

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 42/92

Dated the 23rd day of July 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

DR RICHARD TALBOT
of Hamilton

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L.M. Dawson

DECISION

Introduction

An advertisement for "Strepsils" was shown by Television New Zealand Ltd during the winter months of 1991. The advertisement featured two white coated people with microscopes (apparently research workers) who said that "Strepsils" were effective in killing germs which cause sore throats.

Explaining, first, that only one third of throat infections in young people were caused by bacteria (as opposed to the two thirds which were viral), secondly, that the majority of bacterial throat infections were due to streptococci, and thirdly, that the treatment for streptococcal infection was penicillin, not "Strepsils", Dr Talbot complained that the advertisement was misleading.

TVNZ, after obtaining specialist advice from the Department of Health, declined to uphold the complaint. As Dr Talbot was dissatisfied with that decision, he referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Decision

The members have viewed the advertisement to which the complaint relates and have read the correspondence (summarised in the Appendix. The Appendix also includes a transcript of the advertisement). As is its practice, the Authority has determined the complaint without a formal hearing. Taking into account the conflicting expert medical opinion presented by the parties and the report from the Department of Health supplied by TVNZ, the Authority agreed with Dr Talbot that it could benefit from independent advice. Rather than approach any of the people nominated by Dr Talbot, the Authority engaged Professor John Smith as a consultant. He is an Associate Professor in Microbiology at the University of Otago's Medical School. His comments will be noted at the relevant places below.

Dr Talbot complained that the advertisement for "Strepsils" broadcast by TVNZ during the winter months of 1991 breached standards 2(a) and 3 of the Code of Ethics which read:

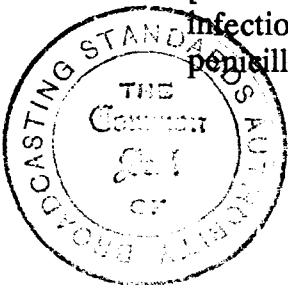
- 2 **Truthful Presentation** - Advertisements must not contain any statement or visual presentation which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, or makes false and misleading representation - in particular with regard to:
 - a) characteristics such as nature, composition, method and date of manufacture, fitness for purpose, range of use, quantity, commercial or geographical origin.;
- 3 **Research Tests and Surveys** - Advertisements must not use tests and surveys, research results or quotations from technical and scientific literature, in a manner which is misleading or deceptive.

Referring to research which linked rheumatic fever to streptococcal throat infections and arguing that "Strepsils" were ineffective against streptococci, Dr Talbot described the advertisement as a "dangerous and irresponsible" piece of information.

TVNZ, having obtained advice from Boots Ltd (the manufacturer) and the Department of Health, declined to uphold the complaint.

Another complaint about the advertisement, under standard 2(a) of the Code noted above, was considered by the Advertising Standards Complaints Board. In a Decision issued on 28 January 1992 (91/108), the Board also declined to uphold the complaint. The Board adopted the advice of Dr Boyd, Manager of the Therapeutics Section in the Department of Health. It recorded his comments:

[The complainant] is correct in his statements concerning streptococcal throat infections, the association with rheumatic fever and the need to treat with penicillin. But Strepsils do not purport to cure or even alleviate either condition.



The Strepsils advertisement does not say Strepsils kill streptococci or cure throat infections; nor can that be inferred. The light-hearted nature of the advertisement indicates that the "cough lolly" is not likely to alleviate any serious complaint and the Strepsils packet carries a message that tells the user to "consult your doctor if symptoms persist".

... Strepsils do contain antibacterial ingredients, but would not be effective against florid streptococcal sore throat. The packet does contain a warning to "consult your doctor if symptoms persist" and therefore the Department has no objection to the continued marketing of the product and the continued use of the advertisement which is the subject of the complaint.

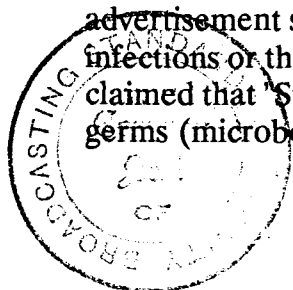
In view of the Advertising Standards Complaints Board's decision, TVNZ submitted that the Authority should decline to determine the current complaint. However, the Authority does not intend to follow that suggestion. In view of Dr Talbot's deep concern and the damaging medical consequences which could follow if the advertisement is misleading in the way he alleges, the Authority has carefully examined the points made by the parties to this complaint.

