

DECISION

Meeting 29 March 1999

Complaint 98/188,98/188a

Appeal 98/15

Appellant: M. Fitzpatrick
Advertisement: Novogen – Trinovin

Order for Appeal: The Secretary of the Advertising Standards Complaints Board initially received two complaints in respect of this advertisement. At a meeting on 21 July 1998, the Board determined not to uphold the complaints and both Complainants subsequently filed applications to appeal that Decision. As the substance of the appeals was identical, Complainant V. James notified the Secretary that her application was to be withdrawn. The remaining application to appeal, filed on behalf of M. Fitzpatrick, was accepted by the Chairman of the Complaints Board.

An advertisement for Trinovin was published by the New Zealand Herald and the Christchurch Press. The header stated "Trinovin Improves The General Health Outlook For Men Over 50". The body of the advertisement included information and claims about the product, as well as direction to contact a health professional if the reader wanted more information about the benefits of Trinovin. There was a toll free number for readers to call should they wish to find out how to maintain quality of life.

Deliberation

The Appeal Board observed that in any advertising involving a consumer's "health," advertisers must observe a high standard of social responsibility particularly where the consumer relies on such information for his or her well being. With this in mind, the Appeal Board had to consider the linguistic effect of statements contained in the advertisement, in particular the statement, "Trinovin Improves The General Health Outlook for Men Over 50." In this respect the majority of the Board was of the opinion that the statement was an absolute statement and any allegation or statement of an absolute nature that could or was likely to mislead or deceive the consumer could not be made without qualification; unless, that is, it could be substantiated. As a result of this determination the Appeal Board considered the advertiser's submissions but failed to find any evidence or statements that could, or were likely to, substantiate the claim. The majority was also of the view that the statement left no room for negative implications or side effects and as such was, on the balance of probabilities, in breach of Basic Principles 3 of the Code for Therapeutic Advertising.

Decision: Appeal Allowed