

COMPLAINT NUMBER	17/367
COMPLAINANT	C. Wheeler
ADVERTISER	Breast Cancer Foundation NZ
ADVERTISEMENT	Television
DATE OF MEETING	9 October 2017
OUTCOME	No Grounds to Proceed

Advertisement: A television advertisement for the Breast Cancer Foundation raised awareness about the signs for breast cancer using the image of a painting by Rembrandt of a model, thought to be his lover and a real image New Zealand woman who was a breast cancer survivor. The voice-over says “With a single brush stroke, Rembrandt unknowingly captured the way his lover would die, it was breast cancer. Four hundred years later we have the knowledge to survive.”

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

Complainant, Caitlyn Wheeler, said: The advertisement in question aired between 6:14AM and 6:18AM and was in regards to Breast Cancer awareness. I understand the importance of the ad, and the implications it was trying to reach - however the advertisement contains incorrect information. It claims that Rembrandt captured his lovers cause of death in a single brushstroke - making the claim that his lover, Hendrickje Stoffels died of breast Cancer which is incorrect. Hendrickje was in Amsterdam in 1663 at the time the plague hit, thousands were dying and as she passed away suddenly during that time it's believed her death was a cause of the epidemic. If the advertisement is trying to reference Rembrandt's wife - not lover - then the information is still incorrect, as Saskia van Uylenburgh died a year after her and Rembrandt had their third child, and tuberculosis was the suspect. I fully respect the need to have advertising material that is trying to drive a message but I don't believe that they should be factually incorrect in the process.

The relevant provisions were Code of Ethics - Basic Principle 4, Rule 11, Rule 2

The Chair acknowledged the Complainant's concern about the accuracy of the information in the advertisement. The Chair also took into account the Complainant's support on the importance of breast cancer awareness.

The Chair confirmed the advertisement was an advocacy advertisement under Rule 11 of the Code of Ethics. Rule 11 said:

“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.”

Also applicable were the Advocacy Principles, developed by the Complaints Board in previous Decisions for the application of Rule 11. These said:

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 Chair confirmed the identity of the Advertiser was clear, a requirement under the provisions of Rule 11, in this case the New Zealand Breast Cancer Foundation.

The Chair then turned to the Complainant's issue regarding the reference to Rembrandt's model suffering from breast cancer. The Chair noted there were different interpretations about what the painting depicted. In her view, the advertisement was drawing attention to possible signs of breast cancer and provided a website to go to for further information.

While the factual accuracy of the statement about the model in the painting may be questionable, taking into account the purpose of the advertisement in drawing attention to a serious health issue and in light of the Advocacy Principles, the Chair ruled the advertisement had not met the threshold to be misleading.

The Chair said the advertisement had been prepared with a due sense of social responsibility to consumers and society and was not in breach of Rules 2 and 11 and Basic Principle 4 of the Code of Ethics.

Accordingly, the Chair ruled that there were no grounds for the complaint to proceed.

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