

COMPLAINT NUMBER	19/122
COMPLAINANT	B Ter Wal
ADVERTISER	Coca Cola Oceania
ADVERTISEMENT	Powerade Television
DATE OF MEETING	14 May 2019
OUTCOME	Upheld in part Advertisements to be removed

SUMMARY

Three television advertisements, each featuring a well-known New Zealand athlete promoted the product Powerade ION4.

Swimmer Sophie Pascoe is shown competing in the pool. She gets to the end of the race and the voiceover says “Oh she’s not happy. Where to from here? Powerade ION4 replaces four electrolytes lost in sweat, to drive today’s athletes forward.” Sophie is then shown training at the gym and drinking from a bottle of Powerade. Next Sophie is shown winning a swimming race. The voiceover says: “What a comeback! What a champion!”

Rugby player Israel Dagg is shown playing rugby. He is tackled and falls. The voiceover says “What a hit! It’s a long road back from here.” An image of an x-ray appears. Israel is then shown drinking from a bottle of Powerade. The voiceover says “Powerade ION4 replaces four electrolytes lost in sweat, to drive today’s athletes forward.” Next Israel is shown training then scoring a try. The voiceover says “What a comeback! What a champion!”

Basketballer Steven Adams is shown playing in a game. He falls over on court and is examined by a health professional, while lying on a bed. The voiceover says “Oh he’s staying down, this is a big setback.” He is then shown drinking from a bottle of Powerade. The voiceover says “Powerade ION4 replaces four electrolytes lost in sweat, to drive today’s athletes forward.” Next Steven is shown training then scoring a goal. The voiceover says “What a comeback! What a champion!”

The Complainant was concerned the advertisements imply the sports drink, Powerade, would be good for sports injuries.

The Advertiser said they do not consider that any of the advertisements make any claims, or give any message, that Powerade ION4 assists to heal sports injuries, and the only claim in the Powerade advertisements in question is “*ION4 replaces four electrolytes lost in sweat*”.

A majority of the Complaints Board agreed the two advertisements featuring Steven Adams and Israel Dagg were misleading. This is because these advertisements show the two athletes getting injured, drinking Powerade, and then training and going on to score. This sequence of events implies Powerade can help athletes recover from injury, and this is misleading. These advertisements are in breach of Principle 2 and Rule (b) of the Advertising Standards Code.

The Complaints Board said the advertisement featuring Sophie Pascoe did not create the same impression and the advertisement was not in breach of the Advertising Standards Code.

The Complaints Board ruled the complaint was Upheld in part.

Advertisements 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 complaint with reference to Principle 2 and Rule (b) of the Advertising Standards Code.

Principle 2 required the Board to consider whether the advertisement was truthful, balanced and not misleading.

Rule 2(b) required the Board to consider whether the advertisement was misleading or 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.

The Complaints Board ruled the complaint was Upheld.

The Complaint

The Complainant was concerned the advertisements imply the sports drink, Powerade, would be good for sports injuries.

The Advertiser's response

The Advertiser said they do not consider that any of the advertisements make any claims, or give any message, that Powerade ION4 assists to heal sports injuries, and the only claim in the Powerade advertisements in question is "*ION4 replaces four electrolytes lost in sweat*".

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed there were two possible consumer takeouts from these advertisements. The first, which applied to all three advertisements, was Powerade can assist with replacing the four electrolytes lost in sweat. The Complaints Board agreed with this first consumer takeout unanimously.

A majority of the Complaints Board said a second consumer takeout was the two advertisements featuring Steven Adams and Israel Dagg implied drinking Powerade could assist with recovering from an injury. A minority disagreed. The minority said only the first consumer takeout applied.

Are the advertisements misleading?

The Complaints Board agreed the advertisement featuring Sophie Pascoe was not misleading. The advertisement shows Sophie Pascoe training at the gym then drinking Powerade, as part of her preparation for competition.

A majority of the Complaints Board agreed the two advertisements featuring Steven Adams and Israel Dagg were misleading. This is because these two advertisements show the two athletes getting injured, drinking Powerade, and then training and going on to score. This sequence of events implies Powerade had a key role in helping athletes recover from injury. The Complaints Board said this is likely to mislead consumers, as the product only has a role in replacing four electrolytes lost in sweat.

A minority disagreed. The minority said the two advertisements were not misleading and did not imply that Powerade can help heal injuries. The minority said the two advertisements did not go further than confirming Powerade can assist with replacing the four electrolytes lost in sweat.

The majority said the advertisements featuring Israel Dagg and Steven Adams are in breach of Principle 2 and Rule (b) of the Advertising Standards Code.

The Complaints Board ruled the complaint was Upheld.

DESCRIPTION OF ADVERTISEMENT

There were three television advertisements for Powerade, each featuring a well-known New Zealand athlete.

