

COMPLAINT NUMBER	21/541
ADVERTISER	New Zealand Herbals Limited
ADVERTISEMENT	Food Intolerance test, Website
DATE OF MEETING	18 January 2021
OUTCOME	Settled – advertisement removed No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board a complaint about an advertisement for a food intolerance test on the New Zealand Herbals Limited website was settled. The Advertiser had confirmed the service was no longer available and the advertisement had been removed from the website.

Advertisement

The New Zealand Herbals Limited website, <https://nzherbal.co.nz/our-services/>, contains information on their Food Intolerance test at <https://nzherbal.co.nz/wp-content/uploads/2016/02/Food-intolerancetest-2015.pdf>. The two-page PDF document includes testimonials from two customers, information on the method of testing, and aims to clarify the idea of a "food allergy". The PDF includes a "supporting herbal program" of supplements and invites people to contact NZ Herbals for more information or to book an appointment.

Summary of the Complaint

The Complainant was concerned the advertisement makes many unsubstantiated therapeutic health claims about being an effective diagnosis for conditions such as arthritis, irritable bowel syndrome, bronchitis and depression.

Issues Raised:

- Truthful presentation

Summary of the Advertiser's Response

The Advertiser initially provided a Food Detective Technical Report (including a bibliography of abstract studies), CV and testimonials as substantiation. Subsequently the Advertiser confirmed the advertisement had been removed and the food intolerance test was no longer offered by the business.

Relevant ASA Codes of Practice

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

THERAPEUTIC AND HEALTH ADVERTISING CODE

Principle 2: Truthful Presentation: Advertisements shall be truthful, balanced and not misleading. Advertisements shall not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear. This includes by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

Rule 2 (a) Truthful presentation: Advertisements shall be accurate. Statements and claims shall be valid and shall be able to be substantiated. Substantiation should exist prior to a claim being made. For medicines and medical devices, therapeutic claims must be consistent with the approved indication(s) (for medicines) or the listed intended purpose (for medical devices).

Definitions:

‘Therapeutic Purpose’ – The Medicines Act provides the following definition:

- (a) preventing, diagnosing, monitoring, alleviating, treating, curing, or compensating for, a disease, ailment, defect, or injury; or
- (b) influencing, inhibiting, or modifying a physiological process; or
- (c) testing the susceptibility of persons to a disease or ailment; or
- (d) influencing, controlling, or preventing conception; or
- (e) testing for pregnancy; or
- (f) investigating, replacing, or modifying parts of the human anatomy.

‘Medical Device’ – Medical Devices are devices that have a therapeutic purpose.

‘Health Services’ – includes services that offer a method of treatment for a range of medical conditions or services that offer support for normal healthy body functions.

‘Method of Treatment’ - Any method of treatment for reward undertaken, or represented to be undertaken, for a therapeutic purpose.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to precedent Decision 19/226 which was settled.

The full version of this decision can be found on the ASA website:

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

Decision 19/226 concerned a website advertisement for House of Health promoting food allergy blood testing which claimed the test could assess reactions to 96 foods.

The Complainant was concerned the advertisement contained unsubstantiated therapeutic claims which could be misleading. Upon receipt of the complaint, the Advertiser removed the advertisement from the website. The Chair of the Complaints Board ruled the complaint was settled.

Complaints Board Discussion

The Chair noted that the Complaints Board’s role was to consider whether there had been a breach of the Therapeutic and Health Advertising Code. In deciding whether the Code has 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: Therapeutic health services
 - Medium: Website advertisement
 - Audience: Consumers interested in food intolerance/allergies
 - Product: Diagnosis of food intolerances which affect health

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was it promoted a food intolerance test to diagnose foods that affect your health in an adverse way. The Board noted the advertisement specifically referred to arthritis, irritable bowel syndrome, bronchitis and depression as conditions which could be related to food intolerance.

Is the advertisement making therapeutic claims about a health service that uses a device to diagnose disease or ailments?

The Complaints Board agreed the advertisement for a food intolerance test was making therapeutic claims relating to a medical device. The Complaints Board confirmed that only medical devices that are listed on the Medsafe WAND database may make therapeutic claims in an advertisement.

The Complaints Board noted the Advertiser had been asked to provide evidence of the WAND listing for the medical device referred to in the advertisement. As this evidence had not been provided, the Board said the advertisement was not entitled to make therapeutic claims and was in breach of Principle 2 and Rule 2(a) of the Therapeutic and Health Advertising Code.

However, the Complaints Board acknowledged the Advertiser had confirmed the food intolerance test was no longer offered and the advertisement had been removed from the website.

Given the Advertiser's cooperative engagement with the process and the self-regulatory action taken in removing the advertisement, the equivalent action the Board could request if it upheld the complaint, the Complaints Board said the complaint was settled.

Outcome

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

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. 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
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Appendix 1

COMPLAINT

New Zealand Herbals advertises 3 types of testing/services which have no credible scientific proof of efficacy. ELISA Food Sensitivity Test <https://nzherbal.co.nz/wp-content/uploads/2016/02/Food-intolerancetest-2015.pdf> The Food intolerance test is a rapid, qualitative, ELISA - based method for the detection of IgG antibodies to 59 different foods in human sera or plasma. IgG reactions to food have been implicated in a number of chronic diseases including arthritis, irritable bowel syndrome, bronchitis and depression. Such reactions involve the formation and deposition of food antigen/antibody complexes in a variety of tissues where they cause inflammation, pain and other symptoms. None of the 3 tests they advertise have any credible scientific evidence which proves they are effective for diagnosis of anything, including nutritional deficiency. Complaint: I submit that this this advertiser has information on their website which in is breach of PRINCIPLE 2: TRUTHFUL PRESENTATION: Rule 2 (a) Truthful Presentation

Appendix 2

RESPONSE FROM ADVERTISER, NEW ZEALAND HERBALS

This complaint is nonsense . I have been practicing for over 40 years. Have seen to date around 30,000 patients and have an unblemished record with high levels of success and credibility.

I understand that testimonials are considered anecdotal – I don't

Please see two presentations and NO I will not stop telling my truth and when it comes to Iridology that is who I am , it's what I do and my main method of analysis and it works and its true and authentic

You would think this guy / organisation would have something better to do during these difficult times!?

FURTHER FROM ADVERTISER WHEN ASKED TO CONFIRM REMOVAL OF ADVERTISEMENTS BY SECRETARIAT

That's correct, they have been removed. No longer offering those services.