

COMPLAINT NUMBER	21/524
APPEAL NUMBER	22/001
APPLICANT	The Advertiser
ADVERTISER	Social Credit Party
ADVERTISEMENT	Why Say No to Mandates and Certificates, Print
DATE OF MEETING	4 March 2022
OUTCOME	Appeal Declined, Complaint Upheld in part

SUMMARY

On 7 December 2021, the Complaints Board ruled on six complaints about a newspaper advertisement for Social Credit about its opposition to vaccine mandates and certificates. The Complaints Board Decision was Upheld in Part.

The Advertiser appealed the Decision. The Advertiser said the advertisement was not promoting a medicine and did not mention Ivermectin in the advertisement. The Advertiser said the advocacy advertisement was about alternatives to the current vaccination mandates and certificates.

The Chairperson considered that the Application raised sufficient grounds for the matter to be considered by the Appeal Board.

The majority of the Appeal Board agreed with the Complaints Board decision that the advertisement was misleading and could undermine the health and wellbeing of individuals and encourage the inappropriate use of a medicine.

The Appeal Board said in the context of a global pandemic, it was not socially responsible to imply using a website link that a medicine, which was not approved for that use by Medsafe, the New Zealand medicines approvals agency, was a credible alternative to current public health measures.

A minority of the Appeal Board said the advertisement's main focus was about the opposition to vaccination mandates and certificates and any website was incidental to the main message. For the minority of the Appeal Board, the advertisement had not reached the threshold to breach the Advertising Codes.

The Appeal Board ruled the advertisement was in breach Principle 1, Principle 2 and Rules 2(a) and 2(b) of the Therapeutic and Health Advertising Code and Principle 1, Principle 2 and Rules 1(h) and 2(b) of the Advertising Standards Code.

The Appeal was Declined and the Complaint was Upheld in part.

Decision: Complaint **Upheld in part**, Appeal **Declined**

Please note this headnote does not form part of the Decision.

APPEAL BOARD DECISION

The Complaints Board ruled on 7 December 2021, that six complaints about a newspaper advertisement for Social Credit advocating against current Government's COVID-19 policies were Upheld In Part.

The Advertiser appealed the Decision. The Chairperson of the Appeal Board considered that the Application raised sufficient grounds for the matter to be considered by the Appeal Board.

The Chairperson directed the Appeal Board to consider the advertisement 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.

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 1(h) Health and well-being: Advertisements must not undermine the health and well-being of individuals.

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. This information shall be set out in a way (legible / audible) that ensures it can be readily understood by the audience to whom it is directed.

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.

Rule 1 (b) Safety and effectiveness: Advertisements shall not contain any claim, statement or implication that the products, devices or services advertised:

- are safe or that their use cannot cause harm or that they have no side effects or risks.
- are effective in all cases
- are infallible, unfailing, magical, miraculous, or that it is a certain, guaranteed or sure cure
- are likely to lead persons to believe that;
 - they are suffering from a serious ailment, or
 - harmful consequences may result from the therapeutic or health product, device or service not being used.

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).

Rule 2 (b) Inappropriate or excessive use: Advertisements shall not encourage, or be likely to encourage, inappropriate or excessive purchase or use. Advertisements for prescription medicines shall not encourage, or be likely to encourage, inappropriate or excessive prescriptions or requests for a prescription.

Summary of Complaints Board Decision

The Complaints Board ruled, by a majority, on 27 October 2021, that the complaints about the Social Credit print advertisement which advocated for alternatives to vaccination mandates and certificates were Upheld in Part. The Complaints Board agreed that several of the statements made in the advertisement had either been adequately substantiated or presented the opinion of the Advertiser. However, the majority of the Complaints Board said the statement - ***“Home based tests and early treatment used successfully in other countries makes sense”*** <https://medicalupdateonline.com/2021/05/home-isolation> when accompanied by the URL link which took the reader to a website headed “Home isolation and Ivermectin-based treatment kits”, was not socially responsible and could encourage the purchase or use of an unapproved medicine and potentially undermine the health and wellbeing of consumers.

A minority of the Complaints Board disagreed and said the reference to ivermectin, via a website link in a print advertisement had not reached the threshold to mislead consumers, undermine the health of consumers or encourage the inappropriate use of an unapproved medicine.

Summary of Advertiser’s Appeal

The Advertiser appealed the Decision and said:

- The advertisement did not promote a medicine and there was no mention of ivermectin anywhere in the advertisement, but rather an example of another country’s strategy.
- The Complaints Board has a fixation on ivermectin, when other treatments were mentioned in the treatment packs.
- Confirmed the advertisement was not indicating an anti-vaccination message.

