

COMPLAINT NUMBER	21/334
ADVERTISER	Radiant Health
ADVERTISEMENT	Radiant Health Out of Home
DATE OF MEETING	6 September 2021
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a Radiant Health poster advertisement offering support with weight management. The Board said the advertisement was not promoting a particular product, was not misleading and did not undermine the health and well-being of individuals.

Advertisement

The poster advertisement, which was located inside a female toilet at a shopping mall, had a head and shoulders photo of a woman, and the following text:

“I struggle with my weight – so I went to my doctor & lost 5kgs – Most people struggle to control their weight with diet, exercise and willpower alone. Your doctor can help. Tell your doctor I’m ready! Cansciencetaketheweightoff.co.nz”.

The small print across the bottom of the poster said:

“Weight management takes time and effort to be successful. People should seek professional advice on diet, exercise and lifestyle changes. Individual results may vary. Radiant Health Ltd Auckland.”

Summary of the Complaint

The Complainant was concerned the advertisement was:

- Sexist and ageist
- Misleading, because it was not obviously about an unfunded medication called Contrave, and
- Could promote eating disorders

Issues Raised:

- Social Responsibility
- Truthful Presentation
- Mandatory information
- Health and well-being

Summary of the Advertiser’s Response

The Advertiser defended the advertisement and said:

- The advertisement had TAPS (Therapeutic Advertising Pre-vetting Service) approval and TAPS supports the Advertiser’s defence of this complaint
- The advertisement does not refer to a specific medicine or weight management program, for which mandatories are to be included as stated in the Codes. Nonetheless, the advertisement does include at the bottom the statements, “Weight management takes time and effort to be successful. People should seek professional

advice on diet, exercise and lifestyle changes. Individual results may vary” as well as the name and address of the advertiser.

- The ad is part of a disease awareness campaign around weight management, it is not about the medication, Contrave (naltrexone, bupropion).
- The advertisement only contains a hypothetical claim of weight loss of 5 kg when seeking assistance from a doctor. This would be deemed to be accurate and valid, in line with current clinical practices.

(Full versions of the Complaint and the Advertisers response can be found in Appendices 1 and 2)

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 (a) Mandatory information: Advertisements shall contain the following mandatory information to encourage responsible prescribing, recommendation, sale and use. This information shall be set out in a way (legible / audible) that ensures it can be readily understood by the audience to whom it is directed.

Weight management programme where ‘Weight Loss’ is claimed

The following statements (or words to the effect).

- *Weight loss takes time and effort to be successful. People should seek professional advice on diet, exercise and lifestyle changes.*
- *Individual results may vary.*
- Name and address of the advertiser.

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).

ADVERTISING STANDARDS CODE

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(h) Health and well-being: Advertisements must not undermine the health and well-being of individuals.

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 or 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, which in this case is:
 - Context: According to the Ministry of Health 1 in 3 adults in New Zealand is obese
 - Medium: A poster inside a female toilet at a shopping mall
 - Audience: Visitors to the toilet
 - Product: Advice on getting support with weight management

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was: Go to your doctor to get advice on how you can lose weight, when you are ready.

The Complaints Board said while the advertisement was making an implied weight loss claim, it was not advertising any particular product or weight loss programme. The Board said there was no mention of the product Contrave (a prescription-only medicine) in the advertisement or information that formed part of the advertisement such as the website or information behind the QR code. The Board noted that the advertisement did include information as outlined in Rule 1(a) of the Therapeutic and Health Advertising Code.

Was the advertisement misleading?

The Complaints Board said the advertisement was not misleading. The advertisement encouraged those with concerns about their weight to contact their doctor, as well as referring them to the website Cansciencetaketheweightoff.co.nz. The message was a very general one about seeking assistance and the website had various options for weight management. The Board said the advertisement did not imply that it is free to visit the doctor or that any prescription medication was subsidised. Neither did the advertisement pressure general practitioners to prescribe a particular weight loss medication.

Did the advertisement undermine the health and well-being of individuals?

