

COMPLAINT NUMBER	21/505
ADVERTISER	Department of Prime Minister and Cabinet
ADVERTISEMENT	Unite Against COVID-19, 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 complaints about the New Zealand Government's television advertisement supporting the COVID-19 vaccine during pregnancy. The Complaints Board said the Advertiser had provided sufficient substantiation for the implied claim made, that on-balance deciding to get vaccinated was the better option for the health of the woman and her child who featured in the advertisement.

Advertisement

The television advertisement promotes getting the COVID-19 vaccine during pregnancy. It shows a woman sitting at a table explaining how she decided that the vaccine was "the best thing for me and the baby". The advertisement then shows text on a light purple screen stating, "Help protect the people you love" and a website URL to book vaccination. "Te Kāwanatanga o Aotearoa New Zealand Government" and the "Unite Against COVID" logos are shown in the corners of the screen.

Summary of the Complaints

Three Complainants were concerned the advertisement was misleading to state the vaccination is safe for pregnant women when there is insufficient research or experience available. The Complainants say no trials have been completed and there remains insufficient data to claim it is safe.

Issues Raised:

- Truthful Presentation
- Advocacy Advertising

Summary of the Advertiser's Response

The Advertiser said the aim of the advertisement was to share similar journeys to those pregnant people who may be making the decision about getting the COVID-19 vaccination. The Advertiser said the unscripted dialogue talks through the motivations of one woman, Sarah. The Advertiser said the Ministry of Health supports vaccination for pregnant people and provided a website link which includes a doctor's endorsement. The Advertiser said the advertisement does not make any absolute claims that the vaccine is "safe" and provided links to multiple international studies which support the efficacy of the vaccine for pregnant people as part of its response.

Summary of the Media Response

The Commercial Approvals Bureau (CAB) said the testimonial of Sarah refers to her doing her own research after talking to her obstetrician and deciding to get vaccinated. CAB refers to points made in the MOH website which says the vaccine protects pregnant mothers from serious illness and that evidence shows babies can get antibodies through the placenta.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaints 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(e) Advocacy advertising: Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

Relevant precedent decisions

In considering these complaints the Complaints Board referred to two precedent decisions, Decision 21/218 which was ruled No Grounds to Proceed and 21/229, which was Settled.

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

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

Decision 21/218 concerned a brochure advertisement from the New Zealand Government about the Pfizer vaccine and the staged vaccination roll out in New Zealand. The Complainants raised a number of issues about claims made in the advertisement.

The Chair of the Complaints Board said issues related to the efficacy of the vaccine were not a matter for the ASA. The vaccine referred to in the advertising had received approval from Medsafe, the Government regulator for prescription medicines. The Chair noted the Datasheet which sets out all the relevant information for the vaccine, under Medsafe's approval process is available on the Medsafe website. The Chair ruled there were no grounds for the complaints to proceed.

Decision 21/229 concerned a print advertisement from the New Zealand Government about the Pfizer vaccine which said the vaccine was "up to 95% effective at stopping you catching COVID-19."

The Chair of the Complaints Board accepted the complaints and the Advertiser responded to confirm there had been an error in the advertisement copy and amended the statement in future advertisements to read "Studies have shown that 95% of people who receive both doses off the vaccine are protected against getting seriously ill." The Chair ruled that the self-regulatory action of amending the advertisement meant that the matter was settled.

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: COVID-19 pandemic and increased cases of Delta variant
 - Medium: Television
 - Audience: Television viewers
 - Product: The COVID-19 vaccination campaign

Does the advertisement fit the definition of advocacy advertising?

The Complaints Board said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 2(e) of the Advertising Standards Code. This Rule required the identity of the advertiser to be clear; opinion to be distinguished from factual information and factual information must be able to be substantiated. The Advocacy Principles developed by the Complaints Board in previous decisions considered under Rule 11 of the Code of Ethics remain relevant. They say:

1. That section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people's rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the rights granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

Role of the ASA when considering an advocacy advertisement.

The Complaints Board noted its role is to consider the likely consumer takeout of an advertisement and complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

The Complaints Board observed that in a free and democratic society, issues should be openly debated without undue hindrance or interference from authorities such as the Complaints Board, and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations.

Under Rule 2(e) Advocacy advertising of the Advertising Standards Code:

- The identity of the advertiser must be clear.
- Opinion must be clearly distinguishable from factual information, and
- Factual information must be able to be substantiated.

If the identity and position of the Advertiser is clear, a more liberal interpretation of the Advertising Standards Code is allowed.

Is the identity and position of the Advertiser clear?

