

<b>COMPLAINT NUMBER</b>	21/121
<b>ADVERTISER</b>	Ministry of Health of New Zealand
<b>ADVERTISEMENT</b>	Measle Vaccination Campaign, Television
<b>DATE OF MEETING</b>	28 April 2021
<b>OUTCOME</b>	Not Upheld No Further Action Required

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

The Complaints Board did not uphold a complaint about a Ministry of Health television advertisement promoting the measles vaccination. The Complaints Board said the reference to measles being 8 times more contagious than COVID-19 was unlikely to confuse or mislead consumers and the Complaints Board was required to defer to the Ministry of Health's expert view on how best to convey the important messages about different vaccinations.

### **Advertisement**

The Ministry of Health television advertisement shows a family watching television coverage of the recent measles outbreak which resulted in children and babies dying. The advertisement encourages people aged 15 to 30 to get immunised as they can be at greater risk of measles having missed out on getting vaccinated. The advertisement states that measles is "about 8 times more contagious than COVID-19." The advertisement ends with the text "Be a Guardian of the Future. Get a free measles immunisation." The advertisement included the website address "Protectagainstmeasles.org.nz" and contained the Ministry of Health and Health Promotion Agency logos.

### **Summary of the Complaint**

The Complainant was concerned it is misleading to compare how contagious measles is in relation to COVID-19 as new strains are changing infection rates making any comparison factually incorrect. The Complainant is also concerned that mixing messages about the two diseases creates ambiguity and confusion for some consumers about which vaccine they should be getting.

### **Issues Raised:**

- Truthful Presentation
- Advocacy Advertising

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

The Advertiser said that given the emergence of new COVID-19 strains, the advertisement script had been amended to remove the 8 times and now says "protect yourself against a disease that's even more contagious than COVID 19."

The Advertiser explained the health risk of measles will rise should the borders reopen. The Ministry considers it important to communicate messages about protecting against measles and well as COVID-19, especially while borders remain closed and before the COVID-19 vaccination programme started. Messages about the three vaccination programmes, MMR, COVID and influenza are being coordinated centrally and are all important.

## Relevant ASA Codes of Practice

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

### ADVERTISING STANDARDS CODE

**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.

**Rule 2(e) Advocacy advertising:** Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

The Complaints Board said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 2(e) of the Advertising Standards Code. This Rule required the identity of the advertiser to be clear; opinion to be distinguished from factual information and factual information must be able to be substantiated. The Advocacy Principles developed by the Complaints Board in previous decisions considered under Rule 11 of the Code of Ethics remain relevant. They say:

1. That section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people's rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the rights granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

#### *Role of the ASA when considering an advocacy advertisement.*

The Complaints Board noted its role is to consider the likely consumer takeout of an advertisement and complaints about advocacy advertising are considered differently to complaints about advertising for products and services. If the identity and position of the

Advertiser is clear, a more liberal interpretation of the Advertising Standards Code is allowed.

### **Relevant precedent decisions**

In considering this complaint the Complaints Board referred to precedent Decision 20/605, which was Not Upheld.

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

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

**Decision 20/605** concerned complaints about the New Zealand Government's COVID-19 Unstoppable Summer television advertisement. The Complaints Board agreed the likely consumer takeout of the advertisement was a Government message reminding the public about the importance of washing hands before touching food in order to limit the potential spread of COVID-19 and said the advertisement was not likely to undermine the health and wellbeing of viewers. The Board said the scene where a man blows on food was not ideal but was incidental to the important public health safety message.

### **Complaints Board Discussion**

The Acting Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised.

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the original advertisement was a call to action from the Ministry of Health to those who have not been immunised against the measles to get vaccinated. The message is particularly aimed at the 15 to 30-year-old age group who may have missed their childhood vaccination. The advertisement encourages getting the vaccination to help protect vulnerable people such as children and babies from the measles, which is 8 time more contagious than COVID-19.

*Has the advocacy advertisement been adequately identified?*

The Complaints Board agreed the advertisement had been adequately identified as an advocacy advertisement.

The Complaints Board confirmed the Advertiser's identity is clear. The advertisement includes the Ministry of Health and the Health Promotion Agency logos and the protect against measles website address. The Advertiser's position on the issue is clear. The Ministry is promoting a call to action for those who may not have received the measles vaccination to protect themselves and others from a disease which is very contagious. The advertisement complied with the requirements of Rule 2(e) of the Advertising Standards Code.

*Was the statement "measles is 8 times more contagious than COVID-19 misleading?"*

The Complaints Board noted the Complainant was concerned the statistic quoted could be misleading, given the emergence of more contagious strains of the COVID-19 virus. The Board also noted the Advertiser had amended the advertisement to state "protect yourself against a disease that's even more contagious than COVID-19."

