

<b>COMPLAINT NUMBER</b>	18/087
<b>COMPLAINANT</b>	B Murie & 2 Duplicates
<b>ADVERTISER</b>	Foodstuffs
<b>ADVERTISEMENT</b>	Pak'nSave, Digital Marketing
<b>DATE OF MEETING</b>	10 April 2018
<b>OUTCOME</b>	Not Upheld

### **SUMMARY**

The advertisement on the PAK'nSAVE Facebook page featured entertainer William Wairua in an "Always Graze When You Liaise" video that parodied two women purchasing alcohol. It showed Wairua playing all the characters in the advertisement, including both women. The grocery assistant, also played by Wairua puts food into the women's trolley along with their alcohol.

Three Complainants were concerned the advertisement was sexist and transphobic and represented the trans community in an insulting and offensive way. One Complainant was also concerned the advertisement stereotyped women in a harmful way.

The Advertiser said the advertisement was part of a series which featured William Wairua to promote the message to eat while drinking. It said William Wairua impersonates multiple characters in each of the videos, which is a communication style that mirrors popular programmes such as The Topp Twins, Summer Heights High and the Catherine Tate Show. The Advertiser said the characters played by William Wairua in the videos are representations of two women shopping for a party. There is no suggestion that they are transgender people and it was designed to be entertaining to promote a message centred on responsible consumption of alcohol.

The majority of the Complaints Board, took into account the advertisement featured a social media personality who played all the characters, including the two women, that promoted a social responsibility message to eat while drinking. While it noted the offence the advertisement caused the Complainants, it said it was unlikely to cause serious or widespread offence to most people.

A minority disagreed and said the advertisement was likely to cause serious offence to transgender people and that community standards were shifting away from humorous depictions of people dressed as the opposite gender.

The Complaints Board was of the view the advertisement employed the stereotype of young women, with intended light-hearted humour, and, when taking into account the overall social responsibility message of the advertisement, it was unlikely to cause offence to most people.

In accordance with the majority the Complaints Board ruled the advertisement was not in breach of Basic Principles 3, 4 or 6 of the Code for People in Advertising or Basic Principle 4 or Rule 5 of the Code of Ethics and ruled the complaints were Not Upheld.

**[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 the complaints with reference to Basic Principle 4 and Rule 5 of the Code of Ethics and Basic Principle 3, Basic Principle 4 and Basic Principle 6 of the Code for People in Advertising.

Basic Principle 4 of the Code of Ethics required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society. Rule 5 required the Complaints Board to consider whether the advertisement contained 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).

Basic Principle 3 of the Code for People in Advertising required the Complaints Board to consider whether the advertisement portrayed people in a manner which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence on the grounds of their gender; race; colour; ethnic or national origin; age; cultural, religious, political or ethical belief; sexual orientation; marital status; family status; education; disability; occupational or employment status.

Basic Principle 4 of the Code for People in Advertising says that while stereotypes may be used to simplify the process of communication in relation to both the product offered and the intended consumer, advertisements should not use stereotypes in the portrayal of the role, character and behaviour of groups of people in society which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence, hostility, contempt, abuse or ridicule.

Basic Principle 6 of the Code for People in Advertising acknowledges that humour and satire are natural and accepted features of the relationship between individuals and groups within the community and humorous and satirical treatment of people and groups of people is acceptable, provided that, taking into account generally prevailing community standards, the portrayal is not likely to cause serious or widespread offence, hostility, contempt, abuse or ridicule.

### **The Complaints Board ruled the complaint was Not Upheld.**

#### **The Complaints**

B. Murie said the advertisement was sexist, transphobic and “perpetuates a ‘man in a dress’ comedy trope that is transphobic and harmful to members of the transgender community.” The Complainant was also concerned the advertisement “stereotypes women in a harmful way regarding negative body image.” B. Murie said the advertisement “needs to be removed and a clear message sent to the advertiser that this behaviour is not acceptable.”

S. Stephenson was concerned the advertisement was promoting PAK’nSAVE “at the expense of making fun of the trans community and is not promoting inclusivity and is insulting and transphobic.”

G. Comer-Hudson said the advertisement showed “two men with facial hair and muscular bodies are dressed in female activewear and wigs, caricaturing women preparing for a night of binge drinking” and “the trope of men dressed as women being funny is hate speech. It’s transphobic and as such is offensive and inappropriate.”

