

COMPLAINT NUMBER	17/233
COMPLAINANT	R. Barber
ADVERTISER	Fonterra Co-operative Group Ltd
ADVERTISEMENT	Television
DATE OF MEETING	8 August 2017
OUTCOME	No Grounds to Proceed

Advertisement: The “From here to everywhere” television advertisement for Fonterra featured a Raglan cooperative farmer talking about Anchor milk in Sri Lanka. He stated, in part: “being part of a co-op we all want to be involved in something bigger than ourselves... as an owner of our co-op it’s our responsibility to be able to give something back”.

The Chair ruled there were no grounds for the complaint to proceed.

Complainant, R. Barber, said: I would like to complain about the misrepresentation in the Fonterra advertisement currently running on the television where the advert is intentionally deceiving investors and farmers about Fonterra being a cooperative when it is not. The cooperative companies act is different to the companies act and this criminal organisation has no right to lie and deceive farmers and investors about the illegal status of the company... This add is making font era out to be something it is not for the purpose to defraud investors and bankers.

You can see that Fonterra was incorporated under the companies act and it has cooperative in its name that is illegal.

...

The add ran at 6.29 on TV one ON the 5/7/2017 this was an anchor add that appears to be part of a series of adds being run by Fonterra with no marketing value at all only to defraud and misrepresent Fonterra corrupt and illegal status ,,

If you are to ask Fonterra as to the purpose of the add then they have to disclose their agenda or lie, Am wondering with the election coming up these adds have a political motivation, and this is also illegal.

...

The nature of the complaint is that Fonterra's content is purporting to misrepresent its cooperative status. The reason for this could be to do with deceiving investors and farmers to invest in a capital structure that is fraudulent. Your jurisdiction for an advertisement would be automatic where breaches and contraventions of law are claimed. Without knowing the intention of the advert it is hard to know, may I suggest you contact Fonterra and ask them the reason for running the advert, if I remember correct is about milk in Sri Lanka or another country and it appears a bizarre marketing angle to promote a product through marketing in another country. So if you can ask Fonterra what they are marketing then this would greatly help. What were your impressions of what the add was marketing and the reason for the large expenses of advertising.

The relevant provisions were Principle 1 and 2 of the Code for Advertising Food.

The Chair noted the Complainant said the reference to Fonterra being a co-operative in the advertisement was misleading as it was incorporated under the Companies Act 1993. The Complainant also questioned the appropriateness of the Advertiser promoting the exportation of milk to Sri Lanka in the advertisement.

The Chair said the Advertiser was entitled to promote its products so long as the advertisement was prepared with a due sense of social responsibility. She confirmed the Advertising Standards Complaints Board were not the appropriate body to consider breaches of legislation, including the Companies Act. The Chair was of the view that Fonterra was a co-operative insofar as it operates a business model where it is owned and supplied by farmer shareholders in New Zealand. The Chair was of the view referring to it as a “co-op” was therefore, not misleading.

She said the premise of the advertisement was to illustrate the story of an individual farmer visiting Sri Lanka to see where milk he produced was being supplied and that was not misleading either.

The Chair said the advertisement before her was not in breach of Basic Principle 4 or Rule 2 of the Code of Ethics and ruled the complaint had no grounds to proceed.

Chair’s Ruling: Complaint **No Grounds to Proceed**

COMPLAINT NUMBER	17/233
APPEAL NUMBER	17/013
APPLICANT	R Barber
ADVERTISER	Fonterra
ADVERTISEMENT	Fonterra, Television
DATE	31 August 2017
OUTCOME	Declined

SUMMARY

The Chair of Complaints Board ruled on 8 August 2017 the complaint made by R. Barber about the advertisement for Fonterra had no grounds to proceed.

The Complainant appealed the Ruling. This appeal application was considered by the Chairperson of the Appeal Board. She noted the Applicant's concern the Chair did not fully consider their complaint and noted they raised additional concerns not related to the advertisement in question.

The Chairperson agreed with the No Grounds to Proceed decision from the Chair of the Complaints Board and said if the Complainant was concerned that other advertisements were in breach of the ASA Advertising Codes of Practice, they should submit a new complaint clearly identifying those issues.

