

COMPLAINT NUMBER	17/419
COMPLAINANT	S Clement
ADVERTISER	Cordbank New Zealand
ADVERTISEMENT	Cordbank New Zealand, Digital Marketing
DATE OF MEETING	13 March 2018
OUTCOME	Settled – advertisement amended

SUMMARY

The CordBank NZ Facebook Page included a picture of a girl and said, in part: “Big gains after using cord blood for autism. Over 70% of Children improved after being treated with their own stored cord blood stem cells.” The post also included a link to a self-published content on the CordBank NZ website.

The Complainant said the claim on the CordBank NZ Facebook page which said “big gains after using cord blood, for autism” was misleading as the study used to support the claim was only a phase 1 trial with a small sample size.

The Advertiser said the advertisement was not claiming a therapeutic purpose as it was only a repository for cord blood but it amended the self-published content to more accurately reflect the nature of the study which formed the basis of the claim.

The Complaints Board said the content before it promoted a therapeutic method of treatment in that it implied umbilical cord blood could be used for a therapeutic purpose. Noting the self-regulatory actions of the Advertiser in amending the content, the Complaints Board ruled the complaint was Settled.

[No further action required – advertisement amended]

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, Principle 2 and guideline 2(a) of the Therapeutic and Health Advertising Code.

Principle 1 required the Complaints Board to consider whether the advertisement observed a high standard of social responsibility particularly as consumers often rely on such products, devices and services for their health and wellbeing.

Principle 2 required the Complaints Board to consider whether the advertisement was 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 Rule 2 (a) required the Complaints Board to consider whether the advertisement was accurate, and statements and claims are valid and able to be substantiated. Substantiation should exist prior to a claim being made.

The Complaints Board ruled the complaint was Settled.

The Complaint

The Complainant said the claim on the CordBank NZ Facebook page which said “big gains after using cord blood for autism” was misleading as the study used to support the claim was a “Phase 1 trial only set up to test the efficacy of using cord blood infusions on Autistic children. It included only 25 children with no placebo. The Phase 2 trial is testing the effectiveness of the treatment but there have been no results published yet for that trial as it has not been completed.”

Response from the Advertiser, CordBank NZ

The Advertiser said it “does not accept that the Facebook post and linked content referred to by S Clement contain a ‘therapeutic purpose claim’. The purpose of the Facebook post was to alert readers to research in this developing area.”

The Advertiser said, in part: “While the Facebook post did not say Phase 1, the linked article referred to the fact that the child in question was now engaged in the second phase of the study. The clear implication being that the results referenced had occurred during Phase 1 of the trial... For a study of this type, 25 children is a significant cohort. For this reason, CordBank did not consider it relevant to reference the number of children who took part in the study. The article made it clear that no claims were being made as to the long term curative effects of cord blood reinfusion for autism.”

The Advertiser also amended the CordBank NZ content linked to from the Facebook post to say: “These results from a phase 1 trial at Duke University have given hope to parents of children with autism including one young Canadian boy.”

Complaints Board Discussion

The Complaints Board first considered whether the item before was an advertisement for the purposes of the Advertising Standards Code. It noted the ASA definition of an advertisement is:

“Advertising and Advertisement(s)” are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.”

The Complaints Board confirmed the Facebook post before it by CordBank NZ was an advertisement as it promoted the services of a business by referring to a possible benefit of storing cord blood for future use and it intended to influence consumers.

The Complaints Board considered the likely consumer takeout of the advertisement and whether the advertisement before it contained a therapeutic purpose claim. The Complaints Board said the advertisement promoted a therapeutic method of treatment in that it implied umbilical cord blood could be used for a therapeutic purpose. While the Complaints Board accepted that CordBank NZ was only a repository for cord blood, it said the post was promoting a possible reason for it to be collected and stored.

