

COMPLAINT NUMBER	17/420
APPEAL NUMBER	18/002
COMPLAINANT	K. Biggs
APPLICANT	K. Biggs
ADVERTISER	Goodman Fielder NZ Ltd
ADVERTISEMENT	Goodman Fielder Digital Marketing
DATE OF MEETING	21 February 2018
OUTCOME	Not Upheld, Appeal Dismissed

SUMMARY

The Complaints Board ruled the complaint from K. Biggs about a claim on the Goodman Fielder website was Not Upheld at its meeting on 12 December 2017. The Complainant appealed the Decision to the Chairperson of the Appeal Board who accepted to it be heard by the Appeal Board.

The Complainant said the Advertiser made claims about their animal welfare policies which were unsubstantiated.

The Appeal Board was satisfied with the level of substantiation provided in the Advertiser's response.

The Appeal Board said the advertisement was not likely to mislead or deceive consumers and had been prepared with a due sense of social responsibility. The Appeal Board ruled the advertisement was not in breach of Basic Principle 4 and Rule 2 of the Code of Ethics.

The Appeal Board ruled the complaint was Not Upheld and the appeal was Dismissed.

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

APPEAL BOARD DECISION

The Complaints Board ruled the complaint from K. Biggs about a claim on the Goodman Fielder website was Not Upheld at its meeting on 12 December 2017. The Complainant appealed the Decision to the Chairperson of the Appeal Board who accepted to it be heard by the Appeal Board.

The Chairperson ruled the appeal was Accepted under ground ground (v), it was in the interests of natural justice for it to be reheard. The complaint was to be placed before the Appeal Board for determination.

The Appeal Board confirmed its role was to consider the matter de novo that is, starting from the initial complaint and reviewing all subsequent correspondence, rulings, and submissions, considering the matter afresh.

The Chairperson directed the Appeal 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 was likely to mislead or deceive consumers by exaggerated claim, omission or ambiguity and whether the advertisement had been prepared with a due sense of social responsibility to consumers and society.

The Appeal Board ruled the complaint was Not Upheld and Dismissed the Appeal.

Appeal from Complainant, K. Biggs

The Complainant said the following claim on the Goodman Fielder website (www.goodmanfielder.com) was unable to be substantiated and misleading: “Goodman Fielder takes animal welfare seriously and supports the Dairy Industry and MPI in monitoring and enforcing Codes of Practice around the ethical treatment of all animals. While Goodman Fielder is not involved in the collection of milk from Dairy Farms directly, we require our suppliers to have appropriate programs in place. Our supplier management program conducts regular reviews of supplier compliance to these requirements and have confidence in the integrity of our milk supply.”

The Complainant was of the view the Complaints Board Decision was against the weight of evidence as the Advertiser, did not adequately address their complaint or substantiate the claim challenged, stating in part: “they are unwilling to provide an overview of this programme (no sensitive commercial secrets required), or even provide evidence that such a programme exists in any meaningful way.”

The Complainant also raised a concern, based on a statement in the Decision they had not been provided with all the information from the Advertiser regarding the measures taken by the Advertiser to assist in the monitoring and enforcing of Codes of Practice around the ethical treatment of animals.

Response from the Advertiser, Goodman Fielder

The Advertiser responded to the Complainant’s appeal that it had not provided adequate information to support the claim.

The Advertiser said it was “not in a position to provide more specific details of its supplier management program as they contain confidential and commercially sensitive information. Revealing this information would not only expose GF to commercial detriment but may also cause GF and its staff to breach confidentiality obligations owed by them throughout the GF supply chain.”

