

<b>COMPLAINT NUMBER</b>	15/412
<b>COMPLAINANT</b>	C. Logan
<b>ADVERTISER</b>	Gillman Wheelans
<b>ADVERTISEMENT</b>	Gillman Wheelans Billboard
<b>DATE OF MEETING</b>	13 October 2015
<b>OUTCOME</b>	Not Upheld

## SUMMARY

The billboard advertisement for Gillman Wheelans Real Estate stated: “Getting the job done. Construction is coming along nicely.” The advertisement featured an image of two builders. The male builder was standing while the woman was kneeling down. The shadow of the pair appeared in the background.

The Complainant said they found the image “deeply offensive.” The Complainant found the image “an objectifying, demeaning sexualisation of women” that implied women are sexual objects to be used for men's sexual gratification. The Complainant also said the advertisement made “degrading assumptions and inferences about the role of women working in the construction industry as being sexual objects.

The majority of the Complaints Board acknowledged the double entendre with the shadow implied a sexual act. However, it said the risqué image was subtle, which stopped the image from being overtly sexual and was saved by the provision for humour under Basic Principle 6 of the Code for People in Advertising.

Turning to the Complainant’s opinion the image objectified and demeaned women, the Complaints Board disagreed. It said the humour with the shadow was oblique and did not reach the threshold to be said to cause serious or widespread offence to women on account of their gender or to women who were in the construction industry.

However, a minority of the Complaints Board expressed concerns about the medium. It said the visibility of the billboard medium meant the advertisement was highly visible to a wide cross-section of the general public. The minority said, despite its subtlety, such indiscriminate exposure to the risqué image, was not socially responsible. However, in accordance with the majority, the Complaints Board ruled the advertisement was saved by the provision for humour and was not in breach of Basic Principle 4 or Rule 5 of the Code of Ethics or Basic Principles 3, 5 or 6 of the Code for People in Advertising.

The Complaints Board ruled the complaint was Not Upheld and Dismissed the appeal.

**[No further action required]**

Please note this headnote does not form part of the Decision.

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## COMPLAINTS BOARD DECISION

The Acting Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rule 5 of the Code of Ethics and Basic Principles 3, 5 and 6 of the Code for People in Advertising.

The Code of Ethics required the Complaints Board to consider whether the advertisement contained anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services) and whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

The Code for People in Advertising said advertisements should not portray people in a manner which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence on the grounds of their gender and should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people in society to promote the sale of products or services. Basic Principle 6 of the same code provided for humorous and satirical treatment of people and groups of people, provided that, taking into account generally prevailing community standards, the portrayal is not likely to cause serious or widespread offence, hostility, contempt, abuse or ridicule.

The Complainant said they found the image “deeply offensive.” The Complainant found the image “an objectifying, demeaning sexualisation of women” that implied women are sexual objects to be used for men's sexual gratification. The Complainant also said the advertisement made “degrading assumptions and inferences about the role of women working in the construction industry as being sexual objects.

The Complaints Board then turned to the response from the Advertiser and noted where it stated: “...The complainant I believe has stepped too far and has read more into the image than what was intended. There is no inference of roles in the workplace or intention to demean women. The image is of a male/female working on a construction site.

The images chosen by our marketing team are chosen by a panel of three people, two women and one male. These are then tested on focus groups for an opinion; almost all those tested look at the image of the two people and see this as acceptable. When the shadow is noticed it is seen as humorous and clever, but not offensive.

As a company selling product, we do not wish to offend due to the negative backlash that can occur however we do like to make people smile on their way to or from work.”

Looking at a copy of the advertisement, the majority of Complaints Board agreed. It acknowledged the double entendre with the shadow implied a sexual act. However, it said the risqué image was subtle, which stopped the image from being overtly sexual and was saved by the provision for humour under Basic Principle 6 of the Code for People in Advertising.

Turning to the Complainant's opinion the image objectified and demeaned women, the majority of Complaints Board disagreed. It said the humour with the shadow was oblique and did not reach the threshold to be said to cause serious or widespread offence to women on

account of their gender or to women who were in the construction industry. Therefore, while the Complaints Board acknowledged the offence the advertisement caused the Complainant, the majority of the Complaints Board said the advertisement was not in breach of Basic Principles 3 or 5 of the Code for People in Advertising or Basic Principle 4 and Rule 5 of the Code of Ethics.

A minority of the Complaints Board expressed concerns about the medium. It said the high visibility of the billboard medium meant the advertisement was highly visible to a wide cross-section of the general public. The minority said, despite its subtlety, such indiscriminate exposure to the risqué image, was not socially responsible. Therefore the minority of the Complaints Board said the advertisement was in breach of Basic Principle 4 of the Code of Ethics.

In accordance with the majority, the Complaints Board ruled the advertisement was saved by the provision for humour and was not in breach of Basic Principle 4 or Rule 5 of the Code of Ethics or Basic Principles 3, 5 or 6 of the Code for People in Advertising.

