

COMPLAINT NUMBER	20/399
ADVERTISER	Glaxo Smith Klein and Simone Anderson
ADVERTISEMENT	Simone Anderson Instagram
DATE OF MEETING	22 September 2020
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about an advertisement for Panadol on Simone Anderson's Instagram page, paid for by Glaxo Smith Klein (GSK).

Advertisement

The advertisement had a photo of Simone sitting on a yoga mat, hugging her dog. Under the photo was the text "...Did you know research* has shown more than half of Kiwi families have experienced stress recently. A new campaign by @panadolanz has launched to encourage Kiwis to Rethink Care, with mindfulness sitting at the top of the mental health to-do list..."

The advertisement also had "#Panadol #LetsRethinkCare #sponsored" and "Use Panadol for the temporary relief of pain. Always read the label. Use only as directed..."

*Nationwide study of n=1665 New Zealanders, commissioned by the makers of Panadol in May 2020.

Summary of the Complaints

There were five complaints about this advertisement. The Complainants were concerned it was irresponsible and dangerous to suggest that Panadol can help with stress, there is no clinical indication that Panadol can relieve the feeling of being stressed and this message could affect vulnerable people.

Issues Raised:

- Social responsibility
- Truthful presentation
- Inappropriate or excessive use

Summary of the Advertiser's Response

Simone Anderson defended the advertisement. She said "My message, which was approved by GSK, was positioned to encourage my community to consider trying mindfulness and meditation to improve their mental health. In no way did my caption encourage anyone to take a Panadol to improve their mental health."

Glaxo Smith Klein defended the complaint as well. They said: "Panadol Masterbrand's 'Rethink Care' campaign, is to encourage audiences to approach health holistically by going 'beyond the pill' and seeking alternative ways of maintaining their wellbeing, such as practicing meditation, yoga, and mindfulness... While the post is sponsored by Panadol, there is no mention of consuming pills, nor is the intended message to encourage consumers to take more Panadol to decrease stress."

Relevant ASA Codes of Practice

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

Therapeutic and Health Advertising Codes

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.

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).

Rule 2 (b) Inappropriate or excessive use: 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

Relevant precedent decisions

In considering this complaint the Complaints Board referred to a precedent decision, Decision 20/119, which was Upheld.

The full version of this decision can be found on the ASA website:

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

Decision 20119 concerned four complaints about Instagram posts created by Simone Anderson. The posts show Simone Anderson wearing activewear on the beach and says “simone_anderson Our little stroll this morning was so gusty!! Crop and tights @aimn.oceania “Simone10”.

The Complaints Board said the content met the ASA’s definition of an advertisement and the Advertiser had not made the identification of the advertisements sufficiently clear to avoid audiences being misled as to the commercial arrangements behind the Instagram content.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was Simone Anderson and Glaxo Smith Klein support mindfulness and encourage people to have good well-being.

The Complaints Board noted that Panadol is an over the counter medicine and can be purchased at many retail locations including pharmacies and supermarkets.

Did the advertisement make any therapeutic or health benefit claims?

The Complaints Board said the Therapeutic and Health Advertising Code applied as the advertisement included the brand name of an over-the-counter medicine, Panadol and a reference to use of Panadol for the temporary relief of pain. The temporary relief of pain is a therapeutic claim.

If so, is the advertisement misleading?

The Complaints Board said the advertisement was not misleading. The Board said the advertisement was encouraging brand engagement by building a consumer connection with a brand, around the topic of mindfulness, as a tool to improve mental health and wellbeing.

Did the advertisement encourage inappropriate use or purchase?

The Complaints Board said the advertisement did not encourage inappropriate use or purchase of Panadol. The Board said the theme of the advertisement is encouraging consumers to have a wellness focus and look after themselves. The Board said the inclusion of the statement about Panadol and temporary pain relief along with the text "Use only as directed" is standard wording required when referencing a medicine and the Board did not consider it made an association with the product and treating stress.

Did the advertisement observe a high standard of social responsibility?

The Complaints Board said the advertisement did observe a high standard of social responsibility, taking into account context, medium, audience and product and was not in breach of Principle 1, Principle 2, Rule 2(a) or Rule 2(b) 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.

APPENDICES

1. Complaints
 2. Response from Advertiser
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Appendix 1

There were 5 complaints about this advertisement:

COMPLAINT 1

She is advertising Panadol for the relief of stress, it's very reckless and irresponsible for her more influenceable followers.

COMPLAINT 2

This is a dangerous ad suggesting that stress management is a simple fix and that taking Panadol can help.