- The Board was wrong to make the assumption that because Medsafe and the Ministry of Health had “strongly recommended“ ivermectin not be used meant it is not a viable alternative when it has been used successfully overseas.
- Ivermectin is not an unapproved medicine, but rather not approved to treat Covid-19
- The advertisement could not encourage the inappropriate purchase or use of ivermectin as it is a prescription-only medicine and therefore inappropriate use would be near impossible.
- Claims the majority of the Board is saying it is not permissible to advocate alternative options to those deployed by government and health authorities.

A full copy of the Advertiser’s Appeal Application is available in Appendix 4.

Summary of Complainant’s Response to the Appeal

One of the six Complainants responded to the appeal submission, agreeing with the 21/524 Decision and said:

- Although ivermectin is not mentioned in the advertisement copy, the link included forms part of the message and refers to ivermectin prominently when link is accessed.
- A natural interpretation would be that the early treatment referred to was ivermectin by presenting it as a viable alternative.
- Did not agree the Board was “fixated” on ivermectin given its prominence in the linked article.
- Despite ivermectin only being available on prescription many attempts are being made to import this.
- The issue is not about the questioning of the current regimes response, but is about encouraging the use of a medication for unapproved purposes.

A full copy of the Complainant’s response to the Appeal is available in Appendix 5.

APPEAL BOARD DISCUSSION

The Appeal Board carefully considered the complaints, the advertisement, the information provided by the Complainant and the Advertiser, precedent decisions and the Complaints Board Decision.

Is the identity and position of the Advertiser clear?

The Appeal Board unanimously agreed with the Complaints Board’s view that the identity and position of the Advertiser was sufficiently clear for the advertisement to be considered as advocacy advertising and a more liberal interpretation of the Codes applied.

Consumer takeout

The Appeal Board broadly agreed with the Complaints Board and said the likely consumer takeout of the advertisement was that the Social Credit Party opposes the Government’s vaccine mandates and vaccine certificates. The majority of the Appeal Board agreed there was a secondary takeout that the Social Credit Party believes there are better ways to deal with the unvaccinated sector of society and provided a link to an example of homebased tests and early treatment highlighting the use of Ivermectin.

The Appeal Board reviewed the four statements made in the advertisement:

- ***“I’ve been jabbed, can I still catch COVID? Yes”***
- ***“Can I still pass COVID on to others? Yes”***
- ***“Vaccinated individuals with a peak viral load similar to unvaccinated cases and can efficiently transmit infection...including to fully vaccinated contacts.”***
- ***“Thousands will be locked out of jobs, shops, events, travel, because of mandates and certificates.”***

The Appeal Board unanimously agreed with the Complaints Board that the four statements had either been adequately substantiated or were opinion statements from the Advertiser. The Appeal Board agreed the four statements were not in breach of Principle 2 or Rules 2(b) or 2(e) of the Advertising Standards Code.

The Appeal Board then considered the following statement and website link in the advertisement:

“Home based tests and early treatment used successfully in other countries makes sense” <https://medicalupdateonline.com/2021/05/home-isolation>

Therapeutic and Health Advertising Code

Is the statement likely to mislead, deceive or confuse consumers by promoting an unapproved medicine?

The Appeal Board noted the website link took consumers to a discussion page with Dr Suryakant and was headed “Home isolation and ivermectin-based treatment kits.” The Board noted the Advertiser had stated in the appeal submission that ivermectin was not mentioned in the advertisement and the Complaints Board “would appear to have a fixation with ivermectin as it did not mention any other medical products, such as Doxycycline, supplied with the treatment packs.”

The majority of the Appeal Board disagreed with the Advertiser and said the URL link formed part of the advertisement and encouraged the consumer to engage further with methods of treatment which the Advertiser had stated “made sense.” The majority of the Board said the emphasis the Complaints Board placed on the promotion of ivermectin was not disproportionate given that the medicine appeared in both the headline and the first sentence of the linked article. The majority also noted ivermectin had been advocated by some as an alternative treatment and this supported the level of consideration by both Boards with regard to this part of the advertisement.

The majority of the Appeal Board noted Medsafe and the Ministry of Health’s position on this issue to be they “*strongly recommend that ivermectin is not used for prevention or treatment of COVID-19*” <https://www.medsafe.govt.nz/safety/Alerts/ivermectin-covid19.htm> and they are expert bodies in medicine approval in relation to the treatment of COVID 19.

The majority of the Appeal Board said in the context of an advertisement about COVID-19, the statement about early treatments and the link to information about ivermectin were likely to mislead or confuse consumers by promoting an unapproved medicine.

A minority of the Appeal Board disagreed and said the main focus of the advertisement was about vaccine mandates and certificates. In the minority’s view, the ancillary point being made was that home-based tests and early treatment made sense and it was drawing too long a

bow to say that a URL link in small print added to this message was promoting the use of ivermectin. Rather the statement and URL link highlighted the fact other countries claimed to have had success using alternative measures to deal with the virus.

Does the advertisement encourage or be likely to encourage, inappropriate purchase or use?

