

COMPLAINT NUMBER	17/412
COMPLAINANT	D. Jessep
ADVERTISER	SAFE - Save Animals from Exploitation
ADVERTISEMENT	SAFE - Save Animals from Exploitation- Out of Home
DATE OF MEETING	12 December 2017
OUTCOME	Upheld in Part, Not Upheld in Part

SUMMARY

The Billboard advertisement for SAFE shows a picture of a cow and a new born calf with a diagonal rip through the image depicting their separation. The wording reads “Their first day together and their last. She was taken for milking. He was taken for slaughter. *Choose dairy-free.*”

The Complainant was concerned the generic stock photo of a cow and calf used in the advertisement was misleading as the Advertiser could not say with certainty what the fate of either animal was, making the advertisement loaded and biased against the dairy industry.

The Advertiser and Media said the stock image was a representation of dairy industry practices and was what happened to most cows and calves based on publically available statistics.

The Complaints Board ruled the advertisement had failed to meet the identity element of the Advocacy guidelines by not displaying an address or website in addition to the Advertiser’s logo in order to give interested consumers contact information for the Advertiser.

The Complaints Board agreed, in an advocacy environment, the advertisement was not misleading, given that the advertisement image was illustrative of the probable outcome of most dairy cattle.

The Complaints Board ruled the advertisement had not satisfied the identification requirements of Rule 11 and had therefore breached Rule 11 and Basic Principle 4 of the Code of Ethics. The Complaints Board said there was nothing misleading in the advertisements content and the Advertiser was using well known illustrative advertising techniques to demonstrate a specific point of view. The Complaints Board ruled there had been no breach of Rule 2 of the Code of Ethics.

The Complaints Board ruled the complaint was Upheld in Part, Not Upheld in Part.

[Advertisement to be removed]

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

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rules 2 and 11 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement could be classed as advocacy advertising and whether or not the advertisement contained anything which, either directly or by implication, was likely to deceive or mislead the consumer and if it had been prepared with a due sense of social responsibility to consumers and to society.

The Complaints Board ruled the complaint was Upheld in Part

The Complaint

The Complainant was concerned the generic stock photo of a cow and calf used in the advertisement was misleading as the Advertiser could not say with certainty what the fate of either animal was, making the advertisement loaded and biased against the dairy industry.

The Advertiser's Response

The Advertiser responded with statistics about the dairy industry and average life-cycle of dairy cattle. In defence of the advertisement claims, the Advertiser said the stock image was a representation of the dairy industry and what happens to most cows and calves based on publically available statistics.

The Media Response

The Media noted the general understanding of photographs used in advertising was that they were representative and used the example of how a family being depicted in an advertisement would be unlikely to actually be related.

The Complaints Board Discussion

The Complaints Board turned first to consider the advertisement under Rule 11 of the Code of Ethics. Rule 11 of the Code of Ethics provided for robust expression of belief or opinion being as expressed by the Advertiser and, therefore, such opinions may be robust. However, opinion should be clearly distinguishable from factual information.

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.

Does the advertisement meet the requirements of the Advocacy Rule 11?

The Code of Ethics Advocacy Guidelines on identity state:

“The identity of the Advertiser and a contact address must be clear.

A physical address is desirable but a P.O. Box number and/or telephone number are acceptable. An email address alone is not sufficient. A website address featuring the organisation’s name may be used providing the website has contact details. It is essential this information is clear and easily seen by the reader / viewer, not hidden in the fine print.”

The Complaints Board said that because advocacy advertising allowed for robust opinion and a more liberal interpretation, it was important the advertisement comply with the requirement that the advertiser’s identity is clear. The advertisement before it was a billboard which may only be seen in passing by consumers and should have displayed a website or an address in addition to the Advertiser’s logo.

The Complaints Board referred to a precedent decision regarding the same Advertiser, Complaint 17/116, which was ruled No Grounds to Proceed. This example of acceptable advocacy advertising displayed the SAFE logo and the Advertiser’s website address in the final frame of the television advertisement.

Given that the Complaints Board agreed the identity was not clear, it ruled there had been a breach of Basic Principle 4 and Rule 11 of the Code of Ethics in the context of advocacy advertising.

Is the advertisement misleading?

The Complaints Board then addressed the Complainant’s concern about the images presented in the advertisement.

