

COMPLAINT NUMBER	18/431
COMPLAINANT	G Smith + 3 Others
ADVERTISER	Helius Therapeutics
ADVERTISEMENT	Helius Therapeutics Billboard
DATE OF MEETING	23 January 2019
OUTCOME	Settled – advertisement removed

SUMMARY

There were three versions of the billboard advertisement for Helius Therapeutics. Each version had a different head-and-shoulders photo of a person on the left-hand side of the billboard and identical text, which was positioned to the right of the photo. The main text, which was in big letters, said: “Cannabis is medicine”. Below this, in much smaller font, was the text: “It’s time to tell the truth about medicinal cannabis”. The Helius Therapeutics logo and reference to their Facebook page was also displayed.

There were four complaints about this advertisement. The first complainant, G Smith, said cannabis is an illegal drug and should not be advertised in public for children to see. Once medicinal cannabis is legal it will be appropriate to advertise it. The second complainant, B Heslop, said the advertisement gives the impression that all cannabis is medicine and therefore good for you, which is misleading. The third complainant, T Williamson, said only medicines that have been evaluated by Medsafe and have consent to be distributed may be advertised in New Zealand. The fourth complainant, T Haddon, said the billboard is a breach of Treaty rights and is promoting an illegal substance which affects the minds of youth.

The Advertiser said the purpose of the campaign was to address the stigma associated with cannabis, draw attention to the use of cannabis as medicine and honour those patients and advocates who have had the courage to stand up for reform.

The Complaints Board acknowledged the prompt action taken by the Advertiser to remove the billboard soon after complaints were received.

The Complaints Board noted that cannabis is an illegal drug in New Zealand, and it is not socially responsible to imply that all cannabis is “medicine”.

The Complaints Board was unanimous in its view the advertisement was likely to mislead, confuse or harm consumers and had not been prepared with the requisite sense of social responsibility. The Complaints Board ruled the advertisement was in breach of Principles 1 and 1(c) of the Advertising Standards Code and Principles 1 and 2 of the Therapeutic and Health Advertising Code.

However, in light of the fact the advertisement was removed, the Complaints Board ruled the complaint was Settled.

[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 complaint with reference to Principle 1 and Rule 1(c) of the Advertising Standards Code and Principles 1 and 2 of the Therapeutic and Health Advertising Code.

Principle 1 required the Board to consider whether the advertisement had been prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(c) Decency and Offensiveness required the Board to consider whether the advertisement contained anything that is indecent, or exploitative or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt abuse or ridicule.

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 contained any statement which was untruthful, unbalanced or misleading or 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 Settled.

The Complaints

There were four complaints about this advertisement. The first complainant, G Smith, said cannabis is an illegal drug and should not be advertised in public for children to see. Once medicinal cannabis is legal it will be appropriate to advertise it. The second complainant, B Heslop, said the advertisement gives the impression that all cannabis is medicine and therefore good for you, which is misleading. The third complainant, T Williamson, said only medicines that have been evaluated by Medsafe and have consent to be distributed may be advertised in New Zealand. The fourth complainant, T Haddon, said the billboard is a breach of Treaty rights and is promoting an illegal substance which affects the minds of youth.

The Advertiser's response

The Advertiser said the purpose of the campaign was to address the stigma associated with cannabis, draw attention to the use of cannabis as medicine and honour those patients and advocates who have had the courage to stand up for reform.

The Advertiser said it decided to remove the advertisement after some members of the public found the headline confronting, and it has no plans to run the advertisement again. The Advertiser requested the complaint be settled.

Complaints Board Discussion

The Complaints Board acknowledged the prompt action taken by the Advertiser to remove the billboard soon after complaints were received.

Consumer Takeout

The Complaints Board said the consumer takeout of the advertisement was that cannabis, in any form, is good for you, in the same way 'medicine' is good for you.

Is the advertisement an advocacy advertisement?

The Complaints Board noted that in 2018 the New Zealand Government voted to make medical marijuana available in New Zealand. A referendum on recreational cannabis use is also planned.

