

COMPLAINT NUMBER	22/238
ADVERTISER	Merck Sharp & Dohme (New Zealand) Limited
ADVERTISEMENT	Merck Sharp & Dohme (New Zealand) Limited Television
DATE OF MEETING	15 August 2022
OUTCOME	No Grounds to Proceed

Advertisement: The television advertisement for Lagevrio, an oral treatment for COVID-19, has the company logo for Merck Sharp & Dohme (New Zealand) Limited, with the initials “MSD”, on the bottom right corner of the screen, throughout the advertisement.

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

Complaint: MSD (which turns out to be Merck and NOT the ministry of social development) is advertising a product for treating Covid 19. It is not immediately clear that it is an ad for a drug company and not from a government department. All that identifies the manufacturing company is the small initials in the right hand bottom corner of the screen. MSD has other connotations in NZ and most New Zealanders will not know that MSD = Merck, which is a name they may be familiar with. Perhaps unintentionally, the ad is too similar to a public service announcement ad and does not have the format or tone of say a Family Health Diary ad. This ambiguity needs to be addressed.

The relevant provisions were Therapeutic and Health Advertising Code - Principle 1, Rule 1(a), Principle 2, Rule 2(a);

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.

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).

The Chair noted the Complainant's concerns that consumers will not be aware that the initials MSD seen in the advertisement relate to pharmaceutical company Merck Sharp & Dohme (New Zealand) Limited and not the Ministry of Social Development, which could be misleading.

The Chair noted that MSD is the brand name for Merck Sharp & Dohme (New Zealand) Limited. It is a subsidiary of Merck & Co, a company which focuses on clinical research and supplies pharmaceuticals and vaccines in New Zealand. The Chair said that although MSD is also the abbreviation for the Ministry of Social Development, it is appropriate for the Advertiser to include this name and logo in its advertising. The advertisement included the name and address of the Advertiser in small print at the end in accordance with legislative requirements.

The Chair also noted that advertising from Government agencies usually includes the New Zealand Government logo.

The Chair said despite the Complainant's concern, she did not consider that most consumers would be misled by the advertisement or mistake it for Government messaging.

The Chair said the advertisement did observe a high standard of social responsibility and was not in breach of Principle 1, Principle 2 or Rules 1(a) and 2(a) of the Therapeutic and Health Advertising Code.

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

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.