The Advertiser said it used a number of measures which demonstrate it takes ‘animal welfare seriously’, ‘supports the Dairy Industry and Ministry of Primary Industries in monitoring and enforcing Codes of Practice around the ethical treatment of all animals’, and ‘conducts regular reviews of supplier compliance as part of its supplier management program’. The Advertiser provided the following information to support the claim in relating to its role in animal welfare:

- “GF manages supplier compliance in a number of ways including through contractual controls, quality auditing, site inspections, official insurances and declarations, and business reviews. These measures provide GF with effective oversight and control of its suppliers to ensure that they have adequate animal welfare measures in place. GF also regularly reports on animal welfare issues at internal meetings, and discusses matters relating to animal welfare at our quarterly business reviews with suppliers.”
- “GF participates in a number of industry forums where animal welfare is addressed, including DCANZ, where it is a member and also has Board representation.”
- “GF has invested significant resources to enable it to monitor and enforce animal welfare throughout its supply chain. We maintain documented traceability systems to ensure transparency across our supplier network, which enables us to verify the claims that we make.”

The Advertiser said it was “not claiming that we physically monitor and enforce the Codes of Practice around the ethical treatment of all animals, as this is MPI’s role” and it would address any concerns raised by MPI.

Appeal Board Discussion

The Appeal Board carefully considered all the information provided to it. The Appeal Board said it was required to determine whether the claim before it was in breach of the Code of Ethics, considering the consumer takeout of the advertisement from the perspective of its likely audience.

The Appeal Board first discussed the issue raised by the Complainant that they had not been provided with all the information from the Advertiser. The Appeal Board confirmed that all the information which had been provided by all parties was contained in the Complaints Board Decision and the Advertiser had not supplied the Complaints Board with any other information.

The Appeal Board then considered the claim, subject to complaint, regarding the wording on the ‘Animal Welfare’ page of the Goodman Feilder website and said it was a low-level and generalised claim about the type of involvement and support the Advertiser had with the industry and regulators regarding animal welfare. The Appeal Board was of the view the summary of practices provided by the Advertiser in their written response supported the claim on the website, noting the assurances from the Advertiser that it manages supplier compliance in a number of ways, including through; contractual controls; quality auditing; site inspections; official insurances and declarations; business reviews; reports on animal welfare issues at internal meetings; quarterly business reviews with suppliers; participation in a number of industry forums and; investment in significant resources to enable it to monitor and enforce animal welfare and traceability systems.

The Appeal Board noted the Advertiser’s role was not enforcement, taking into account the role of Ministry for Primary Industries, a statutory body which, according to its website, “leads and facilitates the management of animal welfare policy and practice in New Zealand. MPI promotes policies for the humane treatment of animals and is an important participant in the ongoing animal welfare debate.”

Taking the above into account the Appeal Board said the Advertiser had substantiated the claim made on the website and it was unlikely to mislead the consumer. The Appeal Board ruled the advertisement was not in breach of Rule 2 or Basic Principle 4 of the Code of Ethics and ruled the complaint was Not Upheld.

Accordingly, the Appeal Board ruled the complaint was Not Upheld and the appeal was Dismissed.

Decision: Complaint **Not Upheld, Appeal Dismissed**

DESCRIPTION OF ADVERTISEMENT

The website advertisement for Goodman Fielder (www.goodmanfielder.com) states “Goodman Fielder takes animal welfare seriously and supports the Dairy Industry and MPI in monitoring and enforcing Codes of Practice around the ethical treatment of all animals. While Goodman Fielder is not involved in the collection of milk from Dairy Farms directly, we require our suppliers to have appropriate programs in place. Our supplier management program conducts regular reviews of supplier compliance to these requirements and have confidence in the integrity of our milk supply.”

COMPLAINT FROM K BIGGS

Unsubstantiated Claims of Animal Welfare Policies by Goodman Fielder.

I would like to bring your attention to what appears to be unsubstantiated claims by Goodman Fielder on their website, regarding their animal welfare policies.

<http://goodmanfielder.com/sustainability-environment/animal-welfare/>

In the attached screen snip, Goodman Fielder claims: “Goodman Fielder takes animal welfare seriously and supports the Dairy Industry and MPI in monitoring and enforcing Codes of Practice around the ethical treatment of all animals. While Goodman Fielder is not involved in the collection of milk from Dairy Farms directly, we require our suppliers to have appropriate programs in place. Our supplier management program conducts regular reviews of supplier compliance to these requirements, and has confidence in the integrity of our milk supply.”

