

<b>COMPLAINT NUMBER</b>	17/243
<b>APPEAL NUMBER</b>	17/014
<b>APPLICANT</b>	K. Sutherland
<b>ADVERTISER</b>	Tourism New Zealand
<b>ADVERTISEMENT</b>	Tourism New Zealand
<b>DATE</b>	7 September 2017
<b>OUTCOME</b>	Declined

## **SUMMARY**

The Complaints Board ruled on 8 August 2017 the complaint made by K. Sutherland about the advertisement for Tourism New Zealand was Not Upheld.

The appeal application was considered by the Chairperson of the Appeal Board. She noted the Applicant's concern the Complaints Board had not fully considered the likely consumer takeout of the advertisement.

The Chairperson said the Complaints Board had considered the likely takeout of the advertisement and did not consider the threshold to mislead consumers or encourage a disregard for safety had been met. The Chairperson agreed. In considering the overall advertisement, the Chairperson said it was portraying what the Advertiser considered to be the best of New Zealand and this included the image of the woman in the Blue Pools at Haast.

The Chairperson acknowledged 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.

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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 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's concern that as the location was not disclosed in the video, tourists may see a river which looks similar to that in the advertisement and drink from it, putting their health at risk. The Complainant stated that the advertisement showed a disregard for safety by encouraging tourists to drink water from unsafe sources.

The Chairperson said the Complaints Board had considered the likely takeout of the advertisement and did not consider the threshold to mislead consumers or encourage a disregard for safety had been met. The Chairperson agreed. In considering the overall advertisement, the Chairperson said it was portraying what the Advertiser considered to be the best of New Zealand and this included the image of the woman in the Blue Pools at Haast.

The Complainant said the reference by the Complaints Board to the advertisement as 'aspirational in nature' was erroneous as it was not part of a dream sequence among other fanciful images, but was of the view it was placed within an advertisement which showed realistic scenes. The Chairperson agreed that the advertisement showed real places in New Zealand, including the water at the Blue Pools. The Chairperson noted the Complaints Board Decision said "the advertisement was an aspirational view of New Zealand, depicting experiences that were still possible in this country." The Chairperson said that the Decision did not imply the images were a dream sequence but rather they showed the best of New Zealand in an advertisement to promote the country to tourists.

The Complainant was concerned the reference by the Complaints Board to the scene being fleeting was incorrect as fleeting shots were often used in advertising as a way to create an impact. The Complainant was of the view the overall implicit message of the advertisement was that it is safe to drink river water in New Zealand.

The Chairperson did not agree with the Complainant's view that the image was a similar implicit message to showing a Doctor smoking a cigarette in a tobacco advertisement or that the fleeting image of the woman holding water to her face was similar to a fleeting image of a child smoking in a tobacco advertisement.

The Chairperson considered the Complainant's statements relating to Government policy announcements on making 90% of New Zealand rivers and lakes 'swimmable' by 2040. The Chairperson re-iterated the view of the majority of the Complaints Board that the image of concern in the advertisement was not likely to encourage tourists to drink river water wherever they were.

The Chairperson acknowledged the Complainant disagreed with the Complaints Board Decision, however, this was not a ground which an appeal could be accepted. The Chairperson said there was nothing else in the application for appeal which met one of the grounds upon which an appeal could proceed and ruled it was Declined.

Accordingly, 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 YouTube advertisement shows a journey through various locations and experiences in New Zealand such as tramping, diving and skiing. The journey shows the beautiful landscape of New Zealand and in one scene a woman is shown cupping river water in her hand and bringing it to her face. The advertisement ends with the 100% pure New Zealand slogan.

## APPEAL APPLICATION FROM COMPLAINT K. SUTHERLAND

As part of TNZ's defense, they argue that the woman doesn't actually drink the water. The fact remains that most viewers get the impression that the woman has drunk the water. This is confirmed by the whole complaints board agreeing the woman appears to be about to drink the water. Therefore, the fact that she actually has not drunk it, is evidence in itself of the misleading nature of the advertisement.

