

COMPLAINT NUMBER	17/396
COMPLAINANT	E O'Donoghue
ADVERTISER	New Zealand Aids Foundation
ADVERTISEMENT	New Zealand Aids Foundation, Out of Home - Poster
DATE OF MEETING	14 November 2017
OUTCOME	Not Upheld

SUMMARY

The poster advertisement for 'Ending HIV' by the NZ AIDS Foundation showed two men kissing passionately and said: "We test because we care. Test for HIV. Search Ending HIV. Stay safe + test often + treat early = Ending HIV".

The Complainant said they were offended by the advertisement as it was highly sexualised and was able to be seen by the general public and children particularly.

The Advertiser said the imagery of two men kissing in the context of an advocacy advertisement was entirely relevant to the message to test for HIV and the placement was appropriate for the target audience.

A minority of the Complaints Board said the identity of the Advertiser should have been clearer and the advertisement did not meet the identification requirement of Rule 11 of the Code of Ethics.

The majority of the Complaints Board said the identity of the Advertiser was clear because of the clear positioning statement, the Ending HIV logo and call to action to "search Ending HIV."

The Complaints Board said while the advertisement was provocative and sexually suggestive, taking into account it was an advocacy advertisement promoting a public safety message to test for HIV, it did not reach the threshold to offend against generally prevailing community standards or cause serious or widespread offence. The Complaints Board ruled the advertisement was not in breach of Rules 4 or 5 of the Code of Ethics and had been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

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

[No further action required]

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

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider whether the advertisement was in breach of Basic Principle 4 or Rules 4, 5 and 11 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement contained anything which clearly offended against generally prevailing community standards, or was likely to cause serious or widespread offence, taking into account the context, medium, audience and product (including services) and whether the advertisement had been prepared with a due sense of social responsibility to consumers and society.

The Complaints Board said the advertisements before it fell into the category of advocacy advertising and noted the requirements of Rule 11 of the Code of Ethics. The Complaints Board noted Rule 11 allowed for expression of opinion in advocacy advertising, provided that the expression of opinion is robust and clearly distinguishable from fact. 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 Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant said they were offended by the advertisement as it was highly sexualised was able to be seen by the general public and children specifically.

The Complaints Board noted the Complainant was concerned about the placement of the advertisement in close proximity to another advertisement with similar imagery from the Court Theatre for a play.

The response from Advertiser, the New Zealand AIDS Foundation

The New Zealand AIDS Foundation responded to the complaint stating that "*Ending HIV* believes that it is generally socially acceptable to talk about sex and sexual health in the context of HIV and that this should not cause widespread offence... *Ending HIV* is a social marketing programme which has been developed to encourage prevention, testing and early

treatment amongst those New Zealanders most at risk of HIV, namely, gay and bisexual men. The message to “test for HIV” is a central component of the programme which aims to increase HIV testing among this group and is well known and familiar to the target audience. All *Ending HIV* promotional material, including the posters in question, are developed with this clear social marketing objective in mind.”

Regarding the placement of the advertisement, the Advertiser said “the decision to place these advertisements in ‘mainstream’ mediums such as street posters was based on two key considerations, the first being that gay and bisexual men live, work and socialise within the wider mainstream community; secondly, we know that most gay and bisexual men cannot be reached through gay media alone. In 2016 the NZAF commissioned research into the media consumption habits of our audience. Results show that only 14% of gay and bisexual men read magazines or websites aimed at gay and bisexual men.”

Turning to the image used in the advertisement, the Advertiser said it “acknowledges that the imagery used is flirtatious, however in the context of the message and product, we believe it is appropriate. Importantly, it is not gratuitous and has not been used simply to draw attention to an unrelated product. The imagery is entirely relevant to the message and the target audience.

In relation to whether the identity of the Advertiser and their position was, the Advertiser said, in part: “We believe it is clear the message is intended for gay and bisexual men. We believe that we have made it clear that the advertiser is *Ending HIV* by providing the ‘Search Ending HIV’ tag line.”

Response from the Media, Phantom Billboards

Phantom Billboards responded to the concerns of the Complainant about the image on the poster and their concerns about its placement stating, in part: “the men in the poster are both wearing trousers and they’re not behaving indecently; kissing is generally deemed acceptable public conduct, as is going without a shirt for men. The public good promoted by this poster (testing enabling safer behaviour and proactive treatment preventing the spread and harm caused by HIV) is in my view considerable we therefore considered it well worth giving people pause to stop and consider.”

In terms of the placement of the two similar images on the same poster bollard, Phantom said this “was unintentional, unfortunate and unhelpful to either campaign. We run hundreds of different poster designs at any one time so it’s a little unlucky and perhaps something I should have anticipated. I can appreciate the complainant’s point of view and why they’d be feeling that it’s a bit too much.”

Complaints Board Discussion

The Complaints Board noted the Complainant’s concern the image of the men kissing was highly sexualised and could be seen by children.

The Complaints Board noted the advertisement was promoting testing for HIV from the New Zealand AIDS Foundation and considered whether the identification of the Advertiser in matters of public interest was clear as part of the requirements under Rule of 11 of the Code of Ethics.

The majority said the identity of the Advertiser was clear. Taking into account the clear positioning message in the advertisement “We test because we care. Test for HIV... stay safe + test often + treat early = Ending HIV” and the Ending HIV logo and call to action to “search Ending HIV” the majority said the Advertiser had met the identification requirements of Rule 11 of the Code of Ethics.

