children were likely to watch.

The Advertiser confirmed the advertisement was rated AO and screened after 8.30pm – in this instance it screened at 9.27pm. The Broadcaster provided information about the audience for The Toy Box and confirmed 95% of the audience was over 18 years.

The Complaints Board noted the Complainant's concerns and agreed the placement was not ideal. The Complaints Board confirmed the advertisement had screened in accordance with its rating. The Complaints Board also took into account the vast majority of the viewing audience were adults.

The Complaints Board agreed the placement of the advertisement promoting a men's sexual health supplement at 9.27pm during The Toy Box programme did not reach the threshold to breach Basic Principle 4 or Rules 4 and 5 of the Code of Ethics.

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 Basic Principle 4 and Rules 4 and 5 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement had been prepared and placed with a due

sense of social responsibility to consumers and to society. It also required the Complaints Board to consider whether the advertisement contained anything which was likely to cause serious or widespread offence taking into account generally prevailing community standards and context, medium, audience and product.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant was concerned an advertisement for a men's sexual health supplement screened during a programme which featured children and which children were likely to watch. The Complainant said an advertisement for this type of product, with a sexual theme relating to erectile dysfunction, was not acceptable during a programme with appeal to children.

The Advertiser's Response

The Advertiser said the advertisement had been approved by the Therapeutic Advertising Pre-vetting Service and had been given an Adults Only (AO) rating by the Commercial Approvals Bureau. The Advertiser said the advertisement screened at 9.27pm in accordance with its rating, as AO viewing time was from 8.30pm. The Advertiser said they empathised with the Complainant and confirmed the advertisement would not run again during The Toy Box.

The Media's Response

The Commercial Approvals Bureau confirmed the advertisement was rated AO and able to be screened after 8.30pm.

The Broadcaster, TVNZ provided information on the composition of the audience for The Toy Box. The Broadcaster confirmed that only 5% of the audience for the programme was aged 5 to 13 years and the vast majority of viewers were over 18 years.

The Complaints Board Discussion

The Complaints Board noted the Complainant's concern that a men's sexual health product was advertised during a programme which included children and which was likely to include children in the audience.

The Complaints Board noted The Toy Box is an American reality show which includes a panel of children comparing new toy ideas and making the final decision to award a contract with toy maker Mattel to the winning inventor. A panel of adult mentors screen the toys and a panel of children test them and judge the winning entry.

The Advertiser and the Media confirmed the advertisement screened in accordance with its rating of AO, after 8.30pm. The advertisement screened at 9.27pm. The Advertiser also empathised with the Complainant and had undertaken not to place the advertisement during this programme again.

The Complaints Board noted an earlier Decision 15/047 where a similar advertisement had played during coverage of a cricket game. That Decision was ruled to have no grounds to proceed.

Information provided by the Broadcaster on the breakdown of the audience for The Toy Box on 6 January 2018, when the Complainant had seen the advertisement, was helpful for the Complaints Board. It noted the largest audience segment was 40 to 49 year olds (48.9% of the audience), with children under 13 years making up 5% of the audience.

Rule 4 of the Code of Ethics required advertisements not offend against generally prevailing community standards, taking in to account context, medium, audience and product. Rule 5 required advertisements not cause serious or widespread offence with the same test relating to context, medium, audience and product.

The Complaints Board agreed the placement of the advertisement during The Toy Box programme was not ideal and noted that the advertiser had agreed not to place the advertisement in that programme again.

The Board discussed that the advertisement had played within its rating, the advertisement did not contain explicit visual images and the number of children in the audience was small. The Board therefore held that the advertisement did not reach the threshold to offend against generally prevailing community standards nor was likely to cause serious or widespread offence, taking into account context, medium, audience and product.

The Complaints Board said the advertisement was not in breach of Rules 4 and 5 of the Code of Ethics and had been placed with a due sense of social responsibility as required under Basic Principle 4.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The television advertisement for Herbal Ignite promoted the men's sexual health supplement to support good sexual health and erections. The advertisement provided information on the product including a two for one offer and details on how to order the product via an 0800 number and online. Wording on-screen included warnings to read the label and take as directed.

COMPLAINT FROM M. WELLS

Advert for Viagra alternative for men with sexual erectile dysfunction is not appropriate during a programme that has an audience potentially the same as the judges on the programme eg 7 - 13.

