

<b>COMPLAINT NUMBER</b>	17/329
<b>COMPLAINANT</b>	R Smith
<b>ADVERTISER</b>	Television New Zealand
<b>ADVERTISEMENT</b>	Television New Zealand, Digital Marketing
<b>DATE OF MEETING</b>	12 December 2017
<b>OUTCOME</b>	Settled

## **SUMMARY**

The video advertisement for Television New Zealand's (TVNZ's) 'New Blood' initiative which showcases short mini films from young directors appeared prior to selected content on YouTube. The video showed a woman being continually interrupted while she attempts to masturbate. Her phone rings, a lawnmower starts and there is a knock at the door. The advertisement concludes with the woman calling out to someone else asking whether they need the batteries in a remote as the ones in her vibrator have died.

The Complainant said they were disgusted by the advertisement and were concerned that it was played on YouTube.

The Advertiser said the video was not an advertisement but was programme content and therefore fell outside the jurisdiction of the Advertising Standards Authority Complaints Board. It said the programme was targeting an audience over eighteen but removed it from the Trueview advertisement delivery service once it learned of the complaint.

The Complaints Board said, in the absence of any messaging to the contrary, the content before it was an advertisement and consumers would recognise it as such, noting it was delivered unsolicited through the YouTube Trueview advertisement platform before selected content.

The Complaints Board was of the view the content of the video advertisement did not reach the threshold to be considered to cause serious or widespread offence under Rule 5 due to the platform and the age restrictions put in place by the Advertiser.

The majority of the Complaints Board said the advertisement did not contain sufficient context to signal to viewers the nature of the content prior to it playing and more could have been done to target the content to an appropriate audience. However, as the content had been removed, the majority, noting the self-regulatory actions of the Advertiser, ruled the complaint was Settled in relation to Rule 4.

A minority disagreed and said the Advertiser had acted responsibly in limiting its target audience to people aged over eighteen and, noting the adult audience, the content did not reach the threshold to offend against generally prevailing community standards.

However, in accordance with the majority, the Complaints Board ruled the complaint was Settled in relation to Rule 4 and Basic Principle 4.

**[No further action required]**

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

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**COMPLAINTS BOARD DECISION**

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

**The Complaints Board ruled the complaint was Settled.****The Complaint**

The Complainant said the video which played before content on YouTube featured a woman being interrupted while attempting to masturbate and said, in part: "It absolutely disgusts me that this kind of ad has even been made let alone plays on YouTube. We let our children watch children's shows on the iPad occasionally, however after seeing this ad today I will no longer be letting them go on YouTube at all."

**The Advertiser's Response, Television New Zealand (TVNZ)**

The Advertiser said the video was part of the 'TVNZ Stubbies' series which was part of the 'New Blood' initiative designed to create diverse content and showcase young directors.

The Advertiser was of the view the item subject to complaint was not an advertisement for the purposes of the Advertising Codes, stating, in part: "*Girl Interrupted: Masti* ... played in full in the YouTube Trueview screening that has been complained about i.e. not cut down to act as advertising or promotion for the series. There was no element of promotion of other episodes in the series in the Trueview screening as it was a single programme. Notwithstanding that the programme was delivered to viewers by YouTube Trueview, TVNZ considers that the material complained about is not advertising material."

The Advertiser also said, in part: "TVNZ understands that the way that the programme was presented with 'Ad' and 'Skip ad' on screen does give a context of advertising for the viewer, and so if the Authority does determine that the content is "advertising" then we believe that we have met the requirements of the advertising principles in regard to social responsibility in that the material was appropriately age restricted."

The Advertiser said distributing the content through by YouTube Trueview was experimental and noted "YouTube Trueview is traditionally an ad placement platform that plays before people start watching another video which they had chosen to view." In considering the placement of the content, the Advertiser said "TVNZ incorporated targeting of 18+. The programmes also went through a 24 hour approval process from Google, who accepted the material in the 18+ category. Material screening through YouTube Trueview can be skipped and so the entire programme does not have to be viewed."

**Complaints Board Discussion***Is this an Advertisement?*

The Complaints Board first considered whether the item before it was an advertisement. It

Board took into account the definition of an advertisement, which said:

“Advertising and advertisement(s)” are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.”