COMPLAINT 3

Simone Anderson has recently posted on Instagram promoting Pamol in a negative way that is a dangerous tactic to vulnerable people that are suffering from a mental illness. Simone doesn't promote other options like taking vitamins or a herbal tea (as a example). Simone should not be promoting any medication as she isn't a doctor or health professional.

Simone isn't a good influencer in my view and this post need to be taken down asap and Simone needs training as to what is acceptable to post.

COMPLAINT 4

I believe that the wording of this claim (or this image) in the advertisement is a breach of the Therapeutic and Health Advertising Code because of the implication of advertising pain relief with the content of the ad being about stress

COMPLAINT 5

I believe that the advertisement breaches the Therapeutic and Health Advertising Code because this implies as association between stress and remedying stress Panadol. This lacks social responsibility.

There's is no clinical indication that Panadol can relieve the feeling of being stressed, nor is there a belief that Panadol can help with this.

Panadol is an analgesic used to pain such as musculoskeletal pain and post operative pain. Panadol is not used for emotional pain or stress.

This post has the potential to make vulnerable people or people of certain age groups believe that there is a link between feeling stressed and taking Panadol. There is none! Panadol should only be taken when required or when discussed with a medical professional. Advertising of this nature has the potential to cause harm, is irresponsible and is misleading.

RESPONSE FROM ADVERTISER, SIMONE ANDERSON

Please find below my response to the complaints referencing the paid post I made advertising Panadol on August 23, 2020.

For the following reasons, I do not believe the post has contravened New Zealand Advertising Standards;

- My post (accompanied by an image of myself and my dog on a yoga mat; yoga is widely-accepted as promoting mindfulness and reducing stress) stated a survey had determined that New Zealanders report feeling stressed, but do not practice mindfulness and meditation as a solution to this.
- I then spoke of my own positive experiences with mindfulness and meditation, and the positive effect that has had on my own mental health.
- Panadol's "Rethink Care" campaign message encourages New Zealanders to approach their health holistically by making positive lifestyle choices.
- My message, which was approved by GSK, was positioned to encourage my community to consider trying mindfulness and meditation to improve their mental health.
- In no way did my caption encourage anyone to take a Panadol to improve their mental health. The message was to contemplate practicing holistic therapies to combat stress, which is in line with the messaging of the "Rethink Care" campaign.

I do not believe that the post portrays Panadol as a solution for stress relief in any way. I did not state at any point that a dose of Panadol could or should be consumed to relieve stress.

In fact, the post encourages people to look into non-medicinal methods of alleviating anxiety.

My agents at Outspoken and I worked very closely with GSK to craft a carefully-worded message, promoting holistic health care, to accompany this post.

It is my understanding that the wording was approved by GSK's legal team and fell within TAPs guidelines.

As has happened numerous times this year (resulting in a court case I have brought under the Harmful Digital Communications Act, which is still currently active), I believe I am continuing to be targeted by two individuals who repeatedly and publicly incite their followers to report my social media content to the ASA.

As a result of this targeting, I am hyper-vigilant of only accepting campaign work with messaging which has been fully sanctioned by my agents; the advertising or PR agency involved, and the client's legal advisors.

Due to prior ASA rulings, I am completely aware that everything I post is "under the microscope," so am very conscious of declining any jobs that may expose me to unnecessary criticism.

Every effort is always made, by everyone I work with, to deliver accurate, water-tight information which is not open to any kind of censure or misinterpretation.

So I feel surprised and disappointed that a campaign I worked on very carefully to mitigate any kind of risk of condemnation is now being called into question

RESPONSE FROM ADVERTISER, GLAXOSMITHKLINE (GSK)

We refer to your letter dated 9 September 2020 which contained complaints from an anonymous complainant in respect of our recent paid post for Panadol on Ms Simone Anderson's Instagram page (**attached**). We are writing to you to defend the complaint.

Description & details of the advertisement

The purpose of the advertisement (**attached**), which is part of the Panadol Masterbrand's 'Rethink Care' campaign, is to encourage audiences to approach health holistically by going 'beyond the pill' and seeking alternative ways of maintaining their wellbeing, such as practicing meditation, yoga, and mindfulness.

The post depicts Simone Anderson sitting on a yoga mat with her dog and is accompanied by a caption explaining how the majority of New Zealanders report feeling stressed but do not practice mindfulness and meditation. The caption emphasizes the positive role mindfulness and meditation has had on Simone's health and wellbeing. The overall message is that more New Zealanders should look to approach their wellbeing holistically, and positions Panadol as a trusted pain relief brand that encourages consumers to look after their health by making positive lifestyle choices but can also provide reliable pain relief when the need arises.

