

COMPLAINT NUMBER	21/435
ADVERTISER	30 Seconds Ltd
ADVERTISEMENT	30 Seconds Ltd Television
DATE OF MEETING	7 December 2021
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a television advertisement for 30 Seconds Spray and Walk Away Concentrate. The Board said the advertisement was not misleading as the comparative claims made had been substantiated.

Advertisement

The 30 Seconds television advertisement promotes the 30 Seconds Spray and Walk Away Concentrate by comparing it to a competitor's product, Wet and Forget Moss Mould Lichen & Algae Remover.

A man pushing a trolley of 30 Seconds Spray and Walk Away stops when he sees his neighbour cleaning his driveway and says: "That's about 100 bucks, eh? You should try this, my friend. Less than 30 bucks in store and in over 120 hardware stores around New Zealand. Does the same thing, has the same active ingredient, and see right here? It says on the label it's the same strength, except you can get more for the same price. So one for you, one for your mother in law, and one for your neighbour, too, if you're feeling generous. Just don't like seeing people throw their money away.

In small print across the bottom, of the advertisement was the following text:

"Labels show the product contains 99g/L of active ingredient. Active ingredient is alkyl benzyl dimethyl ammonium chloride".

'Based on the price of Wet & Forget Moss Mould Lichen & Algae Remover 5L Concentrate advertised on www.wetandforget.co.nz on 12/08/21 and on the price of 30 SECONDS Spray & Walk Away 5L Concentrate in store at Mitre 10 and Bunnings on 12/08/21. Pricing at your local retailer may differ".

Summary of the Complaint

The Complainant was concerned the advertisement was misleading because the two products do not have the same ingredients and results.

Issues Raised:

- Truthful presentation
- Comparative advertising

Summary of the Advertiser's Response

The Advertiser defended the advertisement and said:

- (a) They have the same active ingredient (alkyl benzyl dimethyl ammonium chloride) at almost identical concentration levels.
- (b) The products have the same label strength.
- (c) The products do the same job.

- (d) Wet & Forget's product is \$99, as advertised on its website, while the prices of 30SECONDS' product at Mitre 10 and Bunnings is under \$30.

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.

Rule 2(d) Comparative advertising: Comparative advertisements, or advertising that identifies a competing product or service, must be factual, accurate, make clear the nature of the comparison, must not denigrate competitors and must be of 'like' products or services available in the same market.

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. 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 competitive outdoor cleaning product market
 - Medium: Television
 - Audience: Television audience
 - Product: Outdoor cleaning product

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was 30 Seconds is a good product to use for outdoor cleaning. The advertisement presents the product as similar to Wet & Forget, with the same active ingredient, and states it is cheaper.

Is the advertisement misleading?

The Complaints Board agreed the advertisement was not misleading. The Complaints Board said the Advertiser had provided sufficient substantiation to show the advertised product included the same active ingredient, at the same strength and performed the same as the competitor's product, but for a cheaper price.

The Complaints Board noted the reference to a report written by a consultant chemist, confirming that the two products 30 Seconds Spray & Walk Away 5L Concentrate and Wet & Forget Moss Mould Lichen & Algae Remover 5L Concentrate "had equivalent performance" and "had the same active ingredient at almost identical levels of concentration".

The Complaints Board noted the pricing information provided by the Advertiser comparing different retail prices for both products which confirmed the 30 Seconds product was cheaper.

Was the advertisement in breach of Rule 2(d) Comparative advertising?

The Complaints Board agreed the advertisement was not in breach of Rule 2(d) Comparative advertising. This is because while the advertisement identified a competing product or service it did not reach the threshold to denigrate a competitor.

The Complaints Board said the advertisement was not misleading, taking into account context, medium, audience and product and was not in breach of Principle 2, Rule 2(b) or Rule 2(d) 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 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
 3. Response from Media
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Appendix 1

COMPLAINT

I write to complain about an advert we saw in Bravo tv. It is the 30 seconds ad comparing a wet and forget product. My husband and I have used both 30 seconds and wet and forget concrete cleaner and the products are not the same in terms “the same ingredients” and results. Rapid- works for months and is safe, 30s is toxic and bleach like. Let’s just say, you get what you pay for. So their claim that they can get the same product and exaggerate the (x3) discount is totally innaccurate and misleading- as stated in the commerce commissions “comparative advertising” section.

I don’t believe that it is legal that you can compare one product to another like this ad does. It’s an absolute disgrace and I’m gutted for wet and forget or any other NZ company to be slandered like this. I know for fact this is illegal in USA.

