

COMPLAINT NUMBER	18/392
COMPLAINANT	S Simpson
ADVERTISER	Brand Developers
ADVERTISEMENT	Instachill, Television
DATE OF MEETING	11 December 2018
OUTCOME	Not Upheld

SUMMARY

The television advertisement for a portable evaporative cooler branded Instachill, demonstrated how the unit worked and used a comparative example to show the cost efficiency which said in part: “And the best part is the money savings. In fact, if you run this air conditioning unit, it will cost you at least \$222 dollars per month. And that could go on month after month. Or you could run the InstaChill all day, all night, 24/7 for \$9.24 per month.”

The Complainant was concerned the advertisement made misleading claims about the comparative cost of running a heat pump on a cooling setting compared to running the Instachill unit continuously.

The Advertiser provided substantiation for the comparative figures used in the advertisement. The Advertiser said it had decided to amend the advertisement by revising the advertisement to say “could cost you \$222 per month” as well as adding information about the air conditioning unit running at a high cooling capacity.

The Complaints Board said the Advertiser had provided adequate substantiation for the efficiency figures used in the advertisement to compare the Instachill to the air conditioning unit in the advertisement and the claim was not misleading.

The Complaints Board ruled the advertisement did not breach Basic Principle 4 or Rule 2 of the Code of Ethics or Principle 1 or Guideline 1(c) of the Code for Comparative Advertising.

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 of the Code of Ethics.

Basic Principle 4 required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

Rule 2 required the Complaints Board to consider whether the advertisement contained 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.

The Chair also directed the Complaints Board to consider the advertisement with reference to Principle 1 and Guideline 1(c) of the Code for Comparative Advertising.

Principle 1 required the Complaints Board to consider whether comparisons in the advertisement were likely to mislead or deceive or be likely to mislead or deceive consumers. (Obvious hyperbole, identifiable as such, is not considered to be misleading)

Guideline 1(c) required the Complaints Board to consider whether any price comparisons were likely to mislead by falsely claiming a price advantage.

The Complaints Board ruled the complaint was Not Upheld

The Complaint

The Complainant was concerned the advertisement made misleading claims about the comparative cost of running a heat pump on a cooling setting versus running the Instachill unit continuously.

The Advertiser's Response

The Advertiser provided information supporting the reference to \$222 and said running an air conditioning unit with a power consumption of 2.45 kW at the standard user power cost of \$0.22645 kWh for 13.5 hours per day at high cooling capacity the cost will be about \$222 per month. The Advertiser said running the small 0.088kW INSTACHILL unit at high cooling capacity for the same amount of time, at the same power cost, would cost about \$8.07 per month.

The Advertiser said it had decided to amend the advertisement by revising the advertisement to say "could cost you \$222 per month" as well as adding information about the air conditioning unit running at a high cooling capacity.

The Media's Response

The Commercial Approvals Bureau said the advertiser presents a specific air conditioning unit: not a heat pump, and not a generalised claim against a variety of devices. It is a specific comparison to a specific product and its functions.

The Complaints Board Discussion

Consumer take out

The Complaints Board agreed the likely consumer takeout was the Instachill could be a more cost-effective way to cool a room than the air conditioning unit referred to in the advertisement.

Is the claim misleading?

The Complaints Board said the Advertiser had provided adequate substantiation for the efficiency figures used in the advertisement.

It noted the advertisement, which was in the style of an infomercial, was of two minutes duration. The Complaints Board said the advertisement included examples of the Instachill being used in the home and garage and showing consumers how it functioned in contrast to the wall-mounted air conditioning unit.

The Complaints Board said it was clear from the demonstrations the Instachill was portable and worked in close proximity to individuals rather in a fixed position like the air conditioning unit.

The Complaints Board said the advertisement promoted the portable Instachill for quick, localised cooling of a room, which could cool the immediate vicinity at a lower cost than running an air conditioning unit at a high cooling capacity all day. The Board did not consider this claim to be misleading.

However, in the interests of clarity, the Complaints Board welcomed the amendments made by the Advertiser to say “could cost you \$222 per month” as well as adding information about the air conditioning unit running at a high cooling capacity.

The Complaints Board ruled the advertisement did not breach Basic Principle 4 or Rule 2 of the Code of Ethics or Principle 1 or Guideline 1(c) of the Code for Comparative Advertising.

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

DESCRIPTION OF ADVERTISEMENT

The television advertisement for advertisement for a portable evaporative cooler branded Instachill, demonstrated how the unit worked and used a comparative example to show the costs efficiency which said in part: “And the best part is the money savings. In fact, if you run this air conditioning unit, it will cost you at least \$222 dollars per month. And that could go on month after month. Or you could run the InstaChill all day, all night, 24/7 for \$9.24 per month.”

