

<b>COMPLAINT NUMBER</b>	22/054
<b>ADVERTISER</b>	OptiPharm Pty Ltd
<b>ADVERTISEMENT</b>	OptiSlim, Television
<b>DATE OF MEETING</b>	10 May 2022
<b>OUTCOME</b>	Settled in Part, Not Upheld in Part No Further Action Required

### Summary of the Complaints Board Decision

The Complaints Board agreed to settle in part a complaint about the advertisement for Optislim, and the balance of issues were not upheld. The Board said the Advertiser had substantiated the claim made about weight loss and the immune system and it was not required to refer to other ways to lose weight when promoting its products. The Board agreed the addition of a disclaimer to state "Weight loss takes time and effort to be successful. People should seek professional advice on diet, exercise and lifestyle changes" settled the Code breach.

### Advertisement

The Optislim television advertisement begins with the claim, "Studies show that being overweight can impair your immune system". It then shows various images, including of a woman weighing herself, a woman doing a press up with a baby on her back and a couple doing yoga. The ad promotes the Optislim weightloss range as a way to "take back control of your body, lose weight, improve your immune system and be your version of better". The logos for four different chemists/pharmacies are shown at the end of the advertisement.

### Summary of the Complaint

The Complainant was concerned that, while losing weight is proven to be of beneficial help to boost people's immune system, the advertisement was misleading because:

- going on a restricted and highly processed diet such as Optislim products is not the best way to achieve this
- Dieters really *should* be eating more healthy unprocessed options like fresh fruit and vegetables.
- By showing only Optislim products, and no unprocessed alternatives, their advertisement also appeared to promote the products as a complete meal system rather than an occasional supplement.
- In the current situation with omicron spreading through the community, such unhelpful and misleading claims are particularly harmful.

### Issues Raised:

- Social Responsibility
- Truthful Presentation
- Inappropriate or Excessive Use

### Summary of the Advertiser's Response

The Advertiser said numerous studies supported its statements that being overweight can impair your immune system and losing weight can improve your immune system. It said the statements are truthful and honest and not designed to mislead the viewers. It confirmed the Advertisement does not encourage excessive use of the Optislim products, it simply provides

an additional method of weight loss, either solely using a formulated complete meal replacement program or by including the Optislim range in conjunction with a food-based diet and exercise (at the purchaser's discretion and upon reviewing the different program phases on the Optislim website). Opti-Pharm rejected the suggestion that it is exploiting peoples' fears amid the current pandemic.

The Advertiser acknowledged the advertisement did not include the standard disclaimer wording in the Code and offered to include it in the television advertisement going forward.

### **Summary of the Media Response**

The Commercial Approval Bureau (CAB) said it is true that being overweight can impair the immune system and Optislim offers support to those in their quest to lose weight and to be strong and healthy. CAB said there is no suggestion that the limited range of products should be used as a complete diet.

### **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 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.

**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.

The Complaints Board also considered the definitions of *therapeutic purpose* and *health benefit claim* and the guidance for weight management advertising.

### **Relevant precedent decisions**

In considering this complaint the Complaints Board referred to a precedent decision, Decision 15/088 which was Not Upheld.

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

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

**Decision 15/088** concerned an advertisement for a meal replacement programme called Optifast. The Complainant said the reference to ketosis in the advertisement was not

appropriate. The Complaints Board said the programme, which induced ketosis was not a form of starvation but helped to burn excess energy while maintaining nutritional requirements. ... It said the likely consumer takeout was that the programme targeted those people who needed to lose weight for health reasons and therefore, had a very specific target audience. As such, the Complaints Board said the advertisement did not promote starvation and disagreed with the Complainant's view it was ethically unsound to advertise the product.

