

COMPLAINT NUMBER	21/136
ADVERTISER	Harvey Norman
ADVERTISEMENT	Harvey Norman website
DATE OF MEETING	8 June 2021
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a Harvey Norman website advertisement for AirPop Masks. The Board said the advertisement was not misleading.

Advertisement

The Harvey Norman website advertisement for AirPop Masks included the following quote “In my opinion AirPop Masks are the most wearable and effective masks available” – Sir Ray Avery, Medical Device Expert”.

Summary of the Complaint

The Complainant was concerned the advertisement was misleading because it portrayed Sir Ray Avery as an independent medical device expert, when in fact the Complainant said he is the main distributor and marketer for AirPop face masks, according to a Scoop article dated 22 December 2020.

Issues Raised:

- Truthful presentation

Summary of the Advertiser’s Response

The Advertiser defended the advertisement and said “Neither Sir Ray Avery nor any of his companies is involved in the distribution or sale of AirPop Masks, nor does he receive any financial gain from the sale or endorsement of this product.”

Relevant ASA Codes of Practice

The 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.

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.

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 (f) Testimonials and healthcare professional endorsements: Patient testimonials and healthcare professional endorsements in advertisements, where not prohibited by law, shall comply with the Code, be authenticated, genuine, current, and typical and acknowledge any valuable consideration. Exceptional cases shall be represented as such.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to a precedent decision, Decision 20/255 which was Not Upheld.

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

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

Decision 20/255 concerned a television advertisement for Spark NZ Ltd that showed what appeared to be black and white footage of New Zealand scientist Lord Ernest Rutherford, sitting at a desk reading from a sheet of paper. Lord Rutherford's speech had been altered using technology. The Complainant was concerned the advertisement was disrespectful by placing words in the mouth of an historical figure, Lord Ernest Rutherford, when he is longer able to speak for himself.

The Complaints Board said there were sufficient cues in the advertisement to ensure consumers were not misled that the voiceover and words were Lord Rutherford actually speaking. The Complaints Board said the Advertiser had confirmed it had received consent from Lord Rutherford's estate to use his image, and the particular wording. The Board did not consider the advertisement was an endorsement by Lord Rutherford for a particular 5G service.

This decision was appealed, but the appeal was declined.

Preliminary matter

Does the Therapeutic and Health Advertising Code apply?

The Complaints Board agreed that face masks are not medical devices as they do not come within the definition of a medical device in the Code. Therefore, the Therapeutic and Health Advertising Code did not apply.

Complaints Board Discussion

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Advertising Standards Code or 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 – The COVID-19 pandemic
 - Medium - Harvey Norman website
 - Audience – Mostly adults, visitors to the Harvey Norman website
 - Product – Face mask

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was Sir Ray Avery endorses AirPop masks, which are specially designed for comfort and effectiveness.

Is the advertisement misleading?

The Complaints Board agreed the advertisement was not misleading. The Board noted the information provided by the Advertiser on Sir Ray Avery's involvement. It also referred to the signed statement from Sir Ray Avery confirming that he has not been involved in the importation or sale of AirPop masks in New Zealand and he has not received any payments to promote AirPop masks in New Zealand. A full copy of this statement is in Appendix 2.

In the Complaints Board's view, Sir Ray Avery's endorsement of the AirPop mask was not misleading and the advertisement was not in breach of Principle 2 or Rule 2(b) 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. 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
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Appendix 1

COMPLAINT

<https://www.harveynorman.co.nz/AirPop-masks.html>

Harvey Norman are touting a testimonial from what appears to be an independent medical device expert - Sir Ray Avery on the above page and Facebook sponsored adverts. "In my opinion AirPop Masks are the most wearable and effective masks available" – Sir Ray Avery, Medical Device Expert Searching for Sir Ray and AirPop brings back an article that states he is the main distributor and marketer for AirPop face masks in NZ: from Dec 2020 article

<https://www.scoop.co.nz/stories/BU2012/S00439/kiwi-tech-firms-helping-prevent-global-covid-infections.htm> Serentia Healthcare NZ will market these leading-edge medical technologies alongside its own range of consumer covid protection products including travel packs containing AirPop pocket masks and hand sanitisers. This seems like a paid-for product endorsement by the distributor, regardless of his medical background. This could mislead and influence people into buying this product over others, because of the endorsement.

Appendix 2

RESPONSE FROM ADVERTISER, HARVEY NORMAN

Thank you for requesting our feedback regarding Compliant 21/136. Harvey Norman would like to defend this complaint.

Independent medical expert endorsement

The complainant refers to an article on [scoop.co.nz](https://www.scoop.co.nz) suggesting that Sir Ray Avery (referred to as SRA below) is involved in the distribution of AirPop Marks via Serentia Healthcare, Blue Mirror & Jupt.

Neither Sir Ray Avery nor any of his companies is involved in the distribution or sale of AirPop Masks, nor does he receive any financial gain from the sale or endorsement of this product. Pudney and Lee are the exclusive distributors of AirPop Masks in New Zealand. SRA is not remunerated in any form from Pudney and Lee, or Harvey Norman.

Neither SRA or any company that he is involved with (Serentia, JUPL or any other un-named) receive or is entitled to receive any commercial benefit with the manufacturing of AirPop products in China or sale of AirPop products anywhere in the World.

Prior to stocking AirPop Masks, Harvey Norman's General Manager, Graeme Watt, specifically asked Sir Ray Avery if he would receive any financial benefit from his endorsement or the sale of AirPop Masks. His response was "No"; SRA is an advocate of these masks for the health and wellbeing of New Zealanders.

ADDITIONAL RESPONSE FROM ADVERTISER, HARVEY NORMAN

The Advertiser provided a signed statement from Sir Ray Avery, as follows:

To Whom it May Concern

I understand that a complaint has been filed with the New Zealand Advertising Standards Authority alleging that I am involved in the importation and sale of AirPop masks in New Zealand and therefore cannot be considered to be provide independent scientific recommendation's regarding the selection and use of masks to prevent community transmission of covid.

I can confirm that as on 6th May 2021 I have not been involved in the importation or sale of AirPop masks in New Zealand.

I have also not received any payments to promote AirPop masks in New Zealand.

I routinely conduct independent ISO 13485 Quality Audits of mask manufacturers internationally and have conducted audits of New Zealand mask manufacturers on behalf of NZ MBIE.

I have independently tested the Air Pop masks in my laboratory and have found them to be an excellent mask with respect to fit and particle arrestance and am happy to recommend them for general consumer use.

As a declaration of interest I am working with AirPop China on a NZ Government funded research project to develop a fit testing application to check that medical staff comply with mandatory NZ Worksafe compliance standard's for N95mask fit testing.

This may or may not result in me becoming involved commercially with AirPop but as of 6th May 2021 I have no commercial interests in the sale and distribution of AirPop masks in New Zealand.

Sir Ray Avery