

COMPLAINT NUMBER	21/422
ADVERTISER	Marvel Health
ADVERTISEMENT	Marvel Health, Print
DATE OF MEETING	21 September 2021
OUTCOME	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 and elderly audiences.

Advertisement

The print advertisement for Marvel Health featured in the *Bay of Plenty Times* newspaper. The advertorial describes why the Marvel Health screening is an ideal WOF for over 60's. The advertisement discusses health problems which become more prevalent with age. The advertisement says the scan is ideal for screening for narrowing arteries and chronic inflammation. The scan can help its doctors make personalised and targeted recommendations. The advertisement's bottom banner offers a "Total Health WOF." The advertisement 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, which could be misleading and prey on the elderly and vulnerable.

Issues Raised:

- Social Responsibility
- Truthful presentation
- 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).

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 promoting its health scan as the ideal WOF for the over 60 age group
 - Medium: Advertisement in the *Bay of Plenty Times* newspaper
 - Audience: Adults reading the newspaper, with a target audience of the over 60 age group
 - 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 emphasises the scan is an ideal WOF (Warrant of Fitness) for older people and refers to age-related health issues such as joint and bone problems, cardiovascular disease and neurodegenerative diseases. The service then has doctors to analyse results and offer natural substances and therapies as remedies. The Board said 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, in particular age-related health issues such as joint and bone problems, cardiovascular disease and neurodegenerative diseases. The claim is made that these age-related issues can be slowed down. The advertisement claims the scan can also detect 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.

Is the advertisement misleading to compare the scan to a vehicle WOF?

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 Complaints Board said the Advertiser was using this term as an analogy for a total health assessment and were required to provide substantiation to support the claims made regarding each of the health issues raised in the advertisement.

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 Rules 2(a) 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 “healthcare specialists” 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 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 was directed at an older, over 60 age group. The advertisement claims to be able to slow down common and complex age-related health problems such as joint and bone problems, cardiovascular disease and neurodegenerative diseases. The Board said this was likely to cause undue concern for some consumers. The Complaint Board agreed that without adequate substantiation to support these claims, the advertisement could be seen to prey on a vulnerable older 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?

The Complaints Board noted the Complainant had raised the issue of comparative advertising, 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 Complaints Board said this matter 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 it preyed on vulnerable and elderly 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) 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. 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

A S A. Editor, BOP Times
Wellington
6 August 2021

1. Re: 'Marvel Health' series of weekly advertisements in Bay Sun(2) and BOP Times (6: 2 July - 6 Aug 2021)
2. Re: 'Total Health WOF Whole Body Diagnostic Scan, Report, Consultation and Therapy.'

Please receive my further consideration of the advertiser's specific Headline claim in bold capitals on 30 July 2021 that THE MARVEL HEALTH SCREENING IS AN IDEAL WOF FOR OVER 60's.'

Also repeated lower in the advertisement:

'Total Health WOF Whole Body Diagnostic Scan, Report, Consultation and Therapy.'

I submit that MH's series of 8 weekly advertisements should be considered as a single advertising campaign.

And that the various claims made and subject to Complaints be considered as if for one advertisement. Is this possible?

I submit the advertiser in claiming that his Marvel Health Screening etc is equivalent to a New Zealand Transport Authority Warrant of Fitness for a motor vehicle 'and an ideal WOF for Over 60s'. breaches ASA codes-

Pple 1 Social Responsibility

Rule 1 g exploiting vulnerable audiences...Tauranga's large aged popn.

Pple 2 Truthful presentation.

Rule 2 a Identification, disclaimers too small, not clearly visible Rule 2b Truthful presentation.

Advt misleads, likely to deceive, confuse, exploit lack of knowledge by implication.

Goes well beyond hyperbole and is very likely to mislead.

Has advertiser evidence to substantiate this claim?

Disclaimers contradict the claims they qualify

-a WOF does provide/state a final diagnosis on motor vehicles so not comparable to the MH screening etc which does not. Advertiser deliberately confusing, pulling wool over readers eyes. A large clear disclaimer must be made in body of relevant text if WOF is mentioned.

My submission is that it should not be used/is totally inappropriate in any MH health screening and therapy advertisement.

Rule 2d. This MH advt is Comparative Advertising, not naming but implying MH provides an equivalent or superior Health Service....ie no need to seek advice and treatment from your NZ Medical Council certificated Doctor, health professionals. Quote..'The good news is that such health problems are preventable, and we can slow down their occurrence.'. I submit 'We' are non N Z registered doctors and 'healthcare specialists' who do not hold NZ registered qualifications,

Also information gained from the MH Scanning Device must be questioned . I suggest it has not been approved as a Medical device, and not operated by an NZ approved operator.
Rule2e. Advocacy advertising .

the advertiser dr M Mannu is advocating a new 'medical service'. and must present appropriate and robust evidence to support his claims. Also I suggest should Identify himself clearly stating he is not an NZ medical council registered Doctor. Without this consumers will believe he is.
otherwise not Socially responsible; untruthful, unbalanced and misleading. Pple 1,2

On the matter of an NZ WOF versus Marvel Health Screening.

Vehicle Safety.	Personal Health
cost WOF \$49 - 69.	MH screening \$550-\$2,000
NZ Qualifications.	NZ Qualifications.
for WOF inspector:	for operating MH screening:
3yr qualified automtve technician. None.	
plus 5 yr. experience	
plus searching exam	
plus 3 yr reassessments.	None
premises/equipment assessment. None	
NB overseas qualifications must be recognised in NZ by NZQA	None
Legal liability if WOFed car unsafe, causes death	
?? MH No liability if fatal condition undiagnosed	

I submit it the advertiser blatantly breaches ASA Principles of Social Responsibility and Truthful Presentation in claiming his Marvel Health Medical Screening is comparable to the NZTA's NZ. WOE

The initials of this abbreviation is recognised in NZ to stand for the NZTA's NZ Warrant of Fitness- a legal requirement requiring all motor vehicles to be examined each 6 or 12 months and if unsafe rendered safe to be allowed legally to be driven in NZ.

I submit this advertisement should be prohibited in the media, and any new version of it be submitted to TAPS. -Therapeutic Advt Pre-Vetting Service -at the advertisers expense to ensure ASA Codes of Practice are not breached again.

I fear that MH scan could miss a clients fatal condition. With no liability. ASA+BOP Times should not allow this Advt in the Media Thank you for your consideration of this matter

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.