I first emailed Goodman Fielder’s customer service, via their website, on 17/10/17 to ask the following questions about their supplier management program, as per attached screen snip of that email –

I received a reply which stated that my enquiry had been forwarded to the technical team. After three further emails to ask about progress on this, and promises from the customer service person to follow up with the technical team, I received a reply on 7/11/17, as per attached screen snip.

The evasiveness of the above response from Goodman Fielder, and the length of time it took to get it, seems to indicate that they do not have a supplier management program which conducts regular reviews of supplier compliance to the codes of practice around the ethical treatment of animals, in spite of their claims. They claim that their commitment and position is clear around animal welfare, as referred to on their website statement, however, to me it is only clear that they are making a broad claim to having animal welfare policies, but that these claims have no substance.

Goodman Fielder’s animal welfare statement on their website is intended to influence the choice, opinion or behaviour of those to whom it is addressed. However, despite multiple requests to do so, Goodman Fielder have failed to substantiate these claims. Therefore it is

probable that what Goodman Fielder considers taking “animal welfare seriously” may not align with what consumers consider animal welfare.

As no evidence regarding their animal welfare policy has been forthcoming, it is likely Goodman Fielder may be in breach of (but not limited to) the Advertising Code of Ethics Basic Principle 3:

No advertisement should be misleading or deceptive or likely to mislead or deceive the consumer.

And the Advertising Code of Ethics, Rule 2, which states:

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.

In particular:

1. Goodman Fielder state that they support the “the Dairy Industry and MPI in monitoring and enforcing Codes of Practice around the ethical treatment of all animals”, but have omitted the specifics of their claims regarding what support they offer, and how they implement this in Goodman Fielder’s supply chain.
2. Goodman Fielder state on their website that their “supplier management program conducts regular reviews of supplier compliance”, but have used ambiguous terms such as supplier compliance which give no information to the consumer regarding what constitutes ‘compliance’, or what is specifically being complied to.
3. Goodman Fielder state that it “conducts regular reviews” but have not substantiated what is meant by ‘regular’.

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 – GOODMAN FIELDER NZ LTD

Thank you for your letter dated 27 November 2017 regarding the complaint received from concerning Goodman Fielder New Zealand Limited’s (**GF**) website statements regarding animal welfare (**Complaint**). We understand that the Complaint relates to:

- the statement, *‘Goodman Fielder takes animal welfare seriously and supports the Dairy Industry and MPI in monitoring and enforcing Codes of Practice around the ethical treatment of all animals. While Goodman Fielder is not involved in the collection of milk from Dairy Farms directly, we require our suppliers to have appropriate programs in place. Our supplier management program conducts regular reviews of supplier compliance to these requirements, and has confidence in the integrity of our milk supply (Statement)* as used on GF’s corporate website; and

- perceived 'evasiveness' which the Complainant considers 'indicates that they do not have a supplier management program...'

GF is confident of the accuracy and appropriateness of the Claims. The Claims do not breach Principle 4 of the Code because they do not mislead or deceive consumers.

In summary:

- While Goodman Fielder is not involved in the collection of milk from Dairy Farms directly, we require our suppliers to have appropriate programs in place. Our supplier management program conducts regular reviews of supplier compliance and we have confidence in the integrity of our milk supply.
- GF requires flexibility in its program to address issues most relevant to each supplier. Program implementation can vary between contractual terms, quality auditing, official assurances and business reviews. That said, matters relating to animal welfare are on our quarterly business review agendas with suppliers.
- While we are disappointed to hear that the Complainant considers GF's response 'evasive', GF is not in a position to share these materials as they can contain commercially sensitive information.
- In addition, Goodman Fielder participates in a number of industry forums where animal welfare is addressed. Goodman Fielder is a DCANZ member, and is also represented on the DCANZ Board. Animal welfare in industry performance in animal welfare is monitored through this forum. The following link is a media release demonstrating this: <https://www.dcanz.com/news/media-release-dairy-industry-supports-change-in-animal-welfare-code/>
- The Statement on our website confirms GF's support for industry practice. This support is not physical, which is clear from the statement i.e. GF is not claiming that we physically monitor and enforce the Codes of Practice around the ethical treatment of all animals; this is MPI's role. GF is also alerted by MPI if there are any significant animal welfare breaches through the various forums we are engaged in.

