

<b>COMPLAINT NUMBER</b>	19/388
<b>ADVERTISER</b>	Brand Developers
<b>ADVERTISEMENT</b>	Power Fit - Power Legs, Television
<b>DATE OF MEETING</b>	24 March 2020
<b>OUTCOME</b>	Upheld Advertisement to be Removed

### **Summary of the Complaints Board Decision**

The Complaints Board Upheld a complaint about the Brand Developer's television advertisement for the Power Fit-Power Legs machine. The Complaints Board said the Advertiser had not provided substantiation to support the claims made in the advertisement. The Complaints Board said suggested changes proposed by the Advertiser did not eliminate the implied therapeutic claim the device could improve conditions such as varicose veins and was therefore in breach of Principle 2 and Rule 2(a) of the Therapeutic and Health Advertising Code.

### **Description of Advertisement**

The Brand Developers television advertisement for Power fit-Power Legs shows images of varicose veins and people with other leg problems such as restless legs and poor circulation and suggests the Power Legs product can "make these frustrating embarrassing persistent problems disappear." The advertisement says it can soothe, rejuvenate, strengthen, improve circulation, tone muscles, relieve stress, energize and improve overall health.

### **Summary of the Complaints**

Two Complainants are concerned the advertisement is misleading to claim its product can make varicose veins and other leg problems disappear and queried whether there is any substantiation for this.

### **Issues Raised:**

- Truthful Presentation

### **Summary of the Advertiser's Response**

The Advertiser said the advertisement was code compliant as it had been approved by the Commercial Approvals Bureau. In response to a request for substantiation of the claims made in the advertisement, the Advertiser provided an amended script which would use the same visuals but remove the therapeutic claims made in the voice-over and in the text shown on-screen.

### **Summary of the Media Response**

The Commercial Approvals Bureau said it did not consider the likely consumer takeout of the advertisement would be that the Advertiser is making implied therapeutic claims.

## Relevant ASA Codes of Practice

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

### THERAPEUTIC AND HEALTH ADVERTISING CODE

**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).

### Complaints Board Discussion

#### *Preliminary Matter*

The Chair directed the Complaints Board to consider the original advertisement against the relevant Therapeutic and Health Advertising Codes. She then directed the Board to assess the proposed amendments from the Advertiser to ascertain whether the Complainants' issues had been addressed and the complaints could be settled under self-regulation principles.

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the original advertisement was this is a breakthrough machine which can make various leg conditions such as restless legs, varicose veins and poor circulation disappear through its vibration and acupressure system.

#### *Is the advertisement making a therapeutic claim?*

The Complaints Board agreed the advertisement is making a therapeutic claim that the Power Legs machine can treat various leg conditions. The advertisement uses wording such as: "soothe, rejuvenate, strengthen, improve circulation, tone muscles, relieve stress, energize and improve overall health." The Complaints Board said these therapeutic claims required substantiation.

#### *Has the Advertiser provided adequate substantiation for the claim?*

The Complaints Board noted that no substantiation has been provided by the Advertiser to support the therapeutic claims made in the advertisement. Therefore, the Complaints Board said the advertisement was in breach of Principle 2 and Rule 2(a) of the Therapeutic and Health Advertising Code.

#### *Are the proposed amendments to the advertisement sufficient to settle the complaints?*

The Complaints Board carefully reviewed the proposed amendments from the Advertiser to ascertain whether the complaints were able to be settled.

The Complaints Board noted the Advertiser had proposed leaving the front portion of the advertisement intact which identified various problematic leg conditions. The revised script then introduced the Power Leg machine as a breakthrough vibration and acupressure system. The Advertiser proposed removing the verbal and written references to the various therapeutic benefits of the system. The images from the original advertisement would remain.

The Complaints Board said the visuals in the amended advertisement together with the remaining words, were still making implied claims the device would treat various leg conditions, such as varicose veins. The Board noted images of very bad varicose veins shown at the beginning of the advertisement were replaced with images of healthy-looking legs after the use of the Power Fit machine.

The Complaints Board said the proposed amendments to the advertisement were not sufficient to prevent the advertisement from suggesting an implied therapeutic benefit which was misleading and the complaints were not able to be settled.