The majority of the Appeal Board said the advertisement could encourage some consumers to seek out the inappropriate purchase or use of a medicine. The Board noted the Advertiser had stated that ivermectin is “only available on prescription and must be prescribed by a registered medical prescriber.” The Board said that reports of increased incidents of individuals attempting to obtain the prescription drug online or through animal health stores were in the public domain and noted in the above link that “Medsafe has recently seen an increase in the attempted personal importation of ivermectin.”

A minority of the Appeal Board agreed with the minority view presented in the Complaints Board decision and did not consider the reference to ivermectin, via a website link in a print advertisement, in the context of its use overseas, would encourage inappropriate purchase or use of the product in New Zealand.

However, in accordance with the majority, the Appeal Board agreed the Complaints Board was correct to rule that the advertisement was in breach of Principle 2 and Rules 2(a) and 2(b) of the Therapeutic and Health Advertising Code.

Is the advertisement socially responsible within the context of a global pandemic?

The majority of the Appeal Board agreed with the Complaints Board decision and said the advertisement had not been prepared and placed with the requisite level of social responsibility.

The Board noted the Advertiser had said it had a right to question the Government regime by advocating alternative health measures. The Board said the context in which the advertisement appeared was an important consideration in its deliberation.

The Appeal Board noted there is rightly a high level of public interest about misinformation and as an organisation the ASA understands the important role it plays in supporting the right to freedom of expression along with balancing the public health implications of the global pandemic and the impact of misinformation.

The Appeal Board noted that in recent decisions, the Complaints Board had acknowledged the New Zealand Bill of Rights Act 1990 and protection for freedom of expression but said the broad public health implications of the COVID-19 global pandemic at a population level provided a counterweight to the usual liberal assessment of advocacy advertising with regard to social responsibility and truthful presentation.

A minority of the Appeal Board disagreed and said the advocacy advertisement had met the requisite level of social responsibility and was not promoting an unapproved medicine.

However, in accordance with the majority, the Appeal Board ruled the advertisement was in breach of Principle 1, Principle 2 and Rules 2(a) and 2(b) of the Therapeutic and Health Advertising Code.

Advertising Standards Code

The majority of the Appeal Board said that for the reasons detailed above it also agreed with the Complaints Board that the advertisement was likely to mislead some consumers and had the potential to undermine the health and wellbeing of individuals. The majority of the Appeal Board said the advertisement therefore is not socially responsible under the Advertising Standards Code.

A minority of the Appeal Board disagreed for the same reasons as stated above.

However, in accordance with the majority, the Appeal Board said the advertisement was in breach of Principle 1, Principle 2 and Rules 1(h) and 2(b) of the Advertising Standards Code.

Summary

The Appeal Board ruled the advertisement was in breach of Principle 1, Principle 2 and Rules 2(a) and 2(b) of the Therapeutic and Health Advertising Code and Principle 1, Principle 2 and Rules 1(h) and 2(b) of the Advertising Standards Code.

The Appeal was Declined and the Complaint was Upheld in part.

Decision: Complaint **Upheld in part**, Appeal **Declined**

APPENDICES

1. Description of Advertisement
 2. Original Complaints
 3. Summary of the Complaints Board Ruling
 4. Appeal Application from the Advertiser
 5. Response to the Appeal Application from the Complainant
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Appendix 1

DESCRIPTION OF ADVERTISEMENT

The Social Credit NZ full-page advertisement in The Press advocates against current government COVID-19 policy. The advertisement calls for readers to "SAY NO to mandates and certificates". It indicates that vaccinated people are still able to contract and transmit COVID-19 and highlights the negative impact of mandates and certificates. The advertisement then states that "home based tests and early treatment" is used successfully in other countries and contains a URL for a webpage stating the effectiveness of Ivermectin-based treatments in India. The Advertiser's name and logo is located at the bottom of the page next to the name of the Party Leader, a Party Principle, and the Party's website.

Appendix 2

ORIGINAL COMPLAINTS

COMPLAINT 1

I believe this advertisement breaches the Code principles including in particular rule 1(h) (health and wellbeing) by undermining the New Zealand government's vaccination efforts during the COVID-19 pandemic. Vaccination is safe and effective, and contrary to the claim in this advertisement reduces the risk of passing on COVID-19 to others. The advertisement is also misleading and proffers disinformation which breaches rule 2(b). The URL in the advert links to a site recommending the use of ivermectin for covid-19 which is not an approved treatment in New Zealand. Medsafe advises that inappropriate use of ivermectin can be dangerous and that a Cochrane review found 2 no evidence to support the use of ivermectin for treating COVID19.

COMPLAINT 2

This ad is misleading on health. It misleads on the safety of the vaccine.

COMPLAINT 3

Social Credit.co.nz advocating against vaccine mandates and certificates in direct opposition to public health measures taken by the government of Aotearoa New Zealand

COMPLAINT 4

The information contained in this advertisement is false and dangerous.

