

COMPLAINT NUMBER	21/193
ADVERTISER	CordBank Limited
INFLUENCER	Simone Anderson
ADVERTISEMENT	Simone Anderson Facebook and Instagram
DATE OF MEETING	25 May 2021
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold complaints about Simone Anderson’s Facebook and Instagram advertisements for a CordBank Limited (CordBank) collection kit. The Board said the advertisements were not misleading and met a high standard of social responsibility.

Advertisements

Two advertisements were posted on the Facebook and Instagram pages of Influencer Simone Anderson.

The first advertisement showed Simone Anderson and her husband with a CordBank collection kit. The text said “Trent and I have made the decision to save our baby’s cord blood with kiwi company @CordBankNZ. Cord blood is a valuable source of stem cells, which are a perfect DNA match for your baby. By saving these stem cells it gives them the chance to survive many illnesses and conditions – now and into adulthood. You literally have one chance to do this and it’s at birth so we absolutely want to take this opportunity. The collection kit arrived and it’s definitely making me so excited for the arrival of our baby boy. Is cord blood banking something you have ever looked into? Would love to hear your thoughts.”

The second advertisement had a picture of the CordBank Collection kit. It had the same text as the first advertisement.

Summary of the Complaint

There were five complaints about these advertisements. The Complainants were concerned the advertisements made misleading claims about the use and benefits of the procedure. The Complainants said the posts were not balanced, did not discuss the limitations, and preyed on the vulnerable who may not be able to afford this service. The Complainants said comments were deleted if they questioned the practise.

Issues Raised:

- Social responsibility
- Safety and effectiveness
- Vulnerable audiences
- Truthful presentation

Influencer Response

Simone Anderson defended the advertisements and said they were intended to raise awareness of cord blood banking and open a conversation about it. She said the text of her posts was approved by CordBank and that there was a comprehensive consent process

before signing up. Any comments which were deleted from the platforms were due to personal attacks.

Advertiser Response

The Advertiser confirmed CordBank is licenced by the Ministry of Health and audited by Medsafe. The Advertiser provided substantiation for each claim and said there was no pressure or sales pitch encouraging viewers to “look into it”.

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 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, unailing, 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.

Rule 1(c) Vulnerable audiences: Advertisements should not portray unrealistic outcomes or prey on or misrepresent vulnerable audiences (e.g. sick, elderly, pregnant women, overweight people).

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 a precedent decision, Decision 20/399, which was Not Upheld.

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

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

Decision 20/399 concerned an advertisement for Panadol on Simone Anderson's Instagram page, paid for by Glaxo Smith Klein (GSK). 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..." The Complaints Board said the advertisement was not misleading or socially irresponsible. 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.

Complaints Board Discussion

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Therapeutic and Health Advertising 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:
 - Context: CordBank advertisement on social media
 - Medium: Instagram and Facebook
 - Audience: Simone Anderson's Instagram and Facebook followers
 - Product: Cord blood storage service

Consumer Takeout

The majority of the Complaints Board agreed the likely consumer takeout of the two advertisements was Simone Anderson and her husband are promoting the idea of saving cord blood. This process provides the chance to survive many illnesses over the lifetime of the baby.

For the minority, the likely consumer takeout was that cord blood gives a baby the chance to survive many illnesses and conditions both now and into adulthood.

The Board noted that cord blood is the blood remaining in a baby's umbilical cord following birth. The stem cells in cord blood can be used to repair damaged tissues. The Board noted that the advertisement is making a therapeutic purpose claim.

Do the advertisements imply harmful consequences may result from the therapeutic or health product, device or service not being used?

The Complaints Board agreed the advertisements did not imply harmful consequences may result from not collecting cord blood. The Board said the advertisement refers to potential benefits, not potential harm.

Do the advertisements portray unrealistic outcomes or prey on vulnerable audiences?

A majority of the Complaints Board said the advertisements did not reach the threshold to portray unrealistic outcomes or prey on vulnerable audiences. The majority said the advertisements are describing an opportunity. In the majority view, it is like an insurance policy. The advertisement did not have any direct link to purchase the service. Prospective clients have to register via the CordBank website, after completing a consent process and contract. The CordBank contract requires the parents to involve their Lead Maternity Carer (LMC) and request they complete the cord blood collecting training provided by CordBank.