The target audience for the advertisement is 25-45-year-old adults interested in health and wellbeing, which is the general makeup of Simone Anderson's Instagram following. No additional tools were used to 'boost' the post or target the audience. The advertisement was initially scheduled to be accessible from 24/8/2020 – 24/11/2020. However, it has currently been removed from Ms Anderson's Instagram page.

We have attached a copy of the advertisement, and a presentation outlining the ANZ 'Rethink Care' campaign for your reference.

Nature of the complaint and response

The complaints allege that the advertisement portrays Panadol as a solution for stress relief, and breaches the following sections of the Therapeutic and Health Advertising Code:

1. Principle 1
2. Principle 2
3. Rule 2(a)
4. Rule 2(b).

Principle 1

Principle 1 of the Code states that '*therapeutic and health advertisement shall observe a high standard of social responsibility particularly as consumers often rely on such products, devices and services for their health and wellbeing.*' Rules under Principle 1 consist of requirements to include mandatory statements with the advertisement, avoid making misleading statements about safety and effectiveness, ensuring that the advertisement does not prey on vulnerable people or present unrealistic outcomes, and ensuring that the use of scientific language is appropriate and easily understood by the audience.

GSK confirms that it takes the responsible portrayal of medication usage and compliance with health and safety standards seriously. GSK also maintains that it is not in breach of any rules relating to Principle 1. Appropriate mandatory statements regarding Panadol are contained in the body of the post directly after the main caption. The statements make clear that Panadol is to be used only for the temporary relief of pain, as directed by the label instructions or a healthcare professional. The statements also clearly state that incorrect use of Panadol is harmful.

There is also no misleading representation about the safety or effectiveness of Panadol contained in the post. While the complaints allege that Panadol is presenting itself as a 'stress relief' medication, GSK contends that this is an obvious misinterpretation of the post, which in no way encourages consumers to gratuitously take Panadol to manage stress. While the post is sponsored by Panadol, there is no mention of consuming pills, nor is the intended message to encourage consumers to take more Panadol to decrease stress. On the contrary, the post encourages consumers to consider practicing mindfulness, yoga, and meditation to improve their mental wellbeing. Panadol is simply positioned as a trusted pain relief brand that is empowering consumers to look past medication and approach health holistically.

Further, GSK refutes the suggestion that the advertisement presents unrealistic outcomes and preys on vulnerable audiences. Simone Anderson's following is 25-45-year-old adults who are interested in health and well-being. Members of this audience are usually familiar with the Panadol brand, and are well-informed about both the effects of Panadol and healthy lifestyle choices. The advertisement also does not use any scientific language that would confuse the audience or mislead them into believing that Panadol should be used for stress relief.

Principle 2 – Rule 2(a) and 2(b)

The complaints also allege that the advertisement is in breach of Principle 2, Rule 2(a) and 2(b). Principle 2 states that advertisements shall be truthful, and shall not mislead consumers, abuse their trust, or exploit their lack of knowledge. Rule 2(a) states that statements and claims in the advertisement shall be valid and shall be able to be substantiated. Rule 2(b) states that the advertisement should not encourage inappropriate or excessive purchase or use. GSK maintains that the advertisement is not in breach of any of these rules.

As noted above, the post does not contain any misleading statements or representations that Panadol is an appropriate medication for mental health concerns. Instead, the post encourages consumers to look to non-medicinal avenues of relieving stress. Any statements and claims made in the post relate purely to the prevalence of stress and mindfulness practices in New Zealanders, substantiation for which is attached. Further, the post does not encourage consumers to purchase Panadol for stress relief – instead, it directs consumers towards Panadol brand's 'Rethink Care' hub, which contains more tips on making non-medicinal healthy lifestyle choices.

GSK maintains that it has not breached any of the abovementioned rules. Further, prior to publishing the advertisement GSK submitted the advertisement for approval with the Therapeutic Advertising Pre-vetting Service (TAPS), who are a body appointed by the Association of New Zealand Advertisers (ANZA) to independently review advertisements and help businesses avoid legislative breaches in advertising material. TAPS reviewed the subject advertisement in accordance with the Advertising Standards Code and the Therapeutic and Health Advertising Code, and provided their approval on 20 August 2020 (approval no. TAPS NA 12269, attached for your reference).

GSK is committed to promoting the responsible use of medicine and ensuring that its advertisements adhere to the applicable codes and standards.

Should you have any questions, please feel free to contact us.