

COMPLAINT NUMBER	18/284
COMPLAINANT	T Smith & 3 Others
ADVERTISER	Brand Developers Ltd
ADVERTISEMENT	Pain Erazor, Television
DATE OF MEETING	11 September 2018
OUTCOME	Upheld

SUMMARY

The Brand Developers television advertisement for the Pain Erazor made various claims about the efficacy of the device in treating pain or discomfort. The advertisement stated, in part: “Introducing Pain Erazor – The incredible innovation in drug-free pain relief that’s fast, affordable, convenient and extraordinarily effective....”

Four complaints received questioned the exaggerated claims made about the effectiveness of the product and said there was no supporting evidence to substantiate these claims.

The Chair determined that most of the claims in the advertisement had been dealt within precedent decision 17/378 and not upheld. However, the Chair accepted the complaint in relation to the claim that the Pain Erazor device was “extraordinarily effective.”

The Advertiser said the term ‘extraordinarily effective’ referred to the breadth of the types of pain the device could help to alleviate.

The Complaints Board said the likely consumer takeout of the claim ‘extraordinarily effective’ was that it provided an exceptional level of pain relief and was more effective than other types of pain relief.

Taking in to account the likely consumer takeout of the advertisement about effectiveness, the Complaints Board ruled the Advertiser had not substantiated that the Pain Erazor provided an exceptional level of pain relief and was likely to be more effective than types of other pain relief and as such the advertisement was likely to mislead or confuse consumers.

Therefore, the Complaints Board said the advertisement had not been prepared with a high standard of social responsibility and it ruled the advertisement was in breach of Principles 1 and 2 of the Therapeutic and Health Advertising Code.

The Complaints Board ruled the complaints were Upheld.

[Advertisement to be removed]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Principles 1 and 2 of the Therapeutic and Health Advertising Code. Principle 1 required the Complaints Board to consider whether advertisements making therapeutic and health claims observed a high standard of social responsibility to consumers and society as consumers rely on them for their health and wellbeing. Principle 2 required it to consider whether the advertisement by implication, omission, ambiguity or exaggerated claim was likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear. This includes by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

The Complaints Board ruled the complaints were Upheld

The Complaints

Four complaints received questioned the exaggerated claims made about the efficacy of the product and said there was no supporting evidence to substantiate these claims. One of those complaints specifically queried the claim that the device is “extremely effective”.

The Advertiser’s Response

The Advertiser noted a previous decision from the Advertising Standards Authority had ruled that sufficient substantiation had been provided by the Advertiser to support the claim that the Pain Erazor device provides relief of chronic and acute pain.

The Advertiser said the term “extraordinarily effective” referred to the breadth of the types of pain the device could help.

The Media’s Response

The Commercial Approval Bureau said the advertisement has been TAPS approved and the device was listed on the MedSafe WAND database.

The Complaints Board Discussion

Preliminary Matter

The Chair of the Complaints Board noted a precedent, Decision 17/378, which was not upheld by the Complaints Board and said in part:

“The Complaints Board ruled the therapeutic claims made in the advertisement about the Pain Erazor device were supported by the substantiation provided by the Advertiser and consistent with the notification of the devices intended purpose on the WAND database. The Complaints Board also said the testimonials were genuine and typical and were unlikely to mislead and ruled the advertisement had been prepared with a high standard of social responsibility and was not in breach of Principle 1 and Principle 2 and Rules 2(a) and 2(f) of the Therapeutic and Health Advertising Code.”

The NZ WAND database that requires medical device listing states the intended purpose of Pain Erazor as:

“A device to provide electrical stimuli through the body surface to stimulate nerves and muscles, and stimulate the production of endorphins, in order to provide relief of chronic and acute pain and tension and improve circulation and flexibility.”

The Chair determined that most of the claims in the advertisement had been dealt with in precedent Decision 17/378 and not upheld. However, the complaints were accepted to be heard by the Complaints Board in relation to the claim the Pain Erazor was “extraordinarily effective.”

Having been directed by the Chair to focus on this claim, the Complaints Board began by discussing what ‘extraordinarily effective’ would be likely to mean to the average consumer. The Board agreed the use of the word ‘extraordinary’ amplified the effectiveness or powerfulness of the product. The Board agreed the most likely takeout of the statement was that it provided an exceptional level of pain relief and was likely to be more effective than other methods. The Board said this makes the statement ‘extraordinarily effective’ an efficacy claim about the device and would require substantiation from the Advertiser.

The Complaints Board noted the Advertiser’s response that the term referred to the fact that Pain Erazor device had been proven to relieve pain across a very large range of pain types. While the Complaints Board agreed it may have been acceptable to use the term ‘broadly effective’ or ‘widely effective’ over a range of pain types to convey this intended meaning, it did not consider this would be the likely consumer takeout of the term ‘extraordinarily effective’.

Taking in to account the likely consumer takeout of the advertisement about effectiveness, the Complaints Board ruled the Advertiser had not substantiated that the Pain Erazor provided an exceptional level of pain relief and was likely to be more effective than other types of pain relief and as such the advertisement was likely to mislead or confuse consumers. Therefore, the Complaints Board said the advertisement had not been prepared with a high standard of social responsibility and it ruled the advertisement was in breach of Principles 1 and 2 of the Therapeutic and Health Advertising Code.

