

COMPLAINT NUMBER	17/221
APPEAL NUMBER	17/012
COMPLAINANT	A Zapisetskiy
APPLICANT	A Zapisetskiy
ADVERTISER	World Press Photo Exhibition NZ
ADVERTISEMENT	World Press Photo Exhibition NZ, Out of Home
DATE OF MEETING	12 September 2017
OUTCOME	Upheld, Appeal Allowed

SUMMARY

The Complaints Board ruled on 25 July 2017 the complaint made by A. Zapisetskiy was Not Upheld. The majority of the Complaints Board said the advertisement showed a real-life event that was widely reported that would be familiar to most people and while the image of the dead body was confronting, it was not gruesome and there was a high public interest.

The Complainant appealed the decision to the Chairperson of the Appeal Board who accepted the appeal application and referred it to the Appeal Board.

The Appeal Board considered all the matters afresh and agreed that whether those viewing the image could recall the event or not, it depicted the immediate aftermath of an assassination. The use of such an image to promote an exhibition in a poster advertisement to an unrestricted audience did offend against generally prevailing community standards. The Appeal Board agreed taking the image out of an exhibition context and placing it in an advertisement in an outdoor medium where it is difficult to restrict who would see it was in breach of the Code.

The advertisement had therefore not been prepared and placed with a due sense of social responsibility and was in breach of Rule 4 and Basic Principle 4 of the Code of Ethics.

Accordingly, the Appeal Board ruled the complaint was Upheld and the appeal was Allowed.

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

APPEAL BOARD DECISION

The Complaints Board ruled on 25 July 2017 the complaint made by A Zapisetskiy was Not Upheld.

The Complainant, A. Zapisetskiy, appealed the decision to the Chairperson of the Appeal Board because in their view the decision did not give sufficient weight to the medium used for the advertisement and instead placed too much emphasis on the value of the photograph

itself. The Complainant said exposing the image to a wide audience using the untargeted poster medium needed to be adequately considered.

The Chairperson ruled the appeal was Accepted under ground (iv), the decision was against the weight of evidence and ground (v), it was in the interests of natural justice for it to be reheard. The complaint was to be placed before the Appeal Board for determination.

The Appeal Board confirmed its role was to consider the matter de novo that is, starting from the initial complaint and reviewing all subsequent correspondence, rulings, and submissions, considering the matter afresh.

The Chairperson directed the Appeal Board to consider the advertisement with reference to Basic Principle 4 and Rules 4, 5, 7 and 12 of the Code of Ethics.

This required the Appeal Board to consider whether the advertisement contained anything which clearly offends against generally prevailing community standards or is likely to cause serious or widespread offence, taking into account the context, medium, audience and product (including services) or lends support to unacceptable violent behaviour. The Appeal Board was also required to consider whether, unless justifiable on educational or social grounds, the advertisement contained any visual presentation or any description of dangerous or illegal practices or situations which encourage a disregard for safety.

The Appeal Board were also required to consider whether the advertisement was prepared with a due sense of social responsibility to consumers and to society.

The Appeal Board ruled to Uphold the Complaint and the Appeal was Allowed.

The Advertisement

A poster advertisement promoted the World Press Photo Exhibition 2017 held in Auckland in July. The advertisement included the date and location of the exhibition, logos for the exhibition sponsors, a website address and a content warning for the exhibition which stated "GRAPHIC CONTENT – VIEWER DISCRETION ADVISED". The poster was dominated by an image of the World Press Photo of the Year taken by Burhan Ozbilici, of Associated Press, titled An Assassination in Turkey. It shows the Russian ambassador Andrey Karlov, dead on the ground, assassinated by an off-duty Turkish police officer at an art gallery, while the gunman holds his gun in the air.

The Complaint and Appeal Application

The complaint stated that "A line needs to be drawn between exhibiting a photo depicting terrible real life events and using that same photo for the advertisement that is available to a wide range of audience (including children)."

In their appeal application, the Complainant challenged the majority view of the Complaints Board that the image would be widely known. The Complainant also said: "There is a difference between reporting the news to a limited audience (most likely, not children) who can make a choice as to whether they read a specific newspaper article or watch a specific TV programme and using the image and exposing it to a wide audience using the untargeted poster medium."

The Complainant considered the Complaints Board had not given sufficient weight to the medium used for the advertisement and placed too much emphasis on the value of the photo itself.

The Advertiser's Responses

The Advertiser confirmed in their initial response that the image had won World Press Photo of the Year and had been used to promote the Exhibition in 100 cities and 45 countries around the world. The Advertiser said the poster carried a disclaimer that viewer discretion is advised.