The Authority decided, first, not to accept the aspect of Dr Talbot's complaint when he alleged that, because of the similarity in the words, the advertisement implied that "Strepsils" will eradicate or at least attack streptococci. The Authority considered that many people may be unaware that streptococci are a cause of sore throats and that even those who are aware of the fact would not readily associate "Strepsils" with streptococci just because of the similarity in the words.

The link between sore throats and rheumatic fever made by Dr Talbot was one the Authority understood and accepted as being a major concern to him. However, it decided that, because of the small number of people who develop rheumatic fever from sore throats, the link was not a sufficiently strong foundation for a complaint that the advertisement was misleading. This conclusion was confirmed by Professor Smith who advised the Authority that while some strains of the group A streptococcus have rheumatogenic potential, it is only a prominent feature of certain biotypes and that only 3% or less of children with an untreated streptococcal sore throat develop rheumatic symptoms.

The Authority then viewed the advertisement to decide what claims were in fact being made. It would begin by noting that the research workers featured were hardly "zany scientists" as described by Boots Ltd. Although the workers might have been dramatised in the advertisement, the Authority did not accept that such dramatisation had been portrayed excessively to the extent that the advertisement was a light-hearted "spoof" and that their claims were not supposed to be acceptable as scientific conclusions.

Nevertheless, the Authority did not agree with Dr Talbot when he complained that the advertisement said "Strepsils" were highly effective in killing bacteria which caused throat infections or that they killed streptococci. Professor Smith opined that the advertisement claimed that "Strepsils" attacked infection in the throat - i.e. they attacked the responsible germs (microbes). In other words, the advertisement for "Strepsils" promised that they



alleviated the symptoms of sore throats and killed germs but not that they killed streptococci. That opinion agreed with the Authority's interpretation when it decided that the advertisement implied that "Strepsils" not only relieved the symptoms of sore throats but also that they "killed germs".

In a letter from Boots Ltd to the Television Commercial Approvals Bureau, supplied to the Authority by TVNZ, the company explained the *in vitro* research evidence which supported its claim that the active ingredient in "Strepsils" killed Group A streptococci at concentrations consistent with those experienced in the mouth.

The expert opinion received from Professor Smith explained to the Authority that the advertisement's research claims, while no doubt valid, had to be approached cautiously as they were based on laboratory, not clinical, trials. Clinical trials might produce different results. With reference to Boots Ltd's specific claims about a "single-blind clinical trial" and a "double blind parallel group clinical trial", Professor Smith pointed out that tests showed that "Strepsils" relieved the symptoms of a sore throat. The manufacturer's claim in this part of its report, that "Strepsils" alleviated the symptoms of sore throats", did not substantiate the advertisement's claim that "Strepsils" killed germs. Professor Smith concluded:

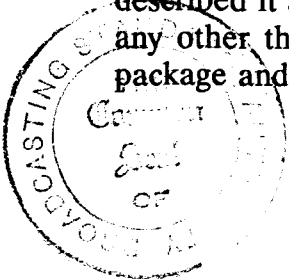
Boots have still not provided any evidence that the active ingredients in Strepsils kill germs (e.g. *Streptococcus pyogenes*) in the oral cavity.

The Advertising Standards Complaints Board referred to the wording on the "Strepsils" package, such as "if symptoms persist, consult your doctor". The Authority considered that such a statement decreased the user's expectation about the product. However, it was clearly of the view that any comments on the packaging were irrelevant to its task which was to assess the advertisement which was broadcast.

The Advertising Standards Complaints Board also emphasised the value it had placed on the Department of Health's report. That report included the comment:

The Strepsils advertisement does not say Strepsils kill streptococci or cure throat infections; nor can that be inferred. The light-hearted nature of the advertisement indicates that the "cough lolly" is not likely to alleviate any serious complaint.

