

COMPLAINT NUMBER	20/236
ADVERTISER	Brand Developers - iTread
ADVERTISEMENT	Brand Developers Television
DATE OF MEETING	21 July 2020
OUTCOME	Upheld Advertisement to be removed

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about a Brand Developers television advertisement for the iTread treadmill which said “So, forget about ... going out to that germ-filled gym, breathing other people’s air and using equipment that’s covered in sweat and bacteria - you never know what you’ll catch.”

Advertisement

The television advertisement for Brand Developers exercise product iTread said: “So, forget about rainy days or busy schedules, or going out to that germ-filled gym, breathing other people’s air and using equipment that’s covered in sweat and bacteria - you never know what you’ll catch.” The voiceover was accompanied by different images, including of sweat and bacteria on the handle grip of a gym treadmill, a person spraying gym equipment in a hazmat suit and mask, an enlargement of corona virus cells and someone having their temperature taken by a person wearing personal protective equipment (PPE).

Summary of the Complaint

There were three complaints about this advertisement. The Complainants were concerned the advertisement was inaccurate and unfair to gym owners, especially in the context of the COVID-19 global pandemic.

Issues Raised:

- Social responsibility
- Fear and distress
- Truthful presentation
- Comparative advertising

Summary of the Advertiser’s Response

The Advertiser said they edited the advertisement, in response to the complaints, and are hopeful this will resolve the concerns.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(g) Fear and distress: Advertisements must not cause fear or distress without justification.

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.

Guideline:

Advertisements that do not specify a specific competitor can still be considered a comparative advertisement, eg if a comparison is made against all competition within an industry or with specific aspects of an unnamed competitor product or service.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 20/143, which was Upheld and 20152, which was Not Upheld.

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

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

Decision 20/143 concerned an email and website advertisement Idiya Ltd which said: "Spread the Savings during the Lockdown VIRAL SALE." The Complaints Board said in the context of the COVID-19 global pandemic, where many lives have been lost, this play on words was both insensitive and irresponsible.

Decision 20/152 concerned a television advertisement for Wet & Forget sanitiser which said: "There's never been a better time to be conscious of cleanliness and sanitisation around the home and workplace. Here at Wet & Forget we have an incredible product by the name of Wet & Forget indoor. It kills 99.9% of bacteria and viruses...Help protect your family against bacteria and viruses. The Board said the advertisement promoted the sale of a cleaning product and did not encourage an unsafe practice or undermine the health and well-being of individuals.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the consumer takeout was if you use this product you can exercise at home rather than going to the gym, where you might catch germs, including COVID-19.

The Board said the context of the advertisement was important as it was screened during the COVID-19 global pandemic.

Is the advertisement misleading?

The Complaints Board said the advertisement was misleading. This is because the advertisement makes claims which have not been substantiated. The Board said the advertisement implies there is a significant risk of catching COVID-19 at the gym, and this has not been substantiated. The Board said consumers have been made aware that gym owners are taking steps such as sanitising equipment, to try and ensure that gyms are safe.

Does the advertisement cause fear or distress without justification?

The Complaints Board said the advertisement did cause fear or distress without justification. The Board said the advertisement is exaggerating the risk of contracting COVID-19 to sell a product, and this is unjustified.

The Board said the use of hazmat clothing, images of the corona virus and the use of PPE when taking someone's temperature all contribute to the impression of something fearful or dangerous.

Does the advertisement fit the definition of a comparative advertisement and does it denigrate competitors?

The Complaints Board said the advertisement does fit the definition of a comparative advertisement and it does denigrate a competing product or service which is available in the same market. The Board said the advertisement identifies gyms as competitors to the iTread home treadmill by the line "forget about ... going out to that germ-filled gym...". The statement that all gyms are germ-filled denigrates gyms and does not acknowledge their efforts to provide an environment which complies with the appropriate health standards.

Do the changes made to the advertisement mean the complaint can be settled?

The Complaints Board said the edited version of the advertisement put forward by the Advertiser did not make sufficient changes to allow the complaint to be settled. The Board noted the edited version of the voiceover for the advertisement now said:

"So, forget about rainy days or busy schedules, or going out to that overcrowded gym and using old, outdated sweaty equipment. It's time to keep your family safe and healthy in the comfort of your own home."