### **Response from the Advertiser PAK'nSAVE**

The Advertiser responded to the Complaints raised, explaining that Foodstuffs partnered with Cheers to create a campaign called 'Always Graze When You Liaise' which was designed to promote the responsible consumption of alcohol in New Zealand.

The Advertiser said eight videos were created to show a variety of social drinking situations such as after work, at the cricket, at a party or just generally socialising and all feature William Waiirua who is "eccentric in his communication style and as such the videos resonate with his social media followers and popular culture... William Waiirua impersonates multiple characters in each of the videos, which is a communication style that mirrors popular programmes such as The Topp Twins, Summer Heights High and the Catherine Tate Show. The range of characters that William Waiirua plays is wide and varied because we consider that the message of responsible drinking applies to all genders and members of society."

Addressing the Complainants concerns, the Advertiser said "the characters played by William Waiirua in the videos are representations of two women shopping for a party. There is no suggestion that they are transgender. The characters are played by William Waiirua with the same degree of eccentricity in line with his online identity... The videos are designed to be entertaining to promote a message centered on responsible consumption of alcohol. They are played in William's 'over the top' style which has following in popular culture. We believe that this content is humorous and satirical and permitted in accordance with Code for People in Advertising (Basic Principle 6)."

The Advertiser said "of the 1,600 comments on the video... less than 5% of these were negative (and included in this are multiple comments from the same people). The video also aired on William Waiirua's personal Instagram and Facebook pages and produced no negative comments out of 34,000 views."

### **Complaints Board Discussion**

The Complaints Board considered the likely consumer take-out of the advertisement and whether it was likely to cause serious or widespread offence to transgender people and people generally; whether the advertisement used stereotypes in a way that was reasonably likely to cause offence, hostility, contempt, abuse or ridicule and; whether the advertisement used humour or satire in a way that was offensive or was likely to cause hostility, contempt, abuse or ridicule.

The Complaints Board noted the advertisement showed the female characters discussing a previous social occasion and discussing the fat content of chips when a PAK'nSave grocery assistant puts food into their trolley. When they discover the unwanted food the women place it into another shopper's trolley. The Board noted that all of the characters in the advertisement were wearing wigs. The Complaints Board agreed the overall message of the advertisement was to "Graze When You Liaise" or eat when consuming alcohol.

### **Rule 5 of the Code of Ethics and Basic Principle 3 of the Code for People in Advertising – was the advertisement likely to cause serious or widespread offence to transgender people, or people generally?**

The majority of the Complaints Board said the advertisement was a parody of two women purchasing alcohol in preparation for a night where they would be consuming alcohol and provided a public safety message to eat when drinking.

The majority took into account the intended humour of the depiction and noted the video was part of a series that featured William Waiirua, a social media personality, playing multiple characters in all the videos, both male and female. The majority said it was unlikely that most

people would be offended by the advertisement as in its view, the depiction was similar to Billy T James and The Topp Twins dressing as the opposite sex for comedic effect, rather than as a comedic portrayal of a transgender person.

The majority noted the advertisement made no comment on the gender of the character, unlike previous Decisions (16/431 and 16/046) where the representation is clearly of a transgender woman and cisgender males are depicted recoiling in surprise in an offensive and transphobic manner. In the advertisement before it the Complaints Board was of the view that a man dressing as a woman for lighthearted comedic effect was not, in itself, enough to affect a breach of the Codes.

In consideration of the Complainants' concerns the advertisement was offensive and transphobic, the majority reviewed the context, target audience, product and social responsibility message of the advertisement. Taking into account the Advertiser's intent to humourously portray two women, it did not reach the threshold to breach Rule 5 of the Code of Ethics or Basic Principle 3 of the Code for People in Advertising. The majority said the advertisement had been prepared with a due sense of social responsibility to consumers and was not in breach of Basic Principle 4 of the Code of Ethics.

A minority disagreed. It said it was sympathetic to the Complainants' views and regardless of the Advertiser's intent to humourously portray women in the advertisement, the depiction was reasonably likely to cause serious offence to transgender people. The minority noted the role of the Complaints Board was to consider the advertisement against prevailing community standards and, in its view, the acceptability of harmful representations of transgender people, even unintentionally, was not acceptable.

The minority ruled the advertisement was in breach of Rule 5 of the Code of Ethics or Basic Principle 3 of the Code for People in Advertising. The minority said the advertisement had not been prepared with a due sense of social responsibility to consumers and society and was in breach of Basic Principle 4 of the Code of Ethics.

