



08/280a

DECISION**Meeting 14 October 2008****Complaint 08/280**

Complainant: D. Crum on behalf of the NZ Dental Association
Advertisement: Fluoride Action Network NZ

FANNZ' note: FANNZ was not the advertiser, but contributed some material to the flyer.

The Chairman ruled that the following provisions were relevant:

Code of Ethics**Basic Principle 4**

All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2. Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

Rule 3. Research, Tests and Surveys - Advertisements should not use tests and surveys, research results or quotations from technical and scientific literature, in a manner which is misleading or deceptive.

Rule 6. Fear - Advertisements should not exploit the superstitious, nor without justifiable reason, play on fear.

Rule 9. Testimonials - Advertisements should not contain or refer to any personal testimonial unless it is genuine, current, related to the experience of the person giving it and representative of typical and not exceptional cases. The claims in the testimonial should be verifiable.

Rule 11. Advocacy Advertising - Expression of opinion in advocacy advertising is an essential and desirable part of the functioning of a democratic society. Therefore

such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an advertiser in matters of public interest or political issue should be clear.

Deliberation

The Complaints Board reviewed the complaint and the flyer advertisement.

The Chairman directed the Complaints Board to consider the complaint with reference to the Code of Ethics, Basic Principle 4, and Rules 2, 3, 6, 9 and 11.

As a preliminary matter, the Complaints Board noted that the Advertiser had chosen not to provide a written submission in response to the issues raised in complaint. Accordingly, it accepted that the claims made in the advertisement had not been substantiated by the Advertiser. The Complaints Board confirmed its position, that the onus fell on an advertiser to substantiate a claim or claims when these claims were challenged in a written complaint.

The Complaints Board took into account the provision in Rule 11 where it said the expression of opinion in advocacy advertising was an essential and desirable part of the functioning of a democratic society. That rule also expressed the requirement for the identity of an advertiser to be clear. Turning to the advertisement before it the Complaints Board confirmed that the identity of the advertiser was clear, and thereby it said the advertisement fulfilled that requirement in Rule 11.

Rule 11 also made provision for such opinions to be robust, provided that opinion was clearly distinguishable from factual information. Addressing this issue, the Complaints Board said it was not clear to the reader which of the statements and claims contained were opinion and which were factual information. Accordingly, the Complaints Board determined that the advertisement did not meet the requirement of that part of Rule 11, and thereby it ruled that it was in breach of that Rule.

The Advertiser had not provided substantiation of the claims made in the advertisement and accordingly the Complaints Board ruled that advertisement contained claims which were likely to mislead the reader. Thereby it ruled that the advertisement breached Rule 2.

FANNZ' response: the reader cannot be misled if the claims are true, as they are. The fact that we have not provided the ASCB with verification does not affect the truthfulness of the statements. The ASCB has made a default decision, as it earlier noted it must. A default decision in the absence of facts is not grounds for withdrawal of factual information from the public.

The Complaints Board said that claims in the advertisement linking fluoride with cancer, clearly played on fear. In the Complaints Board's view, the same applied to the stated association of "fluoridated water with infant milk formula". The Complaints Board said the Advertiser was entitled to express a view, but to do so in the manner before it played on fear, and as such rendered the advertisement in breach of Rule 6 of the Code of Ethics.

Furthermore, to advertise by making unsubstantiated health claims, did not meet the due sense of social responsibility required by Basic Principle 4, and was thereby in breach of that provision.

FANNZ' response: The health claims are not unsubstantiated – FANNZ has simply not substantiated them to the ASCB. Any reader can readily substantiate the claims from publicly available information.

The Complaints Board found the advertisement in breach of Rule 3, as with lack of evidence to the contrary, it was of the view that it used research results in a manner which was misleading.

Turning to Rule 9 which required personal testimonials to be genuine, current, related to the experience of the person giving it and representative of typical and not exceptional cases, with claims made being verifiable, the Complaints Board said that the advertisement before it did not contain testimonials, but material which was in the form of a personal statement and thereby Rule 9 was not applicable.

Having made the above observations, the Complaints Board ruled to uphold the complaint.

Decision: Complaint **Upheld**