

COMPLAINT NUMBER	19/363
COMPLAINANT	A Robertson
ADVERTISER	ALT New Zealand Limited
ADVERTISEMENT	Alt. New Zealand Limited Television
DATE OF MEETING	12 November 2019
OUTCOME	Not Upheld No further action required

Description of the Advertisements

There were three television advertisements for ALT vaping products, each featuring a different fruit or vegetable: broccolini, banana and rhubarb.

The broccolini advertisement showed a man wearing a cowboy hat sitting in a café, “smoking” a stick of broccolini. The voiceover says: “Broccolini, I mean, the black lungs on the packet says it all. Switching to alt. was like switching to a new gear”. At this point the actor looks over at a group of cyclists, sitting at the café. The voiceover continues “Join me and 40,000 other Kiwis who have made the switch”. The man then “stubs out” the broccolini in an ashtray.

The banana advertisement showed a woman at a party “smoking” a banana. The voiceover says: “Wrinkly, saggy skin, that’s where bananas can take you. So I switched to ALT Join me and 40,000 other Kiwis who have made the switch”. The woman then drops her banana into a drink.

The rhubarb advertisement showed a woman on the street. The voiceover says: “I was spending thousands a year on rhubarb. Switching to ALT was like giving myself a pay rise. How often can you do that? Join me and 40,000 other Kiwis who have made the switch”. She then “stubs out” the rhubarb on the pavement.

The introduction for each advertisement says: “alt. would like to apologise for the misuse of (broccolini/banana/rhubarb) in the following endorsement”. “Due to current legislation we are unable to depict the product that KILLS 12 KIWIS EVERY DAY”.

Summary of the Complaint

The Complainant was concerned:

- it is misleading to imply that broccolini, carrots and rhubarb are bad for your health
- the advertisement encourages littering because the food items are thrown away
- the advertisements are misleading because they imply ALT is good for your health, which hasn’t been proved

Issues Raised:

- Social Responsibility
- Decency and Offensiveness
- Health and well-being

- Truthful Presentation
- Therapeutic and Health Code
- Safety and effectiveness

Summary of the Advertiser's Response

The Advertiser defended the advertisements and said they use humour by replacing cigarettes with vegetables, to ensure compliance with advertising restrictions. The advertisements promote the ALT product as an alternative to cigarettes. The advertisements are no longer on air and the Advertiser has no plans at present to use them again.

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about three television advertisements for ALT vaping products. The Board said the general consumer takeout of the advertisements was switching from smoking to ALT will cost less and cause less harm. The Complaints Board agreed two of the advertisements made health benefits claims that were substantiated and were socially responsible.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

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.

Rule 1 (h) Health and well-being: Advertisements must not undermine the health and well-being of individuals.

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2 (b) Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

THERAPEUTIC AND HEALTH ADVERTISING CODE

Principle 1: Social Responsibility: 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.

Rule 1 (b) Safety and effectiveness: Advertisements shall not contain any claim, statement or implication that the products, devices or services advertised:

- are safe or that their use cannot cause harm or that they have no side effects or risks.

- are effective in all cases
- are infallible, unfailing, magical, miraculous, or that it is a certain, guaranteed or sure cure
- are likely to lead persons to believe that;
 - they are suffering from a serious ailment, or
 - harmful consequences may result from the therapeutic or health product, device or service not being used.
- **Principle 2: Truthful Presentation:** 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) Truthful presentation:** 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).