The Complaints Board considered the likely consumer take out and noted the content was delivered through YouTube’s advertisement placement platform, Trueview. It said the delivery included various advertisement signifiers, including three references to the label ‘ad’ and played before selected content which was a typical convention for advertisement delivery. The Complaints Board also noted the logo and the words “TVNZ (Television New Zealand)” appeared under the video and the TVNZ logo appeared at the end of the video. The Complaints Board also took in to account that it was paid placement and a commercial space that was familiar to consumers.

The Complaints Board noted the Advertiser’s position that the item was programme content, but delivered through the Trueview platform. In the Complaints Board’s view, more could have been done to distinguish the item as a short film, noting no context was provided for the viewer to alert them the material was editorial programme content or part of the ‘New Blood’ initiative. The Complaints Board said, in the absence of messages to the contrary, the item before it was an advertisement for TVNZ and therefore, fell within its jurisdiction.

*Does the Advertisement breach basic Principle 4, Rules 4 or 5?*

The Complaints Board then considered whether the advertisement had been prepared with a due sense of social responsibility, offended against generally prevailing community standards, or was likely to cause serious or widespread offence.

The Complaints Board said the advertisement did not reach the threshold to cause widespread offence as it took into account the platform employed to deliver the content and its targeting of people aged over eighteen. They also noted the content included an element of humour. The Complaints Board was of the view the content was not overtly graphic, noting that the woman was only seen from the waist up. The Board ruled the advertisement was not in breach of Rule 5 of the Code of Ethics.

The Board then considered whether the advertisement breached Rule 4. The majority of the Complaints Board was of the view that, while the Advertiser had taken some steps to ensure that the adults only content was only targeted to people over eighteen, the content should have had a warning to notify watchers of its adult theme. The majority said as there was no context for the viewer about nature of the content prior to it playing and with its limited targeting, it offended against generally prevailing community standards and ruled the content was in breach of Rule 4 of the Code of Ethics. The majority said the content had not been placed with a due sense of social responsibility and was in breach of Basic Principle 4 of the Code of Ethics as well.

The majority noted the self-regulatory actions of the Advertiser in removing the content from the Trueview platform on learning of the complaint and, taking into account their cooperative engagement with the process, ruled the complaint was Settled under Rule 4 and Basic Principle 4 of the Code of Ethics.

A minority disagreed. It was of the view the Advertiser had acted responsibly in limiting its target audience to people aged over eighteen and was of the view the advertisement was not salacious and employed humour. The minority noted viewers had the ability to skip the content should they wish and it did not reach the threshold to offend against generally prevailing community standards, taking into account the platform used and the audience. The minority

said the advertisement was not in breach of Rules 4 of the Code of Ethics or Principle 4 of the Code of Ethics.

However, in accordance with the majority, the Complaints Board ruled the complaint was Settled under Rule 4 and Basic Principle 4.

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## DESCRIPTION OF ADVERTISEMENT

The video advertisement for Television New Zealand's 'New Blood' initiative which showcases short mini films from young directors appeared prior to selected content on YouTube showed a woman being continually interrupted while she tries to masturbate. Her phone rings, a lawnmower starts and there is a knock at the door. The advertisement concludes with the woman asking if they need the batteries in a remote as the ones in her vibrator have died.

## COMPLAINT FROM R SMITH

I watch song videos on YouTube and usually skip the ads when given the opportunity to do so, however this morning this particular add came on before my song and I was so disgusted that I continued to watch it to see how it ended and took a photo so that I could make a formal complaint as it was so inappropriate. The lady in the ad is looking at a picture of a naked or semi naked man on her iPad and then proceeds to take her pants off (while lying in bed) and she starts touching herself and obviously trying to organism but keeps being interrupted by certain things like a lawnmower in the background or someone coming home. It absolutely disgusts me that this kind of ad has even been made let alone plays on YouTube. We let our children watch children's shows on the iPad occasionally, however after seeing this ad today I will no longer be letting them go on YouTube at all.

