



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0014-20
2. Advertiser :	Aspen Pharmacare Australia Pty Ltd
3. Product :	Health Products
4. Type of Advertisement/Media :	Poster
5. Date of Determination	22-Jan-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification

DESCRIPTION OF ADVERTISEMENT

The poster advertisement features an image of a woman seated behind a desk looking over her shoulder. There is a fishbowl around her and two goldfish swimming in the bowl. The text 'Could it be bacterial vaginosis?' is superimposed over the image. Information on the product and disclaimers is provided underneath the image.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

I take offence with this advertisement, as it insinuates that a female smell would be similar to a fish smell. I am quite upset at the fact that—in this ad—women are being taught that they should smell like flowers and that any vaginal smell should be dealt with. The lady in the photo is clearly embarrassed, implying that women should be embarrassed if they feel that their vagina may be smelly. Given that all vaginas will have a bodily odour, this advertisement is likely to result in a heightened embarrassment of women about their own bodily functions. As if women aren't suppressed enough with regards to their periods and functioning of their intimate parts. I want this advertisement taken down and an apology issued by the company of the advertised product.



THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

Aspen's response to allegations of breaches of Section 2 of the AANA Code of Ethics

Aspen Pharmacare Australia Pty Ltd is a large pharmaceutical company providing a wide range of therapeutic goods for the treatment of medical conditions. Aspen is not a member of Ad Standards and notes that the AANA Code is a voluntary code.

As a member of Consumer Healthcare Products Australia (previously ASMI – the peak body representing manufacturers and distributors of consumer healthcare products, including non-prescription medicines), Aspen agrees to comply with the CHP Australia Code of Practice (a code which is not administered by Ad Standards) that sets ethical standards for advertising and promotion of non-prescription consumer healthcare products in Australia and supports informed healthcare choices and Quality Use of Medicine. Aspen is also required by the Therapeutic Goods Act to comply with the Therapeutic Goods Advertising Code, and, in respect of promotional material for prescription medicines, with Medicines Australia Code of Conduct. All Aspen marketing material goes through an internal promotional review process involving marketing, medical and legal personnel before it is released.

On behalf of Aspen Pharmacare Australia Pty Ltd and the product sponsor, Starpharma Pty Ltd, we are sorry to hear this female consumer was offended by the advertisement. We acknowledge that not all members of the community will like the advertisement. The advertisement was placed in ladies toilets in 62 shopping centres nationally equating to 784 display points in July, August, September and December 2019, with an estimated weekly reach of 5 million women. The number of negative comments we have received is negligible, which is evidence that community standards have not been breached.

The product

The intent of the ad is to alert women to this new treatment, in the context of a condition that many women find embarrassing to raise with their healthcare professional. The product being advertised is Fleurstat BV Gel – a new treatment for the medical condition bacterial vaginosis (BV) – which has been welcomed by the medical community and sufferers, being the first clinically trialled and efficacious non-antibiotic treatment available for BV. The product is available without a prescription, and is a very important addition to the treatment of this problematic, yet common, condition. Fleurstat BV Gel is registered by the Therapeutic Goods Administration as a vaginal flora gel medical device – see attached the Australian Register of Therapeutic Goods (ARTG) Registration - ARTG number: 295465.

Advertising restrictions



The product is legally allowed to be advertised, but all promotional material relating to the product must comply with the Therapeutic Goods Advertising Code 2018 No.2, including the restricted representations approved by the Department of Health. It is a “Schedule 3 – Pharmacist Only” product (i.e. it is “behind the counter” in pharmacy, not available for self-selection) so the consumer must initiate a discussion with the pharmacist, and the pharmacist must determine whether the product is the correct treatment for the woman.

The condition the product treats

BV is twice as common as vaginal thrush, yet BV condition awareness in the wider community is, as yet, very low. Our pre-launch research indicated only 10% of women who have experienced symptoms are aware of BV. If left untreated BV can have serious consequences including pelvic inflammatory disease, increased risk of sexually transmitted infections, and in pregnancy may cause preterm labour, miscarriage and low birth weight babies.

The intent of the advertisement

Due to the low level of knowledge and sometimes misdiagnosis of BV, we consider that the key to helping women who may have BV (even if they do not know about BV) to correctly identify, and accordingly receive appropriate treatment, is consumer awareness of the condition and the availability of the product. Aspen is using strong imagery to acknowledge the embarrassing nature of the condition and to emphasise the major concerning symptom of BV, which is also the main differentiating factor of BV as compared to vaginal thrush, being the strong odour, commonly objectively described in peer reviewed clinical publications as well as by individual sufferers as ‘fishy’. We attach examples of these publications in which we have highlighted this description. Without this strong imagery, we think this ad would not catch the attention of many of the people who may benefit from this product.

