

COMPLAINT NUMBER	18/025
COMPLAINANT	G Grayston
ADVERTISER	New Zealand Transport Agency
ADVERTISEMENT	New Zealand Transport Agency, Print
DATE OF MEETING	13 February 2018
OUTCOME	Not Upheld

SUMMARY

The New Zealand Transport Agency print advertisement on behalf of the Safer Journeys initiative was featured in Canvas Magazine. The Advertisement shows a car accident with a crashed car sitting vertically on its nose. The tagline says “Come down before you drive. 1 in 4 drivers who crash and die are affected by cannabis”.

The Complainant was concerned about the validity of the advertisement’s claim that “1 in 4 drivers who crash and die are affected by cannabis” and found the advertisement to be disturbing and improbable.

The Advertiser substantiated the ‘1 in 4’ statistic, with research carried out by the Institute of Environmental Science and Research, which found that at least one-quarter of all drivers and motorcyclists killed in road crashes between 1 July 2004 - 30 June 2009 were found to have cannabis present in their system.

The majority of the Complaints Board agreed the Advertiser had met the identity requirements of Rule 11 of the Code of Ethics and ruled that given the clear substantiation provided by the Advertiser, the advertisement was not in breach of the Rule 2 requirement for truthful presentation and had been prepared with the due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

A minority of the Complaints Board said the advertisement had not made the identity of the Advertiser absolutely clear and the advertisement should have included a website link for consumers to be able to access further information about the Safer Journeys initiative. A minority of the Complaints Board also said the advertisement would have benefited from a link to the source information for the statistics in order to strengthen the claim being made and avoid any misunderstanding from consumers.

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 the advertisement with reference to Basic Principle 4 and Rule 2 and Rule 11 of the Code of Ethics. Basic Principle 4 required the Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society. Rule 2 required the Board to consider whether the advertisement contained anything which, either directly or by implication, was likely to deceive or mislead the consumer. Rule 11 for advocacy advertising required the Board to consider whether the identity of the advertiser was clear and opinion was clearly distinguishable from fact.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant was concerned about the validity of the claim that “1 in 4 drivers who crash and die are affected by cannabis”. The Complainant said the advertisement was disturbing and the claim likely to be highly improbable.

The Advertiser’s Response

The Advertiser confirmed it was delivering advertising as part of the Government’s Road Safety Strategy 2010 to 2020, Safer Journeys programme, which has a specific goal to significantly reduce the incidence of alcohol and drug impaired driving.

The Advertiser confirmed the target audience was regular cannabis users who might then be inclined to drive while still under the influence. The tagline was a play on the words ‘come down’, which is a drug related term and well as the literal interpretation of the advertisement’s graphic of the car crashing down onto its nose.

The Advertiser substantiated the ‘1 in 4’ statistic from research carried out by the Institute of Environmental Science and Research, which found that at least one-quarter of all drivers and motorcyclists killed in road crashes between 1 July 2004 - 30 June 2009 were found to have cannabis present in their system.

The Media’s Response

The Media reiterated the source of the statistic used in the advertisement saying it substantiated the claim with sound independent research. It agreed the advertisement was deliberately challenging as is permissible within advocacy advertising guidelines.

The Complaints Board Discussion

The Chair 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.

The Complaints Board accepted the advertisement was an advocacy advertisement promoting the dangers of driving under the influence of cannabis.

The majority agreed that the identity of the sector advertising organisation, Safer Journeys, was clear enough to meet the identity requirements of advocacy advertising.

The Complaints Board said the advertisement was deliberately confronting, but given the important safety message it contained, was an example of the robust advertising permitted by the advocacy rule.

A minority of the Complaints Board disagreed and said the advertisement had not made the identity of the Advertiser absolutely clear and should have included a website link for consumers to be able to access for further information about the Safer Journeys initiative if required.

The Complaints Board then considered whether the Advertiser had provided sufficient substantiation for the claim made in the advertisement. The Complaints Board agreed the independent research supported the conservative estimate that 1 in 4 drivers who crash and die are affected by cannabis.

The majority of the Complaints Board ruled that given the clear substantiation provided by the Advertiser, the advertisement was not in breach of the Rule 2 requirement for truthful presentation and had been prepared with the due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

A minority of the Complaints Board also said the advertisement would have benefited from a link to the source information behind the statistics used in order to strengthen the claim being made and avoid any misunderstanding from consumers.

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

DESCRIPTION OF ADVERTISEMENT

The New Zealand Transport Agency print advertisement on behalf of the Safer Journeys initiative was featured in Canvas Magazine. The Advertisement shows a car accident with the car sitting vertically on its nose. The tagline says "Come down before you drive. 1 in 4 drivers who crash and die are affected by cannabis".

COMPLAINT FROM G GRAYSTON

The advertisement states that "1 in 4 drivers who crash and die are affected by cannabis". I would love to know the source of this incredible statistic. For this to be true, every road fatality would need to be tested for cannabis. From what I've read the link between driving impairment and cannabis is tenuous. This advertisement is placed by the NZ Government (according to the small print). Does this represent current government thinking on cannabis I wonder.