GF takes this matter, and its compliance with applicable ASA codes seriously, however we do not consider that the Statement of GF's conduct breach Principle 4 of the Code as suggested by the Complaint for the reasons set out above.

GF invests substantial resources, and has in place robust internal review processes, in an effort to ensure that the advertisements for which it is responsible comply with all applicable ASA codes (including the Code for the Advertising of Food, trade practices legislation and Food Standards Australia and New Zealand Food Standards Code.

GF would be happy to further discuss any aspect of this response or provide further information. We otherwise trust that this information addresses any concerns that the Complaints Board may have.

APPEAL APPLICATION FROM COMPLAINANT, K. BIGGS

Complaint Number: 14/420 Complainant: K. Biggs Advertiser: Goodman Fielder Re: Appeal to Not Upheld decision for "Complaint About Unsubstantiated Claims of Animal Welfare Policies by Goodman Fielder"

Thank you for your letter received by email on 20th December 2017, in which you advised that the above complaint was not upheld.

Based on the evidence submitted by the advertiser, I believe that the essence of my complaint has not been addressed.

1) "The advertiser provided details of the measures it takes to assist in the monitoring and enforcing of Codes of Practice around the ethical treatment of animals." (excerpt from ASA's decision) I haven't been provided with any details of this. As far as I am aware, there has been no public disclosure.

2) "The Complaints Board said the substantiation provided by the Advertiser detailed the involvement it has in the monitoring and enforcement of animal welfare policies, including the regular reviews of supplier compliance with policies set by industry." (excerpt from ASA's decision)

My complaint didn't ask for details about how Goodman Fielder monitored and enforced animal welfare policies. It pointed out that Goodman Fielder claimed that it supported "the dairy industry and MPI in monitoring and enforcing Codes of Practice around the ethical treatment of all animals", but haven't provided specifics of what support they offer to the MPI, or how. This particular point is about Goodman Fielder's claimed support of MPI, not how they enforce animal welfare. I have seen no evidence to substantiate their claims of support.

3) "The Complaints Board noted that commercial sensitivities prevented the Advertiser from providing specifics about their supply management programme, and said it would not expect that level of detail to be disclosed." (excerpt from ASA's decision)

Please see a copy of my original questions below to Goodman Fielder:

a) Please explain how your 'Supplier Management Program' works, and who manages it.
b) How regular are the reviews of supplier compliance
c) How are the reviews conducted? I haven't asked for 'specifics' which might compromise their 'commercial sensitivities', just a general outline of what they do. I would expect that my questions can be answered in a way that substantiates Goodman Fielder's claims, without any need to divulge sensitive commercial information. I believe that I have only asked for an overview, not specifics that might be detrimental to their business if published, so am puzzled why Goodman Fielder shut me down in the abrupt manner they did, in reply to my original email to them: "As per our statement below (a reiteration of the claim on their website), our commitment and position on this policy are clear, and we have no further information to add at this time."

4) "The Advertiser clarified its monitoring involvement was not a physical enforcement role. The Complaints Board did not consider there was any implication on the website that the Advertiser was claiming to physically enforce animal welfare codes of practice" (excerpt from ASA's decision) Whether or not Goodman Fielder is physically involved in enforcement is immaterial to my questions. What is relevant is their claim to have a Supplier Management Program, because "Goodman Fielder takes animal welfare seriously" (excerpt from their statement on their website), and this claim remains unsubstantiated.