However, in accordance with the majority the Complaints Board ruled the complaint was Not Upheld against Basic Principle 4 and Rule 5 of the Code of Ethics or Basic Principle 3 of the Code for People in Advertising.

**Basic Principle 4 and Basic Principle 6 of the Code for People in Advertising – did the advertisement employ offensive stereotypes and was it saved by humour or use humour in a way that was offensive?**

The Complaints Board said the advertisement stereotyped women in that it showed them querying the fat content of chips, chewing gum and being indecisive. The Complaints Board said it was more likely that people would identify with the stereotype of women rather than transgender people.

The Complaints Board noted a concern of Complainant B. Murie was that the advertisement stereotyped women in a "harmful way regarding negative body image". The Complaints Board noted the advertisement showed the women judging the fat content of chips, however, taking into account the intended humour and hyperbolic nature of the advertisement, it did not go far enough to promote harmful representations of female bodies.

The Complaints Board said the stereotype employed in the advertisement of women at the supermarket was unlikely to cause serious or widespread offense and therefore, the Complaints Board ruled the advertisement was not in breach of Basic Principle 4 of the Code for People in Advertising.

The Complaints Board noted that humour and satire were acceptable parts of society, as long as it was unlikely to cause serious or widespread offence. The Complaints Board noted the serious offence the advertisement had caused the Complainants, however, when considering the intended humour of the advertisement and its social responsibility message, it did not reach the threshold to breach Basic Principle 6 of the Code for People in Advertising.

The Complaints Board ruled the complaint was Not Upheld against Basic Principle 4 or Basic Principle 6 of the Code for People in Advertising.

### **Summary**

The majority of the Complaints Board, took into account the advertisement featured a social media personality who played all the characters, including the two women, that promoted a social responsibility message to eat while drinking. While it noted the offence the advertisement caused the Complainants, it said it was unlikely to cause serious or widespread offence to most people.

A minority disagreed and said the advertisement was likely to cause serious offence to transgender people and that community standards were shifting away from humorous depictions of people dressed as the opposite gender.

The Complaints Board was of the view the advertisement employed the stereotype of women with intended light-hearted humour, and, when taking into account the overall social responsibility message of the advertisement, it was unlikely to cause offence to most people.

In accordance with the majority the Complaints Board ruled the advertisement was not in breach of Basic Principles 3, 4 or 6 of the Code for People in Advertising or Basic Principle 4 or Rule 5 of the Code of Ethics and ruled the complaints were Not Upheld.

## **DESCRIPTION OF ADVERTISEMENT**

The advertisement which appeared on the PAK'nSAVE Facebook page featured entertainer William Waiirua in a "Always Graze When You Liaise" video which parodied two younger woman purchasing alcohol. The video showed Waiirua dressed as all the characters in the advertisement, including both woman and was wearing a tank top, fluro skirt and wigs. The store clerk, also played by Waiirua is trying to sneak food into the women's trolley along with their alcohol.

### **COMPLAINT FROM B MURIE**

This advertisement is both sexist and transphobic.

It perpetuates a 'man in a dress' comedy trope that is transphobic and harmful to members of the transgender community.

It also stereotypes women in a harmful way regarding negative body image.

Many complaints have been made to Pak'nSave on the advert and ignored.

The human rights commission has publicly said this advert is discriminatory and hurtful. It needs to be removed and a clear message sent to the advertiser that this behaviour is not acceptable.

### **COMPLAINT FROM S STEPHENSON**

This advert is advertising its product at the expense of making fun of the trans community and is not promoting inclusivity and is insulting and transphobic.

## COMPLAINT FROM G COMER-HUDSON

Pak'n'save have posted a video advertisement on their Facebook page in which two men with facial hair and muscular bodies are dressed in female activewear and wigs, caricaturing women preparing for a night of binge drinking.

The trope of men dressed as women being funny is hate speech. it's transphobic and as such is offensive and inappropriate.

## CODE OF ETHICS

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

**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).

## CODE FOR PEOPLE IN ADVERTISING

**Basic Principle 3:** Advertisements should not portray people in a manner which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence on the grounds of their gender; race; colour; ethnic or national origin; age; cultural, religious, political or ethical belief; sexual orientation; marital status; family status; education; disability; occupational or employment status.

**Basic Principle 4:** Stereotypes may be used to simplify the process of communication in relation to both the product offered and the intended consumer. However, advertisements should not use stereotypes in the portrayal of the role, character and behaviour of groups of people in society which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence, hostility, contempt, abuse or ridicule.

