



CASE REPORT

1. Complaint reference number	323/09
2. Advertiser	Reckitt Benckiser (Gaviscon)
3. Product	Health Products
4. Type of advertisement	Pay TV
5. Nature of complaint	Health and safety – section 2.6
6. Date of determination	Wednesday, 23 September 2009
7. DETERMINATION	Pending

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement depicts a young woman who is the rescue pilot of a helicopter. She is experiencing symptoms of heartburn, and reaches across to her belongings to get some Gaviscon Dual Action tablets. The voiceover states: "When you need to be at your best don't let heartburn and indigestion hold you back ..." the advertisement then shows an animated scene whereby little rescue workers are inside the woman's body and clearing away the indigestion and discomfort with the voiceover saying that Gaviscon relieves burning pain and contains acid neutralisers.

THE COMPLAINT

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

The "Gaviscon Dual Action" advertisement shows a simulated real life scene of a commercial (obvious from the operation) pilot – initially on the ground and later in the air - in command - she is in the right seat, has the pilot wings on her uniform, and there is no one in the left hand seat, of a rescue helicopter with passengers, engaged in commercial operation while suffering (the medical condition is so serious that she cowers forward with the pain and clutches her chest) before she flies from heart burn / indigestion [sometimes known as reflux] with the suggestion that she will be ok after taking Gaviscon – she is actually shown popping the medication while in command of the helicopter. Later the advertisement shows her flying with the medication on the seat next to her (implying her need for it is ongoing).

It should be noted that the above-mentioned symptoms are possible indicators of heart disease and in fact the Australian Civil Aviation Safety Authority's (CASA's) Designated Aviation Medical Examiner's Handbook at 2.9.3 Gastro-Oesophageal Reflux Disease (GORD), specifically states: "...the possibility of cardiological cause of the symptoms should always be borne in mind..."

Even ignoring heart burn being a possible indication of more serious problems (and the pilot cannot know what is causing the chest pain, as she continues to fly without having it checked out as would be the legal and safety conscious thing to do) it is clear from the advertisement and the accompanying voice over that the pilot is suffering from a serious medical condition that is seen to affect her abilities – she actually takes her concentration off flying to self medicate. This is at the critical takeoff phase.

Breach of AANA Code of Ethics and Australian Civil Aviation Regulations

The advertisement appears to be in breach of the AANA guideline 2.6 (see below) and Australian Civil Aviation Regulation 203 No. 6 (see below) in that it clearly shows the pilot doing something both unsafe and illegal.

As the advertisement shows a pilot flying, the relevant public standard on safety is the Australian Civil Aviation Act 1988 and related regulations. It is important to state the advertisement itself

does not need to comply with aviation safety regulations but that the regulations illustrate the prevailing (and legal) safety standards relevant to flying shown in the advertisement as contemplated by the AANA Code of Ethics 2,6.

The regulations (see appendix below) clearly state that a pilot cannot fly if affected by a medical condition (illness) no matter how minor. This is a very different situation and cannot be compared to someone conducting another “harmless” activity e.g., going for a walk, where there are no such bans. In the case of flying the ban is through legislation (and regulations), specific and absolute – for reasons of safety.

The advertisement should therefore be immediately withdrawn or banned (as the BMW Z4 one was because it showed a person driving in a manner, which under the appropriate motor vehicle regulations would be illegal in Australia) as it is contrary to Australian safety standards for flying in Australia and sends an entirely wrong message to pilots, potential pilots and the public. [Note: it is not the motor vehicle regulations that are applicable here but the CASA safety regulations].

At its extreme the Gaviscon advertisement could lead a commercial (or private / recreational / student pilot) to fly with a medical condition that, untested or cleared by a designated medical examiner, approved by CASA (as is required by CASA regulations), could lead to heart failure with subsequent aircraft accident and substantial loss of life. Even heartburn or indigestion themselves (without any heart symptoms) could be distracting and result in an accident and loss of life.

Appendix

AANA Code of Ethics

2,6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety [emphasis added].

Designated Aviation Medical Examiner's Handbook

2.9.3 Gastro-Oesophageal Reflux Disease (GORD)

GORD is a very common condition. GORD and Irritable Bowel Syndrome are the two most common GI diagnoses in the Australian pilot population. Underlying pathology that is severe or progressive is unlikely. However, the possibility of cardiological cause of the symptoms should always be borne in mind, particularly where there is resistance to treatment. Where there is chest pain with uncertain aetiology, it is imperative to exclude a cardiac cause before moving to GI or other systems....

Civil Aviation Amendment Regulations 2003 (No. 6)

67.010 Definitions for this Part

medically significant condition includes:

(a) any of the following (no matter how minor):

(i) any illness or injury;

(ii) any bodily infirmity, defect or incapacity;

(iii) any mental infirmity, defect or incapacity;

(iv) any sequela of an illness, injury, infirmity, defect or incapacity mentioned in subparagraph (i), (ii) or (iii); and

(b) any abnormal psychological state; and

(c) drug addiction and drug dependence; and

(d) for a woman — pregnancy and the physiological and psychological consequences of pregnancy or of termination of pregnancy.

67.015 Meaning of safety-relevant

For the purposes of this Part, a medically significant condition is safety-relevant if it reduces, or is likely to reduce, the ability of someone who has it to exercise a privilege conferred or to be conferred, or perform a duty imposed or to be imposed, by a licence that he or she holds or has applied for.