5) "In addition, Goodman Fielder participates in a number of industry forums where animal welfare is addressed. Goodman Fielder is a DCANZ member, and is also represented on the DCANZ Board. Animal welfare is an industry performance in animal welfare is monitored through this forum (my note: not quite sure what this sentence means). The following link is a media release demonstrating this: <https://www.dcanz.com/news/media->

release-dairy-industry-supports-change-in-animalwelfare-code/” (excerpt from Goodman Fielder’s response)

Once again, I was only asking for an overview on Goodman Fielder’s Supplier Management Programme, not how Goodman Fielder is involved with the DCANZ, which actually represents dairy farmers - and in fact raises the question of conflict of interest between businesses involved with the dairy industry and animal welfare. I know that the statement above is supposed to demonstrate Goodman Fielder’s commitment to animal welfare, but gives the appearance of a deflection away from the substance of my complaint, and does nothing to address it.

6) “Goodman Fielder requires flexibility in its program to address issues most relevant to each supplier. Program implementation can vary between contractual terms, quality auditing, official assurances and business reviews. That said, matters relating to animal welfare are on our quarterly business review agenda with suppliers” (excerpt from Goodman Fielder’s response). It is reasonable to expect that a publicly proclaimed policy would have consistency in its content and the nature of enforcement, and that any allowance for “flexibility” would still be contained in that policy. Once again, however, this response is immaterial to the substance of my complaint.

7) “While we are disappointed to hear that the Complainant considers GF’s response ‘evasive’, GF is not in a position to share these materials as they can contain commercially sensitive information” (excerpt from Goodman Fielder’s response) I didn’t ask for any commercially sensitive materials, only an overview of how Goodman Fielder’s ‘Supplier Management Program’ works. This request has not been met, and thus Goodman Fielder’s public claim regarding animal welfare remains unsubstantiated.

In summary, I submitted a complaint that while Goodman Fielder claim on their website that they take animal welfare seriously, and have a Supplier Management Program in place to support this, they are unwilling to provide an overview of this programme (no sensitive commercial secrets required), or even provide evidence that such a programme exists in any meaningful way. Goodman Fielder appear to have only provided vague statements that obfuscate more than clarify, and hide more than they reveal. I conclude that my complaint is still valid, in that Goodman Fielder’s evasiveness and failure to materially substantiate relevant claims indicate that they do NOT have an effective Supplier Management Program in place that conducts regular reviews of supplier compliance, otherwise they should be happy to publicly disclose this, in order to provide robust evidence of their corporate responsibility.

APPEAL RESPONSE FROM ADVERTISER, GOODMAN FIELDER

Thank you for your letter dated 25 January 2018 regarding an appeal application lodged with respect to Complaint 17/420 (**Complaint**) concerning Goodman Fielder New Zealand Limited’s (**GF**) website statements about animal welfare (**Statement**). We welcome the Appeal Board’s ruling to consider this Complaint de novo, and appreciate this opportunity to respond.

We understand that the Complaint Board’s ruling of Not Upheld was appealed on the basis that the Complainant considers the “essence of [their] complaint has not been addressed”.

GF remains confident of the accuracy and appropriateness of the Statement. The Statement does not breach Principle 4 of the Code because it does not mislead or deceive consumers.

In our response dated 4 December 2017 (**Response**), we provided information to confirm and verify the Statement, including detailing the measures that we take to monitor our suppliers' compliance with the Codes of Practice through our supplier management program.

In summary:

- GF's supplier management program is not a 'one-size fits all' program. GF requires flexibility in program implementation, which can vary depending on the nature of the goods and the supplier we are working with. GF manages supplier compliance in a number of ways including through contractual controls, quality auditing, site inspections, official insurances and declarations, and business reviews. These measures provide GF with effective oversight and control of its suppliers to ensure that they have adequate animal welfare measures in place. GF also regularly reports on animal welfare issues at internal meetings, and discusses matters relating to animal welfare at our quarterly business reviews with suppliers.
- GF participates in a number of industry forums where animal welfare is addressed, including DCANZ, where it is a member and also has Board representation.
- GF is not claiming that we physically monitor and enforce the Codes of Practice around the ethical treatment of all animals, as this is MPI's role. In the event that MPI uncovered any significant animal welfare breaches through the various forums we are engaged in, they would alert GF, and GF would take all necessary steps to address this.
- While we are disappointed to hear that after receiving our Response and the Complaint Board's Decision that the Complainant still considers that their concerns have not been addressed and that GF is attempting to evade their questions. However, as noted in our Response, GF is not in a position to provide more specific details of its supplier management program as they contain confidential and commercially sensitive information. Revealing this information would not only expose GF to commercial detriment, but may also cause GF and its staff to breach confidentiality obligations owed by them throughout the GF supply chain. We also understand that the Appeal Board is unable to consider information which is marked as "Confidential" as this material is usually extracted in its decisions, which are publicly available. As such, we are simply unable to divulge any further details.

