

COMPLAINT NUMBER	20/265
ADVERTISER	Pharmabroker Sales Ltd
ADVERTISEMENT	Buccaline Website & Radio
DATE OF MEETING	11 August 2020
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about the website and radio advertisements for Buccaline oral vaccine. The Board said the advertisements were not misleading and the Advertiser had provided sufficient substantiation to support the claims made in the advertisements.

Advertisements

Website advertisement

The website advertisement for Buccaline said “When there’s no time for sick days take Buccaline – The only natural oral vaccine that gives 3 months protection against the bacterial complications of colds like: sneezes, runny noses, sore throats and coughs. Pharmacist-only medicine...TAPS approval number PP2077”

Radio advertisement

The radio advertisement for Buccaline said “... now you can power your immunity with Buccaline. It’s the only natural active oral vaccine that gives you 3 months protection against the bacterial complications of colds such as sore throats, runny noses, coughs and sneezes...”

Summary of the Complaint

The Complainant was concerned the advertisement was misleading because it describes the symptoms of an upper respiratory tract infection caused by a virus as if they are the symptoms of a bacterial complication. This is dangerous because it promotes the common belief that these symptoms are caused by bacteria, not viruses, and this leads people to take antibiotics.

Issues Raised:

- Social Responsibility
- Safety and effectiveness
- Truthful presentation

Summary of the Advertiser’s Response

The Advertiser defended the advertisement. The Advertiser said Buccaline is an oral vaccine indicated for the bacterial complications of colds. Taking Buccaline can reduce “the incidence of getting a cold and a reduction in the duration of a cold”, thus shortening the time a patient will suffer from sneezes, runny noses, sore throats and coughs. The Advertiser said they educate pharmacists that Buccaline is not to be sold to treat a cold. The Advertiser said bacterial complications of colds can include a runny and blocked nose, sore and inflamed throat and coughing.

Relevant ASA Codes of Practice

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

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 17/123 which was Not Upheld and 19190 which was No Grounds to Proceed.

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

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

Decision 17/123 concerned an advertisement radio advertisement for Buccaline which included the words: “The following is a public health warning. Winter Colds will be severe.” and “Immunise your family today with Buccaline tablets.”

The Complaints Board said the Advertiser was technically correct to use the word “immunise” in relation to Buccaline because this product is an approved medicine for oral vaccination and it can only be bought from a pharmacist.

Decision 19/190 concerned a radio advertisement for Buccaline which included the words: “When there is no time for sick days, take Buccaline. It’s the only natural active oral vaccine that helps give 3 months protection against the bacterial complications of colds, such as sore throats, sneezes, runny noses and coughs. Join over 100,000 Kiwis already helping to power their immunity strength with Buccaline. Ask your Pharmacist for Buccaline tablets today. When there is no time for sick days, take Buccaline. Always read the label, take as directed. Does not replace the flu injection. Pharmabroker, Auckland.”

The Chair of the Complaints Board said the Medsafe¹ datasheet for the product confirmed the product description in the advertisement and states in section 5 that Buccaline is “an inactivated whole cell vaccine for oral application”.

The Chair noted the advertisement said the product helps give protection against the bacterial complications of colds. She also noted the advertisement said the product “does not replace the flu injection” which she considered to be a reference to the flu vaccine.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisements was Buccaline is an oral vaccine that can help prevent symptoms such as sneezes, runny noses, sore throats and coughs. It can give up to three months protection and it doesn't protect against the flu.

Did the advertisements make any therapeutic or health benefit claims?

The Complaints Board said the advertisements did make therapeutic claims and noted that Buccaline is an approved medicine for oral vaccination and has a Medsafe datasheet.

Are the advertisements in breach of Rule 1(b) Safety and effectiveness?

The Complaints Board agreed the advertisements were not in breach of Rule 1(b) Safety and effectiveness. The Board noted Buccaline is a pharmacist-only medicine. This means while it can be sold without a doctor's prescription, it must be sold by a pharmacist.

Are the advertisements misleading?

The Complaints Board agreed the advertisements were not misleading. The Board said the Advertiser had provided sufficient substantiation to support the claims made in the advertisements.

