

COMPLAINT NUMBER	19/153
COMPLAINANT	L Graham
ADVERTISER	Brand Developers
ADVERTISEMENT	Thin Lizzy Pink Armour, Television
DATE OF MEETING	14 March 2019
OUTCOME	Not Upheld

SUMMARY

The Brand Developers television advertisement for Thin Lizzy Pink Armour nail gel demonstrates how its product could produce the same outcome as a professional gel manicure for a lower cost. The advertisement includes testimonials from users and before and after shots to show the product's results.

The Complainant says the advertisement makes a misleading price comparison between a nail gel and a complete manicure. They also state the before and after images do not use the same hand which is misleading.

The Advertiser said the \$112 quoted in the advertisement as the professional manicure price including an approximate price of \$65 for the manicure and a touch up after 2 weeks. It said this could be directly compared to the \$19.99 bottle of gel polish which lasts a month. The Advertiser acknowledged that different hands belonging to the same person are used in the first testimonial. It noted the second testimonial is shown using the same hand.

The majority of the Complaints Board agreed the price comparison between a professional manicure that included more than just painted nails and a gel polish, was not like-for-like. However, the advertisement was clear about what was being compared.

A minority of the Complaints Board said it was not a relevant price comparison to use the price of a salon manicure and gel application versus the price of a bottle of gel. The minority of the Board said this made the advertisement misleading.

The majority of the Complaints Board said the price comparison used in the advertisement was not in breach of Principle 2 or Rule 2 (b) and 2(d) of the Advertising Standards Code. The Complaints Board were unanimous in ruling that the before and after testimonials did not reach the threshold to be misleading, given the second example showed the same hand.

The Complaints Board ruled the complaint was Not Upheld.

[No further action required]

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 2(b) and 2(d) 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.

Rule 2(d) required the Board to consider whether the comparative advertising that identifies a competing product or service, was factual, accurate, made clear the nature of the comparison, did not denigrate competitors and was of 'like' products or services available in the same market.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant says the advertisement makes a misleading price comparison between a nail gel and a complete manicure. They also state the before and after comparisons do not use the same hand which is misleading.

The Advertiser's Response

The Advertiser said the \$112 quoted in the advertisement as the professional manicure price including an approximate price of \$65 for the manicure and a touch up after 2 weeks. It said this could be directly compared to the \$19.99 bottle of gel product which lasts a month.

The Advertiser acknowledged that different hands belonging to the same person are used in the first testimonial. It noted the second testimonial is shown using the same hand.

The Media's Response

The Commercial Approvals Bureau said the Complainant's issues dealt with the product and deferred to the Advertiser to provide specific details.

Precedents

The Complaints Board referred to Decision 18/392, which was not upheld. That Decision considered the comparison between a portable cooling system and a wall mounted air conditioning unit. The Complaints Board agreed the advertisement had sufficiently demonstrated the difference between the two items being compared and that consumers were not misled.

Complaints Board Discussion

Consumer Takeout

The Complaints Board began by discussing the likely consumer takeout of the advertisement and agreed it was offering a nail gel product which produced a similar look to a professional manicure at lower than salon prices.

Is the price comparison used in the advertisement misleading?

The majority of the Complaints Board said the advertisement demonstrated a new gel nail product which in the Advertiser's view replicates the outcome of a service which could

previously only be obtained at a salon. The Board acknowledged it would be difficult for the Advertiser to find a direct comparison given that salon prices include a manicure service.

While the majority of the Complaints Board agreed the advertisement was not comparing like-for-like services, it said the focus was on the outcome of gel protected nails. The majority of the Complaints Board said it was unlikely consumers would be misled by the advertisement which makes it clear what is being compared. The majority of the Board said the advertisement was targeting consumers who may have previously paid for a manicure and gel service at a salon and would understand the price difference of the do-it-yourself alternative.

A minority of the Complaints Board disagreed and did not consider the advertisement was using a fair comparison by using the price of a salon manicure and gel application against the price of the gel product. The minority said the statement made in the advertisement “you can get the same perfect nails for \$19.99” was misleading. The minority said a fairer comparison would be the price a gel application from a salon versus the price of a gel product applied at home.

The majority the Complaints Board said the price comparison used in the advertisement did not breach of Principle 2 or Rules 2 (b) and 2(d) of the Advertising Standards Code.

Are the before and after testimonials in the advertisement misleading?

The Complaints Board reviewed the images shown in the advertisement of hands being compared before and after the application of the gel product. It noted the Advertiser confirmed the image had used left and right hands, albeit of the same person. The Complaints Board said that the fact that a second comparison was shown later in the advertisement which did use the same hand prevented the before and after comparison from being misleading.

The Complaints Board unanimously agreed the before and after testimonials shown in the advertisement did not reach the threshold to breach Principle 2 or Rules 2 (b) and 2(d) of the Advertising Standards Code.

