

COMPLAINT NUMBER	21/229
ADVERTISER	New Zealand Government
ADVERTISEMENT	Unite against COVID-19, Print
DATE OF MEETING	7 June 2021
OUTCOME	Settled – advertisement amended

Advertisement: The New Zealand Government’s Unite against COVID-19 print advertisement which appeared in newspapers including the Dominion Post and Kapiti News has an image of a globe with New Zealand at the centre and two figures sitting on top of the world with arms wrapped around each other. The advertisement is headed “With the vaccine, it’s all possible. Our immunity against COVID-19 is incredibly important. Because it brings more possibilities for us all.” Part of the information provided is the statement: “Once you’ve had both doses of the vaccine it has been shown to be up to 95% effective at stopping you from catching COVID-19.”

The Chair ruled that in relation to the quote stating the vaccine was “up to 95% effective at stopping you catching COVID-19”, the complaints were Settled.

Three Complainants were concerned it was misleading to say the vaccine is effective at “stopping you catching COVID-19” when trials recorded a reduction in the symptoms, not stopping transmission.

Procedural Matter

The Chair noted two of the Complainants had raised additional issues in relation to similar print advertisements by the Advertiser and said these would be addressed in a subsequent ruling to be issued to parties.

The relevant provisions were:

Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e) and Therapeutic and Health Advertising Code, Principle 1, Rule 1(a).

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.

Therapeutic and Health Advertising Code

Principle 1 Social Responsibility: 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.

Rule 1(a) Mandatory information: Advertisements shall contain the following mandatory information to encourage responsible prescribing, recommendation, sale and use.

Medicines

Mandatory information as required by the most recent edition of the Medicines Act, Medicines Regulations, Medsafe Guideline on Advertising therapeutic products, Medicines NZ Code of Practice and the Self-Medication Industry Code of Practice.

Application of the Therapeutic and Health Advertising Code

The Chair considered the Therapeutic and Health Advertising Code applied to the COVID-19 advertisement and whether it has been breached because mandatory information had not been included. The Therapeutic and Health Advertising Code includes the following statement in the introductory section “For the avoidance of doubt, where legislation relevant to this Code has been updated and/or if a conflict occurs in relation to legislative and code requirements, legislative requirements will prevail”.

Section 32A of the Medicines Act provides exemptions to the Crown when selling, distributing, and advertising a medicine. Given this exemption, the Ministry of Health, is not required to include the mandatory information in advertisements for medicines as usually required in the Medicines Act 1981. The Chair ruled the advertisement does not breach the Principle 1 or Rule 1(a) of Therapeutic and Health Advertising Code.

The Chair accepted the complaints to go before the Complaints Board to consider whether the advertisement was misleading. The Chair noted that there was publicly available information that contradicted the claim in the advertisement that “Once you’ve had both doses of the vaccine it has been shown to be up to 95% effective at stopping you from catching COVID-19.” As part of the self-regulatory process, Advertisers have the option of amending or removing their advertising to comply with the Advertising Codes.

Upon receipt of the complaints, the Advertiser confirmed the advertisement had been amended to read “Studies have shown that 95% of people who received both doses of the vaccine were protected against getting seriously ill.” The advertiser noted in part, in its response:

“By way of background, after advertising in press on 1st and 2nd of May, it was brought to our attention that the statement / message in question was not correct when it stated that the vaccine was “95% effective at stopping you from **catching COVID-19**” (emphasis added). Rather, studies have shown that 95% of people who received both doses of the vaccine were protected against **getting seriously ill** (Safety and Efficacy of the BNT162b2 mRNA Covid-19 Vaccine and BNT162b2 mRNA COVID-19 Vaccine in a Nationwide Mass Vaccination Setting).

This was a genuine error which was amended immediately after we were alerted to it. We have not run any advertising which has included the same error since.

We have run a new advertisement with an updated message in two subsequent nationwide press advertisements, on 8th and 9th of May, and 15th and 16th May (see

attached). The updated message appeared in the same publications that the original advertisement had appeared in.

We had no intention or desire to mislead the New Zealand public in any way. Rather, we're working hard to create material that is as informative and transparent as possible, to enable our audience to get the information they need to make the right decision for them.

The COVID-19 vaccination programme is very fast moving, and we are developing new advertising content weekly to respond to the biggest questions and concerns being raised by the New Zealand public. We aim to provide information which not only informs, but also instils confidence in the rollout.”

Given the Advertiser's co-operative engagement with the process and the self-regulatory action of amending the advertisement, the Chair said that it would serve no further purpose to place the matter before the Complaints Board.

The Chair ruled that the matter was Settled.

Chair's Ruling: Complaints **Settled – advertisement amended**

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.