

COMPLAINT NUMBER	18/291
APPEAL NUMBER	18/018
COMPLAINANT	R Hawkes & others
APPLICANT	Fluoride Free NZ
ADVERTISER	Fluoride Free NZ
ADVERTISEMENT	Fluoride Free NZ Newspaper
DATE OF MEETING	29 November 2018
OUTCOME	Appeal Allowed, Complaint Not Upheld

SUMMARY

The Complaints Board ruled on 9 October 2018 the complaint made by R Hawkes & others about the newspaper advertising for Fluoride Free NZ was Upheld, in part.

The Advertiser appealed the Decision. The Chairperson considered that the Application raised sufficient grounds for the matter to be considered by the Appeal Board de novo.

The Appeal Board said the advertisement did not reach the threshold to be misleading as, in the context of an advocacy advertisement, some substantiation had been provided for the claims made.

The Appeal Board said the advertisement did not reach the threshold to unjustifiably play on fear and therefore was not socially irresponsible.

The Appeal Board ruled the advertisement was not in breach of Basic Principle 4 and Rules 2 and 6 of the Code of Ethics.

The Appeal was Allowed and the Complaint was Not Upheld.

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

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

APPEAL BOARD DECISION

The Complaints Board ruled on 9 October 2018 the complaint made by R Hawkes & others about the newspaper advertising for Fluoride Free NZ was Upheld, in part.

The Advertiser appealed the Decision. The Chairperson considered that the Application raised sufficient grounds for the matter to be considered by the Appeal Board de novo.

The Chairperson directed the Appeal Board to consider the advertisement with reference to Basic Principle 4 and Rules 2, 6 and 11 of the Code of Ethics.

Basic Principle 4 required the Appeal Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

Rule 6 required the Complaints Board to consider whether the advertisement exploited the superstitious, without justifiable reason, or played on fear.

The Appeal Board said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 11 of the Code of Ethics. The Appeal Board noted Rule 11 allowed for expression of opinion in advocacy advertising, provided that the expression of opinion is robust and clearly distinguishable from fact. 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 rights 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 Appeal Board confirmed the advertisement before it for adjudication was the newspaper advertisement for Fluoride Free NZ.

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

The Complaints Board Decision

The Complaints Board agreed the advertisement before it was clearly an advocacy advertisement against water fluoridation. It also noted the Advertiser was clearly identified as Fluoride Free New Zealand and therefore met the identification provision of Rule 11 of the Code of Ethics.

The Complaints Board agreed the advertisement was not likely to mislead as the Advertiser did provide a level of substantiation for the claims made, and, in the context of an advocacy advertisement, this was deemed sufficient.

The Complaints Board agreed the advertisement did unjustifiably play on fear because the combined effect of the photo of the child drinking a glass of water, along with the text, “Fluoride is a Neurotoxin that reduces Children’s IQ” created the impression that this is a likely outcome from drinking fluoridated water in New Zealand. This implication is not adequately supported by the substantiation provided by the Advertiser and the resulting effect was socially irresponsible.

The Complaints Board ruled the complaint was Upheld, in part.

Advertiser’s Appeal

In their Appeal the Advertiser said:

- 1) the ASCB has put itself in the position of an “arbiter of scientific fact”, which it may not do, by its own rules.
- 2) Having accepted that we have provided scientific research supporting the message in the advertisement to the extent that it is not misleading, it is self-contradictory, and therefore irrational, to say it unjustifiably plays on fear.
- 3) It is an error of fact to claim the advertisement “plays on fear” let alone unjustifiably so, as the science provided shows that it is an inevitable outcome for at least a significant proportion of the population. It is “*Wednesbury*” unreasonable to find that a simple, image with nothing compromising about it can transport this justified statement in fearmongering.
- 4) Further, the ASCB ruled that the likely take-out for the public was that children would be likely to suffer neurological harm from drinking fluoridated water. However, the ASCB also agree that the advertisement is obviously an advocacy position. Therefore, the likely take-out for the public is not that children *will* be neurologically harmed, but that it is Fluoride Free New Zealand’s *advocacy position* that children will be neurologically harmed by drinking fluoridated water. (This is aside from the point that the science shows that in fact children are likely to be harmed – point 4).
- 4(a) The advertisement is, in its structure, essentially identical to a Ministry of Health web page that forms part of the Ministry’s antismoking advocacy campaign, which no one would consider fearmongering.
- 5) The ASCB refers to two precedent rulings, both of which are shown to be wrong, in that the statements in those advertisements are now proven correct by the research provided in relation to the current complaint, and the research published since. It is therefore considering irrelevant matters.