This voiceover was still accompanied by the same images as the original version of the advertisement – the sweat and bacteria on the handle grip of a gym treadmill, corona virus cells and a shot of a person having their temperature taken.

The Board said the use of the phrase "keep your family safe..." reinforced the suggestion that gyms are unsafe.

Is the advertisement socially responsible?

The Complaints Board said the advertisement was not socially responsible, taking into account context, medium, audience and product.

Outcome

The Complaints Board ruled the advertisement was in breach of Principle 1, Rule 1(g), Principle 2, Rule 2(b) and Rule 2(d) of the Advertising Standards Code.

The Complaints Board ruled the complaint was **Upheld**.

Advertisement to be removed.

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 calendar days of receipt of this decision.

APPENDICES

1. Complaints
 2. Response from Advertiser
 3. Original and edited versions of the advertisement
 4. Response from Media
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Appendix 1

COMPLAINTS

There were three complaints about this advertisement:

Complaint 1

I have been watching channel one on tvnz this morning and an add came on about the fitness equipment called itread. I think they have inappropriately spoken of another product service in the same field and that is of 'fitness gyms' To say "Who wants to risk their health in a germ filled gym? Breathing other people's germs and their equipment that is covered in bacteria you will never know what you will catch!" " Buy itread instead " It is completely inaccurate for a start. It is also a generalisation. My husband and his business partner own a small gym in Christchurch and of course are struggling after covid 19 and are doing all they can to make sure cleaning policies are adhered to and they have extremely careful measures around cleaning. I do not believe for one minute their equipment would be "germ filled" This add is misleading, and providing the community in Nz with inaccurate information to sell their product. At this time in New Zealand everyone is understandably desperate to sell their products or boost their businesses in some way, and for gyms struggling to pay bills and keep up with excellent client service (while they are at work from 6am working hard all day with actual clients, while they do all the accounting and advertising when they have five minutes) they do not need adverts on tv bad mouthing gyms being germ ridden at the moment, or ever. Because it isn't true.

Thanks for your time reading this, I read the codes and believe this fits under rule 2, comparative advertising.

Complaint 2

Post COVID19 this add has included words such as "germ filled gyms and bacteria" more than once in the add. I find this very offensive and unfair to local NZ's in the fitness industry to hear those comments to promote their sales as well as maybe deter people to proceed with fitness for health options.

Complaint 3

On tv one thursday 4th june, about 9.15am was an advert about itread from the tv shop. While advertising about their product they make a sneering comment about "germ filled gyms". I find that very mean and nasty. I am not a business owner but i know that our local gym has been fanatically disinfecting everything to make a super clean environment. I find this ad is against the kind spirit of kiwis and i want to strongly complain! It is not a decent way to sell your products.

Appendix 2

RESPONSE FROM ADVERTISER, BRAND DEVELOPERS

We are responding to ASA's letter of 23 June 2020 which accompanied the three complaints received regarding the advertisement for iTread exercise machine.

The advertisement has been edited in response to the issues raised in the complaints and a link to the edited version of the 180 version (Z180FWT07T) of the advertisement is being sent in the email accompanying this letter.

We look forward to the board's positive response.

Appendix 3

ORIGINAL AND EDITED VERSIONS OF THE ADVERTISEMENT

The voiceover in the **Original** Advertisement said, in part:

"So forget about rainy days or busy schedules, or going out to that germ-filled gym, breathing other people's air and using equipment that's covered in sweat and bacteria 'you never know what you'll catch.'"

The voiceover was accompanied by different images, including of sweat and bacteria on the handle grip of a gym treadmill, a person spraying gym equipment in a hazmat suit and mask and an enlargement of corona virus cells.

The voiceover in the **Edited** Advertisement said, in part:

"So forget about rainy days or busy schedules, or going out to that overcrowded gym and using old, outdated sweaty equipment. It's time to keep your family safe and healthy in the comfort of your own home."

The voiceover was accompanied by the same images as the original advertisement.

Appendix 4

RESPONSE FROM COMMERCIAL APPROVALS BUREAU

I've been advised Brand Developers are altering these ads so I won't respond. Last week I asked them to alter a number of infomercials with footage along these lines though a much stronger message and they have done so.