COMPLAINT 5

This advertisement is misleading and dangerous. It is promoting misinformation that could threaten public health initiatives and lead to more deaths. It also breaches 1(h) (health and wellbeing) and rule 2(b) (truthful presentation) of the Advertising Standards Code.

COMPLAINT 6

Breaches at least rule 1(h) (health and wellbeing) and rule 2(b) (truthful presentation) of the Advertising Standards Code.

Appendix 3

SUMMARY OF COMPLAINTS BOARD DECISION

The Complaints Board upheld in part complaints about a Social Credit print advertisement which advocated for alternatives to vaccination mandates and certificates. The majority of the Complaints Board said the advertisement referred to home-based testing and Ivermectin-based treatments as alternatives for unvaccinated people. The Board said in the context of a global pandemic, it was not socially responsible to promote a medicine which has not been approved in New Zealand for treatment of COVID-19.

Summary of the Complaints

Six Complainants were concerned the advertisement undermines the Government's COVID-19 vaccination policy and spreads false/misleading information. Complainant 1 is also concerned the URL link in the advertisement is a recommendation for Ivermectin for treating COVID-19 which is not approved by Medsafe.

Issues Raised:

- Social Responsibility
- Advocacy Advertising
- Truthful Presentation
- Health and Wellbeing
- Inappropriate Use of Medicine

Summary of the Advertiser's Initial Response

The Advertiser said the advertisement is about mandates not vaccinations and the advertisement made a positive statement about vaccinations and referenced a study in the Lancet from which that quote is taken, stating there is little difference in virus transmission rates between unvaccinated and fully vaccinated contacts and vaccination is about reducing the severity of illness, not transmission.

The Advertiser said the link to information about Ivermectin does not claim it is universally accepted and says it is used successfully in other countries such as India and links to other countries are provided as further evidence. The Advertiser says there is nothing to prevent them contesting the views of Medsafe or the Cochrane review.

In relation to the Therapeutic and Health Advertising Code, the Advertiser said the advertisement is not misleading and does not proffer disinformation as substantiation has been provided. There is no product being offered and information presented in the advertisement is substantiated.

Appendix 4

APPEAL APPLICATION FROM THE ADVERTISER, SOCIAL CREDIT

Re: NZ Social Credit Party Print – Complaint 21/524

Please find below our appeal to the Board's decision to uphold in part some of the complaints made in regard to advertisements we placed in a number of New Zealand newspapers in November 2021.

We are of the view that the Board's decision to do so was wrong, noting that a minority of the Board disagreed with that decision, and set out below our reasons for that view.

Summary of the Complaints Board Decision

"The Complaints Board said the advertisement referred to home-based testing and Ivermectin-based treatments as alternatives for unvaccinated people. The Board said in the context of a global pandemic, it was not socially responsible to promote a medicine which has not been approved in New Zealand for treatment of COVID-19."

Our comment:

The advertisement did not promote a medicine. No mention of one is made anywhere in the advertisement. In fact it did not promote an Ivermectin-based treatment, but rather showed an example of another country's strategy for dealing with Covid 19. The advertisement specifically says 'Home based tests and early treatment'.

The summary therefore mis-represents what was written in our advertisement and we refute it in its entirety.

We note that out of six complainants only one was concerned about the link provided in relation to our advocacy of 'home based tests and early treatment used successfully in other countries'.

We also note the Complaints Board would appear to have a fixation with Ivermectin as It did not mention any of the other medicinal products, such as Doxycycline, supplied with the treatment packs.

Consumer Takeout

"The majority of the Complaints Board agreed there was a secondary takeout that the Social Credit Party believes there are better ways to deal with the unvaccinated sector of society such as home-based tests and early treatment with Ivermectin"

Our comment:

The Social Credit Party does indeed believe there are better ways to deal with the unvaccinated sector of society, as well as the vaccinated sector who are catching Covid19 despite having had two doses of a vaccine. However the advertisement did not mention Ivermectin and the treatment kits included a range of other medicines. If the board considered that the advertisement was promoting a medicine (which we do not accept) it was wrong in focussing its attention only on Ivermectin. In the doing so the board displayed a bias which it should not have done.

"The Complaints Board said there would also be some consumers who could take the view the advertisement was advocating an anti-vaccination message".

Our comment:

Some consumers could also take the view that the advertisement was advocating that people should not go to hospital for treatment and that treatment should be home-based, however

there is nothing in the advertisement to suggest that, equally as there is nothing in the advertisement to suggest that it was indicating an anti-vaccination message. More relevantly the advertisement specifically says that vaccination reduces the risk of Delta variant infection and accelerates viral clearance, and therefore any view that the advertisement was indicating an anti-vaccination message could only be attributed to it by someone already with a view pre-disposed to anything advocating other than a mainstream view was therefore anti-vaccination.