### **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: Encouraging people to lose weight to help their immune system, during the COVID-19 pandemic
  - Medium: Television
  - Audience: All viewers but of particular note to people who think they are overweight
  - Product: Optislim product range – low calorie meal replacements

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was it promoted a range of products formulated as low-calorie meal replacements to help people lose weight and reducing your weight can help improve your immune system. The Board agreed that while the advertisement did not explicitly link the products and the COVID-19 pandemic, the reference to weight loss and the immune system were themes that could resonate with some consumers in this context and an awareness of the increased risk associated with being overweight or obese.

#### *Does the advertisement make a therapeutic purpose claim about Optislim?*

The Board agreed the advertisement was not making a therapeutic purpose claim about Optislim. This is because the claim about the immune system was linked to weight loss, not specifically to the products being advertised.

#### *Does the advertisement make a health benefit claim about Optislim?*

The Complaints Board agreed the advertisement made a health benefit claim in relation to weight loss; the product maintained or promoted health or wellness. That claim was supported in the context of its low-calorie meal replacement products.

#### *Is the advertisement misleading?*

The Complaints Board noted the Complainant's views the advertisement should have included healthy and unprocessed options like fresh fruit and vegetables which have well-recognised benefits to support health and wellbeing. The Board said the Advertiser was allowed to feature its own products in its advertisement and the lack of unprocessed alternatives was not a breach of the Therapeutic and Health Advertising Code.

The Board agreed the advertisement was not misleading and the claim regarding the link between weight loss and the immune system had been substantiated.

The Board acknowledged that a potentially vulnerable audience meant that advertisers need to exercise a high degree of care when referring to a general therapeutic benefit (from weight loss) in a product advertisement.

*Should a disclaimer have been included?*

The Board noted the Therapeutic and Health Advertising Code and the guidance on advertising weight management programmes require the inclusion of statements supporting a balanced, healthy diet and regular exercise. In its response, the Advertiser said it included a statement like “Weight loss takes time and effort to be successful. People should seek professional advice on diet, exercise and lifestyle changes” in its other advertising and is willing to add this to the television advertisement.

The Board agreed this statement should be in the television advertisement and based on the undertaking by the Advertiser to include it, agreed that this Code breach could be settled.

*Is the advertisement socially responsible?*

The Complaints Board discussed the likely consumer takeout of the advertisement in the context of social responsibility. The Board considered the reference to ‘There’s never been a better time’ to be a call to action rather than a reference to the pandemic. The Board agreed the reference to the immune system in the advertisement meant there was a link to the COVID-19 pandemic in a general way. The Board noted some of the substantiation provided by the Advertiser was directly linked to COVID-19 studies. The Board agreed the general nature of the link did not reach the threshold to breach the requirement for a high standard of social responsibility.

In summary, the Complaints Board said the advertisement was not misleading and had met the required high standard of social responsibility. This is because the claim about the immune system was linked to weight loss, not the product being advertised.

The Complaints Board agreed the lack of disclaimer and the reference to a healthy diet and exercise was settled as the Advertiser had undertaken to add this wording to the television advertisement, in accordance with the principles of advertising self-regulation.

**Outcome**

The Complaints Board ruled the complaint was **Settled in Part, Not Upheld in Part.**

No further action required.

**APPEAL INFORMATION**

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website, [www.asa.co.nz](http://www.asa.co.nz). Appeals must be made in writing with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.

## APPENDICES

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

#### COMPLAINT

Hi, I am not happy with the Optislim advertisement just shown in New Zealand television this morning on TVNZ 1 claiming that their product will somehow help boost peoples' immune system. While losing weight is proven to be beneficial in this regard going on a restricted and highly processed diet such as their products are not the best way to achieve this, and they are deliberately misleading people with such claims at a time when they really should be eating more healthy unprocessed options like fresh fruit and vegetables. By showing only their products and no unprocessed alternatives their advertisement also appeared to promote the products as a complete meal system rather than an occasional supplement something which previous campaigns more sensibly avoided. In the current situation with omicron spreading through the community such unhelpful and misleading claims are particularly harmful I will also be forwarding my complaint to the manufacturers of these products in Australia. I am unable to state the exact time of broadcast accurately due to having paused live viewing.