Appendix 2

RESPONSE FROM ADVERTISER, 30 SECONDS LTD

30 SECONDS’ Television Advertisement – Complaint 21/435

2. Thank you for the opportunity to respond to the complaint regarding 30 SECONDS’ television advertisement comparing its Spray and Walk Away 5L Concentrate and Wet & Forget Moss Mould Lichen & Algae Remover 5L Concentrate.
3. 30 SECONDS is a responsible advertiser. It is very mindful of, and takes seriously, its obligations to make accurate and substantiated claims.
4. 30 SECONDS’ advertisement is fulsome, true and draws factual comparisons with a competing ‘like’ product. The advertisement cannot be misleading in such circumstances. 30 SECONDS therefore wishes to defend the complaint.

The complaint

5. The complainant contends that the 30 SECONDS and Wet & Forget products compared in the television advertisement are not the same in terms of ingredients and results. No evidence is provided to support this view.
6. Your letter records that Rules 2(b) and 2(d) of Principle 2 of the Advertising Standards Code appear to be relevant.

30 SECONDS’ advertisement

7. 30 SECONDS’ advertisement complies with Rules 2(b) and 2(d) of the Advertising Standards Code. Relevant to the complaint, these Rules require that:
 - (a) The comparisons are accurate;

- (b) The comparisons are clear; and
 - (c) The comparisons relate to 'like' products available in the same market.
8. 30 SECONDS' advertisement contains the following accurate representations comparing its Spray and Walk Away 5L Concentrate and Wet & Forget Moss Mould Lichen & Algae Remover 5L Concentrate:
- (a) They have the same active ingredient.
 - (b) The products have the same label strength.
 - (c) The products do the same job.
 - (d) Wet & Forget's product is \$99, as advertised on its website, while the prices of 30SECONDS' product at Mitre 10 and Bunnings is under \$30.
9. In short, 30 SECONDS' advertisement makes consumers aware that its product has the same active ingredient and does the same job for less than a third of the price of Wet & Forget's product. In doing so, 30 SECONDS is promoting competition in the market. I attach the scripts and the advertisements.
10. 30 SECONDS first ran the television advertisement on TVNZ and MediaWorks' channels in September 2020. The television advertisement was part of an extensive campaign that included digital media. 30 SECONDS is not aware of any other complaint to the Advertising Standards Authority regarding the representations in the advertisement.
11. This year, 30 SECONDS has run its Spring campaign, including the television advertisement, since August. The advertisement is currently running on the Sky TV and Spark Sport networks. 30 SECONDS also has digital activity running across Google, YouTube and social media which link to the landing page on 30 SECONDS' website. The Spring campaign will end on Monday, 11 October 2021.
12. Spray and Walk Away 5L Concentrate and Wet & Forget Moss Mould Lichen & Algae Remover 5L Concentrate compete in the same outdoor cleaning market and target the same consumers.

30 SECONDS' advertisement is accurate and true

13. All of 30 SECONDS' representations are fulsome and true. We note:
- (a) The active ingredient of both products is alkyl benzyl dimethyl ammonium chloride.
 - (b) Independent chemists confirm that the amount of active ingredient in both products is almost identical at slightly above or below 100g/L – the label claims of both products are 99g/L of active ingredient.
 - (c) Laboratory testing and real world trials carried out by independent chemists confirm that the products perform identically. This is to be expected, of course, given that the products contain the same active ingredient at almost identical concentration levels slightly above or below 100g/L.
 - (d) The price of Wet & Forget Moss Mould Lichen & Algae Remover 5L Concentrate is \$99 whereas the price of Spray and Walk Away 5L Concentrate is under \$30 at Bunnings and Mitre 10.
14. We address each of these points further below.

The active ingredient of both products is alkyl benzyl dimethyl ammonium chloride