The Complaints Board said the advertisement did not undermine the health and well-being of individuals. The Complaints Board said the advertisement was not promoting the concept of weight loss in an unhealthy way. The Board said the text "I went to my doctor & lost 5kgs" was not inappropriate as this is a realistic amount of weight loss to use as an example. The Board said the advertisement was not promoting eating disorders, via social stereotypes around body image. The Board noted that according to statistics published by the Ministry of Health 1 in 3 adults in New Zealand is obese, and this is a public health concern. The Board accepted that the woman shown in the advertisement looked happy and the language in the advertisement was encouraging people to seek help if that is something they wished to do.

The Complaints Board agreed the advertisement was targeting women. This is due to the location of the advertisement in the women's toilet and the picture of a woman in the advertisement. The Board said it did not agree that the advertisement was sexist or ageist simply by showing a younger woman.

Did the advertisement observe a high standard of social responsibility?

The Complaints Board said the advertisement did observe a high standard of social responsibility. This is because it was not misleading and did not undermine the health and well-being of individuals. It also encouraged those with concerns about their weight to contact their doctor if that is something they were ready to do.

In summary

The Complaints Board said the advertisement was not misleading and did not undermine the health and well-being of individuals, taking into account context, medium, audience and product. The Board said the advertisement was not in breach of Principle 1, Rule 1(a), Principle 2, or Rule 2(a) of the Therapeutic and Health Advertising Code or Principle 1 or Rule 1(h) 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. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT

I think this advertisement obviously targeted at women may breach the code on the following counts:

1. its sexist & ageist, by way of location and picture of a youngish woman
2. its misleading by
 - a. not obviously being about a medication (Contrave) at first reading;
 - b. appearing to be very sensible with saying talk to your GP etc;
 - c. being a direct to the public advertisement for a medication it breaches ethical constraints on GPs being pressured to prescribe which does not enhance professional advice giving;
 - d. Contrave is an unfunded medication and inference could be taken that because it recommends discussion should occur with a GP this means it is subsidised by the NZ health system;
 - e. there is a charge to consult a GP usually and this is not specified;
 - f. it takes quite a lot of online research to actually find out that this is advertising a medication, albeit with what may be scientific nutritional and lifestyle advice accompanying
3. It could via social stereotypes around body image promote Eating Disorders.

(The Poster was located on the inner side of door of a female toilet cubicle in Johnsonville Shopping Centre, Johnsonville, Wellington)

<https://www.cansciencetaketheweightoff.co.nz/>

Appendix 2

RESPONSE FROM ADVERTISER, RADIANT HEALTH

Please find attached our formal response with supporting documents from TAPS who reviewed and approved the advertisement in question:

Radiant Health (New Zealand) Pty Limited (Radiant Health) refer to Complaint 21/334, which was received by the ASA and is to be put in front of the Advertising Standards Complaints Board (Complaints Board) for consideration. Radiant Health wishes to advise of our decision to defend against this Complaint.

Complaint 21/334 refers to an unbranded disease (weight management / obesity) awareness advertisement. The advertisement is one part of a three part campaign aimed to raise awareness around obesity and options through which impacted individuals may obtain further advice and guidance. The three advertisements part of the campaign are enclosed; the advertisement referred to in the Complaint is Page 3 of the enclosure.

New Zealand has the third highest adult obesity rate in the Organisation for Economic Co-operation and Development (OECD) countries, and rates continue to increase. The New Zealand Health Survey 2019/20 found that around 1 in 3 adults (aged 15 years and over) were obese, affecting both men and women. Obesity is associated with many health conditions including type 2 diabetes, ischaemic heart disease (IHD), stroke, several common cancers, osteoarthritis, sleep apnoea and reproductive abnormalities in adults.¹

The target audience of the advertisement campaign is men and women, aged approximately between the mid-twenties to early fifties, who are overweight or obese, and have tried diet and exercise for weight management, and require and are looking for additional assistance. This encapsulates a broad target audience. The appointment of the advertisement referred to in the Complaint to this target audience was done through the contract of a third party company, Adz Up Limited, which places advertisements based on space and location.

