

<b>COMPLAINT NUMBER</b>	21/434
<b>ADVERTISER</b>	Procter and Gamble Australia PTY Ltd
<b>ADVERTISEMENT</b>	Vicks First Defence Television
<b>DATE OF MEETING</b>	9 November 2021
<b>OUTCOME</b>	Not Upheld No further action required

### **Summary of the Complaints Board Decision**

The Complaints Board did not uphold a complaint about a television advertisement for Vicks First Defence nasal spray. The Board said the advertisement observed a high standard of social responsibility and did not undermine the health and well-being of individuals.

### **Advertisement**

The television advertisement for Vicks First Defence showed a woman clearing her throat and grimacing. The woman is in gym gear, punching a punch bag. She says to camera "First signs of a cold that'll knock me down? Not if I knock it down first. New Vicks First Defence. It traps, inactivates and removes cold viruses. Help knock down a cold before it takes hold." An image of the product was shown. The package label said "Helps to stop a cold - Use at 1<sup>st</sup> signs". The following text was also shown: "Common cold virus", and, in small print "Use at first signs" and "If symptoms persist talk to your health professional".

### **Summary of the Complaint**

The Complainant was concerned the advertisement was irresponsible because it should have included a clear message about getting a Covid test.

### **Issues Raised:**

- Social responsibility
- Health and well-being

### **Summary of the Advertiser's Response**

The Advertiser defended the advertisement and said it was promoting Vicks First Defence, a product which helps to stop the progression of a common cold. The advertisement did not contradict Covid-19 public health guidance. It has not been aired since 28 August 2021.

## 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(h) Health and well-being:** Advertisements must not undermine the health and well-being of individuals.

### 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.

## Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 20/161 and 21/337, both of which were No Grounds to Proceed.

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

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

**Decision 20/161** concerned a television advertisement for Strepsils Plus Anaesthetic throat lozenges which included the text "If symptoms persist see your healthcare professional". The Complainant was concerned this advertisement could be misconstrued by an unwell person in the context of the Covid19 global pandemic.

The Chair of the Complaints Board said while a sore throat may sometimes be associated with the symptoms of Covid-19 the main symptoms are a dry cough, fever and breathlessness. The Chair said the advice to contact a doctor and seek a test if you have any symptoms of Covid-19 had been widely advertised since the outbreak of the Covid-19 pandemic. The Chair said while she appreciated the genuine concern of the Complainant, the advertisement did not meet the threshold to undermine the health and wellbeing of individuals.

**Decision 21/337** concerned a television advertisement for Johnson & Johnson's Codral Cold & Flu tablets where a woman with a cold is shown waiting at a train station. Her dinosaur key ring says to her "Own your cold! Take a codral, work from home..."

The Complainants were concerned the advertisement was not socially responsible because it showed the woman out in public, when she should have been keeping clear of other people while she had cold symptoms. The advertisement was aired during the Covid19 global pandemic.

The Chair of the Complaints Board said the advertisement was socially responsible. This is because the likely consumer takeout of the advertisement was that if people have cold or flu symptoms they should stay at home and take the Codral product, so they can recover quickly and resume their normal routines. The Chair said the advertisement did not reach the threshold to breach Principle 1 or Rule 1(e) of the Advertising Standards Code or Principle 1 and Principle 2 of the Therapeutic and Health Advertising Code.

### **Delta strain**

The Complaints Board noted that both these precedent decisions were made prior to the detection of the Delta strain of Covid-19 in New Zealand, which occurred in August 2021.

### **Complaints Board Discussion**

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Advertising Standards Code or the Therapeutic and Health Advertising Code. In deciding whether the Codes have been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised, which in this case is:
  - Context: Covid-19 global pandemic
  - Medium: Television
  - Audience: Adult television viewers
  - Product: Nasal spray to stop a cold developing.

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was: if you notice early symptoms of what appears to be a common cold, Vicks First Defence nasal spray is something you can take, to help reduce the chance of developing a full-blown cold.

#### *Did the advertisement undermine the health and wellbeing of individuals?*

The Complaints Board said the advertisement did not reach the threshold to undermine the health and wellbeing of individuals.