A minority disagreed. They said the advertisement both portrayed unrealistic outcomes and preyed on vulnerable audiences. The minority said the text “You literally have one chance to do this and it’s at birth” acts as a form of pressure on new parents, who are a vulnerable audience. They wish to do their best for their unborn child. The minority said the advertisements also over promise about what is currently achievable through this service, by referring to the chance to survive many illnesses and conditions now. That had not been substantiated by the Advertiser.

Were the advertisements misleading?

The majority of the Complaints Board said the advertisements were not misleading. The Board noted the text “By saving these stem cells it gives them the chance to survive many illnesses and conditions – now and into adulthood” and said it refers to the “chance” of surviving many illnesses, and this is not a guarantee. The Board also said the number of illnesses this could relate to is described as “many” and given the expected ongoing advances in technology this amount is likely to increase as the child ages.

The majority of the Complaints Board noted the following comment from the Advertiser:

“Cord blood stem cells have been used in over 600,000 transplants worldwide. Umbilical cord blood has been used in trials” and treatments for neurologic conditions including cerebral hypoxic ischemic, encephalopathy, traumatic brain injury and autism. In cardiovascular disease cord blood stem cells are in clinical trials for dilated cardiomyopathy and ischemic disease”

For the reasons already referred to, the minority said the advertisement was misleading.

Did the advertisements meet a high standard of social responsibility?

The majority of the Complaints Board said the advertisements met the required standard of social responsibility, taking into account context, medium, audience and product and were not in breach of Principle 1, Rule 1(c), Principle 2 or Rule 2(a) of the Therapeutic and Health Advertising Code. The Complaints Board were unanimous that the advertisement did not breach Rule 1(b) of the Therapeutic and Health Advertising Code.

Outcome

The Complaints Board ruled the complaints were **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 Influencer/Agency
 3. Response from Advertiser
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Appendix 1

COMPLAINT 1:

Simone Anderson is advertising Cord Blood Collection claiming "Cord blood is a valuable source of stem cells, which are a perfect DNA match for your baby. By saving these stem cells it gives them the chance to survive many illnesses and conditions - now and into adulthood. You literally have one chance to do this and it's at birth so we absolutely want to take this opportunity." This is misleading to her many followers and is not evidence based. The advertising is one sided and comments providing information that cord blood banking is harmful to newborn babies are being deleted by Simone. I believe this to be misleading, deceiving and abuses the trust of consumers and exploits the lack of knowledge of the public. She is unrealistically claiming cord blood banking gives them the chance to survive many illnesses and conditions, as per the New Zealand College of Midwives Consensus Statement: <https://www.midwife.org.nz/wp-content/uploads/2019/05/Umbilical-Cord-Blood-Banking.pdf>.

Please consider this complaint as it is blatantly misleading and damaging to vulnerable women.

COMPLAINT 2:

On both Facebook and Instagram, advertiser has shared a post and subsequent comments which are untruths regarding a medical procedure; encouraging expectant parents to pay thousands of dollars for this medical procedure. Procedure in question is cord blood banking, sponsored by CordBankNZ. Post asked for discussion ("hear your thoughts") but comments made by multiple health professionals raising concerns were deleted; comments were subsequently 'limited.' Medical procedure likely carries harm to newborn babies therefore I see this as very unethical advertising.

COMPLAINT 3:

Simone Anderson is advertising the practice of Cord Blood Banking – a practice done at the birth of a child. The wording of her advertisement is extremely misleading "By saving these stem cells it gives them the chance to survive many illnesses and conditions - now and into adulthood" – this insinuates that without saving these stem cells, they wont survive certain illness - which is simply untrue. She also states "You literally have one chance to do this and it's at birth so we absolutely want to take this opportunity" which is socially irresponsible as the product is several thousands of dollars, and has ongoing costs, so it is 'literally' not a chance many intending parents are in a position to take - yet they are then left feeling they are not doing the best for their child. Simone also makes claims in the comments that you can do both Cord Blood Banking, and Delayed Cord Clamping - which is medical misinformation and very misleading.

COMPLAINT 4:

https://m.facebook.com/story.php?story_fbid=309930207160134&id=100044294716094

Advertising cord blood banking as an optimal way to protect infant and child health; providing false statements about the efficacy, use and benefits of this service; advertising a healthcare service in a misleading way that is not consistent with public health guidelines or scientific evidence

COMPLAINT 5:

I believe Simone Anderson has breached principal 1 and 2 of the Therapeutic and Health Advertising Code with her recent advertising of Cord Bank NZ.