The specific advertisement the Complaint was based upon was displayed on the inner side door of a female lavatory cubicle. That advertisement was placed in mall female bathrooms in Auckland, Wellington, Christchurch and two regional locations. The advertisement was displayed for a 6 week period starting June 2021, and is not currently displayed. The remaining two advertisements which form part of the overarching campaign are yet to be displayed, and are intended to be placed in other print media. However, due to the current COVID-19 lockdown in place, the timing of the placement of these advertisements has been delayed.

A Therapeutic Advertising Pre-Vetting Service (TAPS) review was sought on this advertisement prior to distribution, and approval from TAPS was granted on 9 February 2021 (TAPS Approval, NA 12674). A copy of the detailed review and assessment performed by TAPS is enclosed for reference. Following receipt of this Complaint, Radiant Health sought comment from TAPS who strongly recommended that the Complaint be defended against (commentary enclosed).

Radiant Health's rationale for defending against this Complaint is outlined below. The initial section addresses the specific sections of the Codes alleged to be in breach and the subsequent section addresses specific aspects of the original Complaint.

Addressing the relevant sections of the Codes associated with the Complaint

The ASA noted that Complaint 21/334 sought that the advertisement was in breach of the Therapeutic and Health Advertising Code, Principle 1, Rule 1 (a) and Principle 2, Rule 2 (a); and the Advertising Standards Code, Principle 1, Rule 1 (h).

- **Therapeutic and Health Advertising Code, Principle 1, Rule 1(a) Mandatory Information**

“Advertisements shall contain the following mandatory information to encourage responsible prescribing, recommendation, sale and use.

This information shall be set out in a way (legible / audible) that ensures it can be readily understood by the audience to whom it is directed.

¹ Ministry of Health NZ. Obesity. Available at: <https://www.health.govt.nz/our-work/diseases-and-conditions/obesity>, accessed August 2021. Last updated 3 December 2020.

Medicines

Mandatory information as required by the most recent edition of the Medicines Act, Medicines Regulations, Medsafe Guideline on Advertising therapeutic products, Medicines NZ Code of Practice and the Self-Medication Industry Code of Practice.

...

Weight management programme where 'Weight Loss' is claimed

The following statements (or words to the effect).

- *Weight loss takes time and effort to be successful. People should seek professional advice on diet, exercise and lifestyle changes.*
- *Individual results may vary.*
- *Name and address of the advertiser.*

Where food, meals or low calorie meal replacement products are sold in addition to any programme membership fees it shall be clear to the consumer that the cost of these items is additional to any cost for membership. For example, where meals or food are sold, these statements shall appear; 'Food additional' or 'Plus the cost of food'.

Any other mandatory information relevant to products, devices or services advertised with the programme.

Weight management programme where 'Support for Weight Management' is claimed

The following statement (or words to the effect).

- *Weight management takes time and effort to be successful. People should seek professional advice on diet, exercise and lifestyle changes.*
- *Individual results may vary.*
- *Name and address of the advertiser.*

Any other mandatory information relevant to products, devices or services advertised with the programme."

As stated above, the advertisement which is the subject of this Complaint is part of a disease awareness campaign around weight management / obesity, encouraging consumers to visit their general practitioner (GP) and start a conversation. The advertisement does not refer to a specific medicine or weight management program, for which mandatories are to be included as stated in the Codes. Nonetheless, the advertisement does include at the bottom the statements, "Weight management takes time and effort to be successful. People should seek professional advice on diet, exercise and lifestyle changes. Individual results may vary", as well as the name and address of the advertiser. In both internal company review and TAPS review, this was deemed to be consistent with the Therapeutic and Health Advertising Code, Principle 1, Rule 1(a).

- **Therapeutic and Health Advertising Code, Principle 2, 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).”

The advertisement only contains a hypothetical claim of weight loss of 5 kg when seeking assistance from a doctor. The hypothetical claim can be regarded as representative of the typical patient who is overweight or obese presenting to the GP, hence would be deemed accurate and valid.

It is well documented that modest weight loss of 5 - 10% in individuals with obesity has many benefits for health and wellbeing, including metabolic and vascular benefits, enhanced fertility in women, improved respiratory function and wellbeing, reduction in the risk of cancers and joint disease, and improvements in quality of life.² Although the claim within this unbranded disease awareness advertisement is hypothetical, a weight loss of 5 kg in the target audience would be considered as achievable and clinically appropriate, in line with modest weight loss, with benefits as described above. Hence, by the hypothetical claim being regarded as therapeutically meaningful it would be deemed to be accurate and valid, in line with current clinical practices.