Accordingly, the Complaints Board ruled to Not Uphold the complaint and the appeal was Dismissed.

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## **DESCRIPTION OF ADVERTISEMENT**

The billboard advertisement for Gillman Wheelans Real Estate stated: "Getting the job done. Construction is coming along nicely." The advertisement featured an image of two builders. The male builder was standing while the woman was kneeling down. The shadow of the pair appeared in the background.

## **COMPLAINT FROM C. LOGAN**

The billboard advertisement for the Gillman Wheelans subdivision in West Melton depicts two construction workers, a man and a woman, ostensibly preparing tools/working on a new home. On the wall behind them, the advertiser has chosen to depict shadows cast by the workers. They have chosen to do this to look as though the woman worker is performing fellatio on the man.

I found this to be deeply offensive. It is an objectifying, demeaning sexualization of women. It implies that women are sexual objects to be used for men's sexual gratification. Furthermore, it makes degrading assumptions and inferences about the role of women working in the construction industry as being sexual objects. The text accompanying the image on the billboard "Getting the job done" further reinforces these ideas, the implication being that the "job" in question could also be the woman giving the man a "blow job". As a woman who has worked in construction in the past, the already entrenched sexism faced daily is only worsened by the proliferation of this kind of advertising message in public spaces.

The billboard contravenes the advertising standards code for people in advertising in that it is employing sexual themes and imagery which are exploitative and degrading to women. This is done in a gratuitous manner to promote the business aims of Gillman Wheelans. This is in contravention to the fifth of the basic principles of the Code for People in Advertising. I also believe it is contrary to upholding a sense of social responsibility, as it is reinforcing misogynistic ideas around a woman's worth lying in her being a sexual object. This is in contravention to the fourth listed basic principle of the Advertising Code of Ethics.

## **CODE OF ETHICS**

**Basic Principle 4:** All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

**Rule 5: Offensiveness** - Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).

## **CODE FOR PEOPLE IN ADVERTISING**

**Basic Principle 3** - Advertisements should not portray people in a manner which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence on the grounds of their gender; race; colour; ethnic or national origin; age; cultural, religious, political or ethical belief; sexual orientation; marital status; family status; education; disability; occupational or employment status.

**Basic Principle 5** - Advertisements should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people in society to promote the sale of products or services. In particular people should not be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product. Children must not be portrayed in a manner which treats them as objects of sexual appeal.

**Basic Principle 6.** Humour and satire are natural and accepted features of the relationship between individuals and groups within the community. Humorous and satirical treatment of people and groups of people is acceptable, provided that, taking into account generally prevailing community standards, the portrayal is not likely to cause serious or widespread offence, hostility, contempt, abuse or ridicule

## **RESPONSE FROM ADVERTISER, GILLMAN WHEELANS**

Following the complaint and subsequent ruling on our billboard in July of this year we ensured that further testing of our billboards on wider reaching focus groups took place prior to the billboards being erected.

The complainant I believe has stepped too far and has read more into the image than what was intended. There is no inference of roles in the workplace or intention to demean women. The image is of a male/female working on a construction site.

The images chosen by our marketing team are chosen by a panel of three people, two women and one male. These are then tested on focus groups for an opinion; almost all those tested look at the image of the two people and see this as acceptable. When the shadow is noticed it is seen as humorous and clever but not offensive.

As a company selling product, we do not wish to offend due to the negative backlash that can occur however we do like to make people smile on their way to or from work.

We trust this will not be taken further



<b>COMPLAINT NUMBER</b>	15/412
<b>APPEAL NUMBER</b>	15/018
<b>APPLICANT</b>	C. Logan
<b>ADVERTISER</b>	Gillman Wheelans
<b>ADVERTISEMENT</b>	Gillman Wheelans Billboard
<b>DATE</b>	5 November 2015
<b>OUTCOME</b>	Accepted

## SUMMARY

The Advertising Standards Complaints Board ruled on 13 October 2015 the complaint from C. Logan was Not Upheld. The Complainant appealed the Decision.

This application was considered by the Chairperson of the Appeal Board. The Complainant was of the view it was in the interests of natural justice the matter be reheard and was of the view the Decision was against the weight of evidence.

The Chairperson said the Complaints Board deliberation focused on the images in the advertisement and did not appear to take into account the accompanying words. She said it also relied on the Advertiser's response the advertisement had not been considered offensive by its own focus group without having all the relevant information.

The Chairperson ruled the appeal was Accepted and it was in the interests of natural justice the matter be reheard and the Advertiser be invited to respond to the issues raised by the Complainant and the matter be placed before the Complaints Board for determination.

Please note this headnote does not form part of the Decision.

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## CHAIRPERSON'S RULING

The Chairperson viewed the application for appeal. She noted that there were five grounds upon which an appeal was able to proceed. These were listed at Clause 6(c) of the Second

Schedule of the Advertising Standards Complaints Board Complaints Procedures and were as follows:

- (i) The proper procedures have not been followed.
- (ii) There is new evidence of sufficient substance to affect the decision.
- (iii) Evidence provided to the Chairman of the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (iv) The decision is against the weight of evidence.
- (v) It is in the interests of natural justice that the matter be reheard.