The Complaints Board unanimously agreed that in the absence of adequate substantiation, the advertisement was likely to be misleading to some consumers, taking into account product, context, medium, audience. The Complaints Board ruled the advertisement was in breach of Principle 2 and Rule 2(a) of the Therapeutic and Health Advertising Code

### **Outcome**

The Complaints Board ruled the complaints were **Upheld**.

Advertisement to be removed and not used again in its current form.

### **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 calendar 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 N MCNEIL

The advertisement shows legs with very obvious varicose veins and then claims with Powerlegs 'now you have the power to make these frustrating, embarrassing and persistent problems disappear'.

My complaint is that the advert targets a vulnerable audience with misleading claims which are not a truthful presentation of the benefits a buyer can reasonably expect. I am worried my mother could easily be tricked into ordering this product with false hopes it could make her varicose veins disappear and fix my father's poor circulation. I am not a doctor but the adverts seems unsubstantiated. There are no studies quoted or warnings that results might not be achieved.

#### COMPLAINT FROM L SKINNER

The advertisement asks whether the viewer has such problems as 'thrombosed varicose veins' plus a number of other health conditions related to legs - and then proceeds to say that Powerfit will get rid of this & other problems - which is absolute nonsense & misleading.

### Appendix 2

#### RESPONSE FROM ADVERTISER, BRAND DEVELOPERS

This complaint was about a 120 second advertisement for POWERFIT POWERLEGS vibration machine. A

link to the advertisement is included with this response:

The Key number for the advertisement is Z120PWEO2T

#### The Complaint as communicated by ASA:

TV1

*The Chase 2019-09-30*

*10.39am*

*The advertisement shows legs with very obvious varicose veins and then claims with Powerlegs 'now you have the power to make these frustrating, embarrassing and persistent problems disappear'.*

*My complaint is that the advert targets a vulnerable audience with misleading claims which are not a truthful presentation of the benefits a buyer can reasonably expect. I am worried my mother could easily be tricked into ordering this product with false hopes it could make her varicose veins disappear and fix my father's poor circulation. I am not a doctor but the adverts seems unsubstantiated. There are no studies quoted or warnings that results might not be achieved.*

#### Brand Developers' Response to the Complaint:

In the first instance it needs to be noted that Brand Developers' advertisements have both CAD (FreeTV Commercials Advice) and CAB (Commercials Approvals Bureau) approval. The CAB approval number for this key number is 90723028. Brand Developers relies on this independent authority approval, where advertising claims need to be substantiated,

before putting the advertisement to air. We hope that this will alleviate the complainant's concerns about the voracity of the claims.

The benefits claimed for the POWERFIT POWERLEGS product are as a result of a technology called Whole Body Vibration training or WBV employed in the product.

In response to the complainant's concern that their parents will buy the product and be disappointed in it, while Brand Developers has no influence over who purchases their products, they do offer a 30 Day Risk Free Trial so the product can be trailed by the customer and returned should they not be satisfied with it.

#### **FURTHER RESPONSE FROM ADVERTISER FOLLOWING REQUEST FOR SUBSTANTIATION**

Further to your email below please find attached a copy of the revised script for the POWERFIT POWERLEGS advertisement which addresses the claims complained about. For your convenience we are also re-sending a copy of the Advertisement. Please let me know if you require anything else

#### **RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU**

COMPLAINT: 19/388      KEY: Z120PWE02T      RATING: GXC

CAB approved this Vodafone commercial on 17/07/19 with a GXC classification.

The Powerleg device has been advertised since August 2018, a little over a calendar year to date.

A complaint believes that implicit claims are being made in this commercial, beyond the claims that are stated and developed by the advertiser.

In a year of broadcast, this is the first time a viewer has had an issue with the commercial, and the first time that an implied claim has recognised by a single viewer.

CAB's position is that the average viewer – against whose expectations standards must be applied – won't develop undue expectations of the product being advertised. The complaint identifies a possible minority interpretation but not an actual, realised, interpretation.

We must take evidence at hand rather than conjecture – and by this standard the advertisement is fine.