### Appendix 2

#### RESPONSE FROM ADVERTISER, OPTI-PHARM PTY LTD

##### Response to Complaint in respect of Optislim television advertisement

##### Case reference number: 22/054 ("Complaint")

I am writing to you on behalf of Opti-Pharm Pty Ltd ("**Opti-Pharm**"), being the advertiser in relation to the above matter.

This letter is provided in support of Opti-Pharm's response to the issues raised in the above-mentioned Complaint.

Opti-Pharm takes its duties seriously in respect of adherence to the *Therapeutic and Health Advertising Code* ("**Code**") and all other relevant codes, including the Advertising Standards Code ("**ASA**") administered by the Advertising Standards Authority ("**Authority**"). Opti-Pharm acknowledges the importance of the Code and the Authority's self-regulatory system in upholding prevailing community standards and promoting public confidence in advertising and marketing communications.

The response set out in this letter is offered by way of explanation regarding the current form of the advertisement in question.

##### The Advertisement

The advertisement is a television commercial promoting Opti-Pharm's range of weight-loss products known as the "Optislim" product range ("**Advertisement**"). The Optislim product range is designed to assist weight loss and weight management by providing low calorie diet meal replacements in the form of shakes, soups and bars.

The advertisement was produced by advertising agency Two Tractors, and the relevant media buyer in this matter is Advertising Advantage Pty Ltd.

The Advertisement opens with a black screen and the words “*Studies show that being overweight can impair your immune system*” followed by a montage of images including:

- A woman stepping on scales;
- a woman sitting cross-legged practising meditation;
- A woman doing a push up with a child on her back;
- A man and a woman practising yoga and laughing;
- A woman drinking an Optislim shake in a kitchen; and
- A woman stepping off scales.

The images are followed by images of the Optislim weight loss range and overlaid by a series of visual text messages including the phrases “be healthy”, “be strong” and “be whatever”.

The advertisement commences with a voiceover that says “*Studies show that being overweight can impair your immune system so there’s no better time than now to be healthy, be strong, be whatever you want to be*” and culminates with the voiceover stating “*Optislim weight loss range can help you take back control of your body, lose weight, improve your immune system and be your version of better*”.

The Advertisement is currently airing on Bravo, Three and TVNZ1 for the months of March and April. The schedule for following months has not yet been finalised, however the schedule summaries for March and April are set out in Annexure A (“**Schedule**”).

A copy of the script, media schedule and Commercial Approvals Bureau (“**CAB**”) number and rating are set out in Annexure A for your perusal.

### **The Complaint**

The Complaint raises the following concerns with respect to the Advertisement:

- the ad’s statements that link being overweight weight with a reduced immune system;
- alleging Opti-Pharm is promoting its products as a complete meal replacement system; and
- allege that the ad is taking advantage of people’s fears amid the COVID-19 pandemic and states that Opti-Pharm should not be encouraging the use of such products during this time.

We understand that the Authority will review the Advertisement against the following sections of the Code: Principle 1, Principle 2, Rule 1(a), Rule 2(a) and Rule 2(b), and take into consideration the following matters:

- generally prevailing community standards;
- previous decisions;
- the consumer takeout from the advertisement;
- the context, medium and intended audience; and
- the product being advertised.

Each of the concerns raised in the Complaint will be addressed below.