Subpart 67.D Responsibilities of medical certificate holders

(5) If the holder of a medical certificate and a licence:

(a) knows that he or she has a medically significant condition; and

(b) is reckless as to whether the condition has been disclosed to CASA; and

(c) the condition has the result that his or her ability to do an act authorised by the licence is impaired;

he or she must not do the act until a DAME certifies that the holder can safely do such acts.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

We have carefully reviewed the complaint concerning the Gaviscon TVC (Complaint) and make the following comments about the Complaint:

i. We take complaints about our advertising seriously, particularly where, as in the present case, the complainant suggests that our advertising raises issues of health and safety.

ii. We vigorously dispute the claims of the complainant and deny that the Gaviscon TVC breaches the AANA Advertiser Code of Ethics (Code), including in particular section 2.6. We are satisfied that the Gaviscon TVC complies with the laws applicable to advertising of therapeutic goods and the Code

iii. Section 2.6 of the Code states: 2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

iv. The questions therefore are what are the Prevailing Community Standards on health and safety in the context of the advertising of products to alleviate heartburn and indigestion and does the Gaviscon TVC depict material that is contrary to those standards?

v. The term "Prevailing Community Standards" is defined in the Code to mean "the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to Advertising or Marketing Communications" .

vi. The prevailing community standards on health and safety in the context of advertising of products to alleviate heartburn and indigestion are difficult to specify and we are not aware of any specific research the Advertising Standards Board may have conducted on this subject. However, we believe that the nature of the Gaviscon TVC is not such as to suggest something dangerous, risky, inherently unsafe or inappropriate, in terms of health and safety, to ordinary members of the community

vii. The Gaviscon TVC features rescues workers in a helicopter and animated fire fighters who fight heart burn and indigestion. It depicts a fictitious situation involving a helicopter pilot to make the point that "when you need to be at your best", and suffer from heart burn and indigestion, Gaviscon can help. The Gaviscon TVC makes it plain that it concerns heart burn and indigestion, not heart disease. This is plainly stated and obvious to viewers. We believe that it takes a huge leap of logic, and is unreasonable, to suggest that ordinary members of the community would see the Gaviscon TVC and think that the pilot could in fact have a "cardiological" disorder and therefore the TVC is irresponsible or presents a risky or unsafe situation to viewers. The Complainant states that "it is clear from the advertisement and the accompanying voice over that the pilot is suffering from a serious medical condition that is seen to affect her abilities." In fact, as stated above, the Gaviscon TVC makes it clear that it concerns the treatment of "heartburn and indigestion". That is the premise for the TVC and equally it shows that after taking a Gaviscon tablet the helicopter pilot gains relief from heartburn and indigestion. The Gaviscon TVC is no more contrary to prevailing community standards on health or safety than a TVC promoting the use of an antacid by a person with heartburn or indigestion about to drive a car, or in any other situation for that matter.

viii. The Complainant also states that the Gaviscon TVC appears to be in breach of the "Australian Civil Aviation Regulation 203 (sic) NO.6". However, the Code makes no provision for consideration of Civil Aviation laws of any kind and the Civil Aviation Act 1988 (Cth) makes it clear that it is "an Act to establish a Civil Aviation Safety Authority with functions relating to civil aviation." It does not govern advertising of therapeutic goods involving depictions of aircraft or fictitious pilots. These regulations would not be known to most members of the community, much less do they "illustrate the prevailing (and legal) safety standards relevant to flying shown in the advertisement. ... " As a separate matter, we believe that pilots and trainee pilots will be very familiar with their obligations under the Australian Civil Aviation laws.

ix. Given our comments above, we believe that the Gaviscon TVC does not depict material that is contrary to the Prevailing Community Standards on health and safety.

x. The Complainant has referred to a BMW Z4 complaint. There were three of these this year. The complaints which were upheld by the Advertising Standards Bureau concerned breaches of clause 2(c) of the Federated Chamber of Automotive Industries' Advertising for Motor Vehicles Voluntary Code of Practice (FCAI Code). The motor vehicle advertisements in question were found to show driving practices which "... if they were to take place on a road or road related area" would "breach any Commonwealth law ': in breach of the FCAI Code. This code does not apply to the Gaviscon TVC. Nor, as indicated above, do the Australian Civil Aviation Regulations apply to advertising of goods.

We request that the Complaint be dismissed.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concern that the advertisement depicts a helicopter pilot experiencing heartburn symptoms which could be a more serious condition and depicting a pilot choosing to fly a helicopter when unwell or experiencing similar symptoms is contrary to aviation safety standards and laws.

The Board viewed the advertisement.

The Board noted the advertiser's response on this issue.

The Board noted that the pilot is depicted taking the tablet when she is on the ground and she appears to have no symptoms when she is in the air and then depicts an animation of how her symptoms were eased by taking the medicine.

The Board noted that the pilot was depicted as an emergency worker and considered that in an emergency situation taking a tablet for heartburn was similar to taking a tablet for a headache.

The Board considered that it is important that advertisements do not portray acts which are illegal or dangerous, or undermine regulatory regimes, however, in this instance, the Board was of the opinion that the depiction of this scenario was clearly unrealistic and unlikely to be copied by pilots who would be very aware of aviation regulations and the advertisement was clearly depicting a minor condition that was soon rectified by the product.

Overall the Board considered that the advertisement did not breach section 2.6 of the Code

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.