The Complaints Board said the advertisement makes it clear the purpose of the nasal spray is to help fight against common cold viruses, and it is to be taken at the first signs of a cold. The Board noted the word "cold" is mentioned a number of times in the advertisement, including in the text "removes the common cold virus".

The Complaints Board said there has been ongoing Government messaging in various media about how and when to get tested for Covid-19. The Board noted the Ministry of Health has not made it a requirement for advertisers of therapeutic products to include any specific information about testing for Covid-19.

The Complaints Board noted the advertisement had TAPS<sup>1</sup> approval before it was aired on television in March 2021. The Board noted that the advertisement was on air till 28 August 2021, and only for one week after the Delta variant of Covid-19 was first detected in New Zealand. The Complaints Board noted that this was a short overlap in time and that the advertisement is not currently on air.

The Complaints Board noted the advice from TAPS that extra wording like "You should ring the Healthline if there any symptoms of cold or flu" was probably required in advertisements, during the Delta outbreak.

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<sup>1</sup> TAPS - Therapeutic Advertising Pre-vetting Service

The Complaints Board noted the advertisement did not include anything which states or implies that consumers should not get a Covid test if they experience cold symptoms or if they take this nasal spray, they do not need to get a Covid test.

*Did the Therapeutic and Health Advertising Code apply?*

The Complaints Board said the Therapeutic and Health Advertising Code did apply to this advertisement. This is because Vicks First Defence nasal spray is classified as a “medical device” <https://www.vicks.com.au/en-au/search?term=first%20defence> which has a therapeutic purpose.

*Did the advertisement meet a high standard of social responsibility?*

The Complaints Board said that the advertisement’s focus on the product being to help fight the common cold virus and the short period of time it was on air during the Delta outbreak meant that it met the high standard of social responsibility required of advertisements for therapeutic products.

The Complaints Board said taking into account context, medium, audience and product the advertisement was not in breach of Principle 1 or Rule 1(h) of the Advertising Standards Code or Principle 1 of the Therapeutic and Health Advertising Code.

**Outcome**

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

**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](http://www.asa.co.nz). Appeals must be made in writing with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.

## APPENDICES

1. Complaint
2. Response from Advertiser
3. Response from Media

### Appendix 1

#### COMPLAINT

Advertising Vicks nasal spray as "first line of defense" is irresponsible in our current Delta outbreak.

Ad should include clear message to get a Covid-18 test.