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 18/428, which was Upheld and Decision 19/305, which was Upheld in part.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 18/428 concerned four advertisements for Alt New Zealand, each with a theme: “Get Fit”, “Get Old”, “Get Young” and “Get Rich”. The “Get Free. Get Fit” advertisement showed a fit-looking woman leaping through a line drawing in the shape of an alt e-cigarette device. The text says: “Get Free, Get Fit. Stop smoking and your lung capacity can increase by up to 30%.” The “Get Free. Get Rich” advertisement showed a man with a handful of \$100 bills feeding them through a line drawing in the shape of an alt e-cigarette device. The text says: “Stop smoking and you could save \$7000 Dollars a Year”. The “Get Free. Get Old” advertisement showed a close-up of a man’s eye as he is looking through a line drawing in the shape of an alt e-cigarette device. As he does so the camera pans backwards to reveal the man has white hair and a white beard. The text says: “Stop smoking and you could add 10 years to your life expectancy.” The “Get Free. Get Young” advertisement shows an image of a smiling woman looking through a line drawing which is the shape of an alt e-cigarette device. As she does so she gives a wink. The text says: “Stop smoking before you’re 25 and your lungs can regenerate.”

A majority of the Complaints Board said all four advertisements were making therapeutic claims which had not been adequately substantiated.

Decision 19/305 concerned a television advertisement for *myblu* Vape Device. The advertisement introduces three different people who use *myblu* Vape Device, each for different reasons: savings, appearance and fitness. The script includes the following: “My Savings - \$60 last week – more than we made on tips... My Appearance – Not bad. Hey, that’s not my good side... My Fitness – Keep up bro.” The advertisement ends with the line: “My Freedom – *myblu*. Vape with confidence.”

The Complaints Board said the advertisement did not observe a high standard of social responsibility because the advertisement implies that vaping is a safe activity and you can “Vape with Confidence”. The Complaints Board said that while the studies referred to by the

Advertiser support the view that vaping is less harmful than smoking, they do not support the view that there are no risks at all associated with vaping.

Complaints Board Discussion

Consumer Takeout

The Complaints Board considered the consumer takeouts of the advertisements. The Complaints Board said the general consumer takeout of the advertisements was: Switching from smoking to ALT will cost less and cause less harm.

Therapeutic and Health Advertising Code: Does it apply?

The Complaints Board considered the complaint under the Therapeutic and Health Advertising Code.

Are there any therapeutic or health benefit claims made, and have they been substantiated?

The Complaints Board considered each of the three advertisements in turn, posing the following questions:

1. What is the consumer takeout?
2. Does the consumer takeout fit the definition of an actual or implied therapeutic claim, a health benefit claim or another type of claim?
3. If the advertisement is making any of the above claims, has the advertiser provided adequate substantiation to support them?

The Complaints Board agreed two of the three advertisements were making health benefit claims because they suggested switching to ALT will have an effect on health and wellness.

Ad 1 Broccolini

The Complaints Board agreed:

- The consumer takeout was: Switching from smoking to ALT will make you feel better.
- The consumer takeout fitted the definition of a health benefit claim.
- The Advertiser provided adequate substantiation to support this health benefit claim. The Complaints Board noted the Advertiser provided evidence sourced from the Ministry of Health – Manatū Hauora and the Health Promotion Agency/Te Hiringa Hauora which stated that vaping is “much less harmful than smoking”.

Ad 2 Banana

The Complaints Board agreed:

- The consumer takeout was: Switching from smoking to ALT will make your skin look better.
- The consumer takeout fitted the definition of a health benefit claim.
- The Advertiser provided adequate substantiation to support this health benefit claim. The Complaints Board noted the Advertiser provided evidence sourced from the Ministry of Health – Manatū Hauora and the Health Promotion Agency/Te Hiringa Hauora which stated that vaping is “much less harmful than smoking”.

Ad 3 Rhubarb

The Complaints Board agreed:

- The consumer takeout was: Switching from smoking to ALT. will save you money.
- The consumer takeout does not fit the definition of an actual or implied therapeutic claim or a health benefit claim, therefore the Therapeutic and Health Advertising Code does not apply to this advertisement.

Advertising Standards Code

The Complaints Board then considered the complaint under the Advertising Standards Code.

Do the advertisements contain anything that is likely to cause harm or serious or widespread offence?