### **Obesity and reduced immunity**

The Complaint states that the Advertisement claims that using the products will boost an individual’s immunity. There have been numerous studies which have shown that being overweight is linked to a reduced immune system. Including:

- A May 2020 study that showed strong evidence that obesity was linked to worse COVID-19 effects and that obesity has long been associated with a worse outcome with respect to all viral infections.<sup>1</sup>
- A November 2020 study that showed obesity (along with chronic disease and lifestyle factors) have harmful impacts on the immune system and therefore the outcome of COVID 19 for patients with the above issues are far worse than those without.<sup>2</sup>
- A 2012 study showed strong evidence that obesity negatively impacts immune function and specifically states “recent studies demonstrated altered immune cell function in obese human subjects compared to those with a healthy weight range and that “The best solution to improving health of obese individuals is significant weight loss.”<sup>3</sup>
- A 2010 study showed that even minimal amounts of weight loss can reverse the damage that can be seen in obese people.<sup>4</sup>

The Advertisement states in both text and voice over:

*“Studies show that being overweight can impair your immune system” and later states “improve your immune system and be your version of better”.*

Accordingly, the statements made by Opti-Pharm that studies show that being overweight can impair your immune system and losing weight can improve your immunity are supported by numerous studies and are truthful and honest and are not designed to mislead the viewers.

### **Optislim as a complete meal replacement**

Opti-Pharm have a number of products available in their Optislim range, in particular and as set out in the Advertisement a Very Low Calorie Meal Replacement, including shakes, soups and bars. The Complaint states that Optislim should only be used as a supplement not a complete meal replacement. The Optislim products meet the Food Standards Australia New Zealand requirements of complete meal replacement in conjunction with a good exercise regime. Although Optislim products include complete meal replacements, the Advertisement shows the full range and links the individual to the website where they can find additional information. This speaks to Rule 2(b) of the Code. In no way have Opti-Pharm breached this rule.

Numerous studies have been undertaken to show the results of a meal replacement diet as opposed to a diet that is food based, upon review of such studies it is shown that meal replacements are best for weight loss and maintenance as well as maintaining muscle mass.<sup>5</sup>

Although Optislim are promoting a meal replacement diet by promoting their products, it was neither misleading nor harmful to do so given that the products are FSANZ approved and

<sup>1</sup> Korakas, E et al, “Obesity and COVID-19: immune and metabolic derangement as a possible linke to adverse clinical outcomes, AM J Physical Endocrinol Metab 319: E105-E109,2020.

<sup>2</sup> de Frel DL, Atsma DE, Pijil H, Seidell JC, Leenen PJM, Dik WA and van Rossum EFC (2020), The Impact of Obesity and Lifestyle on the Immune System and Susceptibility to Infections such as COVID-19 Front. Nut. 7:597600.

<sup>3</sup> Milner, J and Melinda A. Beck, “Micronutrients, immunology and inflammation. The impact of obesity on the immune response to infection”, Proceedings of the Nutrition Society (2012), 71, 298-306.

<sup>4</sup> A Viardot et al., ‘The effects of weight loss and gastric banding on the innate and adaptive immune system in type 2 diabetes and pre-diabetes’ (2010) *Journal of Clinical Endocrinology & Metabolism* (6), 2845-50.

<sup>5</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2851659/>

Cheskin LJ, Mitchell AM, Jhaveri AD, Mitola AH, Davis LM, Lewis RA, Yep MA, Lycan TW. Efficacy of meal replacements versus a standard food-based diet for weight loss in type 2 diabetes: a controlled clinical trial. *Diabetes Educ.* 2008 Jan-Feb; 34(1):118-27. doi: 10.1177/0145721707312463. PMID: 18267998.

are used in conjunction with a healthy lifestyle. Based on the Authority's guidance note with respect to Weight Management Programs, the Advertisement does not imply the sole use of Optislim products for weight loss, it simply states that it will assist in getting to the better healthier version of oneself and directs the viewer to the relevant retailers and Optislim website.