### Appendix 2

#### RESPONSE FROM ADVERTISER, PROCTOR & GAMBLE

To: ASA Complaints Board

P&G Responses to Appendix 1

1. & 2.	<b>General Reminders – Noted</b>
3.	<p><b>Digital copy of advertisement which is the subject of the complaint:</b> This can be downloaded here: <a href="https://lion.box.com/s/ngxcrhfb38l4xkj7gg36kc8rpbfgkdb">https://lion.box.com/s/ngxcrhfb38l4xkj7gg36kc8rpbfgkdb</a> It is also viewable via YouTube Here: <a href="https://www.youtube.com/watch?v=2Ec2JVI2Uag">https://www.youtube.com/watch?v=2Ec2JVI2Uag</a></p>
4.	<p><b>Is the advertisement still accessible? Where and until when?</b></p> <ul style="list-style-type: none"> <li>• TV - The advertisement was live from April to August 2021 (last spot was 28 August 2021)</li> <li>• Digital – The advertisement was live via YouTube from April to August 2021. The advertisement is no longer being promoted but remains accessible if someone self-navigates to the Vicks YouTube or social pages to find the link/content themselves (accessible here: <a href="https://www.youtube.com/watch?v=2Ec2JVI2Uag">https://www.youtube.com/watch?v=2Ec2JVI2Uag</a>)</li> </ul>
5.	<p><b>All media where this advertisement has been placed</b></p> <p>This advertisement has had placements across broadcast TV, YouTube and social media (Facebook/Instagram).</p> <ul style="list-style-type: none"> <li>• YouTube links that have been promoted: <ul style="list-style-type: none"> <li>○ <a href="https://www.youtube.com/watch?v=pcsm19fFWIc">https://www.youtube.com/watch?v=pcsm19fFWIc</a> (July)</li> <li>○ <a href="https://www.youtube.com/watch?v=2Ec2JVI2Uag">https://www.youtube.com/watch?v=2Ec2JVI2Uag</a> (August)</li> </ul> </li> <li>• Social posts that have been boosted <ul style="list-style-type: none"> <li>○ <a href="https://www.facebook.com/VicksANZ/photos/3767067500015027">https://www.facebook.com/VicksANZ/photos/3767067500015027</a> (July)</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ <a href="https://www.facebook.com/VicksANZ/photos/a.285076021547543/4022700254451749/">https://www.facebook.com/VicksANZ/photos/a.285076021547543/4022700254451749/</a> (August)</li> <li>● Destination URLs that were used (if someone clicked on an ad) <ul style="list-style-type: none"> <li>○ <a href="https://www.vicks.com.au/en-au">https://www.vicks.com.au/en-au</a> (July)</li> <li>○ <a href="https://www.vicks.com.au/en-au/browse-products/vicks-first-defence">https://www.vicks.com.au/en-au/browse-products/vicks-first-defence</a> (August)</li> </ul> </li> </ul>
6.1	<p><b>Script</b></p> <p><b>Voice over:</b>  First signs of a cold that will knock me down?  Not if I knock it down first.  New Vicks First Defence.  It traps, inactivates and removes cold viruses.  Helps knock down a cold before it takes hold.  New Vicks First Defence</p> <p><b>On screen text – supers &amp; disclaimers:</b>  First signs of a cold?  Use at first signs  Creative visualization of how Vicks First Defence traps, inactivates and removes cold virus. Granda et al Proc Natl Sci USA. (1992) 89(21):10213-17  Traps common cold virus  Inactivates common cold virus  Removes common cold virus  Read the label. Use as directed. If symptoms persist, see your healthcare professional.  Procter &amp; Gamble Auckland. Use at first signs.  Helps stop a cold. Use at first signs</p>
6.2	<p><b>Media schedules</b> for FY2021 and FY2122 are attached. The spotlist is also attached. All financial information has been removed</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">   Media  Schedule_FY2021 Vicl </div> <div style="text-align: center;">   Media  Schedule_FY2122 Vicl </div> <div style="text-align: center;">   Spotlist_Vicks  First Defence  2021 NZ TV  Airtime Aria... </div> </div>
6.3	<p><b>CAB Key Number &amp; rating</b>  CAB approval number: 10329019</p>
7.	<p><b>Target audience for the product and what tools and/ or data were used to target this audience?</b></p> <p>TV – All 25+. The platform we use to buy spots is TV Map, which enables us to identify the propensity of audiences to watch certain TV programmes and allows us to select programming based on what’s best suited for the audience to deliver scale &amp; efficiency.</p> <p>Digital – For July/August, the digital buys on YouTube &amp; Facebook targeted audience using geographic and age targeting options. Audiences were defined as NZ + age (25+). There were no other interest or affinity layers applied in YouTube/Facebook.</p>

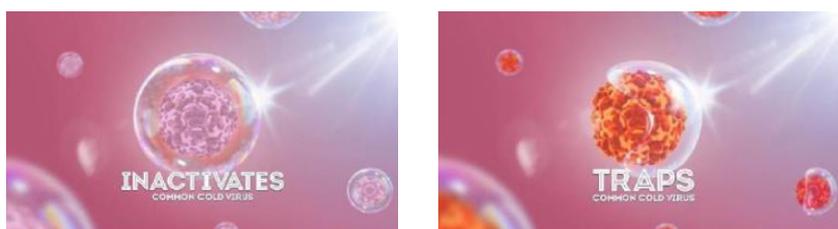
8. **If the complaint is about unsubstantiated claims please provide appropriate substantiation.**

The intent of the advertisement in question is to communicate the efficacy of Vicks First Defence in helping to stop cold progression. The copy is consistent with Vicks' overall brand communications, which are typically activated during the winter season when consumers tend to be more susceptible to cold and flu. This continues to be the case even during the current global pandemic.

