

COMPLAINT NUMBER	21/523
ADVERTISER	Department of Prime Minister and Cabinet
ADVERTISEMENT	Unite Against COVID-19, Radio
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 radio advertisement advocating for eligible people to get vaccinated for summer. In the context of advocacy advertising from the New Zealand Government in support of a high rate of vaccination, the advertisement was not misleading.

Advertisement

The Department for Prime Minister and Cabinet radio advertisement promotes vaccination against COVID-19. The advertisement begins with the female voiceover calling "Shot!". She then encourages listeners to get their first vaccination today and their second in three weeks in order to be "fully protected" and "good to go for summer". She provides a website address (covid19.govt.nz) to find a vaccination centre.

Summary of the Complaints

Four Complainants were concerned the advertisement was misleading to use the phrase "fully protected" in relation to receiving two doses of the vaccine. The Complainants said this implies complete protection when in reality fully vaccinated people can still catch the virus, pass it on, suffer symptoms and even die from the illness.

Issues Raised:

- Truthful Presentation
- Advocacy Advertising

Summary of the Advertiser's Response

The Advertiser said the campaign was a series of advertisements reinforcing the importance of getting your first dose in order to be fully immunised for summer. The Advertiser said the reference "fully protected" is about being fully protected by a certain date, meaning when the vaccination will provide the greatest degree of protection. The Advertiser said the advertisements aimed to communicate the timeframe required for vaccination as opposed to the efficacy of the vaccination itself.

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.

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.

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: The Government's campaign to support a 90% double vaccinated rate in time for summer and the move to The Traffic Lights COVID-19 protection framework
 - Medium: Radio
 - Audience: Radio listeners
 - Product: The Government's COVID-19 vaccination campaign

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 noted the reference to the Government website, BookMyVaccine.nz, which encourages New Zealanders to begin the vaccination process in order to be fully protected by the second vaccine before summer.

Consumer Takeout

Some members of the Complaints Board said the likely consumer takeout of the advertisement was there is still time to get both doses of the COVID-19 vaccine and be fully vaccinated and enjoy summer. Other Board members acknowledged some consumers may interpret the reference to “fully protected” to refer to the efficacy of the vaccine.

Is the phrase “fully protected” in the advertisement misleading?

The Complaints Board said the phrase “fully protected” raised some issues as there was more than one interpretation of the wording in relation to vaccines.

The Board agreed there was considerable context surrounding the advertisement with a large amount of information available from a variety of sources about COVID-19, including the Government, the science community, news media and interest groups. The Board noted the breadth of messaging from the Government reinforcing additional health protection measures such as masks, social distancing and being vigilant about symptoms are still required in addition to vaccination.

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 noted the Advertiser’s position about the importance of obtaining the first dose of the vaccination in order to complete the second dose before the start of the summer holidays when the travel restrictions around the country were due to be relaxed. The Complaints Board said it would defer to the Government’s expert view on how best to convey the importance of being vaccinated and the timeframe required for vaccination to provide the greatest degree of protection.

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
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Appendix 1

COMPLAINT 1

I don't have a copy, It was broadcast while I was driving the advertisement is to encourage people to get the covid vaccine and states "to get fully protected" it is well known and in the news every day from both health experts and our own government that the Vaccine they are referring to is not going to "Fully protect" anyone from Covid. The medical section of the ASA 1(B) Safety and Effectiveness states you are not to claim that items medical and health items are *are effective in all cases * are infallible. I believe their words ----to get fully protected---- are in breach of the last two points I have noted therefore the advert breaches the advertising standards rules

COMPLAINT 2

I noticed for the first time on the Covid advertising that the verbal statement was once you have both jabs you are "FULLY PROTECTED" As we all know,....this is false and misleading advertising as you are NOT fully protected, as you can still contract and pass on this virus. This breaches in my opinion the Principle 2 of Truthful Presentation as we are NOT fully protected as the advert claims.

COMPLAINT 3

On 15/11/21 @07:56 on the Sound Radio station I listened to an advert encouraging people to get the COVID Jab. The advert states to get "Fully Protected" I find this misleading and inaccurate as the vaccination doesn't fully protect you from the virus. please remove this advert.