The poster was one of six different images used to promote the exhibition and was displayed in locations around central Auckland. The Advertiser said the photo was chosen to be in the advertisement as it was the winning Exhibition image.

In response to the appeal, the Advertiser said the photograph was “featured on the cover of the New York Times and viewed online by over 18 million people. World Press Photo’s ethos is about the freedom of the press and breaking down ethical barriers. All photographs used in the exhibition have some degree of controversy and spark debate about freedom of the press and what is reported.”

The Advertiser said that the six different images included wildlife images, a sporting image, portraits of interesting personalities as well as the award winning image. The Advertiser confirmed that care had been taken to ensure the posters were appropriate for the location, “e.g. the winning image was not positioned near schools or kindergartens or in any other locations that could offend.”

The Advertiser also said: “At no point did it select this photo with any intent to promote indecency, offensiveness, violence or a disregard for safety.”

Appeal Board Discussion

The Appeal Board carefully considered all the information provided to it. It said it was required to determine whether the poster before it was in breach of the Code of Ethics, considering the consumer takeout of the advertisement from the perspective of its likely audience.

The Appeal Board first discussed the medium used for the advertisement. The Appeal Board noted the efforts made by the Advertiser to ensure the image was not placed near kindergartens or schools or other locations that could offend. However, the Appeal Board said the use of a static outdoor medium such as a poster or a billboard in high traffic areas such as the Auckland CBD and a popular shopping street made it difficult to limit the likely audience.

The Appeal Board noted and discussed the warning on the advertisement with reference to the exhibition, stating “graphic content – viewer discretion advised”. The Appeal Board said in its view this meant there would be photos in the exhibition that would not be suitable for all ages and that may be upsetting or confronting to some. The Appeal Board discussed the image in the advertisement before it and noted it was likely to be one of the images the warning referred to.

The Appeal Board was unanimous in its view that the 2017 World Press Photo of the Year image of an assassination was not automatically acceptable in an advertising context to promote the exhibition to a wide audience.

The Appeal Board ruled the advertisement was in breach of Rule 4 of the Code of Ethics. Rule 4 states that advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product.

The Appeal Board agreed that whether those viewing the image could recall the event or not, it depicted the immediate aftermath of an assassination. The use of such an image to promote an exhibition in a poster advertisement to an unrestricted audience did offend against

generally prevailing community standards. The Appeal Board agreed taking the image out of an exhibition context and placing it in a poster advertisement where it is difficult to restrict who would see it was in breach of the Code.

The Appeal Board then considered the advertisement under the Rules 5, 7 and 12 of the Code of Ethics.

The Appeal Board said the advertisement was not in breach of Rule 5 as it did not meet the threshold to cause serious or widespread offence. The Board noted that one complaint did not support a breach of Rule 5 in this instance.

The Appeal Board agreed the advertisement did not lend support to unacceptable violent behaviour. It said that the image showed such behaviour but did not consider the use of the image endorsed violent behaviour in any way and the advertisement was not in breach Rule 7 of the Code of Ethics.

Rule 12 requires advertising not to show dangerous or illegal practices that encourage a disregard for safety. The Appeal Board agreed a dangerous and illegal practice was depicted in the advertisement but said the use of that image to promote a press photo exhibition did not encourage a disregard for safety and was not in breach of Rule 12 of the Code.

As the advertisement was in breach of Rule 4, it had not been prepared and placed with a due sense of social responsibility and was also in breach of Basic Principle 4 of the Code of Ethics.

The Appeal Board ruled the complaint was Upheld and the Appeal was Allowed.

Decision: Complaint **Upheld, Appeal Allowed**

DESCRIPTION OF ADVERTISEMENT

The poster advertisement for the World Press Photo Exhibition NZ in Auckland appeared on in several locations around Auckland and showed Russian ambassador Andrey Karlov, who was assassinated by an off-duty Turkish police officer while he was speaking at an art gallery, dead on the ground while the gunman holds his gun in the air. The poster provided information on where the exhibition was being held and contained the disclaimer "Visitor Discretion Advised".

COMPLAINT FROM A ZAPISETSKIY

I would like to complain about the advertisement in relation to the World Press Photo Exhibition (held in Auckland from 1-30 July).

The advertisement is a gruesome visual representation of real life events - it shows the actual person, who assassinated the Russian ambassador Andrey Karlov in Ankara in December 2016. The actual dead body of the ambassador is also shown in the advertisement.