Personally, I found the advertisement disturbing to say the least and likely highly improbable.

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 - NZTA

Thank you for your email of 24 January 2018 in which you ask for the NZ Transport Agency's response to a complaint about our drug driving print advertisement which was published in the Canvas Magazine on 6 January 2018.

You have indicated that the concerns of the complainant fall under four sections of the Code of Ethics:

Code of Ethics – Basic Principle 4: Social Responsibility; Rule 11: Advocacy; and Rule 2: Truthful presentation

The NZ Transport Agency is funded to deliver advertising campaigns, on behalf of the sector, which positively influence desired user behaviour within the transport system to contribute to a reduction in road trauma. The programme is working towards the Government's Road Safety Strategy 2010 to 2020, *Safer Journeys*, which has a long term goal set out in its vision: *A safe road system increasingly free of death and serious injury.*

Drugged driving is a problem on NZ roads and is a high priority for road safety in *Safer Journeys*, which has a specific goal to "significantly reduce the incidence of alcohol and drug impaired driving".

The advertising campaign targets people who use cannabis regularly. It primarily focuses on guys in their early 30s who don't think of themselves as 'stoners' but they smoke regularly with their mates and then drive home. They don't consider this behaviour to be a road safety issue and are consequently very relaxed about driving stoned. The campaign deliberately aims to make our audience feel uncomfortable about driving under the influence of cannabis, and uses simple facts to grab their attention.

This specific advertisement is one of 3 print ads which focus on the issue of drugged-driving [see 3 ads attached]. None of the ads portray a specific view or opinion on driving while impaired, but simply present facts relating to drug-impaired driving, and all the sources can be found on our [website](#). The ads each portray a play on the tagline “Come down before you drive”, showing a vehicle having ‘come down’ and unexpectedly crashing.

The complaint specifically queries the fact that “one in four drivers who crash and die are affected by cannabis”. This particular statistic came from research carried out by [The Institute of Environmental Science and Research](#) from 1 July 2004 to 30 June 2009, which found that at least one-quarter of all drivers and motorcyclists killed in road crashes over that period were found to have cannabis present in their system; with or without other substances.

The Executive Summary of this research highlights the following:

Blood samples taken from 1,046 deceased drivers were analysed for the presence of drugs and alcohol. Based on the analyses carried out on these blood samples 546 (52%) deceased drivers were not impaired by alcohol or other drugs. 500 (48%) of the deceased drivers had alcohol or other drugs in their blood that may have impaired their ability to drive safely:

- 135 used alcohol alone (27% of the possibly impaired drivers)
- 96 used cannabis alone (19% of the possibly impaired drivers);
- 142 used a combination of alcohol and cannabis, but no other drug (28% of the possibly impaired drivers);
- 127 used some other combination of drugs, many including alcohol and/or cannabis (25% of possibly impaired drivers);
- Only 29 of the 500 drivers (6%) who had used a drug, had not used either cannabis or alcohol, and;
- 240 of the 500 possibly impaired drivers (48%) had used more than one potentially impairing drug.

“One in four” is made up of 96 who used cannabis alone; and 142 who used a combination of alcohol and cannabis, but no other drug. These figures alone show that 238 of the deceased drivers in the sample (23%) had cannabis in their system, however the “one in four” statistic also takes into account a proportion of the 127 who used some other combination of drugs, many including alcohol and/or cannabis.

Consequently “one in four” is a conservative estimate of those who crash and die and are affected by cannabis.

RESPONSE FROM MEDIA, NZME

We are writing on behalf of NZME (the media) in response to the above complaint regarding NZTA’s published advertisement in Canvas Magazine on 6 January.

This advertisement was designed and submitted on behalf of the client, but accepted by NZME Publishing for publication, as we do not believe it breached any of the codes.

The ASA identified Basic Principle 4, Rules 11 and 2 as potentially being breached: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

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).

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.

In respect of truthful presentation, the advertisement states: “one in four drivers who crash and die are affected by cannabis”.

We understand that the NZTA is able to substantiate this statistic by reference to independent research carried out by The Institute of Environmental Science and Research from 1 July 2004 to 30 June 2009 on behalf of the New Zealand Police.¹ We also understand that the NZTA has set out how it has calculated the “one in four” statistic in its response to the ASA.

We agree that the ad is deliberately challenging in respect of advocacy advertising. However, as above, the statistic is not presented as an opinion of NZTA. It has substantiated as fact. Additionally, the advertiser is clearly identifiable.

In terms of the ad being prepared with a due sense of social responsibility, we believe that the use of a compelling image, backed with a statistic which can be substantiated on sound independent research, is socially responsible in dissuading people from driving while under the influence of drugs. Previously, the ASA has found similarly compelling subject matter from the NZTA contained an important public safety message and therefore was unlikely to cause serious or widespread offence.

See 1

[http://www.moh.govt.nz/notebook/nbbooks.nsf/0/b59aa2bc86b36eacc257767007bbeef/\\$FI](http://www.moh.govt.nz/notebook/nbbooks.nsf/0/b59aa2bc86b36eacc257767007bbeef/$FI)

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.