Complainants responses to the Appeal

There were two responses from Complainants regarding this Appeal.

The first Complainant, D Eastham said:

- The Advertiser was pushing an agenda to take advantage of the population with little scientific understanding
- The Advertiser’s view is very one-sided and there is no evidence that the ‘International Experts’ will bring a balanced view of fluoride
- The advertisement uses imagery and “trigger” phrases that are deliberately provocative

- The Advertiser draws comparisons to the anti-smoking campaign run by the Ministry of Health. These comparisons are false because there are no widely-accepted benefits for smoking as there are for fluoridation
- The advertisement asks a question rather than makes a statement, however it is a very leading question

The second Complainant, J Hamilton, said:

- The evidence about fluoride and IQ needs to be in regard to relevant concentrations as found in New Zealand drinking water
- The ASA Complaints Board has not put itself in the position of “arbiter of scientific fact” and it has not rejected the scientific research provided by Fluoride Free NZ
- The scientific evidence provided by Fluoride Free NZ does not support the implied claim that children would be likely to suffer neurological harm from drinking fluoridated water
- The point of the advertisement is to generate fear
- The advertisement uses badly interpreted science and applies it incorrectly to mislead the public
- The Ministry of Health anti-smoking advocacy is backed up by relevant scientific research
- If Fluoride Free NZ can provide peer-reviewed evidence that consumption of fluoride concentrations found in New Zealand drinking water reduces children’s IQ then I would withdraw my complaint

Appeal Board Discussion

The Appeal Board carefully considered all the information provided by the Advertiser, the Complainants, the newspaper advertisement and the Complaints Board Decision.

Was the advertisement Advocacy Advertising?

The Appeal Board agreed with the Complaints Board decision the advertisement before it was clearly an advocacy advertisement against water fluoridation. It also agreed the Advertiser was clearly identified as Fluoride Free New Zealand and therefore met the identification provision of Rule 11 of the Code of Ethics.

Consumer Takeout

The Appeal Board agreed the consumer takeout of the advertisement was an invitation to hear a panel of international experts talk about how “Fluoride is a Neurotoxin that reduces Children’s IQ”.

Precedent

The Appeal Board referred to a precedent decision, 16/297, regarding a complaint about a television advertisement for Fluoride Free NZ, which was Not Upheld.

The advertisement consisted of a series of images and the voiceover of a man with a deep, authoritative voice. The images showed a factory with two tall, smoking chimneys, water being piped into glass containers, a beautiful lake in a mountainous area, a worker holding a large plastic container wearing protective clothing and water being poured into a drinking glass. The voiceover described how hydrofluorosilicic acid, commonly known as fluoride, is collected from the chimneys of the fertiliser industry and added to our drinking water. The voiceover also said this fluoride chemical is banned from being released into the air, sea, lakes and rivers because it is toxic to animals and the environment. The advertisement ended with the phrase “Find out the facts, visit FluorideFree.org.NZ”.

In its ruling the Complaints Board said “although some of the imagery could be seen to have encouraged a frightened response, the Advertiser had a justifiable reason in the circumstances. The Advertiser was conveying information about the water fluoridation process and expressing their personal view.”