The copy does not make any claims regarding efficacy against COVID-19 – explicit or otherwise – nor does it contradict COVID-19 public health guidance. By contrast, a conscious effort has been made to reinforce the purpose of the product and its appropriate usage with multiple overt references to “cold”, “common cold” and “common cold virus” featuring throughout the copy.

The set up shows a young healthy adult showing early signs of cold; a sniffle and itchy throat. This is amplified by the script that calls out *“First signs of a cold that will knock me down?”*

*Not if I knock it down first.”* She then uses the product accompanied by a voice over that explains what the new Vicks First Defence product does, i.e. *“traps, inactivates and removes cold viruses”*. This is further aided by the below visuals that clearly state ‘COMMON COLD VIRUS’ for a lay consumer to clearly understand how the Vicks First Defence product assists in stopping the progression of common colds.



After the usage scene and the technical explanation of how the product works, we see the young lady in a different setting, clearly on a different day, proceeding to resume her normal exercise activity. The visual and narrative flow of the advertisement clearly explains to the consumer that when Vicks First Defence is used as directed at the first signs of common cold, the product helps to stop a common cold.

The need for differential diagnosis is highlighted with an accompanying super prominently displayed from frame 0:10s till the end of the advertisement: *“If symptoms persist, talk to your health professional”*, indicating that if symptoms do not resemble those of a common cold, consumers should seek differential diagnosis and medical opinion.

Taking into consideration the advertisement itself, Vicks' long standing brand reputation in combating common colds, and the claims made, a reasonable consumer would not take away that Vicks First Defence directly or indirectly communicates that it will help fight against symptoms or the virus of COVID-19, rather it helps stop common colds from progressing when used at first symptoms.

P&G prides itself on being a socially responsible marketer and is committed to improving the lives of consumers through our trusted range of products.

## **ADDITIONAL INFORMATION FROM ADVERTISER, PROCTOR & GAMBLE**

*The ASA Secretariat sent the following email to Proctor & Gamble:*

As part of our preparation for the Board meeting, we sought comment from a TAPS Adjudicator about their expectations for therapeutic advertisements, in this Covid environment. In particular, we requested their view about the phrase "If symptoms persist talk to your health professional" which is in your advertisement. They provided the following response:

"If symptoms persist talk to your health professional" would now probably not be adequate with the Delta variant outbreak. Most companies are adding wording like "You should ring the Healthline if there any symptoms of cold or flu". This is the extra wording probably now required during the Delta outbreak. This ad by Vicks was done earlier when Delta was not prevalent.

Would you like to provide any comment on this, for the Board?

*Proctor & Gamble emailed the following:*

Certainly. The advertisement in question was created and its spots were booked well in advance of the Delta outbreak in New Zealand, which began when one (1) community case of COVID-19 was identified in Auckland on 17 August 2021. Broadcast amplification of the advertisement concluded, as planned, on 28 August 2021. It has not been aired since.

As per our note original note we seek to defend this complaint. As mentioned, broadcast amplification of the advertisement concluded, as planned, on 28 August 2021. It has not been aired since.

Procter & Gamble however reserves their rights to continue making such claims in the future.

### **Appendix 3**

#### **RESPONSE FROM COMMERCIAL APPROVALS BUREAU**

**Complaint 21/434 Procter & Gamble Key: VICKFDF 15NZ Classification: GXC**

We have been requested to respond to his single complaint under Social Responsibility in both Advertising and Therapeutic Codes.

This Procter & Gamble advertisement was approved in March 2021 and classified as a GXC as is usual for most Therapeutic advertisements. It was approved by TAPS: NA12817.

The product is Vicks First Defence and the advertising promotes using the spray at the first signs of a cold to inactivate and help remove cold viruses.

We agree with the complainant that now that the Delta mutation of COVID 19 is in New Zealand it is prudent to get tested if we feel unwell. However, to suggest that an existing product such as 'Vicks First Defence' should have their advertising campaign restricted because of its name is a stretch too far.

We do not believe the complaint should be upheld.