These are not actors being depicted - these are real life people in a real life event. A line needs to be drawn between exhibiting a photo depicting terrible real life events and using that same photo for the advertisement that is available to a wide range of audience (including children).

I believe this advertisement promotes extremism, terrorism and violence and it is well beyond of any ethical norms.

The advertisement also appears to be endorsed by Canon.

I believe it is in breach of rules 4 (Decency), 5 (Offensiveness), 7 (Violence), 12 (Safety) of the Advertising Code of Ethics.

Relevant Code: Code of Ethics

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

Rule 4, Decency: Advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services).

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).

Rule 7, Violence: Advertisements should not contain anything which lends support to unacceptable violent behaviour.

Rule 12, Safety: Advertisements should not, unless justifiable on educational or social grounds, contain any visual presentation or any description of dangerous or illegal practices or situations which encourage a disregard for safety.

RESPONSE FROM ADVERTISER: WORLD PRESS PHOTO EXHIBITION NZ

<p>A basic, neutral description of the advertisement</p>	<p>The billsticker advertises the World Press Photo image of the Year. It includes the dates which the World Press Photo Exhibition runs for (1st-30th July), as well as the location of the exhibition (Smith & Caughey's Queen St).</p> <p>This winning image depicts the Russian ambassador Andrey Karlov who was assassinated by an off-duty Turkish police officer, Mevlüt Mert Altıntaş, while he was speaking at an art gallery in Ankara, Turkey, on 19 December.</p> <p>This image is being used to promote the Exhibition in 100 cities and 45 countries around the world.</p> <p>The poster carries a disclaimer – Visitor Discretion Advised.</p>
<p>Date advertisement began</p>	<p>2 July 2017- 30 July 2017</p>
<p>Where the advertisement appeared</p>	<p>The advisement is in a Billsticker/poster form. These were booked via Phantom Billstickers.</p> <p>We have booked Phantoms locations in the CBD and the inner city suburbs to advertise. Phantom Billstickers use their billstickers/posters to promote a wide variety of products and events i.e. Game of Thrones launch through to International Film Festivals and Zoo Open Days.</p>

	<p>There are two different sized posters which we have booked:</p> <p>Max- 920mm by 1,320mm</p> <p>Super- 1,840mm by 2,640mm</p> <p>The winning image poster is 1 out of a set of 6 images.</p>
<p>Is the advertisement still accessible – where and until when?</p>	<p>2 July 2017- 30 July 2017</p> <p>The current location of the billsticker/poster in question is:</p> <ul style="list-style-type: none"> • 8a Pitt Street, CBD • 2 Newton Road, CBD • 111 Symonds St, CBD • 434 Broadway, New Market • 67 Custom St, CBD <p>The advertisement is in a series of 6 different images used as billstickers/posters. The billstickers/posters are changed and moved weekly around Phantoms Billsticker locations.</p> <p>These locations are as follows:</p> <ul style="list-style-type: none"> • 36 Symonds Street, CBD, Auckland • 29 Eden Crescent, CBD • 34 Princes Street, CBD • 37 Wellesley Street, CBD • 67 Victoria Street West, CBD • Ponsonby Central, Corners of Richmond Road, Brown Street and Ponsonby Road • 623 Great North Road, Grey Lynn • 434 Broadway, New Market • 67 Customs St, CBD • 380 Khyber Pass Road, New Market • 8A Pitt Street, CBD • 2 St Johns Street, Meadowbank • 5B Roberta Avenue, Glendowie • 17 St Heliers Bay Road, St Heliers • 551 Mount Eden Road, Mount Eden • 367 Parnell Road, Parnell • 62 Jervois Road, Ponsonby • 323 Queen Street, CBD • 67 Customs Street, CBD
<p>Who is the product / brand target audience?</p>	<p>The exhibition has broad appeal and is seen by over two million people in some 45 countries worldwide. The exhibition yearbook presents all prize winning entries and is published annually in six languages.</p> <p>The exhibition goer is typically someone who is interested in current affairs, who want to keep up with</p>