Swimmer Sophie Pascoe is shown competing in pool. She gets to the end of the race and the voiceover says "Oh she's not happy. Where to from here? Powerade ION4 replaces four electrolytes lost in sweat, to drive today's athletes forward." Sophie is then shown training at the gym and drinking from a bottle of Powerade. Next Sophie is shown winning a swimming race. The voiceover says: "What a comeback! What a champion!"

Rugby player Israel Dagg is shown playing rugby. He is tackled and falls. The voiceover says "What a hit! It's a long road back from here." An image of an x-ray appears. Israel is then shown drinking from a bottle of Powerade. The voiceover says "Powerade ION4 replaces four electrolytes lost in sweat, to drive today's athletes forward." Next Israel is shown scoring a try. The voiceover says "What a comeback! What a champion!"

Basketballer Steven Adams is shown playing in a game. He falls over on court and is examined by a health professional, while lying on a bed. The voiceover says "Oh he's staying down, this is a big setback." He is then shown drinking from a bottle of Powerade. The voiceover says "Powerade ION4 replaces four electrolytes lost in sweat, to drive today's athletes forward." Next Steven is shown scoring a goal. The voiceover says "What a comeback! What a champion!"

COMPLAINT FROM B TER WAL

These ads have been running throughout the summer of cricket. I have linked to three of the ads in the attachment, but they can be found here:

<https://www.youtube.com/watch?v=HtnWSBbGiCQ>

<https://www.youtube.com/watch?v=-ly6nHwZSU0>

<https://www.youtube.com/watch?v=-WMM-nYsBfl>

All follow a very deliberate and consistent thread, and include the sports stars coming back from injury. The voiceover doesn't talk about the injury, but the whole narrative is designed

to imply that it the sports drink helps in such a scenario. I have surveyed 12 children aged 10-13, and every single one of them thought the ad meant that Powerade would be good for their sporting injuries. When I explained that it does not do this, they were outraged and asked if that was not "against the law". I said that we could make a complaint, and every time the ad comes on they ask me to make the complaint on their behalf.

Complainant

CODES OF PRACTICE

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.

RESPONSE FROM ADVERTISER, COCA COLA OCEANIA

Thank you for your letter dated 20 March 2019 regarding a complaint received in relation to Coca-Cola Oceania Limited's (**CCO**) television advertisements for the **POWERADE ION4** sports drink viewed by the complainant on pay television.

The Advertisements

The series of three 15" television advertisements depict three well-known New Zealand athletes, Israel Dagg, Steven Adams and Sophie Pascoe, participating in their chosen sport, suffering a setback and working hard to retake their place in competitive sport. The television advertisements depict the athletes consuming **POWERADE ION4** as part of their exercise regime, before making a comeback. They are accompanied by a voiceover which includes "**POWERADE ION4** replaces four electrolytes lost in sweat. To drive today's athletes forward".

The Complaint

The complainant's comments include:

"The voiceover doesn't talk about the injury, but the whole narrative is designed to imply that it the sports drink helps in such a scenario. I have surveyed 12 children aged 10-13, and every single one of them thought the ad meant that Powerade would be good for their sporting injuries."

The relevant section of the Advertising Standards Code appears to be Principle 2, Rule 2(b) which states:

*"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."*

CCO's response

We submit that the advertisements do not mislead, or are not 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.

Instead, each advertisement clearly shows:

- (a) a high performing athlete suffering a setback, either as a result of injury or because the athlete has achieved a disappointing result; and
- (b) the high performing athlete undertaking a vigorous exercise regime and drinking **POWERADE ION4** during exercise sessions. This is accompanied by a voiceover explaining that *“Powerade ION4 replaces four electrolytes lost in sweat ... To drive today’s athletes forward”*; and
- (c) the athlete making a comeback.

CCO considers that the narrative of the television advertisements is that:

- (a) maintaining high levels of performance in sport, including after an injury, requires hard work and vigorous exercise; and
- (b) as is shown in the advertisements, and as would be easily understood by the advertisements’ audience, hard work and vigorous exercise can lead to sweating.

CCO further considers that:

- (a) the clear message of the advertisement is that **POWERADE ION4** can assist to replace electrolytes lost in sweat while undertaking a vigorous exercise regime; and
- (b) the only claim being made in the television advertisements is: *“POWERADE ION4 replaces four electrolytes lost in sweat”*. According to the American College of Sports Medicine, in addition to sodium (the key mineral included in sports drinks), **POWERADE ION4** also contains magnesium, potassium and calcium. Those minerals are present in sweat and therefore can be said to be ‘lost in sweat’, and **POWERADE ION4** can serve a replenishment route.¹

CCO does not consider that its advertisements make any claims, or give any message, that **POWERADE ION4** assists to heal sports injuries. CCO’s target audience for the advertisements is 18 - 54 year-olds. CCO submits that the target audience for the advertisements would not take that message from the advertisements. Rather, the audiences would appreciate that the sports injuries merely provide background for the nature and extent of the work put in by the featured athletes.