### **COVID-19**

Although the Advertisement does not mention COVID-19 the complainant appears to have interpreted the inclusion of the phrase "...there's no better time than now" to refer to the current COVID-19 pandemic. Opti-Pharm rejects the suggestion that it is exploiting peoples' fears amid the current pandemic. The phrase used is a common term used to inspire people to start their health and weight loss journey. In saying this, as mentioned above new evidence has emerged to suggest that those affected by obesity may be at greater risk of a worse outcome when infected by COVID-19 (and other viral infections) due to the impacts that obesity has on their immune system functionality.<sup>6</sup> In addition to this, further studies have shown that individuals with pre existing conditions due to being overweight, may have worse outcomes when infected by COVID-19.<sup>7</sup> However, as stated above Opti-Pharm denies any suggestion that it is exploiting people's fears amid the pandemic.

### **Compliance with the Code**

Opti-Pharm understands that the Authority has raised the following sections of the Code as potential issues. We have provided brief explanations below in conjunction with the substantiations made above for your perusal. Opti-Pharm denies that it is in breach of the Code.

#### *Principle 1 – Rule 1 (a)*

We acknowledge that this rule requires wording to the following effect to be included in the Advertisement, "Weight loss takes time and effort to be successful. People should seek professional advice on diet, exercise and lifestyle changes." Although similar disclaimers are provided for on the Optislim products and website, such disclaimer was not raised by the CAB. Opti-Pharm are willing to amend the Advertisement to include similar wording if the Authority requires it.

#### *Principle 2 – Rule 2 (a)*

This rule has been complied with, for the reasons mentioned above, the claims made in the Advertisement are substantiated by sources and are not intended to be untruthful or misleading to the viewer. The issues raised in the Complaint are not accurate.

#### *Principle 2 – Rule 2 (b)*

The Advertisement does not encourage excessive use of the Optislim products, it simply provides an additional method of weight loss, either solely using a formulated complete meal replacement program or by including the Optislim range in conjunction with a food-based diet and exercise (at the purchaser's discretion and upon reviewing the different program phases on the Optislim website).

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<sup>6</sup>S Scott, "Overweight people at greater risk from coronavirus, heightened by COVID-19 links to respiratory illness" ABC News 8 May 2020 accessible at <https://www.abc.net.au/news/2020-05-08/coronavirus-covid-19-obesity-risk-factor-new-research/12213126>,

<sup>7</sup> P Maffetone and P Laursen, 'The Perfect Storm: Coronavirus (COVID-19) Pandemic Meets Overfat Pandemic' 2020 < <https://www.frontiersin.org/articles/10.3389/fpubh.2020.00135/full>.

I trust that the explanations above and the evidence provided to you, substantiates the claims in the Advertisement and responds adequately to the complainant's issues. Please do not hesitate to contact me directly if you have any queries or require any additional information in assessing the matter.

#### **ADDITIONAL INFORMATION FROM ADVERTISER**

I am writing to you with some further explanation with respect to the provisions of the Therapeutic and Health Advertising Code ("**Code**") which relate to Weight loss/Weight Management programmes and the "Further Guidance on Advertising Weight Management Programmes" as requested by the Complaints Board. I have set out a response in relation to each of the below guidance statements set out in the Code:

- (a) *Advertisements should acknowledge nutrition and exercise as major elements in individual weight management.*

The Advertisement referred to in the initial response dated 24 March 2022, is not considered to breach the above guidance. The Advertisement clearly shows physical activity which infers a balanced lifestyle and reference to exercise as part of weight loss.

- (b) *Advertisements should not suggest or imply that consumers follow a diet which is not nutritionally well balanced or include a plan or process that has or is likely to have, an energy intake of less than that recommended by an authoritative dietary expert and specified from time-to-time in the Guidance Notes. Advertisers should not promote a diet plan with less than 3500 kilojoules (800 calories) per day on average over the course of one week.*

The program does not promote a diet plan with less than 800 calories per day. The Optislim weight loss range includes a number of phases, all of which are either equal to or more than 800 calories per day. These phases are clearly outlined on the Optislim website – [www.optislim.com.au](http://www.optislim.com.au). In addition, the Optislim pamphlets located in our weight loss shake boxes outlines the different phases as well as a reference to using the products in conjunction with a balanced diet and exercise.