Role of the ASA

The Appeal Board noted that it is not the role of the ASA to judge the science provided as substantiation for a particular point of view, nor is the ASA an arbiter of scientific analysis. The Appeal Board referred to the ASA Guidance Note on Advocacy which says:

“Evidence may be cited in support of the opinion, but it should be clear it supports an opinion rather than being the full factual position. Evidence in support of an opinion should be clearly cited and readily obtainable. Academic studies are often cited as evidence. Such studies are treated as expert opinion rather than the full factual situation...the Board will not determine which of competing academic studies or other evidence is correct. The Complaints Board’s only role is to determine whether there has been a breach of the ASA Codes taking into account the Advocacy Principles.”

Was the advertisement misleading?

The Appeal Board noted the Complaints Board ruled the advertisement was not misleading, but it did unjustifiably play on fear because the photo of the child drinking water, along with the text “Fluoride is a Neurotoxin that reduces Children’s IQ”, together created the impression that it is dangerous for children to drink water in New Zealand.

The Appeal Board agreed with the Complaints Board the advertisement did not meet the threshold to mislead consumers as the Advertiser provided some substantiation for the claims made, and, in the context of an advocacy advertisement, this was deemed sufficient.

Did the advertisement exploit the superstitious, without justifiable reason or play on fear?

The Appeal Board disagreed with the Complaints Board’s ruling on Rule 6 and said the advertisement did not quite meet the threshold to unjustifiably play on fear, although it came very close.

The Appeal Board gave greater emphasis to the context of the advertisement, a newspaper invitation to a public lecture explaining recent research on the risks of fluoride.

The Appeal Board said in this instance the Advertiser holds the view that “Fluoride is a Neurotoxin that reduces Children’s IQ” and, in the context of advocacy, the advertised talk was their opportunity to elaborate on this view. The initial statement in the advertisement was further clearly qualified by the sentence “International Experts share latest research linking fluoride to neurological damage and other harms”.

The Appeal Board noted the Complaints Board, on the other hand, had focussed more on the combined effect of the photo of the child drinking water, and the text: “Fluoride is a Neurotoxin that reduces Children’s IQ” which together created the impression that it is dangerous for children to drink water in New Zealand. The Complaints Board said this unjustifiably played on fear because this implication was not adequately supported by the substantiation provided by the Advertiser and the resulting effect was socially irresponsible.

Summary

The Appeal Board said the advertisement did not reach the threshold to be misleading as, in the context of an advocacy advertisement, some substantiation for the claims made had been provided.

The Appeal Board said the advertisement did not reach the threshold to unjustifiably play on fear and therefore it was not socially irresponsible.

The Appeal Board ruled the advertisement was not in breach of Basic Principle 4 and Rules 2 and 6 of the Code of Ethics.

The Appeal was Allowed and the Complaint was Not Upheld.

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

DESCRIPTION OF ADVERTISEMENT

The newspaper advertisement for Fluoride Free New Zealand showed a photo of a child drinking a glass of water with the heading “Fluoride is a Neurotoxin that Reduces Children’s IQ”. Below this photo was the heading “International Experts share latest research linking fluoride to neurological damage and other harms.” Details about three speakers and the venue for the talk were included. The website and Facebook addresses of the advertiser were also included, along with the Fluoride Free New Zealand logo.

APPEAL APPLICATION FROM THE ADVERTISER

We appeal the decision in part (without prejudice to our position as NZ’s expert body on fluoridation).

We do so on the basis that:

- 6) the ASCB has put itself in the position of an “arbiter of scientific fact”, which it may not do, by its own rules.
- 7) Having accepted that we have provided scientific research supporting the message in the advertisement to the extent that it is not misleading, it is self-contradictory, and therefore irrational, to say it unjustifiably plays on fear.
- 8) It is an error of fact to claim the advertisement “plays on fear” let alone unjustifiably so, as the science provided shows that it is an inevitable outcome for at least a significant proportion of the population. It is “*Wednesbury*” unreasonable to find that a simple, image with nothing compromising about it can transport this justified statement in fearmongering.
- 9) Further, the ASCB ruled that the likely take-out for the public was that children would be likely to suffer neurological harm from drinking fluoridated water. However, the ASCB also agree that the advertisement is obviously an advocacy position. Therefore, the likely take-out for the public is not that children *will* be neurologically harmed, but that it is Fluoride Free New Zealand’s *advocacy position* that children will be neurologically harmed by drinking fluoridated water. (This is aside from the point that the science shows that in fact children are likely to be harmed – point 4).
- 4(a) The advertisement is, in its structure, essentially identical to a Ministry of Health web page that forms part of the Ministry’s antismoking advocacy campaign, which no one would consider fearmongering.
- 10) The ASCB refers to two precedent rulings, both of which are shown to be wrong, in that the statements in those advertisements are now proven correct by the research provided in relation to the current complaint, and the research published since. It is therefore considering irrelevant matters.

We now provide discussion of each appeal point.

- 1) the ASCB has put itself in the position of an “arbiter of scientific fact”, which it may not do, by its own rules.

The Complaints Board agreed the advertisement did not meet the threshold to mislead consumers as the Advertiser did provide a level of substantiation for the claims made, and, in the context of an advocacy advertisement, this was deemed sufficient.

This is a gross downplaying of the evidence provided. As stated, the research was conducted under the auspices of the US National Institutes of Health, it was conducted by the world's leaders in the field of neurotoxicological research, and it was published in the most prestigious environmental health journal on the planet. To call this “a level of substantiation” is disingenuous to put it mildly.

- 2) Having accepted that we have provided scientific research supporting the message in the advertisement to the extent that it is not misleading, it is self-contradictory, and therefore irrational, to say it unjustifiably plays on fear.

Firstly, the phrase describing the level of substantiation as “within the context of an advocacy advertisement ... deemed sufficient” has 3 faults with it:

- 1> It shows the ASCB is putting itself in the position of an arbiter of scientific fact, which it may not do;
 - 2> The quality of research is far in excess of “a level of substantiation confined to the context of an advocacy advertisement”
 - 3> The phrase is moot in relation to the ground that was upheld in that this *is* an advocacy advertisement so the statement acknowledges that the substantiation is, *ipso facto*, sufficient for this advertisement. This makes the decision internally inconsistent and self-contradictory.
- 3) It is an error of fact to claim the advertisement “plays on fear” let alone unjustifiably so, as the science provided shows that it is an inevitable outcome for at least a significant proportion of the population. It is “*Wednesbury*” unreasonable to find that a simple, image with nothing compromising about it can transport this justified statement in fearmongering.

To “unjustifiably play on fear” means that the advertisement must in some deliberate way (the word “play” invokes *mens rea*) exaggerate the risks or deliberately cause substantively more concern than the facts justify. The ASCB claims that “[a child drinking fluoridated water in New Zealand has a likely outcome of lowering IQ from drinking fluoridated water is not adequately supported by the substantiation provided]” when in fact the scientific research provided shows it is an inevitable outcome for at least a significant proportion of the population.

We note that the Ministry of Health publishes advertisement that state “smoking causes lung cancer”, yet the fact is that only a percentage of smokers develop lung cancer. If such an advertisement is not in breach of the Code, neither can ours be, by logical necessity.

Further, having stated that babies are the likely victims of harm, which the ASCB has accepted is not in breach of the Code (as it is substantiated by high quality research) to simply show an innocuous picture of such a child cannot by any stretch of the imagination transport this justified statement in fearmongering. It is not just irrational, it is “*Wednesbury*” unreasonable. That is, no reasonable decision maker could conclude that showing a simple, harmless, uncompromised picture of a subject of a valid statement transports that valid statement into “fearmongering”.

Showing a simple innocuous picture of the subject of the advertisement is totally appropriate.