Did the advertisements observe a high standard of social responsibility?

The Complaints Board said the advertisements observed a high standard of social responsibility 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.

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 calendar days of receipt of this decision.

¹ Medsafe is the New Zealand Government regulator for medicines.

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT

Digital Marketing Ad Details: <http://www.buccaline.co.nz/> Advertiser Website

Complaint Details:

I believe that the wording of this claim in the advertisement is a breach of the Therapeutic and Health Advertising Code because it represents a fundamental misrepresentation of the nature of colds. The symptoms described are all simply symptoms of an upper respiratory tract infection caused by a virus - they are NOT signs of a bacterial complication. I therefore do not believe that there can be any evidence that the oral vaccine has any effect on these symptoms. I also think this wording is dangerous because it promotes the common belief that these symptoms are caused by bacteria (leading people to seek antibiotics, or take some they had left over in the cupboard) when there needs to be more public education that these are viral symptoms. Buccaline also have radio ads which make the same statement as is written on their website - I have heard the ad played many times on ZM.

Appendix 2

RESPONSE FROM ADVERTISER, PHARMABROKER SALES LTD

Thank you for your letter of 14th July outlining the Complaint 20/265 relating to the Buccaline website. We will defend this complaint.

Buccaline is a registered Pharmacist Medicine and is an oral vaccine indicated for the bacterial complications of colds. The data sheet is attached. As a Registered Pharmacist Medicine all advertising requires TAPSs approval and attached is the relevant TAPs approval for the Buccaline website as referenced by the complainant. Also attached is the Buccaline Family Pack art work which contains four single dose packs. This is a Medsafe approved pack which has a bold "Colds Immunise Yourself" message supported by the "Bacterial Complications" text on the carton.

Buccaline works by stimulating an immune response to common cold pathogens for up to three months. The clinical studies supporting Buccaline show a significant reduction in the incidence of getting a cold and a reduction in the duration of a cold. This will shorten the time a patient will suffer from sneezes, runny noses, sore throats and coughs. These are featured in the website and used to emphasise the symptoms of a cold.

Regarding the wording being "dangerous and leading people to seek antibiotics", the gate keeper for antibiotics is the GP so even if a consumer believes that an antibiotic would help they will not be able to source antibiotics unless considered appropriate by their GP. Buccaline does not claim to be antiviral and neither do we state in any communications that colds are bacterial. All advertising clearly states it is a Natural Oral Active vaccine for the bacterial complications of colds.

Communication around Buccaline has always been as an oral vaccine. We do not claim to treat a cold and we educate pharmacist that Buccaline is not to be sold for a cold. It can be taken after the cold has passed or ideally at the start of winter and mid-winter.

We consider our message to be a very simple premise, easy to understand and with all necessary approvals. We do not claim to treat but do make it very clear we are dealing with bacterial complications of colds and not the flu. The graphics for sneezes, runny noses, sore throats, and coughs reinforce this giving the consumer clarity. We clearly differentiate from the Flu jab and are at pains to keep this distinction.

Buccaline has strong demand by medical professionals and the public to give protection to vulnerable sections of the community being the elderly and those with pre-existing lung conditions. Greater awareness of Buccaline and its appropriate use as an Oral Vaccine does benefit these at-risk groups.

ADDITIONAL INFORMATION FROM ADVERTISER, PHARMABROKER SALES LTD

Question from the Secretariat:

What are the possible symptoms of the 'bacterial complications of colds'?

Response from the Advertiser:

Colds can lead on to a variety of bacterial infections including Ear Infection, Sinusitis, Strep Throat, Bronchitis, Pneumonia, Bronchiolitis. Depending on the infection symptoms can be far ranging:

- Coughing
- Severe Head aches
- Runny & Blocked nose
- Ear ache
- Difficulty breathing
- Disturbed sleep
- Sore and inflamed throat
- Lack of energy
- Fever
- Facial pain
- Loss of taste & smell
- Difficulty swallowing
- Rash

This list is by no means exhaustive and we only cover very common symptoms with the graphics that we have used in our advertising. Please let me know if anything further is required.