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| <b>COMPLAINT NUMBER</b> | 16/349                         |
| <b>COMPLAINANT</b>      | F. Fraser, Napier City Council |
| <b>ADVERTISER</b>       | Watchdog                       |
| <b>ADVERTISEMENT</b>    | Watchdog Print                 |
| <b>DATE OF MEETING</b>  | 15 November 2016               |
| <b>OUTCOME</b>          | Not Upheld and Settled         |

## **SUMMARY**

A newspaper advertisement for Watchdog headed “Please help us: Napier Pound Welfare Worries” was published in the Napier Mail newspaper. The full-page advertisement showed photos of dogs in cages and black plastic body bags on the floor next to cages.

The Advertiser said the content in the advertisement was factually correct and they consider it to be a true reflection of what happens at the Napier Pound.

The Complaints Board noted the concerns of the Complainant, Napier City Council, which said they found this advertisement damaging and misleading as it undermines and misrepresents the actions of the Napier Pound, which is operated by the Napier City Council.

The Complaints Board confirmed the advertisement was advocacy advertising and should therefore be considered in that context.

The Complaints Board agreed that the opinions expressed were supported with evidence provided by the Advertiser.

The Complaints Board noted the photos used in the advertisement were sourced online and were not taken at the Pound. The Complaints Board also noted that the Advertiser acknowledged this and, in their subsequent advertisements, they included the origin of the photos they used.

The Complaints Board agreed this aspect of the complaint was settled, given the acknowledgement and the self-regulatory action taken by the Advertiser in respect of the photos.

The Complaints Board ruled the complaint was Not Upheld in part and Settled in part.

### **[No further action required]**

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

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## COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rules 2, 6 and 11 of the Code of Ethics.

This required the Complaints Board to consider four questions:

- Did the advertisement contain anything which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive?
- Did the advertisement exploit the superstitious without justifiable reason or play on fear?
- Do the provisions of Rule 11 – Advocacy Advertising of the Code of Ethics apply?

Rule 11 provides for robust expression of belief or opinion to be expressed by the Advertiser and, therefore, such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an Advertiser, in matters of public interest or political issues, should also be clear.

- Was the advertisement prepared with a due sense of social responsibility to consumers and society?

The Advocacy Principles are also relevant. These were developed by the Complaints Board in previous Decisions for the application of Rule 11. These say:

- 1 That Section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in Section 14 is not absolute as there could be an infringement of other people's rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the right granted by Section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

**The Complaints Board ruled the complaint was Not Upheld in part and Settled in part.**

### The Complaint

The Complaints Board noted the concerns of the Complainant that the advertisement grossly undermines and misrepresents the actions of the Napier Pound. One image was particularly

distressing to the Complainant, “the image depicting black rubbish sacks, knotted and left outside the open doors of a row of animal cages, presumably containing euthanised animals”.

The Secretariat of the Advertising Standards Authority requested further information from the Complainant about the investigation into complaints about the Napier City Council’s animal control department, being conducted by the Ministry of Primary Industries. The Secretariat also asked the Complainant whether dogs are ever euthanised at the Napier Pound.

The Complainant replied that the report by the Ministry of Primary Industries had not yet been received by the Council.

The Complainant also replied that euthanising does happen at the Pound, from time to time, in a separate secure area.

### **The Advertiser’s Response**

The Complaints Board acknowledged the response of the Advertiser and their view that the content in the advertisement was factually correct and they consider it to be a true reflection of what happens at the Napier Pound.

The Advertiser said they had used photos from Google Images for the advertisement, not photos taken at the Napier Pound. They acknowledged that it was naivety on their part not to have cited the source of the photos. They noted that in two subsequent advertisements they have clearly shown the origin of the photos used, marking them “internet photo” and “Photos are representative only”.

The Advertiser provided information about wider concerns they have about the operation of the Napier Pound. The Chair of the Complaints Board ruled that some of the information provided was not relevant to the consideration of this complaint.

### **The Complaints Board’s Discussion**

Having considered all the relevant information provided the Complaints Board turned to consider whether the advertisement had breached any of the Principles or Codes of the Code of Ethics.

#### **Do the provisions of Rule 11 – Advocacy Advertising of the Code of Ethics apply?**

Firstly, the Complaints Board considered whether the provisions of Rule 11 - Advocacy Advertising applied in this case.

The Complaints Board discussed whether the identity of the Advertiser was clear and whether opinion was clearly distinguishable from factual information.