My daughter is 9 - it didn't seem to be noticed by her as she was distracted but she pays attention to programmes and adverts.

I don't feel it necessary for me to have to be talking to her at 9 about why some men can't get it up and the solution is a pill, when she doesn't even know what sex is. I am no prude but I felt it was not appropriate to be aired during this particular programme. Toys and children.

Whilst the programme started at 8.35, advert probably on around 9pm - half way through - still not appropriate even if that is deemed suitable time to be airing such advert topics.

Please show some discretion.

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Decency - Advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services).

Offensiveness - Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).

RESPONSE FROM ADVERTISER, INTENZA NZ LIMITED

Thank you for your email, letter and complaint.

I respond as follows:

1. The advert in question was TAPS approved with TAPS Approval No: CH4580 per attached word document
2. The TV advert has an AO Adult Only rating, (to be played after 8.30 pm) issued by TVCAB (Television Commercial Approvals Bureau)
3. The Toy Box program in question plays after 8.30pm and the program is therefore recommended for adults only
4. Intenza's Herbal Ignite Commercial screened at 9.27 pm
5. However, I empathise with M. Wells and we have no more advertisements scheduled in the Toy Box program slot.

RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU

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

Code of Ethics – Basic Principle 4, Rule 4, Rule5;

CAB approved this Herbal Ignite commercial 2+ years ago on 18/12/15 with an AO classification. Under CAB internal policies, this commercial is classified as a Therapeutic advertisement.

An 'AO' classification stands for 'Adults Only' and prevents the commercial from playing prior to 8:30pm, the watershed of NZ television programming.

A complainant believes that 9:00pm was an inappropriately early time to broadcast this commercial, with reference to a child viewing a programme in this post-9:00pm schedule.

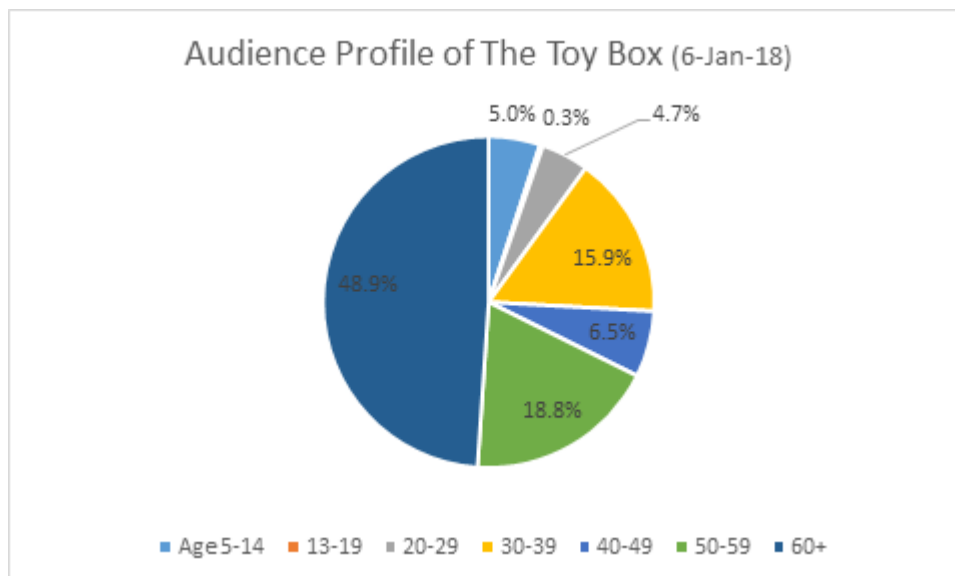
CAB believes that 'AO' Adults Only is the correct classification for this commercial and would like to reference the precedent decision 15/047 (attached).

RESPONSE FROM BROADCASTER, TVNZ

To help the Complaints Board in its consideration of the complaint we have checked the proportion of the audience who were in the 5-14 age group. This was 5%, a small percentage of the total viewers.

The *Intenza* ad was rated AO and screened during AO time during the 21.30 Regional break.

The audience profile is shown below, the majority of viewers were adults as seen by the audience numbers. The 13-19 age group share was so small that it's not really showing on the chart (it's the 0.3%)



APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.