The Chairperson noted the Complainant based their appeal application on grounds (iv) the decision was against the weight of evidence and (v) it is in the interests of natural justice the matter be reheard.

The Chairperson noted the various concerns of the Complainant in their application. The Complainant said the Decision relied on irrelevant considerations on the submission from the Advertiser that its focus group found the advertisement was not offensive, but humorous. The Complainant also challenged the application of Basic Principles 3, 5 and 6 of the Code for People in Advertising.

The Chairperson said the Complaints Board deliberation focused on the images in the advertisement and did not appear to take into account the accompanying words "getting the job done." The Chairperson noted the statement was raised as a concern in the original complaint.

She also held the Complaints Board appeared to have relied on the Advertiser's response the advertisement had not been considered offensive by its own focus group. The Chairperson noted, however, no information about the composition of the focus group, or of the process used to test the advertisement with that group had been provided.

The Chairperson also agreed with the Complainant the application of the Code for People in Advertising needed to be reconsidered by the Complaints Board.

Accordingly, the Chairperson ruled it was in the interests of natural justice the matter be heard and the Advertiser be invited to respond to the issues raised by the Complainant. The Chairperson ruled the appeal was Accepted and be placed before the Complaints Board for determination.

**Chairperson's Ruling:** Appeal application **Accepted**

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## **DESCRIPTION OF ADVERTISEMENT**

The billboard advertisement for Gillman Wheelans Real Estate stated: "Getting the job done. Construction is coming along nicely." The advertisement featured an image of two builders. The male builder was standing while the woman was kneeling down. The shadow of the pair appeared in the background.

## APPEAL APPLICATION FROM C. LOGAN

I would like to request an appeal of decision 15/412 on grounds of natural justice (ASA appeal ground (e)). These grounds are such that the decision made by the Board is also palpably against the weight of the evidence (ASA appeal ground (d)).

### **It is in the interests of natural justice that the matter be reheard**

The Complaints Board's decision was contrary to natural justice in that it both relied on irrelevant considerations and failed to take into account all relevant considerations.

#### *Taking into account irrelevant considerations*

In making its decision, the Board relied on the following evidence provided by the Advertiser:

"...The complainant I believe has stepped too far and has read more into the image than what was intended. There is no inference of roles in the workplace or intention to demean women. The image is of a male/female working on a construction site.

The images chosen by our marketing team are chosen by a panel of three people, two women and one male. These are then tested on focus groups for an opinion; almost all those tested look at the image of the two people and see this as acceptable. When the shadow is noticed it is seen as humorous and clever, but not offensive.

As a company selling product, we do not wish to offend due to the negative backlash that can occur however we do like to make people smile on their way to or from work."

Whether or not the Advertiser believes their advertisement contained an inference to roles in the workplace, and whether or not they intended to demean women, is irrelevant. The reality is, that coincidentally or not (most likely not), the Advertiser has, through its deliberate placement of shadows in the advertisement, accurately portrayed the degrading perception of women that is constantly perpetuated not only in the construction industry, but in wider society – that women are sexual objects to be used for men's gratification. Popular media and advertising are culpable for much of this perception and advertisements such as the one in question only serve to compound it. The fact that the advertisement is related to the construction industry is, as noted in my original complaint, even worse, given the sexism women working in construction already face, not to mention the women who are harassed daily as they walk past construction sites.

The information provided about the Advertiser's marketing team and focus groups is also irrelevant. Such information has been provided to create the impression that the majority of people, even women, find the advertisement acceptable, one that the Board seems to have uncritically accepted. The Board are however required to draw their own conclusions as to whether or not an advertisement is acceptable based on its Codes and impact on the community, not rely on an Advertiser's own self-serving evidence.

Again, whether or not the Advertiser wished to offend is irrelevant. It is whether or not they actually caused offence that is in question. This aspect does not appear to have been given full and careful consideration by the Board for reasons further discussed below.

In its decision the Board further noted that:

“the risqué image was subtle, which stopped the image from being overtly sexual and was saved by the provision for humour under Basic Principle 6 of the Code for People in Advertising.”

Nowhere in the Codes is there a requirement that an image be “overtly sexual” for it to be in breach of the Codes. Clearly it was “overt” enough for myself and members of the Advertiser’s own focus group to pick up on the sexual nature of the image, but an image can be exploitative and degrading (required by Principle 5 of the Code of People in Advertising) without being “overt” or explicit. In other words, a seemingly inexplicit sexual image can nevertheless have a very sexually explicit message (in this case, that women are sexual objects). Consideration by the Board that the image was not “overtly sexual” was therefore irrelevant.

The Board’s reliance on irrelevant considerations has led to a decision that was reached in an unfair manner and was as a result also substantively incorrect.