This is not just our view. We repeat below a candid opinion from a member of the public received when the recent news article about the decision was posted on our Facebook page. We acknowledge that the comment is somewhat derogatory of the ASCB. However, we have reproduced it unabridged simply to demonstrate the lack of credibility this decision holds with the public. Most importantly, it shows that the alleged fear the ASCB claims the flyer will inculcate does not exist – the ASCB simply got it wrong:

“So... it's okay to place an ad to report the science that proves increased fluoride intake from water is most harmful to fetus and young child's brain via developmental neurotoxicity, but not okay to show a picture of a child drinking water when water is the main source of that neurotoxic fluoride overdose to most NZ kids??? You gotta wonder if those Ad Standards people finished high school.”

We repeat that it is those who seek to suppress this scientific research and its vital implications for the health of New Zealanders, such as the complainants, who are being socially irresponsible.

Rule 6 states: **Fear** - Advertisements should not exploit the superstitious, nor without justifiable reason, play on fear.

The Complaints Board agreed the advertisement did unjustifiably play on fear because the combined effect of the photo of the child drinking a glass of water, along with the text, “Fluoride is a Neurotoxin that reduces Children’s IQ” created the impression that this is a likely outcome from drinking fluoridated water in New Zealand. This implication is not adequately supported by the substantiation provided by the Advertiser and the resulting effect was socially irresponsible.

As stated, the research submitted and accepted by the ASCB establishes it is not just likely, it is inevitable. The ASCB appears to have simply not understood the consequence of this research.

4) *Further, the ASCB ruled that the likely take-out for the public was that children would be likely to suffer neurological harm from drinking fluoridated water. However, the ASCB also agree that the advertisement is obviously an advocacy position. Therefore, the likely take-out for the public is not that children will be neurologically harmed, but that it is Fluoride Free New Zealand's advocacy position that children will be neurologically harmed by drinking fluoridated water.*

This reflects our argument seemingly accepted by the ASCB in not upholding the complaint of misrepresentation. The public take-out, as stated then, will be that this is our advocacy position and that the information to be provided at the lecture will support that position. Simply adding a picture of a child drinking a glass of water cannot rationally be seen to change that perspective.

4(a) Comparison with Ministry of health advocacy advertising on its website as part of its anti-smoking advocacy campaign.

We attach as Appendix 1 a Ministry of Health web page with a format essentially identical in principle to our advertisement. It is advocacy because it contains the phrase “*It is not too late to quit.*”, which, in the context, is clearly an admonition, not just a necessarily true and therefore redundant statement of fact.

The claims of harm to children are far more extreme and serious than our claim of an IQ loss of 5 or 6 points: it claims potential death!

It then shows a picture of two children with adults (presumably parents on the context) who potentially, according to the advertisement, could cause that child’s death or serious illness by smoking near the child.

Under its ruling on our advertisement, the ASCB would be obliged to rule that this picture makes the whole advertisement breach Rule 6 = unreasonably playing on fear.

The ASCB could so rule under *Cameron* of course, as it would not be substituting its opinion on a matter of fact for that of an expert body (aside from the fact that no Ministry can be an expert body for the purpose of *Cameron* protection as freedom from Ministerial influence is a requirement.)

But to avoid that argument, suppose that the advertisement was placed by a private anti-smoking lobby group, and even that the parents were both smoking.

Would the ASCB rule it was fearmongering? And would anyone in this country not laugh at such a ridiculous ruling? The Facebook message referenced above answers the latter question. As for the former question, I do not believe for one moment that it would. But the point is, it would be obliged to if it were to be consistent with ruling 18291.