Accordingly, the Complaints Board ruled the Complaints were Upheld.

DESCRIPTION OF ADVERTISEMENT

The Brand Developers television advertisement for the Pain Erazor made various claims about the device in treating pain or discomfort. The advertisement stated, in part: “Introducing Pain Erazor – The incredible innovation in drug-free pain relief that’s fast, affordable, convenient and extraordinarily effective....”

COMPLAINT FROM T SMITH

Ads for the Pain Erazor pen claim it offers drug-free pain relief through “the science of electroanalgesia”. “Say goodbye to the suffering you experience when pain or discomfort strikes,” boasts the marketing material. “Fast, affordable, convenient & extremely effective!” it trumpets.

Eliminating your aches and pains with no pills or costly visits to a doctor sounds appealing, even too good to be true.

COMPLAINT FROM G FINDLAY

This advertisement is indistinguishable, at least in the time available to the viewer, from that which was the subject of complaint 15/482.

Once again advertisement makes exaggerated claims and implies that the device is effective against all types of pain. There is no evidence as to the efficacy of the device shown in the advertisement. The claims are far-fetched at best, and surely this is a therapeutic product and so restricted under the Health Act.

COMPLAINT FROM G PALMER

The advertisement makes claims of medical benefits; specifically, pain relief. The claims are not backed by any independent research or supported by any data, including on the product website.

In my educated opinion, I believe that the claims made of this product are fraudulent and dishonest. In reality, it offers nothing more than a placebo effect.

COMPLAINT FROM K BARRETT

Advertising for the "Pain Erazor" device being shown was the subject of a ruling by the ASA in 2015. (15/482). The relevant provisions were Principle 2 and 3 and Part B2 Requirement 4 and 4.1(ii) and Requirement 5 of the Therapeutic Products Advertising Code

The advertisement broadcast 25/07/2018 continues to be misleading as it made exaggerated claims and implied the device was effective against all types of pain. and no substantial scientific or collaborated evidence as to the efficacy of the device was shown in the advertisement. The device was the subject to a report from NZ consumer in February 2017 which suggests that this is the case. <https://www.consumer.org.nz/articles/pain-erazor-claims> and product reviews in Australia also suggest that the claims are misleading. <https://www.productreview.com.au/p/pain-erazor.html>

CODES OF PRACTICE

THERAPEUTIC AND HEALTH ADVERTISING CODE

Principle 1: 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.

Principle 2: 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.

RESPONSE FROM THE ADVERTISER, BRAND DEVELOPERS

This letter is in response to the multiple complaints that came through and in particular to the claim the chair believes we have not previously substantiated around our product being "extraordinarily effective."

As per the response from previous complaints the ASA has stated that:

'The Complaints Board ruled the therapeutic claims made in the advertisement about the Pain Erazor device were supported by the substantiation provided by the Advertiser and consistent with the notification of the devices intended purpose on the WAND database.'
The intended purpose from WAND is:

'A device to provide electrical stimuli through the body surface to stimulate nerves and muscles, and stimulate the production of endorphins, in order to provide relief of chronic and acute pain and tension and improve circulation and flexibility'

As you can see the evidence and intended purpose show the product provides relief of Chronic and Acute pain.

When you look at Pain over all it is split into two major categories. Acute and Chronic pain make up the pain category.

This is clearly shown from Mayo Clinic article here <https://www.mayoclinic.org/understanding-pain/art-20208632>

When you look at some of the facts and figures of the volume of people suffering from pain you can see how wide spread it is.

According to the National Centre for Health Statistics (2006), approximately 76.2 million, one in every four Americans, have suffered from pain that lasts longer than 24 hours and millions more suffer from acute pain. Chronic pain is the most common cause of long-term disability.

As Pain is such a widespread issue and majority of it is made up of two categories which our product has proven to relieve, this clearly shows that it is extraordinarily effective in relieving pain across a very large range of types of pain.

RESPONSE FROM THE MEDIA, THE COMMERCIAL APPROVALS BUREAU

COMPLAINT: 18/284

KEY: Z 120 PEZ08T

RATING: GXC

We have been asked to respond to this complaint under the Therapeutic and Health Advertising Code – Principle 1, Principle 2: social responsibility and truthfulness.

The original infomercial for this Pain Erazor product received TAPS approval NA8911. It is listed on the MedSafe WAND database in New Zealand. This advertisement is a cutdown from that infomercial. Previous complaints have not been upheld by the ASCB (17/378).

These complaints centre around the use of the phrase ‘extraordinarily effective’. The claim is certainly that the product assists relief of muscle discomfort but there is no mention of guaranteed healing.

A tiny electric charge given by the Pain Erazor works on stimulating the body’s endorphins – our natural defence against pain. For a number of consumers, this device is surprisingly beneficial. This is not dissimilar to those in society who may find treatment by acupuncturists, chiropractors, naturopaths, homeopaths and other alternative medicine practitioners have a positive effect while others feel such treatments are of no benefit whatsoever.

CAB awaits the Board’s decision with interest.

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 via email or letter within 14 days of receipt of this decision.