The Complaints Board confirmed the identity and position of the Advertiser was sufficiently clear for the advertisement to be considered as advocacy advertising. The Board took into account the inclusion of the Unite Against COVID-19 logo and New Zealand Government name in the advertisement. The Board noted the Advertiser in this case is the New Zealand Government advocating for New Zealanders to protect the people they love from the virus by booking in to be vaccinated and the advertisement includes the BookMyVaccine.nz website address.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was it is the story of one pregnant woman talking about her decision-making process about the COVID-19 vaccination. This included weighing up the options and getting advice from her obstetrician. The Board said there was also an implied claim that on-balance, getting vaccinated when pregnant was the better option for the health of the woman, Sarah, and her child.

The Complaints Board noted there was context for the advertisement, as pregnant people have lower vaccination rates than other sectors of the population. The Board also noted that pregnant people had been advised not to be vaccinated earlier in the pandemic health response messaging. The Board said this advice had evolved from suggesting people make a choice about the vaccine, to the current stance which is that on-balance the benefits of the vaccine out-weigh any risks.

The Complaints Board also noted the Advertiser's response which said its research showed that people who are having difficulty making decisions are assisted by seeing the decision-making process others work through.

Has the Advertiser substantiated any factual claim made in the advertisement?

The Complaints Board said that although the Advertiser did not make an absolute claim about the vaccine being "safe", there was an implied claim by Sarah that the benefits of the vaccination outweighed any potential risks.

The Advertiser provided multiple international studies which support the efficacy of the vaccine for pregnant people as part of their response and also referred to the Ministry of Health's website. The website includes information supporting vaccination for pregnant people and contains a video of Dr Nikki Turner stating the benefits of the vaccine for both mothers and babies.

The Complaints Board noted the Government agencies working on the advertising campaign included the Ministry of Health which has a statutory duty to provide information to the public. The Board said the Ministry is an expert body with regard to their statutory role relating to public health matters. Therefore, in accordance with the findings of the Court of Appeal in *Electoral Commission v Cameron* [1997] 2 NZLR 421,424 the Complaints Board was required to "tread carefully" and ensure that it did not substitute its opinion for that of the expert body.

The Complaints Board said the advertisement was Not Upheld, taking into account context, medium, audience and product, together with the Advocacy Principles and the application of *Cameron* to advertising from an expert body.

The Complaints Board ruled the advertisement was not in breach of Principle 2 or Rules 2(b) and 2(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaints were **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 1

It is disgusting that tvnz have permitted an ad to be placed on National tv that promotes pregnant women getting the covid vaccination when there has not been sufficient long term research or testing into the side effects the vaccine has on pregnant women or their babies (we will not know these effects for years to come). The only research that has been done re fertility has been conducted on lab rats and there has been limited research into the effects it has on pregnancy (I have read the medsafe medical reports - maybe you should read them too). The only testing conducted on pregnant women is sadly being conducted now with this roll out on the world population. Refer 2 to page 4 of the <https://medsafe.govt.nz/Profs/datasheet/c/comirnatyinj.pdf> it states clearly "there is LIMITED experience with use of COMIRNATY (the brand name pfiser use for the covid19 vaccine) in pregnant women". Permitting an ad like this that promotes misinformation for pregnant women to get the covid vaccine is not only negligent, irresponsible but down right stupid!

COMPLAINT 2

The interview with an apparent pregnant person insinuating that the Covid 19 vaccine is safe is offensive and disgusting. This vaccine is NOT safe to pregnant women. Why have we said it is safe when it hasn't completed ANY trials yet, and only just started trials on pregnant people. Medsafe has reported many miscarriages as a result of this vaccine and just based on that fact, is NOT safe. Saying ANYTHING is safe for a pregnant women needs to undergo strict protocols from history, and this vaccine has not even started to address concerns. Therefore, it should not be advertised as being safe.

COMPLAINT 3

Covid vaccination during pregnancy is being promoted as safe. This is false information. As stated on the Pfizer Cominarty Vaccine Package Insert. Full Prescribing Information Use in Specific Populations 8.1 Pregnancy "available data on Cominarty administered to pregnant women are insufficient to infirm vaccine associated rusks in pregnancy" 8.2 Lactation "it is not k own whether Cominarty is excreted in human milk" Access to this insert can be found here www.fda.gov/media/151507/download If the manufacturers cannot confirm safety citing insufficient data I believe the NZ Govt advertisement (mentioned above) showing a pregnant women discussing her vaccine decision during 2 pregnancy based on its safety is in breach of advertising standard as false information.

