

COMPLAINT NUMBER	18/182
COMPLAINANT	D Jamieson
ADVERTISER	The Immunisation Advisory Centre
ADVERTISEMENT	The Immunisation Advisory Centre, Television
DATE OF MEETING	26 June 2018
OUTCOME	Not Upheld

SUMMARY

The television advertisement from the Immunisation Advisory Centre was animated and featured information about influenza immunisation. The voiceover said in part, about flu: “Recent New Zealand research showed that four out of five people didn’t even know they had it. So, for every sick person who goes home to bed, four more could potentially be next to you at work...”

The Complainant said the advertisement was misleading because there was no “New Zealand research to support that “for every person that has flu symptoms another four will have the flu but have no symptoms, thereby spreading the flu virus in the community”.

The Advertiser referred to the New Zealand SHIVERS (Southern Hemisphere Influenza and Vaccine Effectiveness Research and Surveillance) study and provided summary information which supported the claim made in the advertisement about four in five people having influenza and being asymptomatic.

The majority of the Complaints Board accepted the substantiation provided to support the claim in the advertisement, noting the advertisement was an advocacy advertisement with an important public health message. The majority said the advertisement was unlikely to mislead consumers and was not in breach of the Code of Ethics or the Therapeutic and Health Advertising Code.

A minority disagreed and said the substantiation provided did not accurately support the claim that four out of five people have asymptomatic influenza and, noting the therapeutic nature of the advertisement, the statistic should have been more accurately reflected in the advertisement as three out of four people.

However, in accordance with the majority, 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 Rule 2 and 11 of the Code of Ethics and Principle 1 and Principle 2 and Guideline 2(a) of the Therapeutic and Health Advertising Code.

Basic Principle 4 and Rule 2 and 11 of the Code of Ethics this required the Complaints Board to consider whether the advertisement was advocacy advertising and if the advertisement contained anything which, either directly or by implication, was likely to deceive or mislead the consumer. The Complaints Board was also required to assess if the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

Principle 1 and Principle 2 and Guideline 2(a) of the Therapeutic and Health Advertising Code required advertisements 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 and Guideline 2(a) require that advertisements be truthful, balanced and not misleading 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.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant was concerned the advertisement was misleading as it claimed that “research carried out in New Zealand shows that for each person that has flu symptoms another four will have the flu but have no symptoms, thereby spreading the flu virus in the community”. The Complainant said “there was no research showing that these ‘no symptom’ individuals were contagious, just a comment that they ‘might’ be contagious, with no evidence offered. If this is the research (Google search) that is the basis of the claims in the ad, I’m afraid that this is just not good enough to justify the conclusion that everybody should have the flu vaccine.”

The Advertiser’s Response

The Advertiser explained the Immunisation Advisory Centre provides evidence-based information to New Zealanders in a way that helps them make informed decisions about immunisation.

The Advertiser said the claim that four out of five people have the flu but are asymptomatic was supported by findings in the “Southern Hemisphere Influenza and Vaccine Effectiveness Research and Surveillance (SHIVERS) study.” The Advertiser explained that the reference to “New Zealand research referred to in the advertisement was based on the SHIVERS study conducted in the greater Auckland area from 2012-2017.

The Advertiser said, in part: “These findings were presented at the New Zealand Influenza Symposium in February of 2018, and the slides of that presentation can be viewed publicly. I have attached a pdf copy of the presentation. Slide 22 shows how the study findings would impact upon a population of 1 million people, with 32% of the population infected with the flu, but 76% being asymptomatic (4 out of 5). The findings from the SHIVERS study, 2015 will be published in an upcoming edition of the Journal of Infectious Diseases.”

The Advertiser also provided information to support the claim that people with no symptoms of influenza can be contagious, which is publicly available on the www.influenza.org.nz website.

The Advertiser said it had obtained TAPS approval for the advertisement from the Therapeutic Advertising Pre-vetting Service which assess therapeutic advertisements for compliance with both the relevant legislation and the Advertising Codes of Practice.