- (c) *Advertisements should not imply that the product or service is a substitute for a balanced diet.*

The Advertisement does not imply that the Optislim products are a substitute for a balanced diet, it simply provides for a product which can aid in weight loss. The Optislim website also provides information on the different weight loss phases, for example a maintenance phase includes only one shake per day in conjunction with balanced whole foods and exercise.

- (d) *Claims for specific weight loss or reduction in body measurement should be realistic and supportable.*

The Advertisement does not show specific weight loss or body measures, therefore not promoting any unrealistic results. All of the results shown on the Optislim website are before and after photos of real life users, therefore not promoting any misleading results.

- (e) *Advertisements should not promote unrealistic, rapid or unsafe outcomes.*

The Advertisement does not promote unrealistic or unsafe outcomes as it does not show any before and after images nor does it provide a specific number on the scales at the beginning of the Advertisement. It is simply promoting the use of the products to assist in weight loss.

*Advertisements should not be directed nor have strong appeal to people under the age of 18.*

The Advertisement does not show any people under the age of 18 using the product nor does it have direct or strong appeal to those under 18. The individuals used in the Optislim Advertisement are over 30 and it even shows a parent with their child.

*(f) Advertisements should not suggest or recommend weight loss during pregnancy.*

The Optislim products should not be used during pregnancy unless approved by a Healthcare Professional, this is clearly stated on the Optislim products and website. The website is clearly stated in the Advertisement and there are no images or reference to pregnant women using the products in the Advertisement.

*(g) Advertisements should not suggest that it is socially or culturally desirable to be underweight.*

The Advertisement does not encourage being underweight, it simply suggests that individuals should maintain a healthy weight range, which is considered to be a universal point of view.

*(h) Statements or implications to the effect that consumers of an advertised product or service can "...eat as much as you like..." or "...eat, eat and get slim" cannot be used.*

Such statements are not used in the Advertisement.

I trust the above comments have provided sufficient explanation as requested by the Complaints Board. If there are any further queries, please do not hesitate to contact me.

### Appendix 3

#### RESPONSE FROM COMMERCIAL APPROVALS BUREAU

##### Complaint 22/054 OPTISLIM Key: OPTIIMU30NZR Classification: GXC

This advertisement for Optislim (first approved in April 2020) contends being overweight may impair the immune system and so offers support to those in their quest to be strong and healthy and lose some weight.

The New Zealand Ministry of Health website states: "... our risk of developing health problems increases as your BMI gets higher above the 'healthy weight' range. Being obese is not good for your health. It can increase your risk of developing conditions such as diabetes and high blood pressure and serious diseases".

Optislim is not a prescription medicine, it is a food supplement.

The product is available in a range of pharmacies where the pharmacist will discuss with the consumer the way the product should be used. As the voiceover states 'Optislim **can help you** take back control of your body" with their range of shakes, bars and soups as occasional meal replacements.

There is certainly no suggestion that the limited range of products should be used as a complete diet. They are merely occasional meal substitutes as you work towards having a healthier routine.

In conjunction with promoting the products, examples of partaking in exercise are shown with a girl meditating, a mother having a child on her back doing press ups as an aid for strengthening her muscles and a couple outdoors doing yoga. All examples of maintaining a balanced lifestyle. Nutritional fresh fruit and tomatoes are displayed alongside product packaging within the footage.

This advertisement was approved with a 'GXC' (General Except Children's Programming) classification.

Most people are fully aware that carrying extra weight can compromise their daily life and this company offers encouragement and support to those who may wish to improve their health and fitness and general wellbeing. It is clearly aimed at those people who are inclined to sometimes skip a meal or binge on unhealthy food when they have hunger pangs. Optislim is a fulfilling quick, simple healthy food substitute on those occasions.

That one complainant has misread the message is regrettable but should not be a reason to uphold the complaint.