#### *Failure to take into account all relevant considerations*

The Board’s application of “the provision for humour” under Basic Principle 6 of the Code for People in Advertising is inappropriate. Basic Principle 6 which provides that “[h]umorous and satirical treatment of people and groups of people is acceptable” is to be read in conjunction with the preceding Basic Principles 3 and 5 applied by the Board, which state (emphasis added):

“**Basic Principle 3** - Advertisements **should not** portray people in a manner which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence on the grounds of their gender...”

“**Basic Principle 5** - “Advertisements **should not** employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people in society to promote the sale of products or services. In particular people **should not** be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product...”

Basic Principles 3 and 5 are couched in absolute terms and do not appear to afford leeway for humour and satire where in fact an advertisement “is reasonably likely to cause serious or widespread on the grounds of...gender” or where it “[employs] sexual appeal in a manner which is exploitative and degrading” or portrays people “in a manner which uses sexual appeal simply to draw attention to an unrelated product.” Before determining that the advertisement was “saved” by Basic Principle 6, the Board was required to determine whether or not Basic Principles 3 and 5 had been breached. The extent of the Board’s assessment was regrettably minimal.

In relation to Basic Principle 3, the Board considered that “the humour with the shadow was oblique and did not reach the threshold to be said to cause serious or widespread offence to women on account of their gender or to women who were in the construction industry.” In relation to Basic Principle 5, the Board considered that “the risqué image was subtle, which stopped the image from being overtly sexual”. As noted above, the fact that an image is not explicit and is only “oblique” or “subtle” does not automatically make it inoffensive or any less exploitative or degrading. The reasoning employed by the Board as to why Basic Principles 3 and 5 were not breached was therefore inadequate.

In particular, the Board does not appear to have turned its mind to the actual wording of Basic Principle 5. If my original complaint didn’t already make this abundantly clear, what makes this image particularly “exploitative and degrading” of women – over and above your typical “overtly” sexualised and scantily clad woman – is the fact that it goes one step further,

suggesting a particularly demeaning action with which to further exploit and degrade women, over and above the typical ogling of them on billboards or in real life. It portrays this in a context where women already face entrenched sexism, and reinforces sexism in the workplace. It is one (albeit still degrading) thing to imply that a woman's worth is in her looks and sex appeal, it is another thing entirely to imply that a woman's place is on the ground sucking a man's dick, no matter how "oblique" or "subtle" the image itself may be. Furthermore, the Board appears to have overlooked the fact that women are degraded through sexual innuendo on a daily basis whether via advertising, the media, entertainment or by their peers, colleagues, strangers etc and that it is precisely because the innuendo is not overt that women often feel disempowered to do anything about it. Billboards like Gillman Wheelans' only compound such degradation and disempowerment, contravening not only Basic Principle 5, but also Basic Principle 4 of the Advertising Code of Ethics in disregarding "social responsibility to consumers and society" – particularly women. Finally, the Board has mentioned nothing of the "sex appeal" to draw attention to an unrelated product, which the billboard clearly does.

As for the advertisement being "saved" by the humour provision, application of Basic Principle 6 must at the very least be weighed against Basic Principles 3 and 5 and the extent to which the advertisement is in conflict with these principles. Taking into account the advertisement's sexually exploitative and degrading message regarding women (albeit through use of a more "oblique" or "subtle" image") and its likely perpetuation of harmful attitudes towards women, it is difficult to see how the advertisement is "saved" by Basic Principle 6.

Sexual objectification of women (exploitation, degradation, assault, harassment etc) is a far from minor issue in New Zealand

[http://www.nzherald.co.nz/rotorua-daily-post/news/article.cfm?c\\_id=1503438&objectid=11534903;](http://www.nzherald.co.nz/rotorua-daily-post/news/article.cfm?c_id=1503438&objectid=11534903)

[http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11534144;](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11534144)  
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[http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11153339\),](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11153339)

a context that the Board is no doubt well aware of, but seems to have failed to consider in its decision. While billboards like Gillman Wheelans' may not be responsible for specific further occurrences of sexual objectification of women in our community, they do serve to generally encourage the harmful attitudes that perpetuate such objectification, whether intended to or not.

The Board's failure to properly consider and apply Basic Principles 3, 5 and 6 as well as its failure to consider the wider New Zealand context within which the advertisement exists, has again led to a decision that was reached in an unfair manner and was as a result also substantively incorrect.

### **Decision against the weight of the evidence**

With the above points in mind, it can also be said that the Board's decision is against the weight of the evidence.

Thank you for your consideration of my appeal.

## **SUMMARY OF COMPLAINTS BOARD DECISION**

The billboard advertisement for Gillman Wheelans Real Estate stated: “Getting the job done. Construction is coming along nicely.” The advertisement featured an image of two builders. The male builder was standing while the woman was kneeling down. The shadow of the pair appeared in the background.