In response, the Authority comments first that a "light-hearted" advertisement does not justify a false claim. Further, it questions whether "light-hearted" is the appropriate term. That term implies "frivolity" whereas the advertisement deals with a product which claims some medical benefits. Moreover, the Health Department put weight on the package's words whereas the Authority is concerned, not with comments on the packaging, but with the advertisement which was broadcast. In view of the differences, the Authority disagreed with the Department of Health's interpretation of the advertisement when it described it as a "light-hearted" advertisement about a "cough lolly" and, in the case of any other than a temporary sore throat, the user would read the instructions on the package and seek medical advice.



However, although there was a divergence of opinion between the Authority and the Health Department about the meaning of the advertisement, that did not necessarily mean that it was misleading or that it breached standard 2(a) in the Advertising Code of Ethics.

Reverting to the issue whether the advertisement breached standard 2(a), Professor Smith concluded his advice to the Authority by saying:

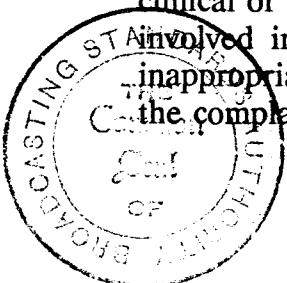
After weighing up the evidence presented, I tend to the opinion that the advertisement (as listed/described) is misleading - it could obviously be improved by having less emphasis on attacking (killing) the germs involved and simply stating that Strepsils may alleviate some of the symptoms associated with sore throats. Advertisements such as this should include information that serious health problems can eventuate from a sore throat and/or that school-aged children with sore throats should be taken to the doctor. It is not good enough to only include this sort of comment on the packaging.

The Authority agreed with Professor Smith's interpretation to the extent that the advertisement claimed that "Strepsils" would have some effect on an actual sore throat infection. As noted above, the Authority did not agree with Dr Talbot's interpretation of the advertisement that it claimed that "Strepsils" would cure sore throats or totally eradicate a throat infection. The Authority's interpretation has to be balanced with what it regards as a common sense understanding about a user's expectations when buying a patent cough medicine from a supermarket. The Authority assumes that a purchaser, shopping in these circumstances, would have limited expectations about the product bought. However, the Authority also assumes that the purchaser could well be influenced by the advertisement which might have raised expectations above those when buying just "cough lollies".

In summary, the Authority decided that the advertisement implied that "Strepsils", while not eradicating the infection, will attack the germs which cause sore throats. Thus, the advertisement claims that "Strepsils" are better than "cough lollies" and will do more than merely alleviate the symptoms of a sore throat. The evidence supplied by the Department of Health and by Professor Smith does not substantiate that claim. It is a matter which has required balancing all the issues carefully and, having done so, the Authority concluded that the "Strepsils" advertisement was misleading.

For the reasons set forth above, the Authority upholds the complaint that the broadcast by Television New Zealand Limited of the "Strepsils" advertisement during the winter months of 1991 breached standard 2(a) of the Advertising Code of Ethics.

Dr Talbot also complained that the advertisement breached standard 3 which prohibits the use of research results in a misleading or deceptive way. Although the advertisement featured laboratory workers doing *in vitro* tests and although Dr Smith pointed out that clinical or *in vivo* tests may well produce different results, because of the technicalities involved in this aspect of the complaint, the Authority concluded that it would be inappropriate to decide it and, accordingly, in the circumstances declines to determine the complaint that the advertisement breached standard 3.



For the reasons set forth above, the Authority declines to determine the complaint that the broadcast of the same advertisement breached standard 3 of the Code.

Having upheld a complaint the Authority may issue an order under s.13(1) of the Broadcasting Act 1989. The Authority decided not to issue an order on this occasion as the advertisement, although misleading, was not so to the extent claimed by the complainant. The Authority was also advised that the advertiser intended to superimpose the words "use strictly as directed" in forthcoming broadcasts and is aware that that is now occurring. It would point out, however, that merely adding that message will not correct the flaws noted in this decision and an order, should an insufficiently corrected advertisement be rebroadcast, might be appropriate if a complaint is made.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



23 July 1992

Appendix

Dr Talbot's complaint to Television New Zealand Limited

Dr Talbot wrote to TVNZ on 22 September 1991 to make a formal complaint about an advertisement for "Strepsils" which had been shown by TVNZ during the winter months of 1991. The advertisement showed two white coated people with microscopes (apparently research workers) who said that strepsils were effective in killing the germs which caused throat infections.