We include a tabular comparison of the two advertisements below:

	FFNZ anti fluoride advert	MoH antismoking advert
Heading	Fluoride is a neurotoxin that reduces children's IQ	Smoking kills Risks to children
Claimed adverse effect	International experts share latest research that links fluoride to neurological damage and other harms	Smoking dramatically increases the risk of cot death (sudden unexpected death in infancy) for infants; Smoking around children increases their risk of serious infections (lists effects)
Message supported by science	Yes (ruled not misrepresenting fact)	Yes
Picture	Child drinking glass of water	Two children playing with adults (presumed by context to be their parents)
Link with message	Subject of advertisement	Subject of advertisement
Nature of picture	Innocuous, innocent, not scary	Innocuous, innocent, not scary
ASCB ruling	Inclusion of picture constitutes unreasonably playing on fear	By precedent, would have to rule the same if complaint made

5) *The ASCB refers to two precedent rulings, both of which are shown to be wrong, in that the statements in those advertisements are now proven correct by the research provided in relation to the current complaint, and the research published since. It is therefore considering irrelevant matters.*

Decision 14460 concerned an advertisement on the Fluoride Free New Zealand website which stated, in part: "Informed Doctors and Dentists say: KEEP FLUORIDE OUT. Keep Rotorua's water safe. It's our right to choose. Swallowing Fluoride is unsafe for babies, doesn't protect teeth and can cause harm."

The Complaints Board said the claim that trusted authorities say swallowing fluoride is "unsafe for babies" and "can cause harm" played on fear, particularly in the case of parents. It said that as no substantiation was provided to support the claims, the advertisement was likely to mislead and played on fear unjustifiably.

Decision 15503 concerned three newspaper advertisements for Fluoride Free New Zealand that cautioned readers about the health concerns that arise from an excess of fluoride.

The Complaints Board acknowledged there was growing body of evidence that challenged the benefits and safety of water fluoridation. It said oppositional evidence in the context of an advocacy advertisement was often adequate evidence to substantiate contradictory claims.

Using these guidelines, the Complaints Board ruled the following parts of the advertisements were Upheld as they went beyond the latitude provided for under the rules of advocacy:

- "What will you choose toxic waste or toothpaste." Upheld
- "Study signals water fluoridation increases hormone disorder." Upheld

15503

"What will you choose toxic waste or toothpaste?"

It is an undeniable fact that fluoride used in water fluoridation is toxic waste. The advertisement asks a question; it does not make a statement. The ASCB's ruling is therefore clearly wrong.

"Study signals water fluoridation increases hormone disorder"

First, the word "signals" shows this was not an absolute statement.

Second. The thyroid study quoted, "Fluoride exposure and thyroid function among adults living in Canada: Effect modification by iodine status"¹, now establishes to the balance of probabilities that the statement was correct. Consequently, the ASCB's ruling was again wrong.

The ASCB is therefore basing this decision on former decisions that are demonstrably wrong. In doing so it is considering irrelevant matters. This renders its decision *ultra vires*.

¹ *Environment International*, Volume 121, Part 1, December 2018, Pages 667-674

Appendix 1: Ministry of Health anti-smoking advocacy web page

<https://www.health.govt.nz/your-health/healthy-living/addictions/smoking/health-effects-smoking>

accessed 2/11/18

Smoking kills

Half of all long-term smokers will die from a smoking-related disease.

Around 5000 people die each year in New Zealand because of smoking or second-hand smoke exposure. That's 13 people a day. **It is not too late to quit.**

How smoking affects your body

Every cigarette you smoke is harming nearly every organ and system in your body. More than 60 of the chemicals in cigarette smoke can cause cancer.

Your lungs: Cigarette smoke damages the tiny hairs (cilia) that help clean your lungs. Without these hairs, toxins from cigarette smoke remain in the lungs, and can move to other organs via the bloodstream. Your lungs are also coated in tar. Smoking is the cause of over 80 percent of lung cancer in New Zealand.

Your skin: Smokers tend to get wrinkles sooner than non-smokers. This may be because smoking reduces blood flow and may damage tissue (elastin and collagen).

Your blood: Many of the chemicals in tobacco smoke end up in your bloodstream, and can travel throughout your body.

Carbon monoxide robs your muscles, brain and body of oxygen. Every cigarette you smoke temporarily increases your heart rate and blood pressure, and narrows the small blood vessels under your skin. It slows your blood flow, reducing oxygen to your feet and hands. Your fingers and toes become colder.