The Complaints Board agreed that while there is ongoing public debate about the uses of cannabis the advertisement did not meet the requirements to be regarded as an advocacy advertisement under Rule 2 (e) of the Advertising Standards Code.

Does the advertisement contain anything that is likely to cause harm?

The Complaints Board agreed the message being conveyed is very simplistic and the advertisement provides very little additional information which could add context. Uninformed viewers, especially young people, could get the impression they had been misled about cannabis in the past, especially given the consumer takeout of this advertisement.

The Complaints Board said the advertisement doesn't make any distinction between medicinal and recreational cannabis, although they are very different products. Medicinal cannabis does not contain any substances, such as tetrahydrocannabinol (THC), that can have a psychoactive effect, whereas ordinary cannabis does.

The Complaints Board noted that cannabis is an illegal drug in New Zealand, and it is not socially responsible to imply that all cannabis is "medicine".

Does the advertisement observe a high standard of social responsibility?

The Complaints Board said the medium, a billboard, is of key relevance in considering this complaint. This billboard is displayed in a public place, available for all to see.

The Complaints Board agreed a person driving past the billboard would only get a short period of time (approximately three seconds) to read what was on the billboard and they would probably only get the main message, in large font, that "Cannabis is Medicine".

The Complaints Board said the second sentence in the advertisement "It's time to tell the truth about medicinal cannabis" does provide a little more context, but this information would not be accessible to all viewers.

The Complaints Board said the viewer can't tell from the advertisements that the people featured in the advertisements are real people with stories relevant to the key billboard message.

The Complaints Board was unanimous in its view the advertisement was likely to mislead, confuse or harm consumers and had not been prepared with the requisite sense of social responsibility. The Complaints Board ruled the advertisement was in breach of Principles 1 and 1(c) of the Advertising Standards Code and Principles 1 and 2 of the Therapeutic and Health Advertising Code.

The Complaints Board took into account the Advertiser's action in removing the billboard in response to complaints, which is the equivalent action required where a complaint is upheld. In light of this self-regulatory action by the Advertiser, the Complaints Board ruled the complaint was Settled.

DESCRIPTION OF ADVERTISEMENT

There were three versions of the billboard advertisement for Helius Therapeutics. Each version had a different head-and-shoulders photo of a person on the left-hand side of the

billboard and identical text, which was positioned to the right of the photo. The main text, which was in big letters, said: "Cannabis is medicine". Below this, in much smaller font, was the text: "It's time to tell the truth about medicinal cannabis". The Helius Therapeutics brand mark and reference to their Facebook page was also displayed, in small font.

COMPLAINT FROM G SMITH

Cannabis is an illegal drug and even in it's medicinal form while it has passed in government should not be advertised in public for children to see. Cannabis is known to impair the learning of youth and making it seem an acceptable thing is utterly inappropriate.

By all means advertise medicinal cannabis products (once legal) but in the meantime this ad suggests that cannabis in it's raw form is a medicine for everyone to use which it's not.

Even if cannabis gets decriminalized for personal use in the future there will be strict regulations on advertising just like alcohol and cigarettes so there is no way this advertising campaign should be permitted to continue.

This is just pro cannabis propaganda.

For the record I support medicinal marijuana and I support it's decriminalization....But I don't support advertising it to my children.

COMPLAINT FROM B HESLOP

This morning Helius Therapeutics commenced a digital billboard advertising campaign claiming "Cannabis Is Medicine". Attached is a photo of the billboard on the corner of Anzac Avenue and Beach Road, Auckland as published in this morning's edition of the NZ Herald.

This messaging gives the impression that all cannabis is medicine, i.e. good for you, which I find very misleading. Further, while there will be cannabis based products which will be medicines following the passing of the Misuse of Drugs Amendment Act last week, to imply that all cannabis is a medicine is dangerous and misleading.