Response from Commercial Approvals Bureau

The Commercial Approvals Bureau said, in part: “the Immunisation Advisory Centre (IMAC) is a nationwide organisation based at the School of Population Health at The University of Auckland. IMAC manages the promotion of the National Influenza Campaign, a project of the National Influenza Strategy Group (NISG). IMAC’s play an important role in New Zealand’s public health preparedness, and have fittingly prepared an advertisement that meets a high standard of social responsibility. CAB does not believe this complaint should be upheld.”

The Complaint Board’s Discussion

The Complaints Board turned first to consider the advertisement under Rule 11 of the Code of Ethics. Rule 11 provides for robust expression of belief or opinion being expressed by the Advertiser and, therefore, such opinions may be robust. However, opinion should be clearly distinguishable from factual information.

Also applicable were the Advocacy Principles, developed by the Complaints Board in previous Decisions for the application of Rule 11. These said:

1. That section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people’s rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the right granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

The Complaints Board agreed the advertisement clearly identified the Advertiser as the Immunisation Advisory Centre and met the identification provisions of Advocacy.

The Complaints Board then considered whether the claim in the advertisement that “recent New Zealand research showed that four out of five people didn’t even know they had it” had been substantiated or whether it was misleading.

The majority of the Complaints Board accepted the information provided by the Advertiser regarding the SHIVERS study, noting it was “New Zealand research” conducted over a five-year period in Auckland. The majority accepted that while the full study was not yet published, the Advertiser provided a sufficient summary of the findings.

The majority also noted the information provided by the Advertiser included a reference to 76% of people having influenza but showing no symptoms. The majority of the Complaints Board noted that the convention is often to round up 76% to 80%. The majority of the Complaints Board accepted that, in the context of an advocacy advertisement which included an important public health message, the reference to “four out of five people” having asymptomatic influenza was unlikely to mislead consumers.

The majority of the Complaints Board said the Advertiser had substantiated the claims in the advertisement and it was unlikely to mislead consumers.

A minority disagreed. In its view, the accuracy of the claim four out of five people having asymptomatic influenza went further than the evidence provided and should have been more accurately reflected in the advertisement as three out of four people which is closer to 75%. In its view, the Advertiser had not adhered to the high standard required of advertisements making therapeutic claims and was likely to mislead consumers in breach of the Code of Ethics and the Therapeutic and Health Advertising Code, noting it was not saved advocacy.

In accordance with the majority, the Complaints Board ruled the advertisement was not in breach of Basic Principle 4 or Rule 2 or Rule 11 of the Code of Ethics or Principle 1 or Principle 2 and Guideline 2(a) of the Therapeutic and Health Advertising Code and ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The television advertisement from the Immunisation Advisory Centre was animated and featured information about the influenza immunisation. The advertisement said, in part: “Recent New Zealand research showed that four out of five people didn’t even know they had it. So for every sick person who goes home to bed, four more could potentially be next to you at work...”

COMPLAINT FROM D JAMIESON

This ad claims that research carried out in New Zealand shows that for each person that has flu symptoms another four will have the flu but have no symptoms, thereby spreading the flu virus in the community. No-one is able to direct me to this NZ research, but the Lancet/Uni College London do have an excellent study identifying the proportion of people that had been exposed to the flu virus (identified antibodies) but did not develop any flu symptoms. There was no research showing that these "no symptom" individuals were contagious, just a comment that they "might" be contagious, with no evidence offered. If this is the research (Google search) that is the basis of the claims in the ad, I'm afraid that this is just not good enough to justify the conclusion that everybody should have the flu vaccine.

CODES OF PRACTICE

CODE OF ETHICS

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

Rule 2: Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation,

abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

Rule 11: Advocacy Advertising - Expression of opinion in advocacy advertising is an essential and desirable part of the functioning of a democratic society. Therefore such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an advertiser in matters of public interest or political issue should be clear.