The Chairperson noted the concerns of the Complainant, however, disagreement with a decision was not a ground on which an appeal could be accepted and as there were no grounds on which the appeal could proceed, the application was declined.

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

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 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 agreed with the No Grounds to Proceed decision from the Chair of the Complaints Board and considered while the Applicant disagreed with it, this is not a ground for appeal.

The Chairperson said the premise of the advertisement was to show a dairy farmer from New Zealand visiting Sri Lanka to demonstrate how New Zealand milk is distributed by Fonterra. The Chairperson said the mention of the word co-op was representative of the business model that is stated on the Fonterra website.

The Chairperson said the Advertising Standards Authority is a self-regulatory organisation. Its jurisdiction is limited to the content and placement of advertisements and compliance with the Advertising Codes of Practice. Matters relating to legal compliance should be raised with the agencies responsible for enforcing the relevant legislation.

The Chairperson said if the Complainant had concerns about other advertisements that may be in breach of the Advertising Codes of Practice, they should submit a new complaint clearly identifying those issues.

The Chairperson ruled there were no grounds on which the appeal could proceed and the application was declined.

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

DESCRIPTION OF ADVERTISEMENT

The "From here to everywhere" television advertisement for Fonterra featured a Raglan cooperative farmer talking about Anchor milk in Sri Lanka. He stated, in part: "being part of a co-op we all want to be involved in something bigger than ourselves... as an owner of our co-op it's our responsibility to be able to give something back".

APPEAL APPLICATION FROM R BARBER

Advertising Appeal board Appeal 17/233

We wish to appeal the chairs ruling on two grounds one that Fonterra is not owned by farmer shareholders, And two the financial markets conduct bill is being violated

The Financial Markets bill has all these acts to create honesty

<http://www.nzlii.org/nz/legis/bill/fmcb2011244.pdf>

16, make it illegal to be deceptive and misleading in promoting . Fonterra legal structure to entice investors or deceive markets into investing money

17, misleading investors as to financial products

!8, misleading conduct as to financial services,

19, The advertising appeal is facilitating the false and misleading promotion of a corrupt and misleading corporate body and a fictional body corporate

, 256, subpart 3 market manipulation,

257, false misleading information

259, Criminal liabilities for false and misleading information

446, Civil remedy provisions
447, part 7 enforcement liabilities

The concern is that the advertising authority is suborning and liable as an accessory or accomplice for possibly political reasons, The concern for the staff and board who are likely to be indemnified and have their personal assets in trusts is that the trusts are able to be claimed through provisions in the financial markets authority bill, it appears as a limit of 2.5 million is placed in this civil liability we would assume that each board member would be indemnified as liable for this amount

Another concern is like with the Hanover and feltex corruption where the fraudsters used false advertising and then investors suffered hundreds of millions in losses is if people invest in Fonterra and it does prove to be fraudulent and corrupt then the advertising board has aided and abetted this fraud and corruption and criminal. Could you please advise who insures and underwrites the advertising board so if this is the case we can make a claim?

SUMMARY OF CHAIRMAN'S RULING

The Chair noted the Complainant said the reference to Fonterra being a co-operative in the advertisement was misleading as it was incorporated under the Companies Act 1993. The Complainant also questioned the appropriateness of the Advertiser promoting the exportation of milk to Sri Lanka in the advertisement.

The Chair said the Advertiser was entitled to promote its products so long as the advertisement was prepared with a due sense of social responsibility. She confirmed the Advertising Standards Complaints Board were not the appropriate body to consider breaches of legislation, including the Companies Act. The Chair was of the view that *Fonterra* was a *co-operative* insofar as it operates a business model where it is owned and supplied by farmer shareholders in New Zealand. The Chair was of the view referring to it as a "co-op" was therefore, not misleading.

She said the premise of the advertisement was to illustrate the story of an individual farmer visiting Sri Lanka to see where milk he produced was being supplied and that was not misleading either.

The Chair said the advertisement before her was not in breach of Basic Principle 4 or Rule 2 of the Code of Ethics and ruled the complaint had no grounds to proceed.