The Complaints Board said that although the Advertiser was using a confronting stock image to make its point around the ethics of consuming dairy products, it did not consider the advertisement to be misleading. The Complaints Board said the illustrative image did not need to depict the fate of the actual animals in the photo in order to represent the probable outcome of most dairy cattle. The Complaints Board ruled there has been no breach of Rule 2 of the Code of Ethics

In conclusion, the Complaints Board ruled the advertisement had not satisfied the identification requirements of Rule 11 and had therefore breached Rule 11 and Basic Principle 4 of the Code of Ethics. The Complaints Board said there was nothing misleading in the advertisement content and the Advertiser was using well known illustrative advertising techniques to demonstrate a specific point of view. The Complaints Board ruled there had been no breach of Rule 2 of the Code of Ethics

Accordingly, the Complaints Board ruled the complaint was upheld in part and not upheld in part.

The advertisement is to be removed.

DESCRIPTION OF ADVERTISEMENT

The Billboard advertisement for SAFE shows a picture of a cow and a new born calf with a diagonal rip through the image depicting their separation. The wording reads “Their first day together and their last. She was taken for milking. He was taken for slaughter. *Choose dairy-free.*” The SAFE For Animals logo appears in the bottom right hand corner.

COMPLAINT FROM D JESSEP

Fanshawe Street side of the building on the corner of Fanshawe Street and Nelson Street, Auckland CBD. The billboard reads:

"Their first day together" "and" "their last."

"She was taken for Milking."

"He was taken for Slaughter,"

"Choose Dairy Free."

I am complaining as I believe this breaches several standards. The photo used is a modified generic stock photo from Shutterstock (see additional image attached). And link here: <https://www.shutterstock.com/image-photo/mother-jersey-cow-lickingnewborn-calf-196376405>

As a result it is highly improbable that SAFE know the provenance of the Mother and Calf. By using third person narrative while attached to an image SAFE are attempting to create an emotional connection with the viewer. This is a deliberate attempt to mislead the viewer into thinking the cow and calve pictured had the fate described.

Also the billboard implies the practice of "Complete Weaning" this is not used in 100% of situations. The billboard implies the calf is male. As this is a stock photo this cannot be known for sure; this calf could be a female destined for milking, a male destined for beef or breeding, or a bobby cow. Even if "he" was taken for Veal, this will likely be at least 4.5 months after the photo was taken. Yet they make the assertion "He was taken for Slaughter," This language is very loaded.

The mother is a dairy Jersey, Guernsey, or cross, it looks to be reasonably mature. Therefore the assertion "She was taken for milking" is also misleading as in all likelihood the cow is on the farm where it will be milked already, probably has been milked for some time, and there for "taken" is the wrong way to describe this and overly emotional.

This breaches basic principals 3 and 4 of the Advertising code of ethics. Specifically Rule 2 Truthful Presentation; clearly unless they can prove this happened to these animals it is untruthful. Rule 9 Testimonials; by using third person the observer is asserting this happened. Rule 11 Advocacy Advertising; I suggest it breaches this rule as they have dressed up a speculative opinion on what they think is likely to happen as fact.

This ad also appears to be very loaded and biased against our dairy industry, and insinuates an extreme approach to dairying that is a further breach of Rule 8 Denigration. Frankly it misleads the viewer about practices in the dairy industry.

I am not in any way affiliated with the dairy industry, and I respect vegetarian practices (my wife is vegetarian). My complaint about this billboard is that it breaches for the above listed reasons, and those alone. They could have written the billboard as following and I would not have complained:

"This is their first day together" "and" "could be their last."

"Cows like her are taken for Milking."

"Cows like him are taken for Slaughter,"

"Choose Dairy Free."

But I doubt SAFE would perceive that to be effective advertising.

CODE OF ETHICS

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

Rule 2: Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

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.

RESPONSE FROM ADVERTISER - SAFE

Contact person for advertising complaints	Ms Jasmijn de Boo, CEO
Name and contact at creative agency	Ms Jasmijn de Boo, CEO
Name and contact at media agency	Alf Jamieson
A basic, neutral description of the advertisement	Image of cow and newborn calf 'torn' apart visually, with the words: "Their first day together And their last. She was taken for milking. He was taken for slaughter. Choose <i>dairy-free</i> " [SAFE for animals logo displayed]
Date advertisement began	6.11.17
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	Billboard - 1 Nelson St, Auckland
Is the advertisement still accessible – where and until when?	Accessible until 30.11.17
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	Attached
Who is the product / brand target audience?	General public, people concerned about

	animal welfare
Clear substantiation on claims that are challenged by the complainant.	See overleaf
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.	

