

COMPLAINT NUMBER	21/419
ADVERTISER	Marvel Health
ADVERTISEMENT	Marvel Health, Print
DATE OF MEETING	21 September 2021
OUTCOME	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. The Board said the advertisement used language which was likely to confuse and mislead consumers and prey on vulnerable audiences.

Advertisement

The print advertisement for Marvel Health featured in the *Bay of Plenty Times* newspaper. The advertorial promotes how Marvel Health delivers advanced diagnostics and science-based natural medicine. It states the whole body scan provides a comprehensive report of a patient's state of health. The scan can help its doctors make personalised and targeted recommendations. The advertisement's bottom banner offers a "Total Health WOF." The advertorial includes a small disclaimer at the bottom 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 and prey on vulnerable audiences.

Issues Raised:

- Social Responsibility
- Truthful presentation
- Scientific language
- Vulnerable audiences

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

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: A clinic operating in Tauranga describing how its scan can deliver advanced diagnostics and science-based natural medicine
 - Medium: Advertisement in the *Bay of Plenty Times* 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 promoting a scan which gives a comprehensive full body health check to diagnose diseases and system malfunctions. The advertisement raises the dangers of environmental toxins. The service has doctors analyse results and offer natural medicine and therapies as remedies. The Board said the advertisement emphasises how the scan could help find the hidden, underlying causes of health problems and offers to recommend the 3 most essential medicines to start healing. 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, food sensitivities, predisposition to genetic disorders 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 WOF drew a parallel with the Warrant of Fitness (WOF) test for vehicle safety which is a regular check to ensure that your vehicle meets required safety standards.

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. 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 advertisement portray unrealistic outcome or prey on vulnerable audiences?

The Complaints Board noted the advertisement makes claims about diagnosing and then treating a range of health issues. The Board said the advertisement uses language such as “reveals hidden diseases and their causes.” The Board said this was likely to cause undue concern for some audiences. The Complaint Board agreed that without adequate substantiation to support these claims, the advertisement could be seen to prey on a vulnerable audience who may be seeking solutions to their health issues.

The Complaints Board noted the Advertiser had not provided any evidence to support the therapeutic claims made in the advertisement.

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

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.

Is the advertisement comparative advertising and does the lack of pricing make the advertisement misleading?

The Complaints Board noted the Complainant had raised the issues of comparative advertising and the lack of pricing in the advertisement, which could be misleading.

The Complaints Board said the example quoted by the Complainant of the scan being “unique” did not constitute comparative advertising. The Board also noted that the Advertiser was not obligated to include pricing in the advertisement. The Complaints Board said these matters did not constitute a breach of any of the ASA codes.

In Summary

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

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(c), 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 **Upeld**.

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. 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**
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Appendix 1

COMPLAINT

ASA Complaints Board. Complaint re Marvel Health Ad.

"How Marvel Health delivers Advanced Diagnostics and Science Based natural medicine.". BOP Times 9 July 2021

Complaint: I submit that this BOPTimes Ad. breaches many ASA Standards of Truth and Honesty-

Principle 1, Social Responsibility Rule1 g, h Ppl 2 Truthful Presentation Social responsibility Rule2 a b d e Therapeutic and Health Code. Truthful presentation Rule 1 a

New information: *Previous Decision

*Disclaimers

*No Costs mentioned

*This is the 5th weekly advt in Tauranga media

*CoFounder dr Machi Mannu, medical doctor- not NZ registered

Details.

Principle 1 Social Responsibility.

A high standard required as this Ad targets Tauranga's aged and retired population with its high proportion of rest and retirement homes, who have concerns about their health and well-being.... This a Medical Device for Diagnosing, for which NZ approval, WAND, and genuine scientific reports should be on hand for its validation. I submit these should be requested and if none this should be included in disclaimers.

Also that it will be operated by a qualified 'Healthcare Professional' Th&H 1a

Also I submit that its unfailing effectiveness 1b is overstated, preying on a vulnerable audience. 1 b, c

Submit that the Ads 'medical' language will not be readily understood by the audience; 'Body Composition Analysis', 'harmful electromagnetic influences', and 'Non invasive Blood test' is impressive sounding nonsense likely to mislead the average reader. 1d.