Dr Talbot explained that about one third of throat infections in young people were due to bacteria (as opposed to the two thirds which were viral) and that the majority of the bacterial throat infections were due to streptococci. Streptococcal throat infections, he continued, was the cause of rheumatic fever and could damage heart valves. He also noted that there was, by world standards, a high incidence of rheumatic fever among Maori.

As penicillin was the treatment for streptococcal throat infection (not strepsils), he described the advertisement as dangerously misleading. The implication that *strepsils* killed *streptococci*, he added, stressing the similarity in the words, was "a dangerous and irresponsible piece of mis-information".

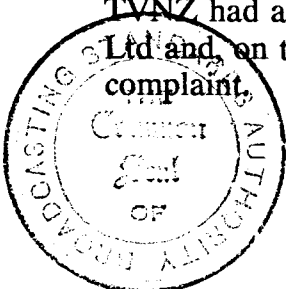
TVNZ's Response to the Formal Complaint

In a letter dated 6 January 1992, TVNZ advised Dr Talbot that its Complaints Committee had considered the complaint against standards 2(a) and 3 of the Code of Ethics promulgated by the Advertising Standards Authority which read:

- 2 **Truthful Presentation** - Advertisements must not contain any statement or visual presentation which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, or makes false and misleading representation - in particular with regard to:
 - a) characteristics such as nature, composition, method and date of manufacture, fitness for purpose, range of use, quantity, commercial or geographical origin;

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

TVNZ had also obtained specialist advice from the Department of Health and Boots Ltd and, on the basis of that information which it attached, declined to uphold the complaint.



The advice from the Department of Health (dated 11 December 1991) recorded it had examined the advertisement because of a complaint from another practitioner. It referred to Dr Talbot's experience in investigating rheumatic fever but pointed out that the advertisement did not say that Strepsils cured streptococcal throat infections. As the advertisement was light-hearted and as the strepsils packet contained a warning to users to consult a doctor if the symptoms persisted, the Department had no objection to the advertisement or to the continued marketing of the product.

The advice from the Regional Medical Director of Boots Ltd in Australia (the maker of Strepsils) (dated 24 October 1991) said that the company had evidence that the active ingredients in Strepsils killed Group A streptococci and the company had laboratory and chemical evidence to support the claims made by the "zany scientists" in the advertisement. Further, the wording on the packet made it clear that strepsils were not a replacement for medical advice. He dealt at length with the issue of rheumatic fever and ended:

In conclusion we maintain that the Strepsils TV advertisement is acceptably factual, and is not 'dangerously misleading' nor a 'dangerous and irresponsible piece of misinformation'! Strepsils have been used for many years and I have no knowledge of self-medication with them adversely affecting the progress and, when necessary, the medical treatment of throat infections.

Dr Talbot's Complaint to the Broadcasting Standards Authority

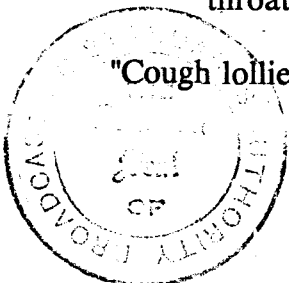
As he was dissatisfied with TVNZ's response, in a letter dated 17 January 1992 Dr Talbot referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989. He argued that the advertisement breached both standards 2(a) and 3 of the Advertising Code of Ethics.

Citing a number of references, he pointed to the high incidence of rheumatic fever among Maori and the significance of the streptococcal sore throat as a cause. He argued:

The only way we can reduce the incidence of rheumatic fever and consequent rheumatic heart disease is by the prevention and prompt treatment of streptococcal sore throats.

In one very reputable study, it was shown that a third of cases of rheumatic fever had been preceded by a relatively mild sore throat which was not severe enough for the patient to feel it necessary to visit the doctor. It is this group we are particularly interested in diminishing. It is my contention that the advertisement for Strepsils disseminates misleading information, reassuring this group of people that Strepsils are appropriate therapy for streptococcal sore throats.

