

<b>COMPLAINT NUMBER</b>	19/027
<b>COMPLAINANT</b>	A Abernethy
<b>ADVERTISER</b>	Brand Developers Ltd
<b>ADVERTISEMENT</b>	Instachill, Television
<b>DATE OF MEETING</b>	30 January 2019
<b>OUTCOME</b>	No Grounds to Proceed

**Advertisement:** 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 Chair ruled there were no grounds for the complaint to proceed.**

**Complainant, A Abernethy, said:** I wish to appeal the decision made by the Complaints Board in respect of Complaint Number 18/392, received by me by email 19 December 2018.

My grounds for appeal are firstly that the figures given in the advertisement and in your decision in respect of operating costs of the Insta Chill and an airconditioner are irrelevant, as at no stage is a comparison made of the output of the two devices, which is a far more important criterion.

The Board's Decision considered Basic Principle 4, and Rule 2 of the Code of Ethics. In respect of Rule 2, I maintain that the advertisement makes misleading representation, and exploits (the consumer's) lack of experience and knowledge.

The Board was also directed to consider Principle 1 and Guideline 1(c) of the Code for Comparative Advertising. In this instance, I maintain that comparisons in the advertisement are likely to mislead, and falsely claim a price advantage by not comparing like with like.

To substantiate my claim, I suggest that it is completely ridiculous to infer that the two units being compared could produce comparable degrees of cooling. I claim that that would be akin to telling the customer that they can do without normal installed lighting in their house, and use a torch instead. Airconditioners are designed to cool (or heat) large volumes of space and maintain set conditions for long periods, whereas the Insta Chill would provide some form of uncontrolled cooling for a short distance around the device, without appreciably affecting the general conditions in the room. The only time this crucial point is touched on in the whole six pages of the Board's opinion is where Complainant Simpson says he would be interested to know the comparable costs for keeping a room at 20 degrees, say, using a heatpump (or airconditioner) or an Insta Chill. There is obviously no comparison, but sadly there are people who will accept the huge savings suggested, only to find they have been misled. They will be then be up for the cost of returning the unit to Brand Developers. This advertiser should not be allowed to fool gullible buyers in this way.

**The relevant provisions were Code of Ethics - Basic Principle 4, Rule 2; Code for Comparative Advertising - Guideline 1 (c), Principle 1;**

Preliminary matter

The Chair noted that A Abernethy had raised the issue of timing in relation to their complaint and Decision 18/392.

The Chair confirmed S Simpson submitted a complaint about the Instachill advertisement on 14 November 2018. This complaint was accepted by the Chair on 19 November and a response from the Advertiser, Brand Developers, was received on 30 November. The complaint was heard by the Complaints Board at its meeting on 11 December and Decision 18/392 was made public on 20 December.

The Chair noted there was a date error in this Decision, which recorded the meeting date as 11 October, not 11 December and the Chair apologised for any confusion this may have caused.

A Abernethy's complaint was received on 10 December 2018 and was designated a subsequent complaint by the Secretariat. A subsequent complaint raises the same or similar issues to a complaint already before the Board for adjudication. As a matter of process, subsequent complainants receive a copy of the Board's decision for their information.

A Abernethy considered Decision 18/392 did not adequately address their concerns. The Chair noted that as A Abernethy was not a party to Decision 18/392, they could not appeal it.

Therefore, the Chair agreed to consider A Abernethy's concerns as a separate complaint, designated as 19/027.

Consideration of A Abernethy's complaint

**The Chair** noted the Complainant's concerns the advertisement was misleading because the comparisons made were only based on price and did not take into account the output of the Instachill cooler unit versus the air conditioning unit.

The Chair said the Complaints Board considered the consumer takeout of the advertisement in decision 18/392, They did not consider that the average consumer would be likely to confuse a small, portable unit as having the same purpose or capability as a full air conditioning unit. That decision said in part:

"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."

The Chair said there was nothing raised in the complaint before her which had not been considered by the Complaints Board during its deliberations of complaint 18/392.

The Chair said this precedent Decision applied to the complaint before her from A Abernethy.

The Complaints Board had unanimously agreed the two cooling options were sufficiently different that it was unlikely that consumers would consider the Instachill unit could be a replacement for full air conditioning unit. Therefore the claims made in the advertisement were not misleading.

The Chair 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.

Therefore, the Chair ruled there were no grounds for the complaint to proceed.

**Chair's Ruling:** Complaint **No Grounds to Proceed**

#### **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](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 days of receipt of this decision.