

COMPLAINT NUMBER	18/011
COMPLAINANT	L Miller
ADVERTISER	Bumper Ball
ADVERTISEMENT	Bumper Ball, Digital Marketing
DATE OF MEETING	24 January 2018
OUTCOME	Settled – advertisement changed

SUMMARY

The website advertisement for Bumper Ball, www.bumperball.co.nz, shows the giant plastic balls encasing people being used in a range of locations including several images and video footage of customers playing with the balls on the beach. The Contact Us page stated “Bumper Ball operates throughout many NZ locations meaning we can bring the fun and excitement of Bumper Ball to your neck of the woods. We’ve run games sport events and contests NZ-wide; in places like schools, parks, sports arenas, corporate settings and even the beach!”

The Complainant claimed the advertisement was misleading consumers by creating the impression through visuals and wording that the product was suitable for use on the beach, only to be told it was not when attempting to book.

The Advertiser explained that some venues may not be suitable and detailed amendments it had made to the advertisement to further assist customers to understand where Bumper Balls can be used.

The Complaints Board acknowledged the Advertiser made changes to the website. It agreed that by removing the “even at the beach” wording from the reference to locations on the Contact Us page and including a paragraph to the FAQ section to advise that not all venues may be suitable, the Advertiser had sufficiently minimised any future confusion.

The Complaints Board ruled that in relation to Basic Principle 4 and Rule 2 of the Code of Ethics, the complaint was settled.

[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 the advertisement with reference to Basic Principle 4 and Rule 2 of the Code of Ethics. This required the Complaints Board to consider whether 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 settled.

The Complaint

The Complainant claimed the advertisement was misleading by extensively using beach video and photos as well as including the fact that they have run beach events in the promotional wording. That suggests the product is suitable and available for use on the beach. When the Complainant attempted to book they were told a beach location was not a suitable venue.

The Advertiser's Response

The Advertiser did not consider the website to be misleading or deceptive. It quoted safety factors being the primary reason determining whether a location was suitable or not. Such factors include sharp objects, size, wind and potential impact on members of the public.

The Advertiser confirmed it had made amendments to the website to minimise any further confusion by removing the words "even the beach" when referring to locations on the Contact Us page and including a paragraph to the FAQ section advising that not all venues may be suitable.

The Complaints Board Discussion

The Complaints Board said the repeated beach imagery on the website, together with the specific wording "even at the beach" as a location on the Contact Us page gave the average consumer the impression it was likely the beach was a suitable location for the use of Bumper Balls. The Complaints Board agreed with the Complainant that it was not clear from the advertisement that there may be any limitations associated with beach locations.

The Complaints Board acknowledged the changes made to the website by the Advertiser. It agreed that by removing the reference to "even at the beach" from the discussion about locations on the Contact Us page and including a paragraph to the FAQ section to advise that not all venues may be suitable was helpful as it made the advertisement much clearer about suitable locations for Bumper Ball.

The Complaints Board agreed that given the Advertiser's co-operative engagement with the process and the self-regulatory action taken in amending the website, the advertisement now alerted the consumer to potential location limitations.

Accordingly, the Complaints Board ruled that in relation to Basic Principle 4 and Rule 2 of the Code of Ethics, the complaint was settled.

DESCRIPTION OF ADVERTISEMENT

The website advertisement for Bumper Ball, www.bumperball.co.nz, shows the giant plastic balls encasing people being used in a range of locations including several shots and video footage of customers playing with the balls on the beach. The Contact Us page stated "Bumper Ball operates throughout many NZ locations meaning we can bring the fun and excitement of Bumper Ball to your neck of the woods. We've run games sport events and contests NZ-wide; in places like schools, parks, sports arenas, corporate settings and even the beach!"

COMPLAINT FROM L MILLER

I believe this companies advertising breaks ASA Code of Conduct Rule 2: Truthful Presentation. The home page of this companies website opens with a video of their Bumper Balls clearly being used on the beach. Each page has a collage of photos at the top, almost every single page includes beach shots. The blurb on the contact page includes the sentence "We've run games, sport events and contests NZ-wide; in places like schools, parks, sports arenas, corporate settings and even the beach!" But when I tried to make a

booking via my local franchise to hire the balls for use on the beach I was refused because they do not deem the beach as a suitable place. I then contacted their head office who told me they would stand by the decision of the franchise not to allow balls on the beach. I believe they have broken the code by having such extensive use of beach shots and including the fact that they have run beach events in the wording, implying that their product is suitable and available for use on the beach when in fact it isn't. I now have 14 very disappointed people who I have planned an exciting beach day for and can't provide the main event

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).

RESPONSE FROM ADVERTISER – BUMPER BALL

I am writing in response to the complaint submission from L Miller. Please note that since this complaint was received we have made some changes to our website

1. We have removed the words “even the beach” from the Contact Us page
2. On the FAQ section we have also added a paragraph in to advise that not all venues may be suitable

I expect that this makes it clearer to potential customers that not all locations may be suitable for Bumper Ball.

With regards to the specific complaint, I do not believe that our website was misleading or deceptive. It did say that Bumper Ball “can” be played at the beach. We have been in business since September 2013 and have not had any issues or complaints of this nature before, and in that time we have run thousands of events at different locations, and also average around 3000 website visits per month.

Most customers who enquire with us will ask out about potential locations and we are always happy to provide suggestions and recommendations. In this case, our local operator in the Northland region advised the client that they felt Ruakaka Beach was not suitable. While our operator did not go into detail with the customer, the reasons for this were primarily about safety. The balls we use are very durable but are susceptible to damage from sharp objects, which on a beach could include such things as shells plus small rocks and stones. There are other factors to include, such as how windy it might be and also potential impact on members of the public.

It is true that we have run events on the beach before and have videos and photos on our website showing this. The main event which is shown was held at Mt Maunganui beach and was organised by a radio station so we had a very specific area of the beach cordoned off, plus approval from the local council.

There are also photos and videos from many other events at varying locations, including parks, public reserves and indoor venues like gyms and school halls. Not all of these venue types may be suitable however, eg some parks may be too small or difficult to access and we would advise the customer accordingly.

It has never been intention to mislead or deceive anyone, and I believe that the changes we have made to our website should further assist customers to understand where Bumper Ball can be played.