

COMPLAINT NUMBER	21/297
ADVERTISER	Gold Rock Ltd
ADVERTISEMENT	Nano Silver Hand & Surface Sanitiser Facebook
DATE OF MEETING	8 March 2022
OUTCOME	Upheld Advertisement to be removed

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about a Facebook advertisement for Nano Silver Hand & Surface Sanitiser. The Board said the advertisement made therapeutic claims in breach of the Therapeutic and Health Advertising Code. In addition, the therapeutic claims had not been adequately substantiated.

Advertisement

The Facebook advertisement for Nano Silver Hand & Surface Sanitiser was on the Nano Silver Facebook page. The advertisement showed an image of a mask being sprayed with Nano Silver Hand & Surface Sanitiser. The heading said: "The mask protects you while Nano Silver protects the mask". The text included the following "... you need to take care of your mask's hygiene to keep it sanitised so it can protect you at optimum levels. When the virus is in the environment and you contact it, the only thing that stops it from getting to you is the mask. But it doesn't kill the virus, it only merely stops it from reaching your lungs. Make it a habit to spray your mask with Nano Silver. It has been lab tested to be absolutely safe for human contact and has been approved to kill 99.9% of COVID19 germs within 30 seconds for up to 30 days which clearly gives you the ease to not worry about catching the virus. Nano Silver is currently the most recommended sanitiser in the market and you can learn more about it on our official website or order here <https://nanosilver.co.nz/> "

Summary of the Complaint

The Complainant was concerned the advertisement was misleading and dangerous because:

- it made unsubstantiated therapeutic claims that the product was safe and effective, and there is evidence that nanosilver particles can cause harm
- it stated that the product was tested to kill 99.9% of COVID-19 germs, but the research referred to relates to the use of a surrogate virus (MHV1), not COVID-19
- it made an unsubstantiated claim that it is currently the most recommended sanitiser in the market

Issues Raised:

- Social responsibility
- Safety and effectiveness
- Truthful presentation

Summary of the Advertiser's Response

The Advertiser said the advertisement was on their website, Facebook & Instagram:

<https://nanosilver.co.nz/>

<https://www.facebook.com/GoldRockNanoSilver>

https://www.facebook.com/marketplace/auckland/?hoisted_items=1270558323362470

The Advertiser defended the advertisement and said Nano Silver is completely safe and the ingredients are water and silver ions. The Advertiser said surrogate viruses are used to test the efficacy of the product, in accordance with guidelines set by TGA (Therapeutic Goods Association Australia).

The Advertiser sent copies of two Eurofins product testing reports: “30 days Surface protection test” (for plastic treated with the Nano Silver hand sanitiser and disinfectant) and “Efficacy of killing rate 99.9% in 30 Seconds” (for the Nano Silver hand sanitiser and disinfectant).

The Advertiser also said Nano Silver is an FDA (Food and Drug Administration) and MPI (Ministry of Primary Industries) approved product.

The Advertiser did not comment on the claim that “Nano Silver is currently the most recommended sanitiser in the market”.

A full copy of the Advertiser’s response is in Appendix 2.

Information Provided by Medsafe

The ASA Secretariat requested information from Medsafe about the use of surrogate viruses in the circumstances described by the Advertiser.

A full copy of this response is in Appendix 3.

The following is an excerpt from the response from Medsafe:

... a mask would be a medical device if used to prevent infection, however, a substance sold separately to be sprayed on the mask is neither a medicine nor a medical device in this situation...

Our understanding is that the surrogate virus used in the testing is a permitted organism for a label claim of efficacy against COVID-19 for products that are either hard surface disinfectants or disinfectants that are medical devices, not to a surface such as a mask.

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

Application of the Code

This Code covers all words and visual depictions in all advertising for therapeutic products (medicines and medical devices), natural health products and dietary supplements, health services and methods of treatment. This Code may also apply when therapeutic or health claims are made in advertisements for other products or services not defined in this code.

Only medicines with consent to distribute in New Zealand and medical devices can claim to have a therapeutic purpose in advertisements.

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 (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).

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.

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 or the Advertising Standards 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: Advertising a sanitiser spray during the COVID-19 pandemic
 - Medium: Facebook
 - Audience: Visitors to the Nano Silver Hand & Surface Sanitiser Facebook page
 - Product: Sanitiser spray recommended for face masks

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was: If I spray Nano Silver Hand & Surface Sanitiser on my face mask it will kill 99.9% of COVID-19 germs within 30 seconds for up to 30 days and help protect me against getting COVID-19. It is the most recommended sanitiser in the market.