Appendix 2

RESPONSE FROM ADVERTISER, DEPARTMENT OF PRIME MINISTER AND CABINET Re: New Zealand Government Advertisement – Appeal 21/505

Thank you for your email of 16 November 2021 in which you ask for the Department of the Prime Minister and Cabinet's response to complaints received about our Vaccine advertisement (ad) which focuses on Sarah, a pregnant woman sharing the reasons she chose to get vaccinated.

You have indicated that the concerns of the complaints fall under the following areas:

Advertising Standards Code - Principle 2, Rule 2(b) Truthful Presentation, Rule 2(e) Advocacy

For some people, making the decision to get vaccinated is a very difficult one, and our research shows that hearing from others who have been on a similar decision-making journey would be helpful e.g. *“I want to see other vaccine hesitant people work through their decision.”* (TRA Motivations and Barriers Research Sept 2021).

This layer of the vaccine campaign is designed to do just that – to connect with and reassure the as-yet undecided, through authentic stories from people like them. The series of ads shares the journeys of people who were uncertain about being vaccinated and what motivations or information changed their mind.

The ad shows a pregnant person, Sarah, sharing the reasons she decided to get vaccinated. The ad was not scripted at all – Sarah simply talked through her decision journey with the interviewer.

I have outlined the ad copy below:

“After doing some research on other pregnant people having the vaccine, and talking to my obstetrician, I decided that that was probably the best thing for me and the baby.”

Help protect the people you love

Visit [Bookmyvaccine.nz](https://bookmyvaccine.nz)

The Ministry of Health supports vaccination for pregnant people, as stated on the Ministry’s website (<https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-vaccines/covid-19-vaccine-health-advice/covid-19-vaccine-pregnancy-and-breastfeeding>):

If you’re pregnant, you can get a COVID-19 Pfizer vaccine (Comirnaty) at any stage of your pregnancy.

The vaccine protects you as you’re far less likely to fall seriously ill. It also protects your pēpi as there is evidence that babies can get antibodies through the placenta that help protect them from COVID-19.

In a video on the same webpage, Dr Nikki Turner points out that, *“you can get a lot sicker with COVID when you’re pregnant – higher risk of miscarriage or losing your baby, so it’s really good to know that the COVID vaccine is very effective for pregnant women.”*

“I guess the best news of all is that if you do get a vaccination when you’re pregnant, that your immune response will give you antibodies that will be passed on to your baby. So when your newborn baby comes they’ll also have some protection against COVID-19.”

Dr Turner goes on to say that there is a lot of international data now showing that the vaccination works very well with pregnant woman and has a really good safety profile.

The ad itself does not make any absolute claims that the vaccine is ‘safe’, rather it simply shares the journey that Sarah has been on to get the vaccination.

The ad ends with a tagline ‘Help protect the people you love’, which refers to Sarah’s comment that it was “the best thing for me and the baby”.

Please see the links below to the multiple international studies which support the efficacy of the vaccine for pregnant people – these links can also be found on the Ministry of Health website (link above):

1. [The impact of COVID-19 on pregnancy](#)
2. [COVID-19 vaccination coverage among pregnant women](#)
3. [Pregnancy and neonatal outcomes of COVID-19 – a study from the UK and US](#)
4. [mRNA COVID-19 vaccine safety in pregnancy – a US study](#)
5. [The vaccine and risk of miscarriage - a study from the US](#)

Please don't hesitate to contact me if you require any further information.

Appendix 3

RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU

Complaint 21/505 1188 **Advertiser: Department of Prime Minister** **Key: DPM 015**
Classification: G

Three complainants are of the opinion that the COVID vaccine is unsafe for pregnant women.

For much of the past year there has been substantial advertising calling for the public to get the COVID vaccine and the identity of the advertiser "bookmyvaccine.nz" is clearly recognised in this instance. In this testimonial Sarah speaks of doing her own research and after talking to her obstetrician has concluded for not only herself, but to help protect the people she loves, she needed to have the vaccine.

Under the Ministry of Health guidelines there is clear advice for pregnant women together with a recommendation for those that are still unsure to discuss any concerns they may have with their doctor or medical specialist.

Among the points made in the MOH website is the statement:

"If you're pregnant, you can get a COVID-19 Pfizer vaccine (Comirnaty) at any stage of your pregnancy. The vaccine protects you as you're far less likely to fall seriously ill or to transmit the virus to others. It also protects your pēpi as there is evidence that babies can get antibodies through the placenta that help protect them from COVID-19."

CAB contends complaints against this advocacy advertising should not be upheld.