Discussion

“I’ve been jabbed, can I still catch COVID? Yes”

‘The Complaints Board said this statement was presented as a fact and was not in dispute as people who had received two doses of the Pfizer vaccine had still contracted the virus’.

Our comment:

oard accepted that this statement in the advertisement was not in dispute, it was incorrect in assuming that the statement referred only to the Pfizer vaccine. Other vaccines have been used widely across Europe and the UK and the statement is not in dispute in respect of those other vaccines either, as the current wave of re-infections demonstrates.

“Home based tests and early treatment used successfully in other countries makes sense” <https://medicalupdateonline.com/2021/05/homeisolation>

Is the statement likely to mislead, deceive or confuse consumers by promoting an unapproved medicine?

‘The majority of the Complaints Board said that by linking Ivermectin to the statement “... early treatment used successfully in other countries makes sense”, the Advertiser is, by implication, suggesting an unapproved medicine is a viable alternative to vaccine mandates and certificates for the unvaccinated, which could mislead or confuse consumers’.

Our comment:

If we were, ‘by implication, suggesting an unapproved medicine is a viable alternative to vaccine mandates and certificates for the unvaccinated’, that ‘could mislead or confuse consumers’ then the Board was wrong.

Firstly it was wrong to assume that the Medsafe and the Ministry of Health statement that they ‘strongly recommend[s] that Ivermectin is not used for prevention or treatment of COVID-19’ means it is not a viable alternative to vaccine mandates and certificates for the unvaccinated. It has been successful in treating Covid 19 in many other parts of the world and is recommended by hundreds of medical professionals as part of a successful treatment protocol. Here are just three links support that:

<https://ivmstatus.com>

<https://worldcouncilforhealth.org>

<https://www.sciencedirect.com/science/article/pii/S0019570720301025?via%3Dihub>

That Medsafe and Ministry of Health statement does not say that it cannot be used for that purpose, nor that it is not a viable alternative.

Nor by the way does a Cochrane review whose website claims a key message from the study was “we found no evidence to support the use of ivermectin for treating COVID19”. That review is only good up until the date of the review (July 2021) and the evidence used in it (up to 26 May 2021). The conclusions of the authors of that study are more explicit. “Based on the current very low- to low-certainty evidence, we are uncertain about the efficacy and safety of Ivermectin used to treat or prevent COVID-19.

The completed studies are small and few are considered high quality.”
https://www.cochrane.org/CD015017/INFECTN_ivermectin-preventing-and-treating-covid-19

Contrary to the Board’s statement, the Medsafe and Ministry of Health statement does not state that Ivermectin is an unapproved medicine. It says only that Ivermectin is NOT APPROVED to prevent or treat COVID-19. The basis for that statement is that under New Zealand’s medicines approvals process a pharmaceutical company would need to make an application for new or approved medicines to be used to treat COVID-19. To date, no application for Ivermectin to treat COVID-19 has been received.

Ivermectin is an approved medicine in New Zealand and has been prescribed by doctors since 2005.

<https://www.medsafe.govt.nz/regulatory/ProductDetail.asp?ID=11299>

Section 25 of the Medicines Act 1981 permits authorised prescribers to prescribe approved medicines for unapproved uses.

In fact the advertisement statement does not promote an Ivermectin-based treatment. The advertisement did not mention Ivermectin and the treatment kits included a range of other medicines.

The kits comprised:- Pulse Oximeter, Digital Thermometer, Paracetamol tablets (15), Vitamin C tablets (30), Multivitamin tablets with Zinc (30), Vitamin D3 tablets (2 packs), Ivermectin 12mg tablets (10), Doxycycline 100mg tablets (10), Three-ply face masks (5), N-95 Masks (2), Sanitizer (100ml), Alcohol based Wipes (1 box with 20 plies), Gloves (2 pairs).

A minority of the Complaints Board said the inclusion of the website link in the advertisement was not promoting Ivermectin, but rather showed an example of another country’s strategy for dealing with Covid 19 and that is our position.

Does the advertisement encourage or be likely to encourage, inappropriate purchase or use?

‘The majority of the Complaints Board said the advertisement could encourage the inappropriate use of Ivermectin’.

Our comment:

Even if the advertisement was promoting Ivermectin, which it is not, it could not be construed to 'encourage the inappropriate purchase or use of that medicine'. Ivermectin is only available on prescription and must be prescribed by a registered medical prescriber. Again the Complaints Board would appear to have a fixation with Ivermectin as It did not suggest the advertisement could 'encourage the inappropriate purchase or use' of any of the other medicinal products supplied with the home-based packs.

Does the advertisement observe a high standard of social responsibility?

The majority of the Complaints Board said the advertisement was not socially responsible to state "... early treatment used successfully in other countries makes sense" with a link to an article about the use of an unapproved medicine, which experts warn could actually do harm, as an example of a viable alternative to mandates and certificates

Our comment:

Here again the Complaints Board would appear to have a fixation with Ivermectin as It did not mention any of the other medicinal products supplied with the home-based kits.