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.

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, THE IMMUNISATION ADVISORY CENTRE

This complaint is in relation to an animated 30 second information piece about influenza. The animation can be viewed here: <https://vimeo.com/212849223>. The script is: "The flu, we all know how horrible it can be and pretty much avoid it where we can, right? Well, recent New Zealand research showed that 4 out of 5 people who had the flu didn't even know they had it. So for every sick looking person who goes home to bed, four more could be next to you at work, or on the bus, serving you in a shop or making your lunch, potentially passing their flu onto you. So make sure you're covered, get your yearly flu immunisation today. It may even be free for you"

In the complaint submitted by D. Jamieson, they contend that: "This ad claims that research carried out in New Zealand shows that for each person that has flu symptoms another four will have the flu but have no symptoms, thereby spreading the flu virus in the community. No-one is able to direct me to this NZ research, but the Lancet/Uni College London do have an excellent study identifying the proportion of people that had been exposed to the flu virus (identified antibodies) but did not develop any flu symptoms. There was no research showing that these "no symptom" individuals were contagious, just a comment that they "might" be contagious, with no evidence offered. If this is the research (Google search) that is the basis of the claims in the ad, I'm afraid that this is just not good enough to justify the conclusion that everybody should have the flu vaccine."

Our response:

The Southern Hemisphere Influenza and Vaccine Effectiveness Research and Surveillance (SHIVERS) study, was based in the greater Auckland area from 2012-2017. SHIVERS was a multi-agency, multi-disciplinary collaboration aiming to better understand influenza and other respiratory viruses and related illness in the hope of curbing future outbreaks and

pandemics. (see <https://www.esr.cri.nz/home/about-esr/our-science-in-action/shivers-project/>)

The “New Zealand research” referred to in the animation relates to findings from the SHIVERS study.

These findings were presented at the New Zealand Influenza Symposium in February of 2018, and the slides of that presentation can be viewed publicly. I have attached a pdf copy of the presentation. Slide 22 shows how the study findings would impact upon a population of 1 million people, with 32% of the population infected with the flu, but 76% being asymptomatic (4 out of 5).

The findings from the SHIVERS study, 2015 will be published in an upcoming edition of the Journal of Infectious Diseases.

In terms of “being contagious” I also attach a summary reference we have available on the www.influenza.org.nz website that provides references regarding viral shedding by asymptomatic individuals. This resource has been available since the April 2018, when the animation was introduced.

Please note also that the animation has TAPS approval TAPS PP9379. Whilst this TAPS number refers to the use of the animation in social media, the animation is exactly the same in the broadcast version.

I do hope this letter and the attached data provide enough context for the information presented in the animation. We are committed to providing evidence-based information to New Zealanders in a way that helps them make informed decisions about immunisation. Where consumers need further details of our communications we are always here to share and address their concerns.

Please ask for any clarifications as required.

RESPONSE FROM MEDIA, CAB

IMMUNISATION ADVISORY CENTRE TELEVISION ADVERTISEMENT

COMPLAINT: 18/182 KEY: IMAC856630 RATING: GXC

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

Code of Ethics – Rule 11 Therapeutic and Health Advertising Code – Principle 1, Principle 2, Rule 1(a), Rule 2(a);

CAB approved this commercial on 12/03/18 with a ‘GXC’ rating. Under CAB internal policies, this commercial is classified as a Therapeutics advertisement.

A complainant with objections to immunisation has produced a counter-claim against information presented in this Immunisation Advisory advertisement.

The complainant references a ‘Google search’ they have performed.

The Immunisation Advisory Centre (IMAC) is a nationwide organisation based at the School of Population Health at The University of Auckland. IMAC manages the promotion of the National Influenza Campaign, a project of the National Influenza Strategy Group (NISG).

IMAC's play an important role in New Zealand's public health preparedness, and have fittingly prepared an advertisement that meets a high standard of social. CAB does not believe this complaint should be upheld.

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.