The majority of the Complaints Board said the most likely consumer takeout of the original "8 times more contagious" claim was within the context of the original COVID-19 variant, which was prevalent when New Zealand was dealing with community cases. While it acknowledged the Advertiser had amended the advertisement to eliminate any confusion, the majority of the Board said the original claim was not misleading and did not reach the threshold to breach Principle 2 or Rule 2(b) of the Advertising Standards Code.

A minority of the Complaints Board disagreed and said the original advertisement made an absolute claim by comparing the transmission rate comparison of COVID-19 and the measles which the minority said was not substantiated. For a minority of the Complaints Board, this claim was in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code. The minority of the Board said the amendment made by the Advertiser meant this part of the complaint was settled in its view.

In accordance with the majority, the Complaints Board said the original claim in the advocacy advertisement was not misleading and was not in breach of Principle 2 or Rules 2(b) and 2(e) of the Advertising Standards Code.

*Is the advertisement's reference to COVID-19 during a measles vaccination campaign likely to confuse or mislead consumers?*

The Complaints Board said it had no evidence before it to suggest that consumers were confused about the vaccinations on offer, nor was a reasonable takeout of the message in the advertisement that consumers should choose to take up one vaccination at the expense of another.

The Complaints Board noted the advertisement had been approved by the Ministry of Health which has a statutory duty to provide information to the public. The Board said the Ministry is an expert body with regard to their statutory role relating to public health matters. Therefore, in accordance with the findings of the Court of Appeal in *Electoral Commission v Cameron* [1997] 2 NZLR 421,424 (Cameron) the Complaints Board was required to "tread carefully" and ensure that it did not substitute its opinion for that of the expert body.

The Board agreed the Ministry of Health was the expert body and deferred to its centrally coordinated COVID-19, MMR and Influenza vaccination campaign roll outs being planned by the Government. The Complaints Board noted the Ministry of Health's position that all vaccination programmes were considered important and the Complaints Board would therefore defer to the Ministry of Health's expert view on how best to convey the importance of the different vaccinations.

The Complaints Board said the advertisement was not in breach of Principle 2 or Rules 2(b) and 2(e) 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](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

Time and date are approximate, as this ad runs regularly across all channels and is also on radio. This is the advert for the Measles immunisation aimed at young people. I fully support what they are trying to achieve however feel the messaging in this advert is incorrect and potentially dangerous, in the midst of the covid pandemic. The advert states 'measles is 7x more contagious than covid19' but now the health department is saying the new strains of Covid are 50xmore contagious. So factually the ad is incorrect and misleading. My most serious concern however comes from how many in the community are now perceiving this ad, I've heard a lot of talk from people, including on radio and social media, that they now believe measles to be more dangerous than covid 19 and that they will just get the Measles vaccine instead of the covid one. This is the ambiguity this ad has created for some of our young people and those with more limited education or understanding etc. I, and many others I've spoken to, believe the wording in this advert is socially irresponsible and needs to remove any mention of Covid 19, especially before the planned covid vaccine roll out.

### Appendix 2

#### RESPONSE FROM ADVERTISER,

The advertisement in question, which has been playing through online channels since late last year and on broadcast TV since 26 January 2021, has been replaced.

From 14 March, the wording in the ad says:

The full script is now:

*If you're aged 15-30, you could be at greater risk of measles cos you may have missed out on getting immunised as a child. But when you get a free measles immunisation, you don't just protect yourself against a disease that's ~~about 8x~~ **even more** contagious than COVID-19, you also protect your whanau, your community and future generations from harm.*

We have also replaced the wording in radio advertisements and in other national campaign assets.

Audience research informed the inclusion of this statement as one of the campaign key messages during campaign development in June/July 2020. At the time, we received clinical advice from the Ministry of Health and Immunisation Advisory Centre (IMAC) around this statement. As new strains emerge, we have taken the decision to amend the wording to avoid confusion. We did this prior to receiving the complaint.

Please note, the Ministry has not published anything that says this is 50 times more contagious.

The reduced overseas population movements and closed borders mean the risk of exposure to measles in New Zealand is currently low. But if borders were reopened, the on-going public health risk of measles to New Zealand would be very high. Measles is a very serious, highly contagious disease and the 2019 measles outbreaks in Aotearoa New Zealand revealed gaps

in our immunity both here and in some Pacific countries. In Samoa, sadly we saw 80 people die – including many children – from measles during a recent outbreak.

It is therefore important to communicate messages about the importance of protecting against measles as well as COVID-19, especially while we have a window of opportunity with borders closed and before COVID-19 vaccine arrived in the country. We are equally mindful of the risk of influenza and messages to the public about the three main programmes are being coordinated centrally. Now that we have dates in place for public vaccination against COVID-19 (from July), we are coming to the end of the national promotion of MMR. Public-facing information on COVID-19 vaccination will include clarification on the importance of COVID-19 and also give information on getting protected against measles and influenza too for people at risk.

### **Appendix 3**

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

The Commercial Approvals Bureau noted the advertisement had been amended and deferred to the Advertiser's response.