COMPLAINT NUMBER	21/473
ADVERTISER	Department of the Prime Minister and Cabinet
ADVERTISEMENT	Unite Against COVID-19, Brochure
DATE OF MEETING	28 March 2022
OUTCOME	No Grounds to Proceed

Advertisement: The 8-page unaddressed Brochure from Department of the Prime Minister and Cabinet is titled, "Aotearoa New Zealand It's your time". It contains information about how to book an appointment to get vaccinated against COVID-19 as well as information about the vaccine and its efficacy. The last two pages contain instructions on how to book a vaccination in over 20 languages, including Māori, Arabic, Chinese, Persian, Samoan, Hindi and Spanish. The booklet includes the logos for the Ministry for Pacific Peoples, Karawhiua, Ministry of Health, and the government COVID-19 logo on the last page. Each page of the booklet is bordered by yellow stripes.

The Chair ruled there were no grounds for the complaint to proceed.

Complaint: I recently received a government pamphlet in my letterbox which was unsolicited and contained misleading and false statements.

The pamphlet entitled

'Aotearoa New Zealand Its your time' contained the following statements which I find offensive due to the misleading nature of the information or the incorrectness of the statements made.

'They're completely free'
This is misleading; they may be free at source but who paid for them? The New Zealand taxpayers who will be continuing to pay for them for many years.

'you will be asked to…… and give consent'
This says nothing about the right to fully informed consent, people without a knowledge of medical ethics may not know or understand the implications of what this means for example how does the word consent compare with 'informed consent' in the Nuremberg Code?
https://history.nih.gov/display/history/Nuremberg%2BCode

' Delta is a new variant of the COVID-19 virus. Being fully vaccinated provides good protection against catching the virus and from getting very sick.
The virus is not COVID-19 it is SARS CoV-2, COVID-19 is the disease which may result from the virus.

Protection against catching the virus may imply the Delta variant but it doesn't specifically state it, does it? This is misleading. Also vaccination does not guarantee an individual will not succumb to the Delta variant as this CDC report shows. This official article clearly shows that 74% of Delta cases were in fully vaccinated individuals.

https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s_cid=mm7031e2_w

‘ The Pfizer vaccine has been thoroughly assessed for safety by our own Medsafe experts……’
According to the response to an Official Information Act request Medsafe was unable to provide information regarding their own safety testing
https://fyi.org.nz/request/15147-request-for-further-information-regarding-sars-cov-2-vaccination-program

‘’There have been no shortcuts taken in granting approval.’

This implies that the product has full approval when in fact the vaccine is still experimental and phase 3 trials will not be complete until 2023. How can it have full approval when the trial is not complete? We cannot know the long term consequences of this product and therefore cannot by definition give truly informed consent, can we?

‘ The COVID-19 vaccine is highly effective if people have both doses. Studies have shown around 95% of people who have received both doses of the vaccine are protected against getting severe COVID-19 symptoms’
‘ This is blatantly misleading to an uninformed individual. 95% effectiveness is a relative risk reduction. The absolute risk reduction is only around 0.8% according to Pfizer’s own data which equates to a Number Needed to Vaccinate of around 120 for one individual to benefit. This clearly paints a different picture, doesn’t it?
https://blogs.bmj.com/bmj/2020/11/26/peter-doshi-pfizer-and-modernas-95-effective-vaccines-lets-be-cautious-and-first-see-the-full-data/

The vaccine ‘ ..is made up of chemicals and ingredients that include small amounts of fats, salts and sugars’

There is no mention here of the fact that the vaccine contains genetic material in the form of mRNA which could theoretically at least compromise human DNA integrity because of cellular reverse transcriptase activity.
https://study.com/academy/lesson/reverse-transcriptase-definition-function-structure.html

‘Small amounts of fats’ is highly misleading to anyone who is uneducated in these matters. The fats are present as Lipid Nano Particles (LNPs) the safety of which has not been established and indeed was of particular concern to Medsafe in the original application for license. LNP’s can cross the blood brain barrier and are probably implicated in many of the neurological sided effects which are happening by the tens of thousands arounds the world. PEG (polyethylene glycol) a component of the ‘fats’ is directly implicated in severe allergic reactions.
https://informedchoicewa.org/news/why-do-lipid-containing-mrna-vaccines-make-you-feel-sick/
https://pubmed.ncbi.nlm.nih.gov/33011299/

The use of the word vaccine throughout this leaflet is misleading as this product does not conform with the definition of a vaccine.
A vaccine is ‘ an antigenic preparation used to stimulate the production of antibodies and to procure immunity from disease’. - Oxford dictionary
This product is not an antigenic preparation by any definition, it is a gene therapy designed to stimulate production of an antigen in the body, something entirely different.

The product does not produce immunity but merely reduces symptoms. This is from Pfizer’s package insert:

1. INDICATIONS AND USAGE

COMIRNATY is a vaccine indicated for active immunisation to prevent coronavirus disease 2019 (COVID-19) caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in individuals 16 years of age and older.

https://www.fda.gov/media/151707/download

Note it does not state it prevents infection with the virus SARS CoV-2 nor does it state it prevents transmission of the virus.