Considerations regarding placement of the advertisement

We have researched BV in depth, including with sufferers, and we are very empathetic with regard to the embarrassing nature of the condition. In recognition of this, we have limited the placement of this large ad to discrete locations, currently inside cubicles in women’s toilets (which is where we understand these complainants saw the ad), enabling women to view and take photos of the ad in private. We have received feedback from pharmacy that many consumers have taken photographs of this advertisement from shopping centre toilet doors into pharmacy to request the product. This helps the woman to start the conversation with her pharmacist, doctor, family or friends.

General response to the complainant’s reason for concern

The advertisement is clearly advertising a pharmaceutical product for a particular medical condition. For the reasons stated above, we consider it is appropriate for the advertisement to portray that a major defining symptom of the female medical condition BV is a smell similar to a fish smell, and it is appropriate for the imagery to acknowledge the embarrassment and isolation women may feel about this medical condition.



Contrary to the opinion expressed in the complaint, the ad is in no way intended to imply (nor do we consider a reasonable person is likely to consider it implies) that women should be concerned about or embarrassed about normal bodily odours or functions, or that they should “smell like flowers”, or that “any vaginal smell should be dealt with”, nor that all women have BV. The advertisement clearly states that Fleurstat BV gel is “for ... relief from symptoms, including abnormal vaginal odour and discharge, helping to normalise vaginal pH, and restore the normal vaginal flora balance” (Aspen’s emphasis). This is in accordance with the product’s intended purpose and approved restricted representations for the product.

Aspen is of the view that the advertisement supports informed healthcare choices – a key objective of the CHP Australia Code of Practice – is ethical and consistent with the Quality Use of Medicines. Aspen considers that the advertisement offers benefits that far outweigh any unintended offence that may be taken.

Response addressing specific sections of the AANA Code of Ethics

Section 2.1 - Not portray people in a way which discriminates against or vilifies a person or section of the community on account of ... gender

The woman portrayed in the advertisement is not portrayed in a way that discriminates against, treats unfavourably or vilifies, humiliates or ridicules her on account of her gender.

As detailed above, the advertisement portrays a woman, and is specifically targeted to women, because the product is used only by women, as only women suffer from BV. The fact that only women get BV is incidental. There is no intent to discriminate against or vilify women on account of their gender. It is advertising a product for a specific condition, the main identifying symptom of which is a ‘fishy’ odour (being an abnormal odour) and is a call to action to women who are concerned about a ‘fishy’ vaginal odour – and those who may not know they have BV or that there is a (new) treatment for BV. The product is only available from a pharmacist. Consumers have to ask the pharmacist if it is suitable for them. A pharmacist will only supply the product if the pharmacist considers the woman may require treatment for the condition BV, not on the basis that the woman wants to “smell of flowers”.

Aspen considers the advertisement is ethically and socially progressive and responsible. It seeks to portray (based on consumer research) the feelings of the person who may have BV, and present a solution. It has been prepared with a sense of obligation to the consumer – it is honest and truthful, and rather than seeking to exploit fears, it is positive and encouraging to women who are concerned about the identifying symptom – giving them information that there may be a treatment available.

The imagery is about the woman’s feelings and the reality of how the woman suffering from BV sees herself (not how others see her or should see her, nor even how she



should see herself). The fish bowl image is intended to resonate with the way that (based on our research) the woman with BV feels constrained or isolated by her medical condition as she feels embarrassed to talk to anyone about it, even to her doctor. It is about the woman's feelings, not the feelings or reactions of others towards her. The two people also in the office in the ad's background are not depicted as ridiculing the woman in the foreground or even being aware of her – they are not looking in her direction.

The image of the fish is intended to be a visual reference to the main identifying symptom and given the product, it is not inappropriate to make reference to the problem that the product can help with. It does not suggest that all women suffer from this medical condition, or that women who do suffer from this medical condition at some time should be thought less of – but rather that if they do suffer from this medical condition, there is a product that may be able to assist.

To summarise:

Not discriminatory: Nothing in the ad that could be said to reveal inequity, bigotry, intolerance towards or unfair, unfavourable or less favourable treatment of females due to them being females or due to them having characteristics attributed to them (such as having a fishy odour) because they are female. It does not imply women with BV should be thought less of as a result of their BV.