The Complaints Board agreed the advertisements did not contain anything that is likely to cause harm or serious or widespread offence. The Board referred to the evidence provided by the Advertiser, which was sourced from the Ministry of Health – Manatū Hauora and the Health Promotion Agency/Te Hiringa Hauora. This evidence stated “The biggest risks of vaping are the unknown risks. Vaping hasn’t been around long enough to know the risks of long-term use, but we do know it’s less harmful than smoking” and “There is now general agreement that vaping use exposes the user to fewer toxicants than smoking tobacco cigarettes.”

Do the advertisements undermine the health and well-being of individuals?

The Complaints Board agreed the advertisements did not contain anything that might undermine the health and well-being of individuals. The Board noted the advertisements do not imply that ALT is good for your health and referred to the Ministry of Health position on vaping.

Are the advertisements misleading?

The Complaints Board agreed the advertisements were not misleading. The Board said the advertisements did not imply that broccolini, bananas and rhubarb are bad for your health. The Board said the broccolini, bananas and rhubarb were used in place of cigarettes, in a metaphorical way, as promoting tobacco smoking behaviour in advertising is restricted by legislation. The Board said this substitution is done in a humorous way and the phrase “alt. would like to apologise for the misuse of broccolini in the following endorsement” is an example of this ironical humour.

The Complaints Board said while the advertisements do not imply ALT is good for your health, the Advertiser provided evidence sourced from the Ministry of Health – Manatū Hauora and the Health Promotion Agency/Te Hiringa Hauora that vaping is “much less harmful than smoking”.

Have the advertisements been prepared and placed with a due sense of social responsibility?

The Complaints Board agreed the advertisements had been prepared and placed with a due sense of social responsibility.

The Board said the advertisement does not encourage littering. The Board said the depiction of the broccolini and rhubarb being “stubbed out” is an extension of the metaphor already in place and a reference to the way cigarette butts are sometimes disposed of. The Board said the advertisement is promoting a switch from cigarettes to vaping, and therefore as vaping products are not “stubbed out” in this way this practice is not being encouraged.

In Summary

The Complaints Board agreed two of the three advertisements were making health benefit claims, which had been adequately substantiated. The Complaints Board said the Therapeutic and Health Advertising Code did not apply to one of the three advertisements. The Complaints Board said the advertisements were socially responsible, taking into account context, medium, audience and product and were not in breach of Principle 1, Rule

1(b), Principle 2 or Rule 2(a) of the Therapeutic and Health Advertising Code or Principle 1, Rule 1(c), Rule 1(h), Principle 2 or Rule 2(b) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

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.

APPENDICES

1. Complaint
 2. Response from Advertiser
 3. Response from Media
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Appendix 1

COMPLAINT FROM A ROBERTSON

There is a product called alt that is being advertised for the last couple of weeks. The ad starts with 'we are not allowed to show you the product this is intended for' so the advertisers have used broccoli/ carrots / rhubarb. The ad varies but it mainly shows an image of a person smoking these items saying these are bad for your health so change to alt. I'm assuming alt is a vaping product. My issue is that broccoli, carrots and rhubarb are not bad for your health, just the opposite which is misleading. The other issue i have is it shows them flippantly throwing these items away out of a car window or stepping on them to extinguish them which is encouraging littering, it speaks of an arrogance towards the environment and lack of care of disposal. As a registered nurse i am also concerned about the fact that the statement or innuendo that 'alt is supposedly good for your health' is again misleading and untrue. There is not enough research available to prove that it is safe as it is a relatively new product. In fact.as time has gone on, it is showing that it is very detrimental to your health with young people ending up in intensive care and some others requiring lung transplants as particles are being carried to the lungs and as they build up, the lungs can't cope and users have difficulty in breathing. Could you please sort this out? The ad disturbs me every time it appears on our screen.

Appendix 2

RESPONSE FROM ADVERTISER, ALT NEW ZEALAND LIMITED

We refer to your letter dated 2 October 2019 and are responding to the complaint sent to you by A Robertson. ALT New Zealand Limited (ALT) is responding on its own behalf and it does not represent any other parties.

The Complaint

We understand the complaint is related to an advertisement which aired on 9 September on TVNZ Duke.