'You can trust the information about the vaccine at……'
Why is there no meaningful debate? Why are well respected scientists from around the word being maligned and censored. To say the government is the 'only source of truth' is clearly ridiculous.. What is truth? There has been little science to back up the statements being issued unlike the dissenting voices which are highly scientific.

On the whole this leaflet needs to be withdrawn and replaced with something that is clear, unambiguous and contains correct information that will allow individuals to make a truly informed choice which is their right, isn't it?

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e);

> **Principle 2: Truthful Presentation:** Advertisements must be truthful, balanced and not misleading.
>
> **Rule 2(b) Truthful Presentation:** Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.
>
> **Rule 2(e) Advocacy advertising:** Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

About Advocacy Advertising under the Advertising Standards Code
The Chair confirmed the advertisement from the New Zealand Government on matters relating to the COVID-19 vaccination programme was advocacy advertising under the Advertising Standards Code.

The Chair observed that in a free and democratic society, issues should be openly debated without undue hindrance or interference from authorities such as the Advertising Standards Authority (ASA), and it should not unduly restrict the Government's role in communicating public health information to the public.

Complainants sometimes ask the ASA to in effect decide which side in an advocacy debate is correct, but the Advertising Standards Complaints Board has consistently declined to have a view. The ASA is not an arbiter of scientific fact. The Complaints Board's only role is to determine whether there has been a breach of the ASA Codes taking into account the Advocacy Principles. In the first instance the Chair's role is to decide if there are any grounds for the complaint to proceed.

The Chair confirmed the Advertiser's identity was clear. The brochure advertisement included the Unite against COVID-19 logo, the Covid19.govt.nz website address and the *bookmyvaccine.nz* website. The position of the Advertiser was also clear. The advertisement promotes the COVID-19 vaccination rollout.

The Chair noted the advertisement was from the New Zealand Government. The Chair confirmed the agencies supporting the Government's COVID-19 approach included the Department for the Prime Minister and Cabinet and the Ministry of Health. The role and jurisdiction of the ASA in advertising from expert bodies was addressed in *Electoral Commission v Cameron* [1997] 2 NZLR 421. In accordance with the findings of the Court of Appeal, the Advertising Standards Authority was required to "tread carefully" and ensure that it did not substitute its opinion for that of the expert body.

Application of the Advertising Standards Code to this advocacy advertisement
In reviewing the complaint about this advertisement, the Chair took into account the role of advocacy advertising, the liberal interpretation of the Codes required by the Advocacy Principles, the application of *Cameron*, the likely consumer takeout, and the context for the advertising; the New Zealand Government's response to the COVID-19 pandemic with an audience of all New Zealanders. The Chair also noted the large amount of information available from a variety of sources about COVID-19, including the Government, the science community, news media and interest groups.

Preliminary Matter
The Chair acknowledged the delays in responding to this complaint and apologised for the time it has taken to provide a ruling. The Chair said the detailed complaint raised a number of matters dealt with in other Complaints Board Decisions. These Decisions had been provided to the Complainant in the interim by the ASA secretariat. One issue raised, the use of the 95% figure in the advertisement, was also considered in an appeal decision and that appeal decision has now been released. The Chair is now able to provide a separate ruling for all the issues raised in this complaint.

The Chair noted the Complainant was concerned the advertisement was making misleading and false statements and considered each statement in turn:

"They're completely free"
The Chair noted the Complainant considered the statement misleading as the taxpayer will be paying for the vaccine.

The Chair said most consumers would consider the term "free" to mean there is no additional doctors fee or charge to receive the vaccination and would not be misled by the statement.

"At your appointment you'll be asked to provide your details and give consent"
The Chair noted the Complainant was concerned people would not understand the implications of consent and compared it to the 'informed consent' in the Nuremberg Code.

The Chair said the Nuremberg Code, which set out standards to which doctors must conform when carrying out experimental research on humans, was not relevant to informed consent to medical treatment in New Zealand. The Chair confirmed the Pfizer vaccine had been approved by the Government's medicines regulator for use in New Zealand.

The Chair said reference to consent in the advertisement was not likely to mislead, deceive or confuse consumers.

"Delta is a new variant of the COVID-19 virus. Being fully vaccinated provides good protection against catching the virus and from getting very sick"
The Chair noted the Complainant was concerned the advertisement uses the incorrect name to describe the virus and does not specifically say the vaccine will protect against the Delta variant. The Complainant is also concerned that the vaccination will not guarantee an individual will not get the COVID-19 Delta variant.

The Chair said the Complainant is correct to state the virus is not COVID-19 it is SARS CoV-2 and that COVID-19 is the disease which may result from the virus. The Chair said this is a technical point and not one which alters the overall consumer takeout of the advertisement about the role of vaccination in protecting against the virus.