Therapeutic and Health Advertising Code*Did the advertisement make any therapeutic claims?*

The Complaints Board agreed the advertisement did make a therapeutic claim, that the product will help protect against COVID-19, therefore the Therapeutic and Health Code applied.

The Complaints Board said the advertisement was in breach of the Therapeutic and Health Code because, according to the Code “Only medicines with consent to distribute in New Zealand and medical devices can claim to have a therapeutic purpose in advertisements”. The Board noted that according to the information provided by Medsafe, the Nano Silver Hand & Surface Sanitiser is “neither a medicine nor a medical device in this situation”.

Is the advertisement in breach of Rule 1(b) Safety and effectiveness?

The Complaints Board agreed the advertisement was in breach of Rule 1(b) Safety and effectiveness because it says: “It has been lab tested to be absolutely safe for human contact”. The Complaints Board noted that advertisements for therapeutic products must not claim that the product is safe.

Was the advertisement misleading?

The Complaints Board agreed the advertisement was misleading. This is because the advertisement made therapeutic claims which had not been substantiated.

The Complaints Board noted the substantiation provided by the Advertiser, in support of the claims about the efficacy of the product, related to different circumstances. The Board said the test results related to the Nano Silver hand sanitiser itself and its use as a sanitiser on hard surfaces, not to its use as a spray on face masks.

The Complaints Board said the Advertiser did not provide any substantiation for the claim that “Nano Silver is currently the most recommended sanitiser in the market”.

Advertising Standards Code

The Complaints Board said in the light of the comments above the advertisement was also misleading under the Advertising Standards Code.

Did the advertisement observe a high standard of social responsibility?

The Complaints Board agreed the advertisement did not observe a high standard of social responsibility. This is because the advertisement made therapeutic claims in breach of the Therapeutic and Health Advertising Code. In addition, the therapeutic claims had not been adequately substantiated.

The Complaints Board said taking into account context, medium, audience and product, the advertisement was in breach of Principle 1, Rule 1(b), Principle 2 and Rule 2(a) of the Therapeutic and Health Advertising Code and Principle 1 and Rule 2(b) of the Advertising Standards Code.

Outcome

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 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. Information provided by Medsafe
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Appendix 1

COMPLAINT

There is a company who goes by Gold Rock but the website they use is nanosilver.co.nz specifically marketing a 100% safe to use and also tested to kill 99.9% of covid 19 germs in a sanitiser form that they are also saying is safe to use on masks. None of their accreditations show proof that it is effective against covid 19. The only documentation under covid 19 is for MHV1 which is not SARS-COV-2 so therefore is dangerous and misleading to the public both on social media pages as captured today and on their website. After numerous attempts asking for their documentation that backs up their claim they are no longer replying and keep referring people back to the current accreditations. Other individual searches shows that silver nano particles may cause harm and irritation to people. So encouraging use on masks may be dangerous as well.

NB. The advertisement on the Auckland Buy, Sell, Swap Facebook page is no longer available.

UPDATED COMPLAINT

The Complainant later clarified via email that their main concern was an advertisement on the Advertiser's Facebook page, dated 25 August 2021:

<https://www.facebook.com/GoldRockNanoSilver/photos/a.143244870615519/370659977874006/>

The main things of my complaint was the Facebook advertisement itself for now i just wasn't sure which sort of um for lack of a better word evidence would be needed or information to show about the complaint so i wanted to get a fair bit just to try and cover all bases.

But the main part of the facebook advertisement was the misrepresentation of information around the lab testing for humans when any documents show that it has been approved for dairy industry but that things like food surfaces need to be washed and the advertisement doesn't state this extra information without being prompted. It is encouraging a spray to be used on the mask that isn't fully safe for inhalation. as well as it being the most recommended sanitiser in the market which we cannot find any evidence of including in google trends (not sure if i need to show that or not) or on the MOH website.

Im not sure if that is specific things although they have come back to me on the testing which i later found out it uses a separate virus that is approved in Australia for testing but im yet to find it as approved in NZ

So basically the whole facebook advertisement i felt is misleading and deceptive to consumers who may not know how to research these things and could potentially put themselves at risk of further harm in the current state of our national outbreak.

Appendix 2

RESPONSE FROM ADVERTISER, GOLD ROCK LTD

[the Complainant] raised two points, one of which was " Is it safe to use Nano Silver on a mask?" And the other, "is Nano Silver effective against COVID19?"

Nano Silver is a hand and surface disinfectant that is completely safe to use on masks, hands, hard surfaces, soft furnishings, and fabrics. It's a fantastic product, especially considering it's only water and silver ions (50ppm).