However the Board, in commenting that experts warn that Ivermectin, as an unapproved medicine, could actually do harm, does not provide evidence of those experts or of what harm. The Board references only the Medsafe and Ministry of Health statement in its decision, which says only that "inappropriate use of Ivermectin can be dangerous". Ivermectin is only available on prescription and must be prescribed by a registered medical prescriber therefore "inappropriate use" is likely to be near impossible.

Contrary to the Board's statement, the Medsafe and Ministry of Health statement does not state that Ivermectin is an unapproved medicine. It says only that Ivermectin is NOT APPROVED to prevent or treat COVID-19. The basis for that statement is that under New Zealand's medicines approvals process a pharmaceutical company would need to make an application for new or approved medicines to be used to treat COVID-19. To date, no application for Ivermectin to treat COVID-19 has been received.

It is approved in New Zealand and has been prescribed by doctors since 2005.
<https://www.medsafe.govt.nz/regulatory/ProductDetail.asp?ID=11299>

Section 25 of the Medicines Act 1981 permits authorised prescribers to prescribe approved medicines for unapproved uses.

Ivermectin itself, used in millions of doses across the world since the mid 1970s, has not proved to be dangerous.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3043740/>

In reaching its decision what the Board is affectively saying is that even though we were not promoting a particular product, had we been doing so, being able to back up every claim with provable fact, as we did, would still not have been sufficient to meet its assessment of the required standard of Principle 1 of the Therapeutic and Health Advertising Code.

What the Board appears to be requiring to meet the standard is no question of the current regime imposed by the government and medical authorities for dealing with Covid 19. That is demanding slavish adherence to government dictate which we do not accept.

We therefore submit the board was wrong to rule that the advertisement was in breach of Principle 1 of the Therapeutic and Health Advertising Code.

Determination about statement under the Advertising Standards Code:

- 1. Is the advertisement likely to mislead, deceive or confuse consumers?**
- 2. Does the advertisement undermine the health and well-being of individuals?**
- 3. Has the advertisement been prepared and placed with a due sense of social responsibility?**

Our comment:

In the case of all three of the questions above the Complaints Board would appear to have a fixation with Ivermectin as it did not mention any of the other medicinal products supplied with the treatment kits.

The board was factually incorrect to state that Ivermectin was an “unapproved medicine, which experts warn could actually do harm”. The Board appears to rely on the Medsafe and Ministry of Health statement which says only that “*inappropriate use* of Ivermectin can be dangerous”. That statement does not say Ivermectin could actually do harm, only that *inappropriate use* can be dangerous, as could inappropriate use of any prescription medicine.

Contrary to the Board’s statement, the Medsafe and Ministry of Health statement does not state that Ivermectin is an unapproved medicine. It says only that Ivermectin is NOT APPROVED to prevent or treat COVID-19. The basis for that statement is that under New Zealand’s medicines approvals process a pharmaceutical company would need to make an application for new or approved medicines to be used to treat COVID-19. To date, no application for Ivermectin to treat COVID-19 has been received.

It is approved in New Zealand and has been prescribed by doctors since 2005.
<https://www.medsafe.govt.nz/regulatory/ProductDetail.asp?ID=11299>

Section 25 of the Medicines Act 1981 permits authorised prescribers to prescribe approved medicines for unapproved uses.

A majority of the board appear to have the view that it is not permissible to advocate for alternative options to those being deployed by the New Zealand government and medical authorities, even though those alternatives have been used successfully in other countries.

We disagree.

The very nature of advocacy is to question what is and to promote alternatives that might provide better outcomes. In doing so, providing examples of where or how those alternatives have provided better outcomes elsewhere is advocating with responsibility.

According to the Board's decision, *'The majority said the advertisement could have delivered its advocacy message without referencing a drug which had not been approved for use in New Zealand and which the Government and the medical regulatory body have explicitly warned against using'*.

The advertisement did not reference a drug. It referenced "Home based tests and early treatment used successfully in other countries". Those treatment kits happened to include Ivermectin as just one of the components.

Had our advertisement "delivered its advocacy message without referencing" options successfully used in other countries the Board would indeed have had grounds for considering it was "likely to mislead, deceive or confuse consumers" or had not "been prepared and placed with a due sense of social responsibility", therefore our use of a successful example was critical to meeting the objectives required under the codes.