On her post she claims cord banking is able to save your child's life and you have one chance to do this. I believe she is preying on a vulnerable audience being pregnant woman and parents who may not be able to afford this service and she is implying there is no other option to save your child's life. New Zealand is part of the stem cell and international bone marrow network and if your child was sick your oncologist would use this network for donor products. believe she has also gone against Rule 1 (b) Safety and Effectiveness in regards to harmful consequences may result from the therapeutic or health product, device or service not being used when she states 'you literally have one chance to do this'

In regards to principal 2 truthful presentation- in the comments section Simone claims this procedure can be done with delayed cord clamping- many registered midwives have commented to say this is not possible- Simone deleted these comments after 48hrs. When I contacted Simone with my concerns she blocked me.

Appendix 2**RESPONSE FROM INFLUENCER, SIMONE ANDERSON AND AGENCY OUTSPOKEN**

Please find below my response to the complaints referencing the paid post I made advertising CordBank on 15 April 2021 on Instagram and Facebook. The advertisement is still accessible on my profile on both platforms.

My post on Instagram and Facebook comprised two images (a picture of Trent and I holding our CordBank collection kit, and a close up shot of the collection kit), with the caption starting by saying that Trent and I have made the decision to save our baby's cord blood with CordBank. The caption goes on to say that cord blood is a valuable source of stem cells, which are a DNA match to your baby, and saving these stem cells gives them the chance to survive many illnesses and conditions. I stated that you have one chance to do this, which is at birth. I then asked my audience if cord blood banking is something they've ever looked into.

The message in my post was intended to raise awareness of cord blood banking as an option for NZ families, and to open a conversation about it.

The intended audience for this post was my Instagram and Facebook followers – who I have shared many pregnancy-related posts with.

I do not believe the post has contravened New Zealand Advertising Standards, and as such would like to defend the complaint.

Context:

- CordBank is a New Zealand owned and operated business and has been licensed by Medsafe since 2002 to provide the service of cord blood collection and storage. This license is audited on-site annually by Medsafe.
- There is a robust consent process that all people engaging the services of CordBank go through (which I obviously had to go through myself) before signing up.
- There is no pressure via a 'buy now' option or a directive call to action from my post. My post raises the topic of cord blood banking to my audience and asks if anyone else has looked into it. Yes, there is a price associated with cord blood banking, but there

is a price associated with many decisions people make for their families, from car seats to sterilising equipment to life insurance and everything in between.

- My post makes no reference to the presence nor absence of safety/side effects/risks. All information about cord blood collection, storage and usage is covered CordBank's consent process.
- Furthermore, the process of the actual cord blood collection involves input from a midwife/obstetrician/lead maternity carer as they need to facilitate the collection as a registered health professional.
- CordBank approved my caption and image prior to posting.
- My caption was not written to mislead or pressure, and in accordance with CordBank's Medsafe license I am not making any false claims. In addition, I state that saving stem cells gives your child the chance to survive *many* illnesses (not all, or specific conditions).
- With specific reference to the feedback about cord blood collection and delayed cord clamping, I understand from my midwife and from CordBank information – as verified by their Medsafe license – that both delayed clamping and cord blood collection are achievable.
- There is varied sentiment in comments on both the Instagram and Facebook posts, with people expressing their opinions for an against cord blood banking. Any comments I limited were due to personal attacks on me as a person.

Given that CordBank has been conveying similar messages to mine for over 19 years across various media platforms – including social media – it would be reasonable to assume I am continuing to be targeted by individuals who incite their followers to report my social media content to the ASA.

As I've mentioned before to the ASA, as result of this targeting I am hyper-vigilant of only accepting campaign work with messaging which has been fully sanctioned by my agents; any advertising or PR agencies involved, and the client's advisors.

I am aware that everything I post is under scrutiny and go out of my way to ensure my content complies with regulations. I worked closely with CordBank to create accurate content for this campaign.

Trent and I had already decided we were going to do cord blood banking prior to entering discussions with CordBank, so this was legitimately a choice we had already made for our family, and something I wanted to make sure my followers knew about. As such, I am incredibly disappointed that a campaign I feel so personally passionate about - with a company I'm proud to represent - has resulted in complaints.