The Complainant said they found the image “deeply offensive.” The Complainant found the image “an objectifying, demeaning sexualisation of women” that implied women are sexual objects to be used for men's sexual gratification. The Complainant also said the advertisement made “degrading assumptions and inferences about the role of women working in the construction industry as being sexual objects.

The majority of the Complaints Board acknowledged the double entendre with the shadow implied a sexual act. However, it said the risqué image was subtle, which stopped the image from being overtly sexual and was saved by the provision for humour under Basic Principle 6 of the Code for People in Advertising.

Turning to the Complainant's opinion the image objectified and demeaned women, the Complaints Board disagreed. It said the humour with the shadow was oblique and did not reach the threshold to be said to cause serious or widespread offence to women on account of their gender or to women who were in the construction industry.

However, a minority of the Complaints Board expressed concerns about the medium. It said the visibility of the billboard medium meant the advertisement was highly visible to a wide cross-section of the general public. The minority said, despite its subtlety, such indiscriminate exposure to the risqué image, was not socially responsible. However, in accordance with the majority, the Complaints Board ruled the advertisement was saved by the provision for humour and was not in breach of Basic Principle 4 or Rule 5 of the Code of Ethics or Basic Principles 3, 5 or 6 of the Code for People in Advertising.

Accordingly, the Complaints Board ruled to Not Uphold the complaint

<b>COMPLAINT NUMBER</b>	15/412
<b>APPEAL NUMBER</b>	15/018
<b>APPLICANT</b>	C. Logan
<b>ADVERTISER</b>	Gilman Wheelans
<b>ADVERTISEMENT</b>	Gilman Wheelans Billboard
<b>DATE</b>	24 November 2015
<b>OUTCOME</b>	Not Upheld / Appeal Dismissed

## SUMMARY

On 13 October 2015, the Advertising Standards Complaints Board ruled the complaint made by C. Logan was Not Upheld. The Complainant appealed the Decision.

The appeal application was considered by the Chairperson of the Appeal Board. The Complainant was of the view it was in the interests of natural justice the matter be reheard and the Decision was against the weight of evidence.

The Complainant's appeal application said the Complaints Board Decision relied on the Advertiser's assertion the advertisement was not intended to demean woman and had been tested on a focus group. It also took into account the Complainant's view the Complaints Board did not fully consider the advertisement against the Code for People in Advertising. The Chairperson ruled the appeal be accepted and the matter be placed before the Complaints Board to be re-heard.

In re-considering the complaint and taking into account the appeal submissions, the majority of the Complaints Board said the advertisement indirectly alluded to a sexual act. However, the majority said it did not consider most people would notice or would consider the combination of the image and words reached the threshold to objectify or demean women in general, or women in the construction industry. The majority agreed the sexual reference was indirect, and any possible offence was outweighed by the intended use of risqué humour.

A minority said the advertisement was likely to cause serious or widespread offence and was not saved by the provision of humour, particularly due to the indiscriminate reach of the medium.

However, in accordance with the majority, the Complaints Board ruled the advertisement was Not Upheld and the appeal was dismissed.

Please note this headnote does not form part of the Decision

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## **COMPLAINTS BOARD DECISION**

On 13 October 2015 the Advertising Standards Complaints Board ruled the complaint was Not Upheld. The Complainant appealed the Decision. The appeal application was considered by the Chairperson of the Appeal Board. The Complainant was of the view it was in the interests of natural justice the matter be reheard and was of the view the Decision was against the weight of evidence.

The Chairperson said the Complaints Board deliberation focused on the images in the advertisement and did not appear to take into account the accompanying words. She said it also relied on the Advertiser's response the advertisement had not been considered offensive by its own focus group without having all the relevant information. The Chairperson ruled the appeal was accepted and referred it to the Complaints Board to be re-heard.

At the re-hearing, the Chairman directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rule 5 of the Code of Ethics and Basic Principles 3, 5 and 6 of the Code for People in Advertising.

The Code of Ethics required the Complaints Board to consider whether the advertisement contained anything which in the light of generally prevailing community standards was likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services) and whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

The Code for People in Advertising said advertisements should not portray people in a manner which, taking into account generally prevailing community standards, was reasonably likely to cause serious or widespread offence on the grounds of their gender and should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people in society to promote the sale of products or services. Basic Principle 6 of the same code provided for humorous and satirical treatment of people and groups of people, provided that, taking into account generally prevailing community standards, the portrayal is not likely to cause serious or widespread offence, hostility, contempt, abuse or ridicule.

As part of its deliberation, the Complaints Board took into account the original complaint and response from the Advertiser, along with the appeal submissions. Two additional complaints had also been received following media coverage of the initial decision.

The Complaints Board noted the Complainant's original complaint the advertisement was "deeply offensive" and the image was "an objectifying, demeaning sexualisation of women" that implied women were sexual objects to be used for men's sexual gratification. The Complainant also said the advertisement made "degrading assumptions and inferences about the role of women working in the construction industry as being sexual objects." In its original Decision (15/412) the Complaints Board ruled the complaint was Not Upheld.