**Basic Principle 6:** Humour and satire are natural and accepted features of the relationship between individuals and groups within the community. Humorous and satirical treatment of people and groups of people is acceptable, provided that, taking into account generally prevailing community standards, the portrayal is not likely to cause serious or widespread offence, hostility, contempt, abuse or ridicule.

## RESPONSE FROM ADVERTISER, FOODSTUFFS NZ

1. I refer to your letter to Foodstuffs North Island Limited (Foodstuffs) dated 20 March 2018. We are responding on behalf of Foodstuffs and Cheers (managed by The Tomorrow Project), a social change organisation designed to promote responsible drinking.
2. I note the advertisement in question was created by Foodstuffs, Cheers and William Waiirua.
3. Foodstuffs has partnered with Cheers to create a campaign called 'Always Graze When You Liaise' designed to promote the responsible consumption of alcohol in New Zealand.

4. As part of this campaign, we developed a series of videos which show social drinking situations such as after work, at the cricket, at a party or just generally socialising. We have engaged William Waiirua, a popular online personality to convey the message about responsible drinking through a series of fun and engaging videos centred around the catchphrase 'Always Graze When You Liaise'.
5. William Waiirua is a popular personality figure who is eccentric in his communication style and as such the videos resonate with his social media followers and popular culture. The ASA may refer to <https://www.facebook.com/william.waiirua/> and [https://www.instagram.com/w\\_cribb/](https://www.instagram.com/w_cribb/) to view William's online brand / identity.
6. The videos were shown on social media through the New World, PAK'nSAVE, Liquorland and Cheers Facebook pages and on William Waiirua's personal Instagram and Facebook pages.
7. William Waiirua impersonates multiple characters in each of the videos, which is a communication style that mirrors popular programmes such as Topp Twins, Summer Heights High and the Catherine Tate Show.
8. There are eight videos in this series with William Waiirua playing a cricket player, road worker, reporter, checkout operator, male member of the public and female member of the public (amongst others). William also appears in other videos on social media promoting responsible consumption of alcohol. Some include Dr Paul Quigley, the Head of the Emergency Department at Wellington Hospital giving advice on common 'grazing' habits and tips for better 'grazing'. The link for each of the main videos are as follows:  
<https://www.facebook.com/PAKnSAVE/videos/10156096226269380/>  
<https://www.facebook.com/PAKnSAVE/videos/10156167925704380/>  
<https://www.facebook.com/PAKnSAVE/videos/10156179155824380/>  
<https://www.facebook.com/PAKnSAVE/videos/10156188482684380/>  
<https://www.facebook.com/PAKnSAVE/videos/10156200274179380/>  
<https://www.facebook.com/PAKnSAVE/videos/10156209210884380/>  
<https://www.facebook.com/PAKnSAVE/videos/10156219770749380/>
9. The range of characters that William Waiirua plays is wide and varied because we consider that the message of responsible drinking applies to all genders and members of society.
10. The complainant asserts that advertisement is transphobic and is making fun of the trans community. The characters played by William Waiirua in the videos are representations of two women shopping for a party. There is no suggestion that they are transgender. The characters are played by William Waiirua with the same degree of eccentricity in line with his online identity.
11. The views on each video range from 29,000 to 127,000. Of the 1,600 comments on the video that is the subject of complaint, less than 5% of these were negative (and included in this are multiple comments from the same people). The video also aired on William Waiirua's personal Instagram and Facebook pages and produced no negative comments out of 34,000 views.
12. The videos are designed to be entertaining to promote a message centered on responsible consumption of alcohol. They are played in William's 'over the top' style which has following in popular culture. We believe that this content is humorous and satirical and permitted in accordance with Code for People in Advertising (Basic Principle 6).

13. For the reasons outlined above we do not believe Code of Ethics (Basic Principle 4 & Rule 5) or Code for People in Advertising (Basic Principle 3, Basic Principle 4 & Basic Principle 6) have been breached. In particular, given the numbers outlined in paragraph 11 (above) we do not believe that advertisements could be said to have caused "serious or widespread offence".
14. We have one more video in the similar style to run this week. At this stage we have decided not to show any more videos in which William Wairua plays a female character.
15. We have not been informed by the Human Rights Commission to remove this advertisement as alleged in the complaint by B. Murie. Comments from the Human Rights Commission have been attributed to an advisor to the Human Rights Commission speaking from his own personal opinion. We have not been advised by the Human Rights Commission on any aspect of this advertisement.

**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](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 days of receipt of this decision.