	<p>modern culture and trends. Active, opinionated, intelligent, confident individuals of all ages.</p> <p>It is anticipated many clubs, groups, retirement villages and photographic clubs will arrange tours to visit the exhibition. In addition, the business community will have easy access and can view the exhibition in a lunch break as well as students from the local universities and language schools in the vicinity.</p> <p>For school classes planning a visit to the exhibition, World Press Photo offers a package of learning tools called Look & Click. The package provides resources for teachers introducing the subject of journalism and press photography to their students. It is ideally suited to be used in combination with a visit to a World Press Photo Exhibition and offers students the opportunity to explore various aspects of visual communication.</p>
<p>Clear substantiation on claims that are challenged by the complainant.</p>	<p>World Press Photo Exhibition is regarded as the world's most prestigious exhibition of international current affairs photography. It is a public showcase of photojournalism featuring award-winning images from the year's biggest and most memorable world events. Through gripping images, stories portrayed in the World Press Photo Exhibition evokes the full breadth of raw emotion.</p> <p>The World Press Photo Exhibition is exhibited in 100 locations around the world annually. This year so far the exhibition has been to 30 locations including Auckland, Sydney, Tokyo, Amsterdam and Rome.</p> <p>It is the only international event of this stature, not simply bringing together pictures from all parts of the globe but also reflecting trends and developments in photojournalism, and revealing how the press gives us the news.</p> <p>The World Press Photo image of the Year was chosen by an independent jury. The Jury concluded that the courage the photographer had to continue photographing the events as it played out was monumental and made this image a clear winner.</p> <p>The image was already widely run in the news media all around the world before it was a World Press Photo winning photo. This included the front page of the New York Times Magazine and was viewed 18 million times online in a very short space of time.</p> <p>We did not select this photo with any intent to promote 'indecentcy, offensiveness, violence or a disregard for</p>

	<p>safety. It was selected because it is the winning Exhibition image.</p> <p>The Exhibition is brought to New Zealand by the Rotary Club of Auckland, an organisation of note. (Rotary is a global network of 1.2m neighbours, friends, leaders and problem-solvers who come together to make positive, lasting change in communities at home and abroad.</p>
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APPEAL APPLICATION FROM A. ZAPISETSKIY

I would like to appeal Decision 17/221 of the Complaints Board on the following grounds:

- Evidence provided to the Complaints Board has been misinterpreted to the extent it has affected the decision.
- The ruling is against the weight of evidence.
- It is in the interests of natural justice that the matter be reheard

Decision: “The majority of the Complaints Board were of the view the advertisement did not reach the threshold to breach the Code of Ethics. It took into account the image won the photo of the year and showed a real-life event that was widely reported and would be familiar to most people. While it acknowledged the image of the immediate aftermath of an assassination was confronting, it said the image was not gruesome and held high public interest.”

Response: For the purposes of determining whether the advertisement has breached the Code of Ethics it is irrelevant whether the image had won the photo of the year. The complaint was not about the photograph itself, but the advertisement featuring the photograph that was exposed to a wide audience. Further, the event would not necessarily be familiar to most people. For instance, most certainly, it will not be familiar to children. It is sad and it is concerning that in the context of the ASA Codes depicting the assassin with a weapon next to the body of the person who he had killed is not considered to be gruesome by the Complaints Board. This view is certainly not shared by the news outlets that have reported the ASA decision. Both news outlets have edited the photo.

http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11904002

<http://www.newshub.co.nz/home/new-zealand/2017/08/complaint-over-advert-showing-dead-bodythrown-out.html>

Decision: “It was the majority’s view the advertisement did not endorse violent behaviour but was reflective of the news media’s freedom of expression.”

Response: The news media’s freedom of expression is extremely important but it is irrelevant here as the complaint is not about using the image in the context of news reporting, but about using the image in the context of advertising. There is a difference between reporting the news to a limited audience (most likely, not children) who can make a choice as to whether they read a specific newspaper article or watch a specific TV programme and using the image and exposing it to a wide audience using the untargeted poster medium.

Decision: “It agreed the image illustrated a violent and grotesque act, but did not lend support to that kind of behaviour or promote it in a way that was likely to cause serious and widespread offence.”

Response: It is not at all clear from the decision why the image did not lend support to violent behaviour or promote it in a way that was likely to cause serious and widespread offence. This conclusion is not supported by any reasoning.

Overall, the decision did not give sufficient weight to the medium used for the advertisement and instead placed too much emphasis on the value of the photograph itself. I believe it is in the interests of natural justice that this matter is reheard. For the reasons I have set out above I would like to ask the Appeal Board Chairperson to accept this matter for an appeal.

RESPONSE TO APPEAL FROM ADVERTISER, CRACKERJACK

About the Exhibition

World Press Photo Exhibition is regarded as the world's most prestigious exhibition of international current affairs photography. It is a public showcase of photojournalism featuring award-winning images from the year's biggest and most memorable world events. Through gripping images, stories portrayed in the World Press Photo Exhibition evokes the full breadth of raw emotion.