– Tobacco kills, Quitline

Your mouth: Smoking causes gum disease, oral cancer, loss of taste, stained teeth, mouth sores and bad breath. Visit [Smoking and oral health](#) for more information.

Risks to children

Kids who have a parent who smokes are seven times more likely to become smokers.



- Smoking around children increases their risk of serious infections that affect breathing, such as:
 - croup
 - bronchitis
 - pneumonia.
- They're also more likely to catch coughs, colds or wheezes.
- **Smoking dramatically increases the risk of cot death (sudden unexpected death in infancy) for infants.** (emphasis added by FFNZ)
- Smoking increases the risk of your children contracting glue ear and other middle ear infections.
- Smoking increases the risk of your children getting meningococcal disease.

Fact: About 15,000 asthma attacks in children under 16 are caused by second-hand smoke in New Zealand every year.

CODES OF PRACTICE

CODE OF ETHICS

Basic Principle 4: 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).

Fear - Advertisements should not exploit the superstitious, nor without justifiable reason, play on fear.

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 TO THE APPEAL APPLICATION FROM THE COMPLAINANTS

RESPONSE FROM D EASTHAM

Happy to provide my comments as an initial complainant who has the benefit of a scientific education and involvement with a cross-section of NZ society;

The Advertiser has appealed the decision on the basis of 5 key points. These points are fair in some, but in others based on petty word-play and spelling errors, and as such should not be considered to carry weight.

My initial complaint focused on the clear bias of the Advertiser in pushing an agenda, which in my opinion, would take advantage of the population with little prior scientific understanding with deliberately emotive & evocative statements and images.

From a robust scientific point of view, any evidence brought forward and promoted by a clear advocacy group such as the Advertiser would be treated with caution. However, any balanced scientific education should include a balanced review of the literature to date, including both the advantages & disadvantages of the subject matter. Therefore I would argue that there is no evidence in the advertisement that the "International Experts" will bring a balanced view of fluoride to the discussion.

If no balanced view of fluoride is being presented, then only one side of the debate is being put forward, and given the name of the Advertiser, it is reasonable to assume that it is in the negative for fluoridation. Were the title to read something similar to "International Experts debate latest research on the health risks of fluoride vs the social benefit for low income households" then I would have never felt the need to lodge a complaint regarding the advert. The use of imagery with vulnerable individuals like a small child performing innocuous tasks such as drinking a glass of water is a perfectly acceptable advert. There is no denying however, that making this image in black & white, and accompanying it with 'trigger' phrases like "neurological damage" "other harms" "Experts" is deliberately provocative. The psychology of black and white advertising is well understood, and has been extensively researched. If the Advertiser feels that their Experts and product is proved beyond any possible bias, then a much warmer, less intimidating image of children could have been used without any fear of a loss in attendance numbers. Make no mistake, this image & coloring choice was very deliberate.

In their appeal, the advertiser also draws numerous comparisons to the anti-smoking campaign run by the MoH. In my opinion, this comparison is completely false. There are no widely-accepted health benefits for smoking, as there is for fluoridation of water supplies. This is scientific fact, and as such this argument should bear no weight.

The final point of the appeal mentions other examples where subsequent research proved a statement correct. The Advertiser's argument in its appeal is somewhat thin in my opinion; they are correct in that the advert asked a question rather than making a statement. It is however, a very leading leading when matched with the imagery used. Ethical principle and robust scientific procedure dictates that leading questions and the use of psychological principles to sway an answer or response is not appropriate.

Assessment against these standards is relevant, given that the advertiser has clearly suggested (but carefully not actually stated) that they intend to use scientific data and scientists to convey their message.

Lastly, the use of one very specific comment from a Facebook post simply serves to underline the target market of such an event, and as such, I would compare tactics such as this anti-fluoride advert to those of the anti-vaccination campaign, or at a stretch perhaps, even that of

the anti-1080 propaganda - both of which used research and opinions of "International Experts" to promote their agenda.