The advertisement does not contain any other claims or statements that would require substantiation as the remaining text only directs target consumers to consult their doctor for further professional advice. Hence, Radiant Health does not believe that the advertisement breaches Therapeutic and Health Advertising Code, Principle 2, Rule 2(a).

- **Advertising Standards Code, Principle 1, Rule 1 (h) Health and Wellbeing**
“Advertisements must not undermine the health and well-being of individuals.”

As stated above, the advertisement is part of a disease awareness campaign around weight management / obesity, and is intended to encourage individuals who are obese and struggling to manage their weight to seek advice from their GP regarding weight management.

Obesity is associated with increased mortality and morbidity from many health conditions (risk factor for a number of comorbidities) including type 2 diabetes, IHD, stroke, several common cancers, osteoarthritis, sleep apnoea and reproductive abnormalities in adults.³ Hence, encouraging individuals who are obese or overweight to seek advice from their GP in relation to weight management would be in the best interest of individuals' health and wellbeing. Consequently, Radiant Health does not believe that the advertisement breaches Advertising Standards Code, Principle 1, Rule 1 (h).

Addressing specific points of original Complaint:

(1) “Its sexist & ageist, by way of location and picture of a youngish woman”

As stated above, the advertisement is one part in a three part series, two of which feature women and one which features a man, all of differing ages. Obesity affects both men and women, and the advertisement campaign features both men and women to remain unbiased.

The specific advertisement in question features a woman who would have a BMI >30kg/m², which is the medically accepted definition of obesity. The placement of the specific

² Haslam D., Sattar N. and Lean M. ABC of obesity. Obesity – time to wake up. *BMJ*. 2006;333:640-2

³ Ministry of Health NZ. Obesity. Available at: <https://www.health.govt.nz/our-work/diseases-and-conditions/obesity>, accessed August 2021. Last updated 3 December 2020.

advertisement in question on the inner side door of a female lavatory cubicle would make sense in context.

Obesity is associated with increased levels of mortality and morbidity relating to many health conditions⁴, and is of particular concern in the young adult age group as it can have great implications on future health with development of chronic health conditions. The advertisement is aimed to create disease awareness and encourage impacted individuals who are concerned about weight management to seek further help and start a conversation, for future beneficial health outcomes. It is not an advertisement for a specific product.

Hence, Radiant Health believes that the advertisement, and the series of which it is a part, features an appropriate demographic of individuals looking to lower their weight to a healthy level. It refutes the claim that this advertisement is either sexist or ageist.

(2) “Its misleading by:

- **not obviously being about a medication (Contrave) at first reading;**
- **appearing to be very sensible with saying talk to your GP etc;**
- **being a direct to the public advertisement for a medication it breaches ethical constraints on GPs being pressured to prescribe which does not enhance professional advice giving;**
- **Contrave is an unfunded medication and**
- **inference could be taken that because it recommends discussion should occur with a GP this means it is subsidised by the NZ health system;**
- **there is a charge to consult a GP usually and this is not specified;**
- **it takes quite a lot of online research to actually find out that this is advertising a medication, albeit with what may be scientific nutritional and lifestyle advice accompanying”**

As stated previously, this advertisement is an unbranded disease awareness campaign, designed to provide impacted individuals with obesity to initiate meaningful discussions with their GP about weight management. It is not about the medication, Contrave (naltrexone, bupropion).

The consumer takeout in the Complaint that the advertisement is not clearly about Contrave is correct, as the advertisement is not about the medication, Contrave. It is unclear how the complainant incorrectly infers that the advertisement is related to Contrave, as consumers are unlikely to know of Contrave. The advertisement has no mention of or linkages to Contrave. In fact, in this three-part campaign, of which the current advertisement is a part, no product brand colours or imagery have been used, specifically to ensure that it would not be linked. The bottom of the advertisement only mentions the company name, Radiant Health, in keeping with mandatory information required as per Principle 1, Rule 1. However, the company does have two products for obesity.