The advertisement contains imagery of a woman about to drink New Zealand river water at an undisclosed location. Because the location is not disclosed in the video, tourists in New Zealand may see a river which looks similar and believe it is the river they saw in the advertisement and drink from the river as the woman did to copy the New Zealand 'experience', unknowingly putting their health at risk. Drinking river water in the majority of monitored New Zealand rivers could result in any of the three main potential water borne diseases: campylobacteriosis, cryptosporidiosis and giardiasis; all of which would make unaware tourists very sick as listed by Environmental Health Indicators New Zealand. This breaches Rule 12 of the Code of Ethics as it encourages a dangerous practice: drinking from a river without first checking the health of the river.

The Complaints Board argues the advertisement shows an "aspirational view of New Zealand". For clarification, 'aspiration' is defined as 'a strong desire, longing, or aim; ambition'. I have two objections to this defence. First, had the scene been part of a dream sequence among other fanciful images, this aspirational argument might hold. However, it sits within an advertisement where every other scene is real. Given that nothing else in this advertisement is aspirational, there is no way that a viewer could recognize this scene as aspirational. Second, drinkable rivers are not aspirational in the context of current public policy in New Zealand. On the 23<sup>rd</sup> of February 2017, the government announced new policy goals to make 90 per cent of rivers and lakes 'swimmable' by 2040. Claims that this advertisement showing 'drinkable' rivers is an aspirational view of New Zealand does not align with current government policy to make rivers 'swimmable' by 2040. The 'swimmable' policy timeline is set to be achieved in 23 years time. Most tourists viewing the advertisement would be expected to visit within the next 5 years. Therefore, the claim that the advertisement shows an "aspirational view of New Zealand" is exaggerated, misleading and exploits the viewers lack of knowledge of local policy under Rule 2 of the Code of Ethics. The complaints board argues that there were no explicit claims made that all water in New Zealand is safe to drink. While I agree there were no explicit claims, what the board should have considered in their original judgment is the overall implicit message viewers receive through this advertisement as to the safety of drinking river water in New Zealand. An example of the importance of implicit messages would be a cutaway shot of a doctor smoking a cigarette. While there is no explicit message that doctor advocates smoking cigarettes, the implicit message received is that it is fine to do.

The Complaints Board also believes that "the image of the woman lifting the water to her mouth was a fleeting shot and not a major focus of the overall advertisement." The art of

marketing and persuasion is replete with examples where fleeting shots are used to powerful effect and it is absurd to suggest that this in any way lessens the impact of the scene. The complaints board with expertise in advertising would surely acknowledge how crucial it is that every shot in an advert is considered independently of the overall advertisement. It is unthinkable, for example, that a scene in an advertisement like this would have a child in the background smoking a cigarette, no matter how fleeting the shot was. The takeaway message received by viewers in every shot, regardless of length, should be considered the most important issue when deciding whether the overall advertisement contains anything misleading or encourages a dangerous practice. The fact that the advertiser is so strenuously defending the scene is a clear indication that it serves a very important purpose in the overall advertisement.

Based on the above responses to the defences of Tourism New Zealand and the Complaints Board, I request the Appeals Board look at the shot by itself to determine whether or not it breaks any Rules or Codes.

### **SUMMARY OF COMPLAINTS BOARD DECISION**

The YouTube advertisement for Tourism New Zealand shows a 'journey' around various New Zealand locations, including an image of a woman at the Blue Pools in Haast raising cupped hands of water to her face. The scene then cuts to the woman smelling a handful of green foliage.

There were two complaints received for this advertisement. Their concerns were the advertisement made misleading claims about the quality of the water in New Zealand rivers and there was a safety risk showing someone drinking from a river when many are not safe to drink from.

The majority of the Complaints Board said the advertisement was an aspirational view of New Zealand, depicting experiences that were still possible in this country. The advertisement did not claim that all rivers in New Zealand were safe to drink from and therefore was not misleading and did not encourage unsafe practices.

A minority of the Complaints Board disagreed and said as the likely consumer take-out was the water was safe to drink, the Advertiser should have provided substantiation of the water quality at the location where that part of the advertisement was filmed. As this was not provided, the minority considered the advertisement to be misleading and likely to encourage an unsafe practice.

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