The Complainant's appeal application said the Complaints Board Decision relied on the Advertiser's assertion the advertisement was not intended to demean women and had been tested on a focus group. It also took into account the Complainant's view the Complaints Board did not correctly apply the Basic Principles 3, 5 and 6 of the Code for People in Advertising to the advertisement.

The response to the appeal from the Advertiser reiterated its original position there was no pejorative inference about gender roles in the workplace in the advertisement. It said there was no intention to demean women and it was tested on focus groups for an opinion, where it was seen as humorous and clever, but not offensive. The Complaints Board noted the Advertiser explained the billboard had since been removed and would not be used again.

The Complaints Board turned to consider the likely consumer takeout of the advertisement, in its entirety, including the imagery and text. The wording in the advertisement said, in part: "Getting the job done... Construction is coming along nicely."

The majority noted the humorous treatment of people was an acceptable part of society which was often reflected in advertisements and was allowable under Basic Principle 6 of the Code for People in Advertising, as long as the portrayal was not reasonably likely to cause serious or widespread offence. In considering the likely level of offence in this case, the majority of the Complaints Board noted one complaint had been received about the billboard and two more complaints had been received following media coverage of the Not Upheld Decision (15/412).

The majority acknowledged the Complainant's interpretation the combination of the shadow image and wording "Getting the job done... Construction is coming along nicely," alluded to a sexual act which demeaned and objectified women. The majority of the Complaints Board disagreed with the Complainant's interpretation. It said the wording and image were unlikely to be seen as demeaning to women, or women in the construction industry, by most consumers. The majority said while the advertisement employed a risqué premise, in light of generally prevailing community standards, and taking into account the audience, context, medium and product, it was unlikely to cause serious or widespread offence to most people and was not in breach of Basic Principles 3 or 6 of the Code for People in Advertising or Basic Principle 4 and Rule 5 of the Code of Ethics.

A minority of the Complaints Board said any intended humour did not save the advertisement from being likely to offend against generally prevailing community standards and the sexual connotations in the advertisement were likely to cause serious offence. It said this was exacerbated by the indiscriminate reach of the billboard medium and it was irresponsible to place the advertisement where it could be seen by such a varied audience. The minority said the advertisement was in breach of Basic Principles 3 and 6 of the Code for People in Advertising and Basic Principle 4 and Rule 5 of the Code of Ethics.

However, in accordance with the majority, this part of the complaint was not upheld.

The Complaints Board then turned to consider the Complainant's view Basic Principle 5 of the Code for People in Advertising had not been adequately considered in the Decision and the advertisement employed sexual appeal to sell an unrelated product in an exploitative and demeaning way.

The Complaints Board was unanimous in its view the advertisement had not used sexual appeal. The Complaints Board agreed that Basic Principle 5 focused on the use of sexual appeal to sell unrelated products or to exploit or degrade individuals or groups of people. It said the sexual act depicted in the shadow of the advertisement did not meet the requirements to effect a breach of this part of the Code for People in Advertising.

On consideration of the above, and in accordance with the majority, the Complaints Board ruled the advertisement was Not Upheld and dismissed the appeal.

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### **DESCRIPTION OF ADVERTISEMENT**

The billboard advertisement for Gillman Wheelans Real Estate stated: "Getting the job done. Construction is coming along nicely." The advertisement featured an image of two builders. The male builder was standing while the woman was kneeling down. The shadow of the pair appeared in the background.

### **COMPLAINT FROM C. LOGAN**

The billboard advertisement for the Gillman Wheelans subdivision in West Melton depicts two construction workers, a man and a woman, ostensibly preparing tools/working on a new home. On the wall behind them, the advertiser has chosen to depict shadows cast by the workers. They have chosen to do this to look as though the woman worker is performing fellatio on the man.

I found this to be deeply offensive. It is an objectifying, demeaning sexualization of women. It implies that women are sexual objects to be used for men's sexual gratification. Furthermore, it makes degrading assumptions and inferences about the role of women working in the construction industry as being sexual objects. The text accompanying the image on the billboard "Getting the job done" further reinforces these ideas, the implication being that the "job" in question could also be the woman giving the man a "blow job". As a woman who has worked in construction in the past, the already entrenched sexism faced daily is only worsened by the proliferation of this kind of advertising message in public spaces.

The billboard contravenes the advertising standards code for people in advertising in that it is employing sexual themes and imagery which are exploitative and degrading to women. This is done in a gratuitous manner to promote the business aims of Gillman Wheelans. This is in contravention to the fifth of the basic principles of the Code for People in Advertising. I also believe it is contrary to upholding a sense of social responsibility, as it is reinforcing misogynistic ideas around a woman's worth lying in her being a sexual object. This is in contravention to the fourth listed basic principle of the Advertising Code of Ethics.

### **APPEAL APPLICATION FROM C. LOGAN**

I would like to request an appeal of decision 15/412 on grounds of natural justice (ASA appeal ground (e)). These grounds are such that the decision made by the Board is also palpably against the weight of the evidence (ASA appeal ground (d)).