1. ASC, Principle 1, Rule 1(c)

ALT does not believe that the advertisement contains 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.

We do not consider that any imagery and/or messaging used in the advertisement is likely to cause any harm, or cause offense to any reasonable individual.

2. ASC, Principle 1, Rule 1(h)

ALT does not believe that the advertising undermines the health and well-being of individuals and further complies with the ASA's Therapeutic and Health Advertising Code. The advertisements use humour by replacing cigarettes with vegetables to ensure compliance with the advertisement restrictions, and ultimately promote the ALT product as

an alternative to cigarettes. Rule 1(h) was recently considered by the ASA Chair in Complaint Number 19/341, and as it was determined that there were no grounds for the complaint to proceed. We consider that this complaint should be viewed in an analogous manner.

The advertisement had been rated S830 (Special 830) by the Commercial Approvals Bureau, which meant it could only be broadcast after 8:30pm. The Complaint by A Roberston notes that the advertisement was aired “after 8:30 pm”, ensuring the advertisement was not targeting children and had aired within the constraints of its afforded rating.

3. THAC, Principle 1, Rule 1(b)

ALT believes that all messaging, claims and/or implications either implied or explicit are made in compliance with Rule 1(b).

ALT is very conscious of its social responsibility and to this end ensures that this and any other advertisements are in compliance with the Ministry of Health requirements and expectations. The advertisement is not sexualised, overstated or produced in a way to entice children.

The Complainant makes reference to a number of young people being in intensive care due to lung complications. This is an issue that is isolated to the United States and has been strongly associated with the use of tainted, black market THC/CBD vaping products. Not one lung illness has been directly associated with nicotine vaping. Further, we have not been made aware of any of these complications by the individual(s) in New Zealand and strongly refute any connection between these complications and nicotine vaping products, in particular, highly quality controlled products such as ALT.

4. THAC, Principle 1, Rule 2(a)

ALT believes that the advertisement is not misleading and is accurate.

The explicit statement referred to in the Complaint “ALT is supposedly good for your health” must be read in the context of the advertisement. At no point in the advertisement is it expressly stated or implied that ALT is “good for your health”. Although vaping is not designed for non-smokers it is widely accepted that vaping is significantly less harmful than smoking. We submit that it is important to note the position of the Ministry of Health on www.vapingfacts.health.nz where it is noted:

Vaping is not harmless, but it is much less harmful than smoking.

<https://vapingfacts.health.nz/vaping-vs-smoking/>

‘There is now general agreement that vaping use exposes the user to fewer toxicants than smoking tobacco cigarettes.’ (McNeill 2015; RCP 2016.Cochrane Review.)

Vaping is less harmful and cheaper than smoking, and can have a similar feel.

<https://vapingfacts.health.nz/vaping-vs-smoking/>

We further refer to the Surge Report

(<https://d3n8a8pro7vhmx.cloudfront.net/ashnz/pages/81/attachments/original/1570154436/SurgeSmokefree2025Report.pdf?1570154436>), published on 7 October 2019 that establishes smoke free alternatives, such as the ALT product present much lower health risks compared to cigarettes. We would recommend that the Complainant read the above report and visit the Ministry of Health website.

5. Other matters

The disclaimer text at the beginning of the advertisement clearly implies that the vegetables being shown are not reflective of the subject matter of the advertisement.

The advertisement is no longer on air and we have no plans at present to continue showing these particular adverts again on New Zealand television in future.

Appendix 3

RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU

CAB approved this series of ALT commercials on July of 2019 with an 'S830' classification, which ensures they play only after 8:30pm in adult viewing times [...].

The complainant is an adult viewer but presents a view unlikely to be shared by others [...].

The presentation of the commercial is clear to the average New Zealand viewer [...].

ALT is a responsible advertiser, and their agency worked closely with CAB throughout the creative process to ensure that all relevant and existing advertising standards were met. ALT collaborated in good faith and exhibited diligence in meeting their social responsibility as an advertiser in New Zealand's television market. CAB does not believe that their efforts should warrant an upheld decision.