It should be noted that one version of the "home based tests" advocated for in the advertisement has now been adopted by the government, medical authorities and many businesses. Rapid Antigen Tests are now available from pharmacies and are being rolled out in businesses. "RATs can be conducted in a laboratory, a health setting, or in the community e.g., **at home.**"

<https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-health-advice-public/assessment-and-testing-covid-19/rapid-antigen-testing>

Rapid Antigen Tests have been widely used overseas for months. They were made available free to everyone in the United Kingdom in April 2021
<https://www.gov.uk/government/news/twice-weekly-rapid-testing-to-be-available-to-everyone-in-england>

In New Zealand, experts have been calling on the government for months to make these tests available. "the beauty of the rapid antigen test is that the workers can test themselves on a daily basis and that is the only real way to keep the essential workforce free from the disease" - University of Auckland professor of medicine Des Gorman 03.10.21
<https://www.newshub.co.nz/home/new-zealand/2021/10/university-of-auckland-professor-of->

[medicine-des-gorman-slams-government-over-handling-of-covid-19-pandemic-after-truckie-case.html](https://www.stuff.co.nz/business/126020883/the-saliva-testing-stoush-between-rako-science-and-the-ministry-of-health)

Should Professor Gorman's comments be considered likely to "undermine the health and well-being of individuals?"

The Simpson Roche report commissioned by the Government into a Covid-19 outbreak in 2020, delivered to the Government in late September 2020, advises "all efforts should be made to introduce saliva testing as soon as possible".
<https://www.stuff.co.nz/business/126020883/the-saliva-testing-stoush-between-rako-science-and-the-ministry-of-health>

Should Heather Simpson and Sir Brian Roche be considered likely to "undermine the health and well-being of individuals", or their report "not been prepared and placed with a due sense of social responsibility"? Should media chain Stuff or Newshub be likewise considered so for publishing press reports about it?

What the Board is requiring to meet the standard is that no question be made of the current regime imposed by the government and medical authorities for dealing with Covid 19. That is demanding slavish adherence to government dictate which we do not accept

We submit that the evidence supplied proves that in our advertising, we were advocating for alternatives responsibly, in a way that was not likely to mislead, deceive or confuse consumers, and with a due sense of social responsibility.

Dr Brian Boyd, distinguished Professor at the Department of English at Auckland University reviewed, in the most recent Listener, a new book, The Constitution of Knowledge - a defence of truth, by American journalist Jonathan Rauch. (Dr Boyd was awarded the Rutherford Medal by the Royal Society, the first time the award has been given to a scholar in the humanities). He highlights this point in his review.

No one proposing a hypothesis gets a free pass simply because of who she or he is or what group they belong to. Who you are does not count; the rules apply to everybody and persons are interchangeable. If I claim that my class or race or historically dominant status or historically oppressed status allows me to know and say things that others cannot then I am breaking the empirical rule by exempting my views from contestability by others.

We therefore submit the board was wrong to rule that the advertisement was in breach of Principle 1, Principle 2 and Rules 1(h) and 2(b) of the Advertising Standards Code.

In closing we request the Board reverse its decision that the complaints were upheld in part, and instead rule that the complaints were not upheld.

Appendix 5

RESPONSE TO THE APPEAL APPLICATION FROM THE COMPLAINANT 1

Thanks for the opportunity to submit comments on the appeal of the decision. I don't agree with the appeal for the reasons given in my complaint, and would agree with the decision of the Board to the extent that it upheld my complaint.

I don't agree with the Board's decision that the other parts of the advertisement were acceptable. It seems clearly misleading to me to state that vaccinated individuals can still catch covid and pass it onto others, without also acknowledging that vaccinated individuals are much less likely to catch covid in the first place and are also much less likely to experience severe illness. That is the reason behind the government's use of certificates and behind mandates in some (not all) circumstances -- to reduce the spread of covid and reduce the burden on the health system.

I've got the following further comments on some of the specific points raised in the advertisement:

The advertisement did not promote a medicine. No mention of one is made anywhere in the advertisement. In fact it did not promote an Ivermectin-based treatment, but rather showed an example of another country's strategy for dealing with Covid 19. The advertisement specifically says 'Home based tests and early treatment'.

The headline of the linked website is "Home isolation and **ivermectin-based** treatment kits" (emphasis added). The first sentence is "Dr Suryakant (Head of the Department of Respiratory Medicine at King George Medical University in Lucknow, India) explains how an **ivermectin-based therapy kit** was provided to patients with mild or asymptomatic covid-19 who were in home isolation." (emphasis added)

The fact that the advertisement does not say the word "ivermectin" is not an answer in my view. The Code applies to the entire content of the advertisement and this must include any links contained in the advertisement. Clearly "early treatment" was a reference to ivermectin.

I agree with the earlier decision of the Board that "the Advertiser had framed the link supporting the use of ivermectin treatment kits around a message of viable alternatives to current policies in New Zealand". This is the natural and ordinary interpretation of the advertisement in light of the linked website.

We also note the Complaints Board would appear to have a fixation with Ivermectin as It did not mention any of the other medicinal products, such as Doxycycline, supplied with the treatment packs.

Again, the linked document clearly focussed on ivermectin (refer to the headline and first paragraph). The other contents of the treatment packs are mentioned later on in the article.