COMPLAINT FROM T WILLIAMSON

I believe the use of the word medicine means this advertisement falls under the Therapeutic and Health Advertising Code. This advertisement alleges that cannabis is a medicine, but under the code it cannot be called a medicine as 'Only medicines that have been evaluated by Medsafe and have consent to distribute may be advertised in New Zealand. The medicine(s) advertised may be available on prescription or may be purchased 'over-the-counter'. Cannabis is currently not legally available in NZ on prescription or over-the-counter. Medsafe only provides information on Cannabinoid products, not cannabis itself. Cannabis is currently illegal.

This advertisement breaches the following:

Principle 1(a) and 1(b): Advertisements shall contain the following mandatory information to encourage responsible prescribing, recommendation, sale and use. This information shall be set out in a way (legible / audible) that ensures it can be readily understood by the audience to whom it is directed.

This advertisement doesn't contain any of the mandatory information or of harm, and it would be unable to as it is not an approved medicine in NZ.

Principle 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.

Under current legislation, Cannabis is not a medicine.

Principle 2(b): Advertisements shall not encourage, or be likely to encourage, inappropriate or excessive purchase or use. Advertisements for prescription medicines shall not encourage, or be likely to encourage, inappropriate or excessive prescriptions or

requests for a prescription. This advertisement currently encourages people to purchase an illegal substance. Even if/when proposed legislation comes into effect, Cannabis will only be legalised for those with terminal illness.

COMPLAINT FROM T HADDON

Not while I am against legalizing medicinal marijuana Is it only me that sees the signage aa promotion of cannabis as something you would take like paracetamol. They are going to save money by decriminalising marijuana by moving people out of criminal justice into health. It is approximately 53% of Maori men in prison and 61% of Maori women in prison does mean that we should see less whanau in there due to marijuana related crimes? Are we going to see more problems with drugs and our tamariki accessing it within our whare. Please if you are going to promote cannabis being medicinal do in the right context so our tamariki understand that. Do not encourage it as you would an over the counter medication it is still a drug and our Mokopuna need protecting. Shifting one inequity to another. Drugs are not our culture. The way it is portrayed its is women who looks Māori or indigenous . Cannabis as it stands is Illegal and while I have no problem with products containing cannabis for medicinal use being advertised and I support (non retail) decriminalization of cannabis for personal use.....this billboard is promoting an illegal substance. I don't want my kids or other people's kids thinking it's all good because we know how it affects the minds of youth.

Because of the nature of cannabis being smoked it will also mean that whānau who are risk of lung cancer as a leading cause of death for Māori could be potentially promoting this as being smoked where we are trying to become smokefree as a nation. I believe that this billboard is inequitable and a breach of Treaty rights of where we should partner, and protect whānau not influence.

CODES OF PRACTICE

ADVERTISING STANDARDS CODE

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(c): Decency and Offensiveness: Advertisements must not contain anything that is indecent, or exploitative or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt abuse or ridicule.

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.

RESPONSE FROM ADVERTISER, HELIUS THERAPEUTICS

Thank you for your correspondence dated the 18th of December 2018 regarding a complaint received in relation to our outdoor campaign, 'Cannabis is Medicine'.

The purpose of this campaign was to address stigma associated with cannabis and honour those patients and advocates who have had the courage to stand up for reform. As a licensed cannabis producer, we also aimed to draw attention to the use of cannabis as medicine, following the successful passing of New Zealand's medicinal cannabis bill. The campaign concept was reviewed and approved by our lawyers at Duncan Cotterill prior to launch. We note that medicinal cannabis is a very new industry here, without advertising precedent.

We received overwhelmingly positive feedback about this campaign, as an important and timely conversationstarter. However, we also noted through social media commentary that some members of the public found the headline somewhat confronting. The 'Cannabis is Medicine' execution of the campaign was originally scheduled to run for three weeks from the 17th of December 2018 to the 6th of January 2019. In response, we opted to conclude the use of this execution on the 21st of December. We have no plans to run it again.

As Helius has proactively chosen to conclude the advertising in question, we hope the ASA will consider this complaint settled.

If you require any further information, please don't hesitate to get in touch.

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.