The Complaints Board agreed that both the identity and the position of the Advertiser were clear, in compliance with Rule 11, and therefore the advertisement should be reviewed in the context of advocacy advertising, which is advertising designed to express an opinion. As such, and in the interests of freedom of expression under Section 14 of the Bill of Rights Act 1990, a more liberal interpretation of the Code was appropriate.

#### **Did the advertisement contain anything which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive?**

The Complaints Board then turned to consider the content of the advertisement and whether it was misleading under Rule 2 of the Code of Ethics, Truthful Presentation in the context of an advocacy advertisement.

The Complaints Board agreed that the opinions expressed by the Advertiser were supported with evidence provided by the Advertiser.

The Complaints Board noted the photos used in the advertisement were sourced online and were not taken at the Pound. The Complaints Board also noted that the Advertiser acknowledged that in subsequent advertisements they included the origin of the photos they used.

The Complaints Board agreed this aspect of the complaint was settled, given the acknowledgement and the self-regulatory action taken by the Advertiser.

**Did the advertisement exploit the superstitious without justifiable reason or play on fear?**

The Complaints Board acknowledged that while the images and wording in the advertisement may be confronting to some they had to be considered in the context of an advocacy advertisement.

The Complaints Board agreed that the advertisement did not meet the threshold to breach Rule 6 of the Code of Ethics, as the advertisement did not exploit the superstitious or play on fear.

**Was the advertisement prepared with a due sense of social responsibility to consumers and society?**

The Complaints Board agreed that, in light of the findings above, the advertisement had been prepared with a due sense of social responsibility to consumers and society.

Accordingly, the Complaints Board ruled the complaint was Not Upheld in part and Settled in part.

**Decision: Complaint Not Upheld (in part) Settled (in part)**

## **DESCRIPTION OF ADVERTISEMENT**

The full-page newspaper advertisement for Watchdog was headed "Please Help Us: Napier Pound Welfare Worries". The advertisement showed three photos of dogs in cages and one photo of a row of plastic body bags on the floor next to a row of cages. There were several paragraphs of text in the advertisement detailing the concerns the animal welfare group Watchdog has had about the management of the Napier Pound.

**Procedural Matter: The Complaint and the Advertiser's response have been summarised in this Decision.**

## **SUMMARY OF COMPLAINT FROM NAPIER CITY COUNCIL**

The Council argued the advertisement was misleading and damaging. It used images with before and after headings in an advertisement about the Napier City Pound and neither image was taken inside the Pound or any other building it has occupied.

The Complaint stated "the Animal Control Team in Napier does not euthanise on-site. Rather, animals are taken to Carlyle Veterinary Clinic where the euthanasia is performed in a controlled environment by a registered vet."

The Complaint provided information to support the commitment to reunite or rehome dogs with a decrease in euthanasia and stated: "There are multiple checks and balances in place,

including that all dogs to be euthanised must first be signed off by TWO Animal Control Officers, before being driven to Carlyle Veterinary Clinic.”

The Complaint concluded: “We believe this advertisement to be untruthful, unfair, misleading, and potentially damaging to the reputation of the Animal Control Team.”

In response to a question from the Secretariat, Napier City Council said dogs are euthanised on the premises of the Napier Pound “from time to time”, in a separate secure area and never in the cages.

## CODE OF ETHICS

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

**Rule 2: Truthful Presentation** - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

**Rule 6: Fear** - Advertisements should not exploit the superstitious, nor without justifiable reason, play on fear.

**Rule 11: Advocacy Advertising** - Expression of opinion in advocacy advertising is an essential and desirable part of the functioning of a democratic society. Therefore such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an advertiser in matters of public interest or political issue should be clear.

## SUMMARY OF RESPONSE FROM ADVERTISER, WATCHDOG

The Advertiser confirmed that they stood by the content “as being factually correct and consider it to be a true reflection of what happens at the Napier Pound.”

The Advertiser disputed the statement from the Complainant about how and where dogs are euthanised.

The Advertiser confirmed that: “None of the photographs used in WATCHDOG!'s public notice were of Napier Pound. Importantly, I never stated that the photos were of Napier Pound. The Advertiser went on to say the images were sourced from Google Images to draw the readers' attention and to show what happens to unclaimed impounded dogs.

The Advertiser stated: “I would put it down purely to naivety on my part not to have included in tiny font that the photos were representational only.”

The Advertiser confirmed that subsequent advertising had included a statement that the images used in those advertisements were representative only.