## 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).

## RESPONSE FROM ADVERTISER - TELEVISION NEW ZEALAND

Further to your email advising of R Smith's complaint TVNZ would like to add the following in regard to R Smith's complaint concerning the programme "*Girl Interrupted: The Masti*"

1. *Girl Interrupted: the Masti* is not advertising, it is programme content.

*Girl Interrupted: the Masti* is a part of "TVNZ Stubbies", a series of short, local comedy one-off sketches, developed through TVNZ New Blood; an initiative designed to:

... create content that is different, provocative and champions diversity – through a range of voices, ethnicities, genders, sexuality, beliefs – as well as authenticity.

TVNZ's digital commissioner, Amie Mills, says:

“New Blood is TVNZ’s way of reaching viewers who might not be engaging with our content like they used to.”

The newly launched titles include 30 days (a one off sketch where an office worker has an existential crisis trying to remember the date, by Simon Ward). The Han Chronicles (a two-part true story of an Asian man assimilating into life in New Zealand in the 1970’s, by Chye-Ling Huang) and Girl Interrupted – The Masti (a sketch series about women dealing with first-world problems, by Jessica Joy Wood and Kura Forrester). <http://stoppress.co.nz/news/tvnz-new-blood-launch>

*Girl Interrupted: Masti* is certified AO, Adults Only and can be seen here playing in more traditional programme distribution models:

- <https://www.tvnz.co.nz/shows/tvnz-stubbies/episodes/s1-e1>
- <https://www.youtube.com/watch?v=APmBZwkOiYo>

*Girl Interrupted: Masti* was eventually developed as a single programme (rather than a series as described by Stop Press above) and it played in full in the YouTube Trueview screening that has been complained about i.e. not cut down to act as advertising or promotion for the series. There was no element of promotion of other episodes in the series in the Trueview screening as it was a single programme.

Notwithstanding that the programme was delivered to viewers by YouTube Trueview, TVNZ considers that the material complained about is not advertising material and would like the Authority’s direction on this point.

## 2. Distribution of the programme through YouTube Trueview.

Part of the New Blood initiative was to experiment with distribution methods for the programmes that had been developed. In the case of the TVNZ Stubbies full first episodes of the short format series were scheduled through YouTube Trueview.

YouTube Trueview is traditionally an ad placement platform that plays before people start watching another video which they had chosen to view.

The shows chosen to be played through this platform are:

- Worlds Fastest Maori
- Hayley’s Kitchen
- The Han Chronicles
- Girl Interrupted (now turned off)

When they were scheduled TVNZ incorporated targeting of 18+. The programmes also went through a 24 hour approval process from Google, who accepted the material in the 18+ category. Material screening through YouTube Trueview can be skipped and so the entire programme does not have to be viewed.

TVNZ understands that the way that the programme was presented with “Ad” and “Skip ad” on screen does give a context of advertising for the viewer, and so if the Authority does determine that the content is “advertising” then we believe that we have met the requirements

of the advertising principles in regard to social responsibility in that the material was appropriately age restricted.

Given the complaint however, this programme was removed from the YouTube Trueview platform on 13 September.

Contact person for advertising complaints	Andrea Fasching
Name and contact at creative agency	N/A (the full episode of our short series, Girl Interrupted, was played as an ad).
Name and contact at media agency	Seb van Dyk
A basic, neutral description of the advertisement	The “ad” was a full episode (1 min 32 secs) of Girl Interrupted played through YouTube Trueview. This is a placement that plays before people start watching a video. The viewer can skip the ad after certain duration.
Date advertisement began	11 <sup>th</sup> September 2017.
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	YouTube Trueview.
Is the advertisement still accessible – where and until when?	No. The content was stopped on 13 <sup>th</sup> September 2017.
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	Content can be downloaded from the link below: <a href="https://we.tl/cdSIFKh2W4">https://we.tl/cdSIFKh2W4</a>
Who is the product / brand target audience?	Targeting of 18+ was incorporated when scheduling the programme.
Clear substantiation on claims that are challenged by the complainant.	Please see attached
The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	
<b>For Digital advertisements:</b>	

What platform tools have you used to target your audience?	We used DoubleClick Bid Manager (DBM) to target users across YouTube.
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**RESPONSE FROM MEDIA,**

No response received from Google.