"Cough lollies", he added, "are never appropriate therapy ...".



He said that the advertisement implied that strepsils killed streptococci which, he noted, corresponded with the claim from Boots' Regional Medical Director. He also contested the quality of TVNZ's specialist advice. The Health Department representative was not medically qualified and the Boots' representative was "clearly biased". He suggested advice be obtained from a Dr Martin at the NZ Communicable Disease Centre in Porirua who, he said, was a world authority on the subject of streptococci.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. The letter to TVNZ is dated 4 February 1992 and its reply, 29 April. TVNZ emphasised that the complaint was taken very seriously and had involved correspondence with the Health Department, and Boots Ltd both in New Zealand and Australia. It also raised the question whether Dr Talbot was lodging the complaint on his own behalf or under the aegis of the Waikato Area Health Board.

TVNZ expressed its opposition to a formal hearing, as requested by Dr Talbot to ensure that unbiased advice was obtained, as although complex medical detail was involved, the complaint fundamentally involved the non-specialist viewer's response to the advertisement.

Pointing out that Dr Boyd of the Health Department was medically qualified (contrary to the complainant's claim), TVNZ submitted the Authority should accept the Health Department's conclusion that the advertisement was not seriously flawed.

TVNZ also supplied the following information to the Authority:

- 1) To ensure that consumers followed the instruction on the packet to consult a doctor if the symptoms persisted, Boots intended to superimpose the words "Use strictly as directed" when the advertisement was used in the winter of 1992.
- 2) The Regional Medical Director for Boots believed the Television Commercial Approvals Bureau decision showed the advertisement remained correct.
- 3) The Strepsils name had been used in New Zealand for 25 years and had not previously been described as misleading.
- 4) A survey of nurses and doctors involved in treating children had shown that liquid paracetamol or some other drink was recommended for children - rather than throat lozenges.



Strepsils was positioned at the top end of the market and consumer research showed that purchasers tended to be those in the middle and upper socio-economic levels who purchased the product for their own use. It was not bought for children.

While acknowledging the complainant's concerns about rheumatic fever, TVNZ argued that that issue was an educational matter rather than one which required the inclusion of clinical detail in a "Strepsils" advertisement. TVNZ concluded that unless an excessively purist or technical approach was adopted, the advertisement did not breach the standards.

TVNZ also attached a copy of the decision from the Advertising Standards Complaints Board. Referring to the same facts noted above about streptococcal sore throats, the complainant alleged that the same advertisement was misleading under the same standard on which Dr Talbot's complaint is based - the Advertising Code of Ethics. The Advertising Standards Complaints Board, accepting the advice from the Department of Health that as Strepsils did not claim to be effective against streptococcal sore throat and as the packet included the advice to consult a doctor if the symptoms persisted, ruled that the advertisement was not misleading. Referring to this decision, TVNZ submitted that the Authority should, in all the circumstances, decline to determine the complaint.

Dr Talbot's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 7 May 1992 Dr Talbot stated that he was complaining in his own name - not as an employee of the Waikato Area Health Board - but added that his views were shared by paediatricians and cardiologists throughout New Zealand.

Dr Talbot disputed TVNZ's claim that it had widely consulted in its efforts to obtain further advice and he said that the views of Dr Boyd from the Health Department and an executive from Boots were an inadequate base on which to reach a decision. He listed the names of six people whom he described as experts on streptococci and rheumatic heart disease. He argued that a decision on the complaint involved complex medical detail and, to be fully informed, the Authority should consult the people named.

Transcript

Two men in white coats looking into a microscope

- 1st man: What have you got there?
 2nd man: Germs
 1st man: Nasty
 2nd man: Particularly. The type that causes many sore throats. Ugly brutes. But this will fix them.
 1st man: A cough lolly won't hurt them.
 2nd man: I know, but this is Strepsils.
 1st man: A Strepsils?
 2nd man: Yes. The two antiseptic/anti-bacterial ingredients in Strepsils actually attack the infection.
 1st man: You've killed them.
 2nd man: Quite ... (laughter)
 Voice Over: Medicated Strepsils - works fast on sore throats.