RESPONSE FROM ADVERTISER, CORDBANK

Re: Simone Anderson and CordBank Digital Marketing — Complaint 21/193

I write in response to the ASA's advice that it is investigating complaints about an Instagram paid post by Simone Anderson, advertising on behalf of CordBank Limited ("CordBank"), (the "advertisement"), as attached to your letter. CordBank wishes to defend these complaints.

CordBank holds a Licence to Manufacture Medicines from the Ministry of Health — Licence No. 087/20/1 '. The licence which CordBank has held since 2002, is granted pursuant to Section 51 of the Medicines Act 1981 and the Medicines Regulations 1984. It authorises CordBank to collect, process and store autologous haemopoietic stem cells derived from cord blood. The licence is subject to annual review following an audit from Medsafe, the regulatory arm of the Ministry of Health.

CordBank is cognisant of its obligations under the Medicines Act 1981 and under the Therapeutic and Health Advertising Code. Since 2002, the company has done its utmost to ensure that any advertising published on its behalf is accurate, carefully balanced and within the bounds of all relevant regulations, and it considers that Ms Anderson's post did not breach any of the applicable rules.

Truthful presentation

CordBank is confident that all claims made in the advertisement are true and can be substantiated by scientific evidence. The advertisement did not contain any specific claims that might be the subject of disputed evidence (for example the efficacy of stem cell-based treatment for a particular illness).

Each claim made in the advertisement can be substantiated:

- a. **Cord blood is a valuable source of stem cells:** This is true. Cord blood stem cells are more pristine than the stem cells in adults because they are younger and they have had less exposure to illness or environmental factors."
- b. **Stem cells in cord blood are a perfect DNA match for the donor baby:** This is true. For the use of cryopreserved umbilical cord blood stem cells HLA matching is one of the most important factors measured for transplantation. As the DNA from the stem cells in cord blood are the child's own DNA, the stem cells are a perfect match.
- c. **"Saving these stem cells gives the child a chance to survive many illnesses and conditions":** This is true. Cord blood stem cells have been used in over 600,000 transplants worldwide. Umbilical cord blood has been used in trials and treatments for neurologic conditions including cerebral hypoxic ischemic, encephalopathy, traumatic brain injury and autism. In cardiovascular disease cord blood stem cells are in clinical trials for dilated cardiomyopathy and ischemic disease.^{iv} According to Dr Joanne Kurtzberg, an internationally renowned expert in pediatric haematology/oncology, pediatric blood and bone marrow transplantation at Duke University states "I predict the use of cord blood cells as cellular therapies in the emerging field of regenerative medicine will emerge as one of the major great advances in novel therapeutics in medicine."
- d. **"...survive many illnesses and conditions now and into adulthood":** This is true; from the first cord blood transplant in 1998, cord blood is now a successful treatment option for both pediatric and adult patients.^{iv} Its use permits patients to have a chance to survive a range of illnesses.
- e. **"You literally have one chance to do this and it's at birth":** This is true. Cord blood stem cells are only present in the umbilical cord at birth — making it the only time at which they can be collected.^{iv}

Consequently, the advertisement was in all respects factual and based on scientific evidence.

Responsible advertising

CordBank considers that the advertisement was socially responsible, as it provided information about the option to save cord blood at birth which was phrased in general terms and designed to introduce the topic for discussion. The advertisement did not purport to

provide complete information about the service. Instead, it asked viewers whether they had looked into it themselves.

The advertisement emphasised that Ms Anderson and her partner had made a personal decision to save their baby's cord blood with CordBank. Wording such as "Trent and I have made the decision" emphasised that the decision to store a child's cord blood is a personal one to be made by parents for their own child after they have undertaken due inquiries. The advertisement did not encourage parents to register for cord blood banking but rather encouraged them to consider the option and reach their own decision.

The advertisement does not portray unrealistic outcomes. It does not represent that cord blood stem cells "guarantee" the survival of some illnesses or conditions. It only refers to providing a "chance" of survival.