According to MEDSAVE NZ, a 10ppm silver inhaler allows you to inhale directly into your nose, but Nano Silver is not a therapeutic product, and Nano Silver is not 'consumed' for internal use. Many other people are selling the same silver-infused masks and one of NZ's manufacturers also recommends using a silver solution in daily life, including spraying on masks; I've attached a few links for your reference.

<https://www.skybright.co.nz/2021/10/using-colloidal-silver-around-the-home/>

<https://boomernaturals.com/blogs/news/what-is-nano-silver-and-why-is-it-effective-in-face-masks>

<https://boomernaturals.com/pages/nano-silver-s-vietnam#science-behind>

<https://www.sylex.com/nano-silver-face-mask>

<https://www.masksdelivered.co.nz/pages/faqs>

<https://www.skybright.co.nz/product/colloidal-silver-nasal-spray/>

<https://silverbiotics.com/product/silver-biotics-supplement-4oz/>

<https://www.silversolutionusa.com/bloggging/dont-believe-these-nanosilver-myths/>

Concerning the efficacy claims against COVID-19, we have used surrogate viruses in disinfectant efficacy tests to justify claims against COVID-19 in accordance with TGA Australia.

It was clearly stated on their website. "For sponsors and manufacturers wishing to make label claims of efficacy against COVID-19 for products that are either hard surface disinfectants or disinfectants that are medical devices, the following surrogate viruses can be used:

- Human coronavirus 229E
- Murine hepatitis virus (MHV1)"

Please see the attached Eurofins report and link here for your reference

<https://www.tga.gov.au/surrogate-viruses-use-disinfectant-efficacy-tests-justify-claims-against-covid-19>

Aside from covid, we have tested the efficacy of Nano silver against nine highly resistant bacteria, and it is a FDA and MPI approved product, as well as AsureQuality and Global Proficiency Independent test verification. Please see our full list of accreditations here.

<https://nanosilver.co.nz/accreditations-antibacterial-hand-sanitizer-spray-auckland/>

List of media where the advertisement is placed, its still accessible and will continue to be. The advertisement is only on our website and social media (Facebook & Instagram)

<https://nanosilver.co.nz/> <https://www.facebook.com/GoldRockNanoSilver>

https://www.facebook.com/marketplace/auckland/?hoisted_items=1270558323362470

https://www.instagram.com/p/CS_jLCllnwU/?utm_medium=copy_link

I've attached my ad and all the supporting links for you to review. Please let me know if you have any further questions, and I'm happy to revise my post if there is anything specific that does not comply with any standards and practices

ADDITIONAL INFORMATION FROM ADVERTISER

The Advertiser sent two reports, one called “30 days Surface protection test” and the other “Efficacy of killing rate 99.9% in 30 Seconds”.

Appendix 3**INFORMATION PROVIDED BY MEDSAFE**

Our apologies for taking some time to come up with some advice on this one. It is a little complex as we first needed to determine whether or not the product and its advertised use made it either a medicine or medical device? under the Medicines Act 1981. That is not such an easy question to answer as while the product appears to be for a therapeutic purpose, we have looked at it carefully and it is not captured as either a medicine or medical device under the legislation. We can provide the detail of legal rationale for this if that would be helpful. Essentially, a mask would be a medical device if used to prevent infection, however, a substance sold separately to be sprayed on the mask is neither a medicine nor a medical device in this situation. As the product is not regulated by the medicines legislation we have to flag that we don't have this 'authority' behind the following advice and suggest that the Fair Trading Act 1986 or the Consumer Guarantees Act 1993 would be appropriate tests.

You have asked specifically about the TGA information on proving efficacy in relation to COVID-19 protection.

Our understanding is that the surrogate virus used in the testing is a permitted organism for a label claim of efficacy against COVID-19 for products that are either hard surface disinfectants or disinfectants that are medical devices, not to a surface such as a mask.

The log 3 reduction in the testing allows a label claim of 99.9% efficacy. Note that under Australian law some disinfectant solutions when used in certain circumstances or when used to disinfect medical devices are regarded as medical devices. As the TGA requirements, both legal and technical, are complex, we cannot be definite about our advice.

If Medsafe was in a position of requiring proof that the solution when sprayed on a mask was effective, we would expect validated test methods that actually tested masks on which the solution had been sprayed in order to prove that the claim was valid. Testing of the solution would not be sufficient.

We also note that the 'accreditations' page on the nanosilver.co.nz website may contain misleading certifications. You may wish to contact the Licensing Authority named on the certificates at MPI on the use of their certifications. The reference to Medsafe on the Eurofins certificates is misleading (by Eurofins) and Eurofins has been warned about this.