

<b>COMPLAINT NUMBER</b>	21/351
<b>ADVERTISER</b>	Marvel Health
<b>ADVERTISEMENT</b>	Marvel Health, Print
<b>DATE OF MEETING</b>	21 September 2021
<b>OUTCOME</b>	Upheld
	Advertisement not to be used again in its current form

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

The Complaints Board upheld a complaint about a newspaper advertisement for Marvel Health. The Board said the advertisement made therapeutic claims involving diagnosis and treatment which were unsubstantiated and used language which was likely to confuse and mislead consumers.

### **Advertisement**

The print advertisement for Marvel Health featured in the *Weekend Sun* newspaper promotes a new clinic opening in Tauranga. The advertorial focuses on the benefits of the bio-magnetic scanning service, a total-body health scan which can diagnose a variety of health problems. The advertorial includes a disclaimer in small print at the bottom of the page stating that the scan is not a substitute for medical inspections and should not be used as a final diagnosis.

### **Summary of the Complaint**

The Complainant was concerned the advertisement makes many unsubstantiated therapeutic claims to persuade the public to have investigations and therapies.

### **Issues Raised:**

- Social Responsibility
- Truthful presentation
- Scientific language

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

The Advertiser did not provide a response to the issues raised by the complainant.

## 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(d) Scientific language:** The use of scientific language in advertisements is acceptable providing that it is appropriate to, and readily understood by, the audience to whom it is directed.

**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).

Definitions:

**‘Therapeutic Purpose’** – The Medicines Act provides the following definition:

- (a) preventing, diagnosing, monitoring, alleviating, treating, curing, or compensating for, a disease, ailment, defect, or injury; or
- (b) influencing, inhibiting, or modifying a physiological process; or
- (c) testing the susceptibility of persons to a disease or ailment; or
- (d) influencing, controlling, or preventing conception; or
- (e) testing for pregnancy; or
- (f) investigating, replacing, or modifying parts of the human anatomy.

**‘Medical Device’** – Medical Devices are devices that have a therapeutic purpose.

**‘Health Services’** – includes services that offer a method of treatment for a range of medical conditions or services that offer support for normal healthy body functions.

**‘Method of Treatment’** - Any method of treatment for reward undertaken, or represented to be undertaken, for a therapeutic purpose.

### 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.

### Guidance Point 5

- Disclaimers, asterisked, footnoted or “small print” information must not contradict the claims that they qualify. The information must be obvious, and located and presented in such a way as to be clearly and easily read and / or heard. Where appropriate, the information must be linked to the relevant part of the main message.

### Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 20/349, which was Upheld and 20/409, which was Settled.

The full version of these decisions can be found on the ASA website:

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

**Decision 20/349** concerned a print advertisement from Marvel Health promoting its whole-body diagnostic scan.

The Complaints Board upheld the complaint because the Advertiser had not supplied sufficient substantiation to support the therapeutic claims involving diagnosis and treatment made in the advertisement.

**Decision 20/409** concerned Facebook advertisements from Marvel Health promoting its Scan and Colloidal Silver products. The Complainant was concerned the advertisements made unsubstantiated therapeutic claims. Upon receipt of the complaint the Advertiser chose to remove the advertisements and the Chair of the Complaints Board ruled the matter settled.

### 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 and 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: An international company setting up a new clinic in Tauranga, New Zealand
  - Medium: Advertisement in the free *Weekend Sun* newspaper
  - Audience: Adults reading the newspaper
  - Product: A bio-magnetic diagnostic body scanning service

### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was that Marvel Health is opening a new clinic in Tauranga and promoting a scan which gives a comprehensive full body health check to diagnose diseases and system malfunctions. The service then has doctors to analyse results and offer natural substances and therapies as remedies. The Board noted the advertisement uses the language of healthcare repeatedly in the text.

*Is the advertisement making therapeutic claims about a health service that uses a device to diagnose disease?*

The Complaints Board agreed the advertisement was promoting a bio-magnetic diagnostic body scanning service. The Complaints Board confirmed the Therapeutic and Health Advertising Code states that only Medicines with consent to sell and advertise, Medical Devices that are listed on the Medsafe WAND database and Methods of treatment may make therapeutic claims in an advertisement.

The Complaints Board noted the advertisement must observe a high standard of social responsibility particularly as consumers often rely on devices and services for their health and wellbeing.

The Complaints Board noted the Advertiser had been asked to provide evidence of the WAND listing for the medical device referred to in the advertisement. As this evidence had not been provided, the Board said the advertisement was not entitled to make therapeutic claims and was in breach of Principle 1, Principle 2 and Rule 2(a) of the Therapeutic and Health Advertising Code.

*Does the advertisement make therapeutic claims about the efficacy of the scanning service which require substantiation?*

The Complaints Board noted the advertisement makes a range of diagnostic claims including being able to “examine all organs and systems”, detect diseases, viruses, bacteria, fungi, lead, mercury and other environmental toxins.

The Complaints Board said that alongside the WAND listing, it would expect substantiation from the Advertiser to support such therapeutic claims to include well-designed clinical studies that have been published in peer-reviewed journals.