Does not portray negative stereotypes that implicate women: The ad does not imply that all women are smelly, or that being smelly is bad, nor is it intended to make a person with BV feel smelly. The ad is intended to raise awareness, for those who may be concerned, that there is a product that may treat their condition.

Does not vilify: there is nothing in the ad that humiliates, intimidates, incites hatred towards, contempt for, or ridicules females owing to, because of, or due to their being female or having characteristic attributed to females. A fishy odour is not a characteristic generally attributed to females. It targets, in a positive and empathetic way, women who are concerned about having a fishy odour – being a distinguishing symptom of a medical condition they may well be suffering from.

Section 2.2 – Not employ sexual appeal ... in a manner which is exploitative or degrading

Not relevant as the advertisement does not employ sexual appeal.

Section 2.3 – Not portray violence unless justifiable

Not relevant as the advertisement does not present or portray violence.

Section 2.4 – Treat sex, sexuality and nudity with sensitivity to the relevant audience

Not relevant as the advertisement contains no visual reference to sex or sexuality.



Section 2.5 – Only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided

Not relevant as the advertisement does not raise this issue.

Section 2.6 – Not depict material which is contrary to Prevailing Community Standards on health and safety

The advertisement does not portray, promote or cause pressure to conform to an ideal body image that is unrealistic or unattainable through healthy practices and which is not justifiable in the context of the product being advertised. If the Board considers that this section of the Code is relevant due to the complainant’s statement that it insinuates that women should “smell like flowers”, we repeat that this is not the intent of the advertisement and, with respect to the complainant, nor do we consider a reasonable person to whom the advertisement is addressed is likely to understand that the advertisement implies that women should “smell like flowers” or that “normal vaginal smells should be dealt with”, particularly given that the advertisement talks about abnormal vaginal odour and restoring the normal vaginal flora balance. The advertisement is clearly for a therapeutic product that is only available from a pharmacist after the pharmacist determines whether the product may be the correct treatment for the consumer’s medical condition.

The advertisement does not contain any statements that are factually inaccurate or which involve unsafe practices. The advertisement does not constitute bullying in a manner that is contrary to Prevailing Community Standards.

Section 2.7 – Shall be clearly distinguishable as an ad to the relevant audience.

The material is clearly distinguishable (as noted by the complaint) as an advertisement for a product (Fleurstat BV Gel) to women who may be suffering from BV.

Other AANA Codes

The product does not come within the scope of the AANA Code for Advertising and Marketing Communications to Children or the AANA Food and Beverage marketing and Communications Code. Aspen is not a licensed wagering operator so the AANA Wagering Advertising and Marketing Communications Code does not apply to the advertisement.

Aspen considers the advertisement complies with the AANA Code (and with the CPH Australia Code and the Therapeutic Goods Advertising Code).

Please let us know if the Board intends to consider any section of the Code that Aspen has considered not relevant so that Aspen is afforded a reasonable opportunity to make submissions on the matter as it is our present understanding that only section 2.1 of the Code is relevant to this advertisement.



THE DETERMINATION

The Ad Standards Community Panel (Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement is offensive towards women.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Panel noted the Practice Note to Section 2.1 provides the following definitions:

"Discrimination – unfair or less favourable treatment.

Vilification – humiliates, intimidates, incites hatred, contempt or ridicule."

The Panel considered that the complainant's overall concern appeared to relate to the topic of a woman's vaginal odour being promoted at all, and that such a reference to a matter which some women wish to remain private is offensive. The Panel considered that of itself, the topic of vaginal odour is not discriminative or vilifying although some members of the community would prefer not to have this type of issue discussed publicly.

The Panel noted supporting documentation provided by the advertiser, providing evidence that the medical condition bacterial vaginosis is commonly associated with a fish smell. The Panel considered that depicting possible symptoms of a medical condition is not of itself a breach of the Code.

The Panel noted that the advertisement depicts the woman in the fishbowl as looking uncomfortable or embarrassed, but considered that the other people in the advertisement are not looking at her, and are not denigrating her in any way.

The Panel considered that the advertisement depicts a symptom of a medical condition in a relatable manner, and provides an option to help with the condition. The Panel considered that the advertisement does not depict the woman in the advertisement or women in general in a manner that is unfair nor in a manner that would be likely to humiliate or incite ridicule. The Panel noted that the advertisement is only displayed on toilet doors in women's toilets and that there is very little opportunity for people other than women to see the advertisement, and very little opportunity for it to be interpreted as demeaning to women. The Panel determined



that the advertisement does not discriminate against or vilify a person or section of the community on account of gender.

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.