15. Many outdoor cleaners utilise a class of active ingredients called quaternary ammonium compounds (also known as quats or QAC's) due to their biocidal activity.
16. Alkyl benzyl dimethyl ammonium chloride (ADBAC) is a mixture of QACs where the nitrogen atom is surrounded by a long chain (alkyl group) of varying even numbered length, two single carbon (methyl groups), an aromatic (benzyl group) and a chloride counter ion.
17. The label on Spray and Walk Away 5L Concentrate records that the active ingredient is benzalkonium chloride (BAC) at a concentration of 99g/L. BAC is a shortened generic term for ADBAC. I attach a copy of both the product label and safety data sheet which record the active ingredient.
18. Wet & Forget Moss Mould Lichen & Algae Remover 5L Concentrate records on the label that the active ingredient is N-Dodecyl/Hexadecyl-N, N-dimethyl benzyl ammonium chloride at a concentration of 99g/L. This is a systematic name provided by the International Union of Pure and Applied Chemistry for a mixture of ADBAC. I attach a copy of both the product label and safety data sheet which record the active ingredient.
19. The label on 30 SECONDS' product also records the precautions for safe handling and storage. Of course, such safety measures apply equally to Wet & Forget's product given that they have the same active ingredient. Neither product contains bleach.
20. In summary, the labelling on both products refers to the same active ingredient. The difference in naming convention simply reflects that 30 SECONDS uses a generic name which it considers to be more accessible to the public, whereas Wet & Forget uses a systematic name.
21. On 6 October 2021, 30 SECONDS' lawyers received a letter from Wet & Forget's lawyers recording that its client had advised that "*the products concerned do not contain the same active ingredient.*" The letter was vague and did not provide any evidence to support Wet & Forget's position. It also contradicted confirmation from Wet & Forget's lawyers in September 2020 that the products "*share the same active ingredient.*" In any event, 30 SECONDS is investigating whether Wet & Forget has changed the active ingredient in its product since the commencement of 30 SECONDS' campaign in 2021.

30 SECONDS meets its label claim of 99g/L of active ingredient and both products have almost identical concentration

22. Testing carried out by independent chemists before the advertising campaigns in 2020 and 2021 confirmed that both products have almost an identical concentration of the same active ingredient at slightly above or below 100g/L.

The products performed identically in real world trials

23. Independent chemists also conducted laboratory and real world trials to compare the performance of the products. Those trials confirmed that both products performed identically. That is, they did the same job.
24. Specifically, when tested for fungicidal activity in a laboratory performance trial, the samples of both products killed the same amount of fungi. The independent chemists determined that the products had equivalent performance.
25. The results from the real world trials enabled the independent chemists to reach the same conclusions. In those trials, both products showed equivalent browning of the biological growth throughout the trial irrespective of the moss and mould growth. Again, the independent chemists determined that the products had equivalent performance.

26. These results were entirely predictable given that the products contain the same active ingredient with the same label strength.

The prices in the advertisement are true and accurate

27. The complainant does not suggest that the prices in the advertisement are inaccurate. Nonetheless, 30 SECONDS substantiated the prices with screenshots and receipts which I attach. The relevant dates are referenced during the television advertisement.

Concluding comments

28. Spray and Walk Away 5L Concentrate and Wet & Forget Moss Mould Lichen & Algae Remover 5L Concentrate are 'like' products that do the same job but with very different prices. The advertisement is accurate, clear and substantiated.
29. 30 SECONDS is simply bringing price into consumers' decision-making to improve competition and help them save money.
30. 30 SECONDS would be happy to assist further if the Complaints Board has any questions or requires clarification on any of the above.

Please find to follow a link to the necessary documentation in support of this letter as outlined below

- The Television advertisements
 - CAB key numbers are
 - 30S_45_WFLOW_R3
 - 30S_45_WFHUND_R3
- Scripts for the two advertisements – original format
- Safety Data Sheet – Wet and Forget Moss Mould Remover – shows active ingredient
- Safety Data Sheet – 30 Seconds Spray and Walk Away – shows active ingredient
- Product Label - Wet and Forget Moss Mould Remover – shows active ingredient strength
- Product Label - 30 Seconds Spray and Walk Away – shows active ingredient strength
- Pricing record - Wet and Forget Moss Mould Remover
- Pricing record - 30 Seconds Spray and Walk Away Mitre 10
- Pricing record - 30 Seconds Spray and Walk Away Bunnings

Appendix 3

RESPONSE FROM COMMERCIAL APPROVALS BUREAU

Complaint 21/435 - 30 Seconds- Key:30S 45 WFUNDR2 -Classification: G

We have been asked to respond to a complaint for this advertisement under the Codes of Truthful Presentation and Comparative Advertising.

Versions of this advertisement have been airing since September 2020. The only alterations made have been regular updates of the price comparisons to ensure the actual broadcast material is current. The latest comparison was on 21st September 2021. The advertiser holds such receipts.

Before the advertisement went to air both the 30 Seconds Spray and Walkaway and Wet and Forget products were subjected to independent testing to confirm the same ingredients were used.

The competitor is clearly identified within the commercial and it should also be noted that Wet and Forget have not proceeded to an AWAP as competitors may do if they believe a comparison is in any way untruthful.

CAB sees no reason as to why this single complaint should be upheld.