The Complaints Board noted the Advertiser had not provided any substantiation for the therapeutic claims made in the advertisement.

The Complaints Board ruled the advertisement was in breach of Principle 1, Principle 2 and Rule 2(a) of the Therapeutic and Health Advertising Code.

*Does the advertisement use language which is likely to mislead consumers?*

The Complaints Board said part of its consumer takeout of the advertisement was that the language used contained medical jargon which was likely to suggest the scanning service offered a comprehensive full body health check-up. The Board said the use of the term “Total Health MOT” drew a parallel with the United Kingdom’s Ministry of Transport (MOT) annual test for vehicle safety and roadworthiness.

The Complaints Board noted the Advertiser had not provided any substantiation for the language used and therapeutic claims made in the advertisement.

The Complaints Board ruled the advertisement was in breach of Principle 1, Principle 2 and Rules 2(a) and 2(d) of the Therapeutic and Health Advertising Code.

*Does the advertisement mislead consumers by implying the service will be run by registered doctors?*

The Complaints Board noted the advertisement used the terms “doctor” and “patient” when referring to the consultations undertaken by the service following the scan. The Board said the advertisement gave the impression consumers could expect a registered doctor would be providing the treatment and be in charge of the service.

The Complaints Board noted the Advertiser had not provided any evidence to support the use of the term doctor in the advertisement.

The Complaints Board ruled the advertisement was in breach of Principle 1, Principle 2 and Rule 2(a) of the Therapeutic and Health Advertising Code.

The Complaints Board noted the advertisement did not appear to have received TAPS approval. The Therapeutic Advertising Pre-Vetting Service (TAPS) is a user-pays service available to all advertisers making therapeutic and health claims to help minimise the risk of breaching the ASA Codes of Practice as well as other industry codes and relevant legislation.

Information about TAPS is available at <https://www.anza.co.nz/taps>. It is recommended that therapeutic and health advertisements use the TAPS process to help with code compliance. In addition to the user-pays service, TAPS also provides a number of [Guidelines](#) at no charge. These guidelines provide information to help advertisers understand legislative and code compliance requirements.

*Does the disclaimer in the advertisement contradict the claim it qualifies?*

The Complaints Board noted the advertisement included a disclaimer in small font which said “The inspection from the scan is not a substitute for medical inspections. It is not designed to state the final diagnosis.”

The Complaints Board noted Rule 2(b), Guidance Point 5 of the Advertising Standards Code states:

“Disclaimers, asterisked, footnoted or “small print” information must not contradict the claims that they qualify.”

The Complaints Board agreed the disclaimer directly contradicts the claims made in the advertisement about being able to provide a comprehensive diagnosis of diseases and system malfunctions and provide clinically trialled natural substances and therapies as remedies.

The Complaints Board ruled the disclaimer was likely to mislead or confuse consumers and was in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code.

### **In Summary**

The Complaints Board said the advertisement made therapeutic claims involving diagnosis and treatment which were unsubstantiated and used language which was likely to confuse and mislead consumers.

The Complaints Board said the advertisement was not socially responsible taking into account context, medium, audience and product and was in breach of Principle 1, Principle 2, and Rules 1(d) and 2(a) of the Therapeutic and Health Advertising Code and Principle 2 and Rule 2(b) of the Advertising Standards Code.

### **Outcome**

The Complaints Board ruled the complaint was **Upheld**.

Advertisement to be removed and not used again in its current form.

### **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 with notification of the intent to appeal lodged within 14 calendar days of receipt of the written 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

### Appendix 1

#### COMPLAINT

I submit this (annotated) Advt has many breaches of Rules and Principals, especially of Therapeutic and Health Adv Code. Rule 2a. \*12 = disclaimer not clearly visible /easily understood/negates claims. Rule 2b Truth & 2c use of data Advtsers must hold evidence to substantiate their claims: \*1, \*2, \*3, \*4, \*5?/proof? \*7='exactly what's wrong" 11, mumbo jumbo!, Language not appropriate. \*9= validation? \*10 Can they test blood without taking sample? validation.? \*11. Medically meaningless - explain and validation? \*12 disclaimer too small to read without magnification, and negates the text claims etc. Rule 2 d Comparative. - \*4 'the most advanced in the world.'Factual, accurate-?data to substantiate? \*6. Is the doctor NZ Certified to practice diagnose, prescribe in NZ for money? \*13. Detailed Examination of all organs and systems. Expert confirmation? \*14 detection of lead, mercury and other...env toxins. Are the accurate amounts and significance given...validated accuracy??? I submit that this and similar Marvel Heather advts containing these questionable and spurious claims and statements related to Health, Disease Diagnosis and claiming a high rate of success when nothing has worked, from (quote)" the most advanced diagnostic technology in the world". unless they have scientific validation of this is untruthful and breaches Principals and Codes as being not Truthful, Balanced and very Misleading, and should be banned entirely from all NZ Media. Similar advts may be in Christchurch and Warkworth etc located media/ papers. And should receive similar ASA attention.

### Appendix 2

#### RESPONSE FROM ADVERTISER

The ASA secretariat made repeated attempts to obtain a response from the Advertiser, however no response was received.