#### **It is in the interests of natural justice that the matter be reheard**

The Complaints Board's decision was contrary to natural justice in that it both relied on irrelevant considerations and failed to take into account all relevant considerations.

#### *Taking into account irrelevant considerations*

In making its decision, the Board relied on the following evidence provided by the Advertiser:

“...The complainant I believe has stepped too far and has read more into the image than what was intended. There is no inference of roles in the workplace or intention to demean women. The image is of a male/female working on a construction site.

The images chosen by our marketing team are chosen by a panel of three people, two women and one male. These are then tested on focus groups for an opinion; almost all those tested look at the image of the two people and see this as acceptable. When the shadow is noticed it is seen as humorous and clever, but not offensive.

As a company selling product, we do not wish to offend due to the negative backlash that can occur however we do like to make people smile on their way to or from work.”

Whether or not the Advertiser believes their advertisement contained an inference to roles in the workplace, and whether or not they intended to demean women, is irrelevant. The reality is, that coincidentally or not (most likely not), the Advertiser has, through its deliberate placement of shadows in the advertisement, accurately portrayed the degrading perception of women that is constantly perpetuated not only in the construction industry, but in wider society – that women are sexual objects to be used for men’s gratification. Popular media and advertising are culpable for much of this perception and advertisements such as the one in question only serve to compound it. The fact that the advertisement is related to the construction industry is, as noted in my original complaint, even worse, given the sexism women working in construction already face, not to mention the women who are harassed daily as they walk past construction sites.

The information provided about the Advertiser’s marketing team and focus groups is also irrelevant. Such information has been provided to create the impression that the majority of people, even women, find the advertisement acceptable, one that the Board seems to have uncritically accepted. The Board are however required to draw their own conclusions as to whether or not an advertisement is acceptable based on its Codes and impact on the community, not rely on an Advertiser’s own self-serving evidence.

Again, whether or not the Advertiser wished to offend is irrelevant. It is whether or not they actually caused offence that is in question. This aspect does not appear to have been given full and careful consideration by the Board for reasons further discussed below.

In its decision the Board further noted that:

“the risqué image was subtle, which stopped the image from being overtly sexual and was saved by the provision for humour under Basic Principle 6 of the Code for People in Advertising.”

Nowhere in the Codes is there a requirement that an image be “overtly sexual” for it to be in breach of the Codes. Clearly it was “overt” enough for myself and members of the Advertiser’s own focus group to pick up on the sexual nature of the image, but an image can be exploitative and degrading (required by Principle 5 of the Code of People in Advertising) without being “overt” or explicit. In other words, a seemingly inexplicit sexual image can nevertheless have a very sexually explicit message (in this case, that women are sexual objects). Consideration by the Board that the image was not “overtly sexual” was therefore irrelevant.

The Board’s reliance on irrelevant considerations has led to a decision that was reached in an unfair manner and was as a result also substantively incorrect.

*Failure to take into account all relevant considerations*

The Board's application of "the provision for humour" under Basic Principle 6 of the Code for People in Advertising is inappropriate. Basic Principle 6 which provides that "[h]umorous and satirical treatment of people and groups of people is acceptable" is to be read in conjunction with the preceding Basic Principles 3 and 5 applied by the Board, which state (emphasis added):

**"Basic Principle 3** - Advertisements **should not** portray people in a manner which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence on the grounds of their gender..."

**"Basic Principle 5** - "Advertisements **should not** employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people in society to promote the sale of products or services. In particular people **should not** be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product..."

Basic Principles 3 and 5 are couched in absolute terms and do not appear to afford leeway for humour and satire where in fact an advertisement "is reasonably likely to cause serious or widespread on the grounds of...gender" or where it "[employs] sexual appeal in a manner which is exploitative and degrading" or portrays people "in a manner which uses sexual appeal simply to draw attention to an unrelated product." Before determining that the advertisement was "saved" by Basic Principle 6, the Board was required to determine whether or not Basic Principles 3 and 5 had been breached. The extent of the Board's assessment was regrettably minimal.

In relation to Basic Principle 3, the Board considered that "the humour with the shadow was oblique and did not reach the threshold to be said to cause serious or widespread offence to women on account of their gender or to women who were in the construction industry." In relation to Basic Principle 5, the Board considered that "the risqué image was subtle, which stopped the image from being overtly sexual". As noted above, the fact that an image is not explicit and is only "oblique" or "subtle" does not automatically make it inoffensive or any less exploitative or degrading. The reasoning employed by the Board as to why Basic Principles 3 and 5 were not breached was therefore inadequate.