The Complaints Board said the advertisement would be of interest to a vulnerable audience and, with this in mind, considered whether the advertisement was likely to mislead consumers. The Board looked at the information the Advertiser had provided to support the claim. It noted the link in the advertisement to the self-published content on the CordBank website which provided some context to the claim in the Facebook post. The Complaints Board said the supporting CordBank NZ content was only implicit with regard to the study being phase 1 and included two links through to the full published study so that readers would be able to read the information about it in full.

In order to make it clearer that the study referred to in the advertisement was only in its early stages, the Advertiser added further context, stating, in part: "These results from a phase 1 trial at Duke University have given hope to parents".

The Complaints Board said the addition to the CordBank NZ content provided clarification to the claim in the Facebook post and, noting the self-regulatory action of the Advertiser in amending the material, the Complaints Board ruled the complaint was Settled.

Accordingly, the Complaints Board ruled to Settle the Complaint.

DESCRIPTION OF ADVERTISEMENT

The CordBank NZ Facebook Page included a picture of a girl and said, in part: "Big gains after using cord blood for autism. Over 70% of Children improved after being treated with their own stored cord blood stem cells." The post also included a link to a self-published content on the CordBank NZ website.

COMPLAINT FROM S CLEMENT

The Facebook post and linked content on their website claim "big gains after using cord blood for autism".

The actual study at Duke University was a Phase 1 trial only set up to test the efficacy of using cord blood infusions on Autistic children. It included only 25 children with no placebo. The Phase 2 trial is testing the effectiveness of the treatment but there have been no results published yet for that trial as it has not been completed.

The use of cord blood for autism treatment is not available in NZ.

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.

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).

RESPONSE FROM ADVERTISER, CORDBANK NEW ZEALAND

1. CordBank does not accept that the Facebook post and linked article referred to by S Clement contain a 'therapeutic purpose claim'. The purpose of the Facebook post was to alert readers to research in this developing area. For the sake of clarity, CordBank NZ is not in the market of selling or using cord blood. CordBank's license is for the collection, processing and storage of cord blood only. For these reasons, CordBank does not consider that the Facebook post and linked article were in breach of Principle 1 or Principle 2 of the Therapeutic and Health Advertising Code.
2. In order to determine the position more clearly, we have written to TAPS for an opinion on whether CordBank, for the reasons listed above, can be regarded as making 'therapeutic purpose claims'.
3. Their initial "informal" view was that CordBank is not covered by this Principle. We have now written to them requesting a formal opinion on this matter. We would therefore ask the Board defer consideration of this complaint until this opinion has been received and considered.
4. If the Board does not wish to defer the matter in order to consider TAPS expertise – we make the following points in relation to S Clement's two "criticisms" of the post and article which are:
 - a. *They did not include a specific reference to the trial being in Phase 1 only.*

While the Facebook post did not say Phase 1, the linked article referred to the fact that the child in question was now engaged in the second phase of the study. The clear implication being that the results referenced had occurred during Phase 1 of the trial.

- b. *They did not refer to the fact that the Phase 1 trial "only" included 25 children.*

For a study of this type, 25 children is a significant cohort. For this reason, CordBank did not consider it relevant to reference the number of children who took part in the study. The article made it clear that no claims were being made as to the long term curative effects of cord blood reinfusion for autism.

It included a quote from the lead researcher, Dr Kurtzberg who stated **"We don't know whether this therapy will be curative for autism. But I am hopeful it will be curative in the long run"**.

5. We have attached a copy of the Duke University study as background for you.
6. In the section titled "Abstract" the authors report the following:

"Significant improvement in children's behaviour were observed on parent-report measures of social communication skills and autism symptoms, clinical ratings of overall autism symptom severity, and degree of improvement, standardized measures of expressive vocabulary, and objective eye-tracking measures of children's attention to social stimuli, indicating that these measures may be useful endpoints in future studies."
7. We do not accept that the Facebook post and article were in breach of the Principles set out in the Code. However, in an effort to resolve the issues at the centre of the complaint, we are prepared to amend the first paragraph of the article to read:

These results from a phase 1 trial at Duke University have given hope to parents of children with autism including one young Canadian boy

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.