World Press Photo Exhibition is located in 100 cities and 45 different countries. The exhibition is seen by over 4 million people annually. The World Press Photo image of the Year was chosen by an independent jury. The Jury concluded that the courage the photographer had to continue photographing the events as it played out was monumental and made this image a clear winner.

The photograph in concern was featured on the cover of the New York times and viewed online by over 18 million people. World Press Photo's ethos is about the freedom of press and breaking down ethical barriers. All the photographs used in the exhibition have some degree of controversy and spark debate about the freedom of press and what is reported. The Exhibition is brought to New Zealand by the Rotary Club of Auckland, an organisation of note. (Rotary is a global network of 1.2m neighbours, friends, leaders and problem-solvers who come together to make positive, lasting change in communities at home and abroad.

Addressing the Complaints

During the consideration of how best to advertise the World Press Photo Exhibition 2017, much thought was put into the mediums used, and which audience they would target. Also what images would be selected for each medium.

When working with Phantom Billstickers to implement the Exhibition advertising campaign, a series of six different images were used to feature on the posters e.g. wild life images, a sporting image of Usain Bolt, portraits of interesting personalities as well as the award winning image in question.

These images were carefully positioned in locations that we felt were suitable for the specific image e.g. the winning image was not positioned near schools or kindergartens or in any other locations that could offend.

The locations selected for the posters were mostly in the Auckland CBD near the exhibition venue and targeted specifically to our exhibition audience.

Throughout the Exhibition's marketing campaign, we ensured that the images were suitable for the targeted audience, for example, Exhibition communication to secondary schools

featured a wild life image. The Exhibition press advertisements during school holidays also featured wild life images.

The poster in question was taken out of circulation for close to two weeks when Phantom Billstickers first received the original complaint. The poster was then put back into circulation for the final week of the campaign and Exhibition (the last week of July).

In Conclusion

Each year the World Press Photo Exhibition Foundation selects a winning image, that they feature in their marketing campaign internationally.

Crackerjack went to great lengths to ensure that they used this winning image in selected and appropriate mediums only, selecting specific and suitable images for each medium. At no point did it select this photo with any intent to promote 'indecent, offensiveness, violence or a disregard for safety'.

SUMMARY OF COMPLAINTS BOARD DECISION

The poster advertisement for the World Press Photo Exhibition NZ in Auckland showed Russian ambassador Andrey Karlov, who was assassinated by an off-duty Turkish police officer while he was speaking at an art gallery, dead on the ground while the gunman holds his gun in the air. The poster provided information on where the exhibition was being held and contained the disclaimer "Visitor Discretion Advised".

The Complainant was concerned the advertisement was a gruesome depiction of a real-life event which showed a dead body and promoted extremism, terrorism and violence.

The Agency said the image was judged photo of the year and had been widely used to promote the World Press Photo Exhibition internationally.

The majority of the Complaints Board said the advertisement showed a real-life event that was widely reported that would be familiar to most people and while the image of the dead body was confronting, it was not gruesome and there was a high public interest. It said the advertisement did not endorse violent behaviour but was reflective of the news media's freedom of expression, did not lend support to unacceptable violent behaviour and not was likely to cause serious and widespread offence. The majority ruled the advertisement was not in breach of Basic Principle 4 and Rules 4, 5, and 7 of the Code of Ethics.

A minority said the advertisement was likely to cause serious and widespread offence due to the untargeted poster medium and more care should have been taken to ensure it was not exposed to such a wide audience considering the graphic, real-life violence. It said the advertisement was in breach of Rule 5 of the Code of Ethics due to its unfiltered reach. Some in the minority went further and said the advertisement also offended against community standards and lent support to violent behaviour, also in breach of Rules 4 and 7 of the Code of Ethics.

In accordance with the majority, the Complaints Board ruled the complaint was Not Upheld.

SUMMARY OF CHAIRMAN'S RULING TO ACCEPT APPEAL APPLICATION

The Advertising Standards Complaints Board ruled on 25 July 2017 that the complaint made was Not Upheld. The Complainant appealed the Ruling.

Decision 17/221
Appeal 17/012

This application was considered by the Chairperson of the Appeal Board. The Chairperson noted the Applicant's view that the Complaints Board did not give sufficient weight to the medium used for the advertisement placed too much emphasis on the value of the photograph itself.

The Chairperson ruled the appeal was Accepted under grounds (iv) and (v) to be placed before the Appeal Board for determination.