In particular, the Board does not appear to have turned its mind to the actual wording of Basic Principle 5. If my original complaint didn't already make this abundantly clear, what makes this image particularly "exploitative and degrading" of women – over and above your typical "overtly" sexualised and scantily clad woman – is the fact that it goes one step further, suggesting a particularly demeaning action with which to further exploit and degrade women, over and above the typical ogling of them on billboards or in real life. It portrays this in a context where women already face entrenched sexism, and reinforces sexism in the workplace. It is one (albeit still degrading) thing to imply that a woman's worth is in her looks and sex appeal, it is another thing entirely to imply that a woman's place is on the ground sucking a man's dick, no matter how "oblique" or "subtle" the image itself may be. Furthermore, the Board appears to have overlooked the fact that women are degraded through sexual innuendo on a daily basis whether via advertising, the media, entertainment or by their peers, colleagues, strangers etc and that it is precisely because the innuendo is not overt that women often feel disempowered to do anything about it. Billboards like Gillman Wheelans' only compound such degradation and disempowerment, contravening not only Basic Principle 5, but also Basic Principle 4 of the Advertising Code of Ethics in disregarding "social responsibility to consumers and society" – particularly women. Finally, the Board has mentioned nothing of the "sex appeal" to draw attention to an unrelated product, which the billboard clearly does.

As for the advertisement being “saved” by the humour provision, application of Basic Principle 6 must at the very least be weighed against Basic Principles 3 and 5 and the extent to which the advertisement is in conflict with these principles. Taking into account the advertisement’s sexually exploitative and degrading message regarding women (albeit through use of a more “oblique” or “subtle” image”) and its likely perpetuation of harmful attitudes towards women, it is difficult to see how the advertisement is “saved” by Basic Principle 6.

Sexual objectification of women (exploitation, degradation, assault, harassment etc) is a far from minor issue in New Zealand

[http://www.nzherald.co.nz/rotorua-daily-post/news/article.cfm?c\\_id=1503438&objectid=11534903;](http://www.nzherald.co.nz/rotorua-daily-post/news/article.cfm?c_id=1503438&objectid=11534903)

[http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11534144;](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11534144)  
[http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11534227;](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11534227)  
[http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11533629;](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11533629)  
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[http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11153339\),](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11153339)

a context that the Board is no doubt well aware of, but seems to have failed to consider in its decision. While billboards like Gillman Wheelans’ may not be responsible for specific further occurrences of sexual objectification of women in our community, they do serve to generally encourage the harmful attitudes that perpetuate such objectification, whether intended to or not.

The Board’s failure to properly consider and apply Basic Principles 3, 5 and 6 as well as its failure to consider the wider New Zealand context within which the advertisement exists, has again led to a decision that was reached in an unfair manner and was as a result also substantively incorrect.

### **Decision against the weight of the evidence**

With the above points in mind, it can also be said that the Board’s decision is against the weight of the evidence.

Thank you for your consideration of my appeal.

### **CODE OF ETHICS**

**Basic Principle 4:** All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

**Rule 5: Offensiveness** - Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).

### **CODE FOR PEOPLE IN ADVERTISING**

**Basic Principle 3** - Advertisements should not portray people in a manner which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence on the grounds of their gender; race; colour; ethnic or national origin; age; cultural, religious, political or ethical belief; sexual orientation; marital status; family status; education; disability; occupational or employment status.

**Basic Principle 5** - Advertisements should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people in society to promote the sale of products or services. In particular people should not be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product. Children must not be portrayed in a manner which treats them as objects of sexual appeal.

**Basic Principle 6.** Humour and satire are natural and accepted features of the relationship between individuals and groups within the community. Humorous and satirical treatment of people and groups of people is acceptable, provided that, taking into account generally prevailing community standards, the portrayal is not likely to cause serious or widespread offence, hostility, contempt, abuse or ridicule

## **CHAIRPERSON'S RULING SUMMARY**

The Advertising Standards Complaints Board ruled on 13 October 2015 the complaint from C. Logan was Not Upheld. The Complainant appealed the Decision.

This application was considered by the Chairperson of the Appeal Board. The Complainant was of the view it was in the interests of natural justice the matter be reheard and was of the view the Decision was against the weight of evidence.

The Chairperson said the Complaints Board deliberation focused on the images in the advertisement and did not appear to take into account the accompanying words. She said it also relied on the Advertiser's response the advertisement had not been considered offensive by its own focus group without having all the relevant information.

The Chairperson ruled the appeal was Accepted and it was in the interests of natural justice the matter be reheard and the Advertiser be invited to respond to the issues raised by the Complainant and the matter be placed before the Complaints Board for determination

## **RESPONSE FROM GILLMAN WHEELANS**

I cannot add much more than my original response.

The complainant's position is based on her perception, which differs from others. There is no right or wrong with a blurred line.

The ASA decision was picked up by some media outlets last week which lead to a mixture of feedback, some negative and some positive. Personally I have received a lot of positive feedback. I have also encountered some inappropriate negative responses with attacks on my character, background and upbringing, all by those who took issue with the billboard, quite ironic I feel.

The billboard has been removed, some months ago, and will not be used again.

The fact that a further hearing is to be held, may just lead to more publicity and the galvanising of positions in an us vs them mentality.