The advertisement does not "prey" on any concerns that pregnant women may have, namely the health of their child. The photographs used do not allude to sickness or illness; they are of Ms Anderson and her partner looking content. The caption simply refers to a legitimate possibility that a child may suffer an illness or condition (and that there are many illnesses or conditions that a child could suffer), and notes that saving their child's cord blood cord at birth may give their baby a chance to survive an illness or condition — because of the availability of a treatment using the child's own stored cord blood stem cells.

Ms Anderson asked "is cord blood banking something you have ever looked into?", encouraging viewers to "look into" the possibility of cord blood banking and to express their opinions — including those who may not have been aware of the service or may have been aware and chosen not to do this for their child.

Informed consent

In addition, viewers of the advertisement cannot sign up for CordBank's services through Instagram. Prospective clients can only register for the service via the CordBank website, after completing an extensive informed consent process, within the formal contract, on behalf of their unborn child.

The Parental consent form, which must be accepted by all clients, states that both parents understand:

- a. It is not possible to determine whether my child will develop a condition or disease in the future which can be treated by these cells.
- b. However, collecting and storing my baby's cord blood cells may benefit my baby should he/she need them in the future to treat certain conditions or diseases.

Further, the CordBank contract requires the parents to tell their Lead Maternity Carer (LMC) that the family wishes to save cord blood stem cells for their child at their child's birth, and request that their LMC completes the cord blood collecting training provided by CordBank (if the LMC is not already trained in the procedure). Only registered health professionals are authorised to collect umbilical cord blood stem cells to ensure they undertake the process in compliance with the aseptic technique required in sterile medicines manufacture.

This extensive registration process ensures that all parents who wish to pursue the option to bank their child's cord blood stem cells confirm their understanding of the service and have provided express written consent before the child is born and the collection takes place.

The advertisement is therefore designed to spark interest and raise awareness. It does not supplant the need for parents to provide informed consent before engaging CordBank's services to save their child's stem cells for future medical use — if required.

Deleted comments

CordBank is not aware of, and therefore cannot address, the contents of any comments on the advertisement that may have been deleted.

Supporting material

In addition to the papers attached, there are a huge number of clinical studies and scientific evidence that support CordBank's position on the truthfulness of the advertisement, providing substantiation for the statements made and undermining the complaints. Should the ASA have any residual concerns or questions relating to the complaints, CordBank can provide further material and medical studies. At this point though, CordBank considers the material referenced and attached to this response should provide a more than adequate basis to dismiss the complaints.

Licence to Manufacture Medicines no. 087/20/1

ⁿ 2017 Kurtzberg, J. *A History of Cord Blood Banking and Transplantation*

^{iffil} 2017 Ali Kowsari, Zahra Jafarian, Reza Tabatabaei Qomi, Azar Sheikholeslami, Naser Kalhor, Hoda Fazaeli, Mohsen Sheykhasan. *Umbilical cord blood stem cells as a beneficial option in cell-based therapy and regenerative medicine*

^{ivl} 2017 Ali Kowsari, Zahra Jafarian, Reza Tabatabaei Qomi, Azar Sheikholeslami, Naser Kalhor, Hoda Fazaeli, Mohsen Sheykhasan. *Umbilical cord blood stem cells as a beneficial option in cell-based therapy and regenerative medicine*

^{ln} 2009 Harris, D.T. *Non-haematological uses of cord blood stem cells*

^w 2017 Jessica M Sun, Allen W Song, Laura E. Case, Mohamad A Mikati, Kathryn E. Gustafson, Ryan Simmons, Ricki Goldstein, Jodi Petry, Colleen McLaughlin, Barbara Waters-Pick, Lyon W. Chen, Stephen Wease, Beth Blackwell, Gordon Worley, Jesse Troy, Joanne Kurtzberg: *Effect of Autologous Cord Blood Infusion on Motor Function and Brain Connectivity in Young Children with Cerebral Palsy: A Randomized, Placebo-Controlled Trial*

^{ns} 2017 Ballen, K. *Umbilical Cord Blood Transplantation: Challenges and Future Directions*

2017 Ballen, K. *Umbilical Cord Blood Transplantation: Challenges and Future Directions*
2017 Ali Kowsari, Zahra Jafarian, Reza Tabatabaei Qomi, Azar Sheikholeslami, Naser Kalhor, Hoda Fazaeli, Mohsen Sheykhasan. *Umbilical cord blood stem cells as a beneficial option in cell-based therapy and regenerative medicine*