GF continues to take this matter, and its compliance with applicable ASA codes seriously. However, for the reasons set out in this letter, and our Response, we do not consider that the GF's conduct breaches Principle 4 of the Code.

As evidenced above, GF has invested significant resources to enable it to monitor and enforce animal welfare throughout its supply chain. We maintain documented traceability systems to ensure transparency across our supplier network, which enables us to verify the claims that we make. GF also has in place robust internal review processes to ensure that any such claims comply with all applicable ASA codes prior to being published.

GF would be happy to further discuss any aspect of this response or provide further information. We otherwise trust that this information addresses any concerns that the Appeals Board may have.

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 was likely to mislead or deceive consumers by exaggerated claim, omission or ambiguity and whether the advertisement had been prepared with a due sense of social responsibility to consumers and society.

The Complaints Board ruled the complaint was Not Upheld

The Complaint

The Complainant said the Advertiser made claims about their animal welfare policies which were unsubstantiated.

The Advertiser's Response

The Advertiser provided details of the measures it takes to assist in the monitoring and enforcing of Codes of Practice around the ethical treatment of animals. These included supplier management programmes and participation in industry forums.

The Complaints Board Discussion

The Complaints Board began by confirming it considered the information featured on the Advertiser's website was an advertisement, given that it highlighted a point of difference with its commitment to animal welfare within its supply chain which gave the website a promotional intent.

The Complaints Board said the substantiation provided by the Advertiser detailed the involvement it has in the monitoring and enforcement of animal welfare policies, including the regular reviews of supplier compliance with policies set by the industry. The Advertiser confirmed that animal welfare issues featured in quarterly business review agendas with suppliers. The Advertiser also participated in a number of industry forums and is represented on the Dairy Companies Association of New Zealand (DCANZ) Board.

The Complaints Board noted that commercial sensitivities prevented the Advertiser from providing specifics about their supply management programme and said it would not expect that level of detail to be disclosed.

The Advertiser clarified its monitoring involvement was not a physical enforcement role. The Complaints Board did not consider there was any implication on the website that the Advertiser was claiming to physically enforce animal welfare codes of practice.

The Complaints Board was unanimous in its view the advertisement was not likely to mislead or deceive consumers and had been prepared with a due sense of social responsibility. The Complaints Board ruled the advertisement was not in breach of Basic Principle 4 and Rule 2 of the Code of Ethics.

Accordingly, the Complaints Board ruled to not uphold the complaint.

CHAIRPERSON'S RULING

The Chairperson viewed the application for appeal. She noted that there were five grounds upon which an appeal was able to proceed. These were listed at Clause 6(c) of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and were as follows:

- (i) The proper procedures have not been followed.
- (ii) There is new evidence of sufficient substance to affect the decision.
- (iii) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (iv) The decision is against the weight of evidence.
- (v) It is in the interests of natural justice that the matter be reheard.

The Chairperson noted that in the appeal application, the Complainant said the original questions raised in their complaint were not adequately addressed by the Advertiser or considered by the Complaints Board. The Complainant said, in part: “based on the evidence submitted by the advertiser, I believe that the essence of my complaint has not been addressed.”

After reviewing all the relevant correspondence, the Chairperson held that on balance the appeal application had met the threshold to establish grounds for appeal under ground (v) it was in the interests of natural justice that the matter be reheard..

Accordingly, the Chairperson ruled that the appeal application be accepted, parties be provided the opportunity to comment and the matter be referred to the Appeal Board to be considered de novo.

Chairperson’s Ruling: Appeal application **Accepted**