RESPONSE FROM J HAMILTON

I am surprised that this is going to appeal.

The evidence about fluoride and IQ needs to be in regard to relevant concentrations as found in NZ drinking water.

The ruling was not that the picture was Fearmongering or scaremongering in and of it's self but that the included image implies that the text applies to the context of the image. Giving an overall implied message that Children's IQ would be affected by dinking NZ fluoridated water. This is the message that is misleading and Fearmongering.

Point one is untrue

"the ASCB has put itself in the position of an "arbiter of scientific fact", which it may not do, by its own rules."

The ASCB has not put itself in this position. It has not rejected the known scientific research provided by Fluoride Free NZ.

This evidence does not support the implied claim that children would be likely to suffer neurological harm from drinking fluoridated water.

Point two is a distraction, The original complaints and the ASCB finding were not about the explicit claims but the implied emotive claim hat children would be likely to suffer neurological harm from drinking fluoridated water.

Point three is a boldfaced lie. The point of this advertisement is to generate an emotional response to get audience engagement. The emotion targeted here is fear.

Point four is more distraction. The advertisement implies a public health claim to target a fear response getting audience engagement in an attempt to advertise talk for Fluoride Free NZ. My complaint is not that this talk is happening or even that it is advertised my complaint has always been about the implied claim about drinking water and how this is misinformation using badly interpreted science and applying it incorrectly to mislead the public.

Point five. Again the implied claim about drinking water is not backed by scientific evidence as the concentration is significantly less.

About the comparison to Ministry of Health anti-smoking advocacy.

First definition:

Fearmongering or scaremongering is the spreading of frightening and exaggerated rumours of an impending danger or the habit or tactic of purposely and needlessly arousing public fear about an issue.

While the anti-smoking media represents the impending danger and may arouse public fear, these claims are backed by relevant scientific research. It therefor is not exaggerated rumour.

If Fluoride Free NZ can provide repeatable peer reviewed evidence that consumption of fluoride concentrations found in NZ drinking water reduces Children's IQ then I would withdraw my complaint.

SUMMARY OF COMPLAINTS BOARD RULING

The newspaper advertisement for Fluoride Free New Zealand showed a photo of a child drinking a glass of water with the heading “Fluoride is a Neurotoxin that Reduces Children’s IQ”. Below this photo was the heading “International Experts share latest research linking fluoride to neurological damage and other harms.” Details about three speakers and the venue for the talk were included. The website and Facebook addresses of the advertiser were also included, along with the Fluoride Free New Zealand logo.

The ASA received seven complaints about the newspaper advertisement for Fluoride Free New Zealand. The Complainants raised concerns the advertisement was misleading because it exaggerated the neurological effects of fluoride on children and used fear to spread a counter-scientific message that fluoride is dangerous to children.

The Advertiser said the purpose of the advertisement was to encourage people to attend a presentation given by world experts on fluoride about the neurological harm caused by fluoride, especially to children. The Advertiser said they also felt a social responsibility to advise the general public that fluoride has been found to be a neurotoxin, according to recent scientific research.

The Complaints Board agreed the advertisement before it was clearly an advocacy advertisement against water fluoridation. It also noted the Advertiser was clearly identified as Fluoride Free New Zealand and therefore met the identification provision of Rule 11 of the Code of Ethics.

The Complaints Board agreed the advertisement was not likely to mislead as the Advertiser did provide a level of substantiation for the claims made, and, in the context of an advocacy advertisement, this was deemed sufficient.

The Complaints Board agreed the advertisement did unjustifiably play on fear because the combined effect of the photo of the child drinking a glass of water, along with the text, “Fluoride is a Neurotoxin that reduces Children’s IQ” created the impression that this is a likely outcome from drinking fluoridated water in New Zealand. This implication is not adequately supported by the substantiation provided by the Advertiser and the resulting effect was socially irresponsible.

The Complaints Board ruled the complaint was Upheld, in part.