CCO acknowledges that, while 10 - 13 year olds are not the target audience of the advertisements, the advertisements were run in programming slots which may have been viewed by some 10 - 13 year olds. However, CCO has a policy of ensuring that its advertisements are not aired to any audience of which children may account for more than 25%. The programming slots in which the advertisements aired were not targeted at 10 - 13 year olds, but at audiences of which the vast majority would be adults (the target audience).² CCO expects that, in most cases, 10 - 13 years olds who viewed the advertisements would be in the company of adults.

¹ American College of Sports Medicine – Position Stand: Exercise and Fluid Replacement 2007.

² The programming slots in which the advertisements aired are shown in the shown in the attachment *Powerade Always Forward TV Spotlist*.

CCO further acknowledges that the complainant has surveyed a selection of 10 - 13 year olds. However, CCO considers that the advertisements are sufficiently clear in their message that the vast majority of 10 - 13 year olds (particularly those who viewed the advertisements in the company of adults) would not take the message described by the complainant from the advertisements.

CCO submits that the current complaint is comparable to that in ASA Decision 17/264. In that decision, the relevant advertisement was for a product called Clever Cane. The advertisement *“showed various elderly people having difficulty standing up in various situations, including getting out of a car and bed”, and “demonstrations of the Clever Cane as a tool to aide in the transition from sitting to standing”*. The complainant in Decision 17/264 was concerned that the advertisement oversimplified the issues some elderly people can have with balance, weakness, and mobility, and presented *“a ‘magic solution’ of these issues”*.

The Chair ruled that there were no grounds to proceed with the complaint, on the basis that the advertisement:

- (a) *“was illustrative of the types of problems some people have with mobility and demonstrated how the Clever Cane could assist with stabilisation as well as other safety features”*; and
- (b) *“did not present unrealistic outcomes and was unlikely to mislead consumers into thinking the product would fix all mobility problems”*.

CCO submits that, similarly, its advertisements:

- (a) are illustrative of the types of issues that might lead a person to undertake a vigorous exercise regime, and demonstrate that **POWERADE ION4** can assist a person undertaking a vigorous exercise regime by replacing four electrolytes lost in sweat; and
- (b) do not present unrealistic outcomes and are unlikely to mislead consumers into thinking that **POWERADE ION4** will heal injuries.

Summary

CCO takes its obligations to do business with integrity and engage in ethical conduct very seriously. Our business is built on this trust and reputation.

CCO understands the importance of its role, as an iconic global brand, to encourage positive messaging to all consumers. We take the Principles and Rules of the Advertising Standards Code very seriously. We are comfortable that the underlying messaging of the advertisements is that **POWERADE ION4** can assist to replace electrolytes lost in sweat while undertaking a vigorous exercise regime, and that the advertisements do not contain anything inconsistent with the Code.

It is CCO's view that the advertisements, for the reasons listed above, fully comply with all elements of the Advertising Standards Code. We consider that when assessed against the relevant Code provisions and the relevant audience, the advertisements do not breach the Code.

We are very happy to answer any further questions you may have and please let us know if you need more information.

ADDITIONAL RESPONSE FROM ADVERTISER, COCA COLA OCEANIA

I've spoken with our Science and Legal team and we remain of the view that the only claim in the Powerade advertisements in question is "*ION4 replaces four electrolytes lost in sweat*" and is not a Therapeutic/Health claim.

RESPONSE FROM MEDIA, CAB

We have been asked to respond to this complaint under the following codes:
Advertising Standards Code – Principle 2, Rule 2(B);

CAB approved multiple Powerade commercials on 21/09/18 with a GXC classification.

The GXC classification applied to Powerade commercials excludes them from playing in programmes specifically targeted at children, and is applied to the significant majority of food and beverage advertising in New Zealand.

At the time of complaint, the Powerade commercials had played for approximately six months or half a calendar year.

The crux of the complaint is whether these commercials mislead viewers into believing Powerade has the ability to heal significant injuries. In CAB's opinion, this interpretation is a long draw.

Top-level sportspeople often suffer injuries, and they need determination and commitment to overcome those injuries. This series of commercials celebrates the admirable dedication of sportspeople to overcome challenges, especially in the case of Paralympian Sophie Pascoe.

CAB relies on the principles of the Advertising Codes of Practice as well as precedent decisions made by the Complaints Board when classifying commercials for television. The specific details provided by this decision will determine how we deal with top-level sportspeople, including Paralympians, in all our future work. CAB eagerly awaits the outcome of this complaint and the details that will guide future advertising.

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.