A minority disagreed. It said the identity of the Advertiser should have been clearer as the NZ AIDS Foundation and at a minimum, the website address should have been included, rather than just the statement “search Ending HIV”. The minority said the advertisement was in breach of the identification requirement of Rule 11 of the Code of Ethics and had not been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

Having established the identity of the Advertiser was clear, the Complaints Board said the image, while sexually suggestive and provocative, included an important public health message about testing for HIV. It noted the men were kissing in the advertisement but that did not reach the threshold to offend against generally prevailing community standards or cause serious or widespread offence.

The Complaints Board noted there was a level of risk in using an untargeted medium where an advertisement can be seen by a general audience. In the instance before it, the combination of two unrelated advertisements which contained similar images created an overall impression for the Complainant. However, when the image and placement of the advertisement before it was considered, the Complaints Board said it did not reach the threshold to cause serious or widespread offence to most people taking into account the context, medium, likely audience and public health message.

In accordance with the majority, the Complaints Board ruled the advertisement was not in breach of Rules 4, 5 or 11 of the Code of Ethics and had been prepared with a due sense of social responsibility to consumers and society required by Basic Principle 4 of the Code of Ethics and ruled the complaint was Not Upheld.

Decision: Complaint **Not Upheld**

DESCRIPTION OF ADVERTISEMENT

The poster advertisement for ‘Ending HIV’ by the NZ AIDS Foundation showed to men kissing passionately and said: “We test because we care. Test for HIV. Search Ending HIV. Stay safe + test often + treat early = Ending HIV”.

COMPLAINT FROM - E O'DONOGHUE

I find both adverts offensive because they are:

1. Highly sexualised, and
2. On full public display.

It's evident when you look at each poster that sex is either taking place or about to. I'm concerned young children are being exposed to highly sexualised content (would you like your 4 year old to see this?). This should not be on full public display.

CODE OF ETHICS

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

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.

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).

RESPONSE FROM ADVERTISER – NEW ZEALAND AIDS FOUNDATION

I am writing in response to your letter dated 31 October 2017 regarding **Complaint 17/396: Ending HIV 'We Test Because We Care' Street Poster** in Cuba Street Mall.

Our response is in relation to each of the relevant sections of the Advertising Codes of Practice:

Basic Principles

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

Ending HIV developed these advertisements as part of the New Zealand AIDS Foundation (NZAF)'s HIV prevention programme. Gay and bisexual men are overwhelmingly the group most at risk of HIV in New Zealand and continue to be over-represented in annual HIV diagnoses. The message to "test for HIV" is a central component of the programme which aims to increase rates of testing among this target group. This is in line with the NZAF's Strategic Plan, and current government policy for HIV prevention.

Under Ministry of Health guidelines, New Zealand enjoys a responsible, proactive and widely accessible approach to the sexual health of New Zealanders. *Ending HIV* believes that the poster is a generally socially acceptable way to talk to any New Zealander about sexual health, but especially those who are most at risk of HIV.

The ads have been prepared with a due sense of social responsibility to consumers and to society, with the objective being to increase rates of testing to identify new HIV infections and prevent onward transmission to other New Zealanders.

Rules

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).

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).

Ending HIV believes that it is generally socially acceptable to talk about sex and sexual health in the context of HIV and that this should not cause widespread offence.

The decision to place these advertisements in 'mainstream' mediums such as street posters was based on two key considerations, the first being that gay and bisexual men live, work and socialize within the wider mainstream community; secondly, we know that most gay and

bisexual men cannot be reached through gay media alone. In 2016 the NZAF commissioned research into the media consumption habits of our audience. Results show that only 14% of gay and bisexual men read magazines or websites aimed at gay and bisexual men.

Ending HIV acknowledges that the imagery used is flirtatious, however in the context of the message and product, we believe it is appropriate. Importantly, it is not gratuitous and has not been used simply to draw attention to an unrelated product. The imagery is entirely relevant to the message and the target audience.

11. Advocacy Advertising – Expression of opinion in 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.

Ending HIV is a social marketing programme which has been developed to encourage prevention, testing and early treatment amongst those New Zealanders most at risk of HIV, namely, gay and bisexual men. The message to “test for HIV” is a central component of the programme which aims to increase HIV testing among this group and is well known and familiar to the target audience. All *Ending HIV* promotional material, including the posters in question, are developed with this clear social marketing objective in mind.

We believe it is clear the message is intended for gay and bisexual men. We believe that we have made it clear that the advertiser is *Ending HIV* by providing the ‘Search Ending HIV’ tag line.

Please let me know if you or the Complaints Board require any additional information.

RESPONSE FROM MEDIA – PHANTOM BILLSTICKERS

I considered both of these images prior to the campaigns running.

I didn't feel that either was beyond the bounds of decency (and the test I run is exactly along the lines of what the complainant states - "would I want my children to see this").

The Court Theatre campaign has run throughout Christchurch and the HIV Testing campaign has run in several cities nationwide.

I didn't anticipate any issues arising with the Court Theatre poster.

The woman in the poster is clothed and they're not actually kissing one another.

The relationship between the two characters is presumably a key part of the play being promoted, so the use of this image to promote it doesn't strike me as gratuitous or designed to provoke.

I am less surprised to get a complaint about the HIV Testing poster as some of the public find same sex contact offensive.

However the men in the poster are both wearing trousers and they're not behaving indecently; kissing is generally deemed acceptable public conduct, as is going without a shirt for men.

The Public Good promoted by this poster (Testing enabling safer behaviour and proactive treatment preventing the spread and harm caused by HIV) is in my view considerable we therefore considered it well worth giving people pause to stop and consider.

The placement of the two images on the same poster bollard was unintentional, unfortunate and unhelpful to either campaign.

We run hundreds of different poster designs at any one time so it's a little unlucky and perhaps something I should have anticipated.

I can appreciate the complainant's point of view and why they'd be feeling that it's a bit too much.

I'd be happy to answer any other questions on this matter.