COMPLAINT FROM S SIMPSON

This advertisement is for a stand-alone fan/chiller. It states that running a heatpump 24/7 will cost AT LEAST \$222 per month and that an Instachill will cost just \$9.24 per month, running 24/7.

There is no way a heatpump costs that much unless you run it very hot or very cold. The ad would be truthful if it said it CAN cost \$222.

I would be very interested to know what the comparable costs for keeping a room at 20 deg, say, using a heat pump or an instachill. No doubt the difference won't be a factor of 24.

This advert takes advantage of people who believe these figures are accurate.

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: 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).

CODE FOR COMPARATIVE ADVERTISING

Principle 1: Comparisons in advertisements should not mislead or deceive or be likely to mislead or deceive consumers. (Obvious hyperbole, identifiable as such, is not considered to be misleading)

Guideline 1(c): Price comparisons should not mislead by falsely claiming a price advantage.

RESPONSE FROM ADVERTISER, BRAND DEVELOPERS

We are responding to the Complainant's concerns about the comparative costs of running a "heatpump" 24/7 and an INSTACHILL 24/7. The Complainant says "there is no way a heatpump costs that much unless you run it very hot or very cold. The ad would be truthful if it said CAN cost \$222".

If you run an air conditioning unit with a power consumption of 2.45 kW at the standard user power cost of \$0.22645 kWh for 13.5 hours per day at high cooling capacity the cost will be about \$222 per month.

Running our small 0.088kW INSTACHILL unit at high cooling capacity for the same amount of time, at the same power cost, would cost about \$8.07 per month.

We obtained the standard user costs from <https://www.canstarblue.co.nz/energy/average-electricity-costs-per-kwh/>

Since receiving this complaint we have instructed our production department to revise the current wording of the advertisement to say "could cost you \$222 per month".

In addition, we have also instructed our production department to add wording on the screen where the \$222 appears, so that it reads "when unit is running at high cooling capacity ...".

It is our view that we have not shirked our social responsibility in any way (Advertising Code of Ethics – Basic Principle 4).

We submit also that the price comparisons do not mislead or falsely claim a price advantage (Rule 2, Principle 1(c)) and that the matter should be regarded as settled, especially in view of the addition of onscreen wording and the change from "can" to "could" clarifies the parameters of the comparison.

Contact person for advertising complaints	Scott Mitchell
Name and contact at creative agency	Not applicable
Name and contact at media agency	Not applicable
A basic, neutral description of the advertisement	120 second advertisement for a portable evaporative cooler branded INSTACHILL – Key number Z120ICH02T (BDL Internal Key No. Z/120/ICH/02/T)

Date advertisement began	6 November 2018
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	Television and Internet (www.tvshop.co.nz)
Is the advertisement still accessible – where and until when?	Yes, on television and on the Internet indefinitely – however a written disclaimer is being edited into the advertisement to clarify that the \$222 per month cost is for a unit run at high capacity 24/7 and the words in the complaint “will cost” are being edited to be “could cost”
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	https://spaces.hightail.com/receive/XmbukuhY9n
Who is the product / brand target audience?	General Public
Clear substantiation on claims that are challenged by the complainant.	See Response Letter – Standard User Power prices are taken from: https://www.canstarblue.co.nz/energy/average-electricity-costs-per-kwh/
The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	n/a
For Broadcast advertisements:	

A copy of the script	Attached to the accompanying email. The Script attached is the same wording for this key number – only the telephone number is different.
A copy of the media schedule and spot list (Please remove all financial information)	Media for this advertising is scheduled for TV One for each day of the week from 25 November to 1 December 2018.
CAB key number and rating	This advertisement is CAB approved, there is no CAB key number
For Digital advertisements:	

What platform tools have you used to target your audience?	The standard devices used within Google and Facebook Digital Marketing Tools. Emails to opted-in customers.
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RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU

A complainant feels this commercial could be misleading based on the claim that, "Running a heat pump 24/7 will cost AT LEAST \$222 per month".

Please note that this claim does not appear in the commercial.

The advertiser presents a specific air conditioning unit: not a heat pump, and not a generalised claim against a variety of devices. It is a specific comparison to a specific product and its functions.

In the absence of quantified data, the complainant's issue rests on disbelief. Neither the code of ethics nor the code for comparative advertising require consumers to be convinced of claims made - the codes require that claims are accurate and true.

Consideration of the codes in relation to this ad must disregard the misheard/misquoted claim presented by the complainant; to do otherwise would contravene a sense of natural justice.

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.