SAFE's Response

The **aim** of SAFE's dairy billboard, as advertised from 6.11.17 to 30.11.17, was to educate the general public, and those citizens concerned about animal welfare in particular, about the bond between dairy cows and their newborn calves, and to encourage them to reduce or eliminate dairy products from their diets, in favour of choosing non-dairy alternatives.

Research on which the SAFE Billboard was based

- By 30 June 2016, New Zealand had 6.6 million dairy cattle, an increase from just over 5 million, a decade prior. In the year to 30 Jun. 2016, 4.4 million dairy calves were born (MacPherson 2017).
- In the year ending Sep. 2017, 1.7 million beef and dairy calves were slaughtered. Beef cattle are normally slaughtered after being grown to marketable weight as adults, so almost all slaughtered would have been dairy calves.
- After about five years of pregnancy and lactation, cows' milk production declines and they are slaughtered, having lived only a quarter of their normal lifespan. More than 20% of dairy cows are killed each year (Stafford 2013).
- Some of the remaining 2.7 million dairy calves would have been grown as herd replacements. 728,000 dairy cows, 92,000 dairy heifers, 53,000 dairy steers and 79,000 dairy bulls were slaughtered in the year ending Sep. 2017. An additional 474 calves were grown for veal and slaughtered as dairy vealers.
- The fate of the remaining 1.8 million dairy calves is not clear from examination of MPI statistics (MPI 2017). MPI does not keep figures on the proportion of these calves that are killed on farms.
- Cows, like humans, are pregnant for nine months and they too bond strongly with their babies. Hudson and Mullord (1977) estimated that a strong maternal bond is formed after only five minutes of contact following calf birth. Calves would naturally suckle five to eight times a day for the first few weeks and stay with their mothers for up to two years. However dairy calves are generally taken from cows within 12 hours of birth, and some cows show signs of severe distress when their calves are taken (Stafford 2013). This can be seen in video footage from [2015](#) and [2016](#). This is in contrast to beef cows, most of whom are reared with their mothers and weaned at around six months of age (Stafford 2013).
- In October 2017, SAFE commissioned an independent Horizon survey¹ to investigate attitudes towards dairy, and some of the key findings included:

¹ Horizon survey summary attached for information

- 50% of people either thought it was false or did not know that a cow needs to give birth each year if they are to produce milk.
 - Over 80% of the public vastly underestimate the number of bobby calves killed per year.
 - There is widespread condemnation of the killing of bobby calves soon after birth, with 60% of people feeling it is not acceptable.
 - When asked how much trust and confidence they had in the dairy industry to ensure bobby calves are treated humanely, 47% were unconfident.
- Apart from some observations of seagulls who have occasionally consumed the milk of elephant seals, very few other species in the animal kingdom, apart from humans, are known to consume milk after weaning, let alone milk from another species.
 - While dairy provide nutrients, all of these can be sufficiently obtained from plant-based and mineral sources for a well-balanced healthy human diet. The official positions of dietary associations near-invariably recognise that milk is not essential within the human diet. On the other hand, dairy products are [high in cholesterol and saturated fat](#) (Warensjö 2004), which can increase the risk of heart disease. They've been linked to increased risks of various cancers, especially [prostate](#) (Aune 2004), [ovarian, lung](#) (Sundquist 2015) and [breast cancers](#) (Kroenke, 2013). One study found that women consuming more than one glass of milk daily had a [73% greater chance](#) (Kushi 1999) of ovarian cancer. Another found that men who consume a diet high in red, processed meat and dairy have a 2.5 times greater risk of cancer mortality. Another found those consuming more than one glass of milk daily were [10 percent more likely to experience cognitive decline](#) (Petruski-Ivleva 2017). Dairy products have also been linked to health risks for children, and can encourage the development of [obesity](#) (Lu 2016) diabetes and heart disease.