The complainant states that “being a direct to the public advertisement for a medication it breaches ethical constraints on GPs being pressured to prescribe which does not enhance professional advice giving”. In New Zealand, advertising medicines to consumers is within the

⁴ Ministry of Health NZ. Obesity. Available at: <https://www.health.govt.nz/our-work/diseases-and-conditions/obesity>, accessed August 2021. Last updated 3 December 2020.

legal framework and does not breach any applicable Codes. However, as the advertisement is an unbranded disease awareness campaign, this part of the Complaint is not applicable.

The messaging around advising individuals to speak with their GP is, as the complainant has stated, “sensible”. This is accurate and as a result ensures that the advertisement maintains a high standard of social responsibility by directing individuals with obesity and struggling with weight management to consult their GP for advice. There is no pressure on GPs to prescribe a particular product, as no product is mentioned. GPs would still be required to utilise their clinical judgement for each individual patient to provide independent medical advice for each patient consultation. The advertisement is simply directing impacted individuals to their doctor to say “I’m ready” and does not apply any pressure or bias with regards to a specific treatment or management option. The statement advising consumers to seek professional advice is also consistent with the mandatory information required by the Code.

As this is an unbranded advertisement, which does not discuss Contrave, the statement that Contrave is unfunded is not required and is not a reasonable part of the Complaint. Further, most medicines for the treatment of obesity in New Zealand are not subsidised by the health system. There is also no requirement in an unbranded advertisement to mention that there is a charge to consult a doctor. Most consumers would be well aware that doctor’s fees would apply if they were to arrange a doctor’s consultation. Consequently, there is no requirement to mention this charge in the advertisement, and this should not be a reason to uphold the Complaint on this advertisement.

Hence, Radiant Health refutes this part of the Complaint as the advertisement is an unbranded disease awareness campaign and is not advertising a medication. The advertisement observes a high standard of social responsibility and provides sound advice for individuals with obesity wanting to manage their weight and makes it clear that there is no easy way to lose weight.

(3) “It could via social stereotypes around body image promote Eating Disorders.”

In the creation of the advertisement, in-depth consideration was given to sourcing an appropriate image from stock images that portrayed a person who was obese, defined as having a BMI > 30 kg/m². Further, in the internal review of the advertisement, the image was assessed and deemed to portray an individual who was obese.

As stated earlier, it is well documented that modest weight loss of 5 - 10% in individuals with obesity has many benefits on health and wellbeing, including metabolic and vascular benefits, enhanced fertility in women, improved respiratory function and wellbeing, reduction in the risk of cancers and joint disease, and improvements in quality of life.⁵ A weight loss of 5 kg in the target audience would be considered as clinically appropriate, in line with modest weight loss, and have benefits as described above. It would not be considered inappropriate weight loss associated with eating disorders. The advertisement, by way of creating disease awareness to appropriate individuals, maintains a high standard of social responsibility, and is not deemed to promote eating disorders, nor does it mention eating disorders.

Further, the image of the person in the advertisement, although being obese, is shown as happy and not miserable or upset. The overall advertisement, through use of colours and font,

⁵ Haslam D., Sattar N. and Lean M. ABC of obesity. Obesity – time to wake up. *BMJ*. 2006;333:640-2

is upbeat. The issue of obesity and weight management is not portrayed in a negative light, nor does the advertisement associate any social shame or stigma with being obese.

Therefore, Radiant Health believes that the portrayal of promotion of eating disorders is a misleading assumption on the part of the complainant. Radiant Health does not believe there is any social stereotype around body image and promotion of eating disorders indicated in the advertisement.

In summary, based on the above points, Radiant Health strongly contends that the advertisement which is the subject of this Complaint does not breach the Therapeutic and Health Advertising Code or the Advertising Standards Code, and hence the Complaint should not be upheld.

Enclosures:

1. Digital Copy of the Radiant Health Campaign (three advertisements) – advertisement referred to in the Complaint is Page 3.
2. TAPS Review and Approval of Advertisement (TAPS Approval, NA 12674), 9 February 2021
3. TAPS Commentary of Complaint 21/334, 18 August 2021