Therefore, the Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The Brand Developers television advertisement for Thin Lizzy Pink Armour nail gel demonstrates how its product will produce the same outcome as a professional manicure for a reduced cost. The advert used testimony and before and after shots to show the product’s effectiveness.

COMPLAINT FROM L GRAHAM

The advert makes false claims and shows a receipt designed to make people believe they are buying a bargain but the receipt does not show the price for a comparable product but a receipt for a whole service which may include a similar product but not limited to price comparison of the product by itself which is misleading. The advert also shows the before and after benefits of using the product but in the before example uses the left hand and in the after example shows the right hand, again this is misleading as it is not a true before and after example of the same hand

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.

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.

RESPONSE FROM ADVERTISER, BRAND DEVELOPERS

INITIAL RESPONSE TO PRICING QUERY

The \$112 claimed in the advertisement is based on the research into the cost of professional manicures in NZ where a Regular manicure at The Nail Studio in Auckland is \$70 and a Re-Shellac or Gel Manicure is \$65; and a Basic Manicure with Gel Polish at LeahLight Studios, also in Auckland, is from \$65. Snips from each of these websites are attached.

On the basis that a professional manicure usually lasts about two weeks the cost of the original manicure plus the repeat or a retouch would be at least \$112.

Thin Lizzy Pink Armour is a protein gel coat for your nails for at home gel manicures. The advertisement advises once a week use. One bottle of Thin Lizzy Pink Armour lasts at least one month when used once a week on fingers and toes. The cost per bottle is \$19.99. Substantially less than professional manicures.

ADDITIONAL RESPONSE FROM ADVERTISER

Our response to the Complaint is in two parts.

Complaint Part A:

"The advert makes false claims and shows a receipt designed to make people believe they are buying a bargain but the receipt does not show the price for a comparable product but a receipt for a whole service which may include a similar product but not limited to price comparison of the product by itself which is misleading [...]."

Professional Nail Salon Costings:

A Shellac Mini Manicure costs \$60; A Re-Shellac or Gel manicure costs \$65; at The Nail Studio (<http://www.thenailstudio.co.nz/pricelist/>).

A Basic Manicure with Gel Polish at LeahLight Studios, also in Auckland, is from \$65 (<https://leahlight.co.nz/pages/nail-services>).

It is well accepted that a manicure lasts at best two weeks. Therefore, the monthly professional nail care for the above services can reasonably be estimated to be at least \$112.

What Does The Advertisement Say?

1. The advertisement states that, "The salon will charge you over \$100 for gel manicures each month". This can be considered a true statement on the pricing information we give above.
2. The advertisement then states, "But now you can get the same perfect gel nails naturally for only\$19.99".

The advertisement makes a clear comparison between the "perfect gel nails" obtained at a salon with those obtained by the application of Pink Armour and the greatly different costs of achieving the same outcome.

In our view this is a fair comparison and is not misleading. It should be noted that the public is well educated in the difference between DIY and professional services including the need for self-effort when it is DIY, but with the reward of a cost benefit.

Complaint Part B:

"j...1 The advert also shows the before and after benefits of using the product but in the before example uses the left hand and in the after example shows the right hand, again this is misleading as it is not a true before and after example of the same hand."

The complainant is correct that at 00:42 to 00:45 in the advertisement a woman testifies to her experience of Pink Armour. She places both hands on the table and the words BEFORE and AFTER are superscripted on the screen with a close-up after a second of the hand that has Pink Armour applied to it. The claimant correctly points out that "the before example uses the left hand and in the after example shows the right hand".

Clearly both these hands belong to the same woman and the comparison with "before" and "after" is a comparison between no Pink Armour on one hand and the experience of Pink Armour on the other hand. We acknowledge this might not be regarded as a usual "before" and "after", but we do not accept that it is misleading. It should be noted that another "before" and "after" testimony is given at 1:40 — 1:43 where the same hand it offered showing a clear "before" and "after" for the same hand. If the advertiser' intention was to mislead this second shot would not have been included in the advertisement.

Please contact us as soon as possible if the Complaints Board requires any further comment or actions from us, we are keen to comply and will work with the Board to overcome any issues they view as existing.

RESPONSE FROM MEDIA, COMMERCIAL APPROVAL BUREAU

BRAND DEVELOPERS ADVERTISEMENT

COMPLAINT: 19/153 KEY: Z120TPA02T RATING: G

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

CAB approved this Thin Lizzy commercial on 06/12/18 with a 'G' classification.

The complaint at hand has two main points for consideration:

- Truthful presentation of the product efficacy;
- Fair comparison of products/services.

Both issues deal with the product itself more so than its presentation, so CAB will defer to the advertiser for specific details and their relationship with the issues above.

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.