Defence of SAFE claims on the billboard

- The image used was a Shutterstock image, serving as a representation of the dairy industry in New Zealand. While the fate of the precise cow and calf depicted cannot be known, SAFE's claims are truthful insofar as representing what happens to most cows and calves in the dairy industry, based on publically available statistics and published guidance on codes for the dairy industry.
- Such use of images as representations of wider groups is normal within advertising. Claims are frequently made about the product or service without being specifically related to the exact depicted product or service (for example, see ASA complaint 15/281).²
- Moreover, other advertisers frequently use images and make claims that are not representative of the actual situation displayed in print or broadcast. The ASA Board would have to review hundreds of complaints daily if people interpreted images as

² ASA Complaint 15/281 - Advertisement used a photo of celebrities wearing generic boots like the ones which were sold. The complaint: "It is not explicitly stated that the celeb images and boots are not the same."

Ruling: The Chairman said most consumers would be aware that the boots worn by the celebrities, and those being advertised were similar styles, but were obviously not exactly the same. Chairman was of the view the advertisement did not reach the threshold to be considered to be likely to mislead consumers.

representative only of the product, person or animal displayed and not as representing a wider concept.

- While the wording on the billboard could have been made clearer, it is unlikely that any reasonable person would have been misled or deceived by SAFE's claims on the billboard. SAFE has not received any other formal complaint about the billboard.
- With regard to specific concerns raised by Mr Jessep:
- *"the billboard implies the practice of 'complete weaning' is not used in 100% of situations".*
- The Billboard made no comments about 'complete weaning', or suggested that 100% of calves were taken for slaughter on day one. It is a fact that all calves will be slaughtered, most of whom are removed within 12 hours after birth and killed at around four days of age (Stafford, 2013), while others are used in the dairy, beef and veal industry. The claim that "he was taken for slaughter" is a reasonable description of what occurs for many, if not most, dairy calves born annually.
- *"the assertion "she was taken for milking" is also misleading as in all likelihood [sic] the cow is on the farm where it [sic] will be milked already, probably has been milked for some time, and there for [sic] "taken" is the wrong way to describe this and overly emotional"*
- 'Taken' is a neutral way of describing removing a mother from her calf in order to take, for human consumption, the milk that was biologically produced to feed a calf. The cow is thereby denied the opportunity to nurse her offspring, and the calf is denied the opportunity to spend several months with his or her mother, until weaning naturally, to grow up naturally. Following several months of milking, the cow is returned to reproduce. Cows are impregnated around four to five times in their short lifespans. After giving birth each year they are separated from their calves to repeat the cycle of taking, for human consumption, the milk that was biologically produced to feed newborn and growing calves. The emotional distress caused to cows and calves exceeds the description SAFE used on its billboard.
- *"This ad also appears to be very loaded and biased against our dairy industry, and insinuates an extreme approach to dairying that is a further breach of Rule 8 Denigration."*
- The image and words used describe standard practices within New Zealand's dairy industry. There may be some exceptions, e.g. calves may not be immediately removed in organic farming systems. However, the vast majority of calves are removed from their mothers within 12 hours. Mr Jessep's comment possibly implies a lack of knowledge of standard dairy farming practices in New Zealand. Further, identifiable products or competitors were not denigrated; SAFE purely encouraged consumers to reduce or eliminate dairy from their diets by choosing non-animal alternatives.

Conclusion

Advocacy advertising is provided for under Rule 11 of the Code of Ethics. A robust expression of opinion is allowed as long as the advertiser is clearly identified, which was the case given the clear bold SAFE logo published alongside the text on the billboard. SAFE therefore firmly believes that the complaint has no grounds to proceed.

References

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RESPONSE FROM MEDIA – MEDIA5

Media5's thoughts on the complaint are:

The substantive aspects of the complaints are exclusively based on the possibility that the copy below the photo is essentially 'misleading' as it may not relate 100% to this specific Cow and Calf.

It is the opinion of Media5 that the ad does not breach any ASA rules because:

- The general public understand that photos used in advertising are frequently representative. (e.g. People know they're not buying that specific iPhone or house, they're getting one similar. They also understand that the people in the TV ad may not be a real family.)
- If you accept that the photo is representative then the complainant acknowledges that the copy on the billboard would be entirely accurate under certain circumstances and in no way does the billboard state that that these circumstances apply 100% of the time. Hence the billboard is not misleading.
- In general the complaints are overly specific in nature and not the way a reasonable person would generally interpret the data provided by the billboard