Firstly it was wrong to assume that the Medsafe and the Ministry of Health statement that they 'strongly recommend[s] that Ivermectin is not used for prevention or treatment of COVID-19' means it is not a viable alternative to vaccine mandates and certificates for the unvaccinated. It has been successful in treating Covid 19 in many other parts of the world and is recommended by hundreds of medical professionals as part of a successful treatment protocol.

[...]

That Medsafe and Ministry of Health statement does not say that it cannot be used for that purpose, nor that it is not a viable alternative.

I don't see how Medsafe and the Ministry of Health could have been more clear. We are not in another country. We are in New Zealand. To reiterate what has been said by Medsafe, "Ivermectin is NOT APPROVED to prevent or treat COVID-19, which means that Medsafe has not assessed the safety and efficacy for this use. Inappropriate use of ivermectin can be dangerous."

Principle 2 of the Therapeutic and Health Advertising Code states that: "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)." The guidelines to this principle are clear that: "Therapeutic claims for Medicines shall be those approved by Medsafe and thus would be consistent with the product Data Sheet, Consumer Medicine Information and / or the approved Label."

It is no answer to say, as the advertiser does, that authorised prescribers are permitted to prescribe approved medicines for unapproved uses, given that Principle 2 is clear that any therapeutic claims in advertisements must be consistent with the approved indications. Any consumer reading the advertisement is not told that ivermectin is not approved for the use of covid-19 in New Zealand.

The advertiser has also been selective in the information provided about the use of ivermectin overseas. I note that:

- In Australia the prescribing of oral ivermectin for COVID-19 has been banned: <https://www.tga.gov.au/media-release/new-restrictions-prescribing-ivermectin-covid-19>
- The FDA has not approved or authorised ivermectin for the treatment of COVID-19: <https://www.fda.gov/consumers/consumer-updates/why-you-should-not-use-ivermectin-treat-or-prevent-covid-19>
- The WHO recommends that ivermectin only be used within clinical trials in relation to COVID-19: <https://www.who.int/news-room/feature-stories/detail/who-advises-that-ivermectin-only-be-used-to-treat-covid-19-within-clinical-trials> / <https://app.magicapp.org/#/guideline/nBkO1E/section/LAQX7L>

Even if the advertisement was promoting Ivermectin, which it is not, it could not be construed to 'encourage the inappropriate purchase or use of that medicine'. Ivermectin is only available on prescription and must be prescribed by a registered medical prescriber. Again the Complaints Board would appear to have a fixation with Ivermectin as It did not suggest the advertisement could 'encourage the inappropriate purchase or use' of any of the other medicinal products supplied with the home-based packs.

It's clear that even though ivermectin is only available on prescription, people are still attempting to import ivermectin for personal use against covid-19. See an article of 3 February 2022 <https://www.stuff.co.nz/national/health/coronavirus/300509399/covid19-ivermectin-import-attempts-not-slowng-down-amid-warning-against-use> which states "Nine-hundred-and-sixteen consignments of ivermectin were caught at the border in November, December and January, up from 472 between August and October."

The natural meaning of the advertisement, and the way consumers read it, is that early treatments used in other countries are a better way to treat covid-19 than vaccination. Any

consumer who wants to find out more would go to the linked website where they would read that "ivermectin-based treatments" are the way to go. It is true that if they ask their GP their GP is likely to refuse to prescribe them this medication. But it's clear that consumers can and do attempt to obtain ivermectin through other means, and it's socially irresponsible for the advertiser to encourage this.

However the Board, in commenting that experts warn that Ivermectin, as an unapproved medicine, could actually do harm, does not provide evidence of those experts or of what harm. The Board references only the Medsafe and Ministry of Health statement in its decision, which says only that "inappropriate use of Ivermectin can be dangerous". Ivermectin is only available on prescription and must be prescribed by a registered medical prescriber therefore "inappropriate use" is likely to be near impossible.

It's not the role of the Board to make a decision about the safety of ivermectin. The Board is entitled to, and indeed required to, follow Medsafe's decision. Health advertising is subject to particular requirements and rigorous standards, and for good reason.

What the Board appears to be requiring to meet the standard is no question of the current regime imposed by the government and medical authorities for dealing with Covid 19. That is demanding slavish adherence to government dictate which we do not accept.

No, it's simply requiring that advertisers don't encourage the use of a medication for unapproved purposes. To do so is socially irresponsible.

I haven't refuted every point made in the advertiser's appeal due to lack of time, but I hope that the above is helpful to the Board. Thank you again for the opportunity to make further comments, and please let me know if I can assist further.

Additional Comment from Complainant 1

Sorry, further to my email yesterday, I just want to make one more general comment.

Any reader who wants to understand what the advertiser is referring to by "home-based tests and early treatment" is going to naturally look at the website link for more information, as I did. I'd find it very troubling if advertisers were able to link to websites promoting unapproved uses for medication in New Zealand, then say "well, the wording of the advertisement didn't specifically reference that medication" and get off the hook that way.