The Chair said the name Delta is used twice in the paragraph, both in the heading and in the body of the answer. The Chair said the average consumer would understand the assertion about "good protection" is referring to the Delta variant. The Chair also noted the advertisement does not claim to guarantee an individual will not get Delta as the Complainant claims.

"The Pfizer vaccine has been thoroughly assessed for safety by our own Medsafe experts……"
The Chair noted the Complainant was concerned about access to Medsafe's safety testing.

The Chair said this issue related to the safety of the vaccine. The Chair confirmed the efficacy and safety of the vaccine was not a matter for the ASA. The vaccine referred to in the advertising had received approval from Medsafe, the Government regulator for prescription medicines. The Chair noted the Datasheet which sets out all the relevant information for the vaccine, under Medsafe's approval process is available on the Medsafe website.

''There have been no shortcuts taken in granting approval.'
The Chair noted the Complainant was concerned the advertisement implies the medicine has full approval when in fact phase 3 trials will not be complete until 2023.

The Chair reiterated it was not the role of the ASA to comment on the vaccine approval process of an expert body such as Medsafe, a unit of the Ministry of Health. The Chair confirmed the vaccine referred to in the advertising had received approval from Medsafe, the Government regulator for prescription medicines and therefore the statement made in the advertisement was not in breach of the Advertising Standards Code. The Chair also noted the advertisement does state that ongoing monitoring for safety continues.

"**The COVID-19 vaccine is highly effective if people have both doses. Studies have shown around 95% of people who have received both doses of the vaccine are protected against getting severe COVID-19 symptoms"**
The Chair noted the Complainant had raised the issue of relative verses absolute risk reduction in relation to the 95% figure used in the advertisement.

The Chair referred to a complaint which raised this issue which had originally been ruled No Grounds to Proceed, appealed by the Complainant and referred to the Complaints Board by the Chairperson of the Appeal Board.

The Chair said the precedent Decision 21/330 Appeal 21/014 was Not Upheld by the Complaints Board and said in part:

> …"The Complaints Board agreed the advertisement was not likely to mislead or deceive the average consumer. The Complaints Board said the Advertiser was

communicating information to the general public in an accessible way through a frequently asked questions format, in a newspaper advertisement.

In making this determination the Board considered the context of an advocacy advertisement from an expert body during a global pandemic which has been declared a public health issue of international concern by the World Health Organisation.

The Complaints Board acknowledged the Complainant had raised a technical point about differentiating between relative and absolute risk reduction in the data supporting the statement in the advertisement. The Board noted the Complainant's view that a statement which more accurately aligned with the clinical data available at the time would be that *95% fewer people became ill after receiving two doses of the vaccine*.

The Complaints Board agreed the Complainant's issue was not material for consumers reading the print advertisement. The Board re-iterated the likely consumer takeout that being vaccinated will reduce the risk of getting seriously ill from COVID-19 and it did not consider the advertisement was likely to mislead or deceive consumers. "

The Chair said the precedent decision was directly relevant to the complaint before her and agreed the technical point raised by the Complainant in relation to the advertisement's use of the 95% figure was unlikely to alter the likely consumer takeout that the vaccine will reduce the risk of you getting seriously ill from COVID-19.

[The vaccine] "is made up of chemicals and ingredients that include small amounts of fats, salts and sugars"

The Chair noted the Complainant was concerned the advertisement was misleading by omission by not mentioning the mRNA technology and did not disclose the fats mentioned in the advertisement are Lipid Nano Particles (LNPs) which are of concern to them.

The Chair said the advertisement was designed to reach a wide audience and reflected New Zealand's collective management of the pandemic including the expansion of the vaccination programme to the general public. The Chair said the likely consumer takeout of the advertisement would be it was an awareness-raising message, which briefly addressed some of the questions the public may have had at the time of publication. The Chair said the advertisement was not, and did not purport to be, a comprehensive communication about the full composition of the vaccine and how it worked. The Chair said the advertisement was unlikely to mislead consumers.

Use of the term 'vaccine' throughout the advertisement

The Chair noted the Complainant was concerned the advertisement was misleading to use the term vaccine when it does not conform with the definition of a vaccine.

The Chair said the advertisement reflected the term vaccine had been commonly used, including by the manufacturer.

The Chair said the use of the term vaccine was not likely to mislead or deceive consumers.

"You can trust the information about the vaccine at…"

The Chair said the Complainant had misquoted the advertisement which actually stated, "You can find trusted information about the vaccine and COVID-19 at …" and then provided a list of websites for consumers to obtain more information. The Chair said the word trusted

was used by the Government to differentiate official sources of information from those which may be unofficial or unsourced.

Summary
Having carefully reviewed the advertisement and the complaint, the Chair said the advertisement was not misleading when viewed through the lens of an advocacy advertisement on behalf of the Government in the context of a global pandemic. The Chair ruled the advertisement was not in breach of Principle 2 or Rules, 2(b) or 2(e) of the Advertising Standards Code.

Chair's Ruling: Complaint **No Grounds to Proceed**

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.