COMPLAINT 4

Advert encouraging people to get the COVID vaccine. At one place it says "get your first shot now to be fully protected by christmas" The characterisation of fully protected is misleading. When advertising for medical products, you cannot make claims of therapeutic benefit that are not made by the manufacturer based on proper medical studies. Pfizer's 6 month long double blind placebo controlled randomised study on the effectiveness of their COVID vaccine consisted of 44,000 people, half given the active vaccine, the others given a saline solution. Based on the data from the study, they made the finding that their vaccine was 95% effective in preventing "serious COVID" (defined in the study as a set of clinical conditions, consistent with a level of symptoms that people would need to be receiving hospital care for) However, the report made no claim that the vaccine had any effect on the risk of dying from COVID. This is the part that most people have a lot of trouble understanding. Most people assume that if it reduces your chance of ending up in hospital by 95%, it must also reduce your chance of dying by 95%. With respect to death, the study data results were. Vaxed 22000 unvaxed 22000 (approx) Deaths from all causes excluding accidents. Vaxed 15 unvaxed 13. Deaths from COVID vaxed 1 unvaxed .2 Deaths from medical events well established as linked to adverse reactions to the vaccine (but people also die from these absent receiving the vaccine) vaxed 6 unvaxed 2 Deaths from all other non accident causes not related in any way to the vaccine, vaxed 8 unvaxed 9 From this data Pfizer is unable to make a statistically significant claim that the vaccine was beneficial with respect to death, and so made no such claim. A study by Pfizer released in October was a retrospective study of 3.4 million people who met the studies criterion, (they were all insured with a particular insurer) The study again found that the vaccine was 95% effective against COVID at the start, but that after 5 months

the effectiveness had fallen to 47% (other peoples studies put pfizers 5 month effectiveness at 50% , moderna 63% Johnson&johnson at 3%) The study made no claim of any impact on the risk of dying. The detail in this study was such that it identified that half the people in the study had a BMI of 32.7 (30 is considered obese) and that half of the people that tested positive for COVID had a BMI of 43.9 So based on Pfizers own peer reviewed published medical research papers, their vaccine has no effect on a persons chance of dying from COVID. As such the claim in the advert " get fully protect " is grossly misleading. Fully protected implies 100%, not 95% Only gives 90% against serious covid Gives NO PROTECTION AGAINST DEATH. And death is the event most people are concerned about !!!!

Appendix 2

RESPONSE FROM ADVERTISER,

Thank you for your email of 23 November 2021 in which you ask for the Department of the Prime Minister and Cabinet's response to complaints received about our series of vaccine radio advertisements (ads) which refer to getting vaccinated so that you are 'fully protected' by a given date.

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

This series of ads updates each day reinforcing the importance of getting your first dose now to be immunised in time for summer. The ads tell the public the date they will be fully protected if they get vaccinated 'today'.

Please find attached in Appendix 1 the radio script and the daily changeout of dates.

You will note that there is a five-week gap between the date each ad is aired, and the corresponding date it says you will be fully protected by. This accounts for someone getting their first dose 'today', their second in three weeks, and allowing the extra two weeks required for the vaccination to reach its greatest protection.

The ads refer to being fully protected by a particular date: "**Get your first shot today to be fully protected from the 17th of December.**" Common definitions for the word 'fully' include 'as much as possible' (<https://dictionary.cambridge.org/dictionary/english/fully>); 'to the greatest degree' (<https://www.collinsdictionary.com/dictionary/english/fully>); and 'to the greatest extent' (<https://www.thefreedictionary.com/fully>).

The use of the term 'fully protected' indicates when the vaccination will give you the *greatest degree of protection* from COVID-19, or when you are protected *to the greatest extent* from COVID-19. Any sooner, and the protection would not be as great.

The intention of the series is to communicate the timeframe required for the vaccination to give you the greatest protection, as opposed to the efficacy of the vaccination itself.

This advertising ceases on 27 November 2021.

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