Truthful presentation.

I submit this breaches 'Truthful and not Misleading Principle 2 confuse, unrealistic exaggerated claims - on the Scanner itself and what it can do.'

There are many claims made, and I note it is an offence under the FTA to make a claim in an Ad that cannot be substantiated. 2a.

ASA Ppl 2. Truthful Presentation All things mentioned thro Ad. The price of initial scan...\$550 is not stated, nor ongoing costs for "the 3 most essential medicines needed to kick start your healing and stop pain and discomfort". 2 b costs: 2b unrealistic claims.

Scanner 'Unique'. 2d. comparative advertising, implying it superior to other scanners, denigrating others.

Scientific justification for this claim should, be readily available on request.

'our doctors', 'the doctor', 'the doctor'. appears in text from which I submit an average reader might reasonabley expect to be a doctor in New Zealand, and holding an NZ Medical Council annual practising certificate.

...

Disclaimers ASA Principle 2

Too small, not linked to the relevant text.

Rule 2 (a) 'Disclaimersmust be clearly visible and easily understood'....Too small

Rule 2 (b) 'Where appropriate the information must be linked to the relevant part of the main message'.

Being separated from the main text and sited at the extreme bottom of the advert the disclaimer is clearly is not linked, and being in very small hard to read print it could easily be overlooked.

2(b) I submit that Marvel Health Disclaimers also contradict information in the body of these advertisements.

1st Disclaimer:"T4 inspection from the scan is not a substitute for medical inspections". but the text says: "The whole body scan we perform provides our doctors with a comprehensive report of a patient's state of health."

My comment: This is unequivocally touting the scan as a medical inspection. It refers to 'doctors' comprehensive report' and 'of a patient's state of health' and would be read as such by the average reader.

2nd M H Disclaimer:

"It is not designed to state the final diagnosis". Text says:

"How Marvel Health delivers advanced Diagnostics..." "After studying the scan reports, our doctors make personalised and targeted recommendations." "During your 30-minute tele-consultation with the doctor they recommend only the 3 most essential medicines that you need to kick-start your healing and stop pain and discomfort."

Comment:

I submit that the MH claiming that

"the whole body scan we perform provides our doctors with a comprehensive report of a patient's state of health. It reveals hidden diseases and their causes and our recommendations are based on the detailed information from the scan."

....and would be read by a non medically trained ...average reader....to imply they will receive a medical inspection, and final diagnosis, M H doctors are clearly involved in study of the scan report and recommendation of medicines.)

I submit that these M H Disclaimers contradict the claims they qualify, breaching Principle 2, Rule 2(b) Truthful presentation are too small and not linked to relievant text.

Finally I note that the ASA received a Complaint about a Marvel Health advertisement in March 2020.

Quote:

"The Chair noted the Complainant's concerns the advertisements made unsubstantiated therapeutic claims.

The Chair acknowledged the Advertiser had removed the advertisements after receiving the complaint. Given the Advertiser's co-operative engagement with the process and the self-regulatory action taken in removing the advertisements, the Chair said it would serve not further purpose to place the matter before the Complaints Board.

The Chair ruled the matter was settled."

"Complainant's comment:

The Advertiser has brought his Marvel Health clinic and advertisements from Spain and Ireland (previous M H advertisement) and I assume the Advertiser after complaint 20/409 was made aware of the existence of NZ's ASA, its role in regulating advertising in NZ, and especially its relevant Therapeutic and Health Advertising Code.

...Conclusion:

This M H 'Therapeutic and Health' related advertisement breaches many of the ASA's Principles and Rules and Th & H Code as noted above. Pple 1 Pple 2, a, b, c, f
I ask that they receive urgent attention as Marvel Health's Tauranga clinic opened for business and exploitation of the public on 7th July 2021.

I request these advertisements be placed before the Complaints Board for consideration as to whether they should be banned, and whether the Advertiser be required to forward any future advertisements -Therapeutic and Health or not - to the ASA for scrutiny and clearance before publishing in the NZ media, for the above reasons

Appendix 2

RESPONSE FROM ADVERTISER, MARVEL HEALTH

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