

<b>COMPLAINT NUMBER</b>	19/276
<b>COMPLAINANT</b>	S Paurini
<b>ADVERTISER</b>	New Zealand AIDS Foundation
<b>ADVERTISEMENT</b>	Out of Home Poster
<b>DATE OF MEETING</b>	27 August 2019
<b>OUTCOME</b>	Upheld Advertisement to be Removed

### **Description of Advertisement**

The billboard for the New Zealand AIDS Foundation shows a photo of a man with his bare chest exposed, his hand on his side and his eyes almost shut. The main text says “I bring condoms. You bring lube. What’s your rule?” Above this, in smaller text is the URL “rulesofafuckbuddy.com” with the word “fuck” partially obscured. Next to this is a logo for “Ending HIV”.

### **Summary of the Complaint**

The Complainant was concerned the advertisement was promoting condom use and safe sex in a deliberately provocative and “vulgar” way.

### **Issues Raised**

- Social Responsibility
- Decency and Offensiveness
- Truthful Presentation
- Advocacy Advertising

### **Summary of the Advertiser’s Response**

The Advertiser said the content of the advertisement was entirely relevant to the message and the target audience. The Advertiser acknowledged the recent ruling about ensuring the “Ending HIV” brand is more prominent on advertising. The Advertiser said this advertisement had already been produced at the time that ruling was made.

### **Summary of the Complaints Board Decision**

The Complaints Board upheld a complaint about a New Zealand AIDS Foundation billboard advertisement because it included the URL “rulesofafuckbuddy.com” with the word “fuck” partially obscured.

## Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

### ADVERTISING STANDARDS CODE

**Principle 1: Social Responsibility:** Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

**Rule 1(c): Decency and Offensiveness:** Advertisements must not contain anything that is indecent, or exploitative or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt abuse or ridicule.

**Principle 2: Truthful Presentation:** Advertisements must be truthful, balanced and not misleading.

**Rule 2(e): Advocacy Advertising:** Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

### Relevant precedent decisions

In considering this complaint the Complaints Board referred to a recent precedent decision, Decision 19/235, which was Upheld.

The full version of this decision can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

**Decision 19/235** concerned the same billboard advertisement for the New Zealand AIDS Foundation, but in a different location. The Complaints Board said the identity of the Advertiser was not sufficiently clear for it to qualify as an advocacy advertisement, and therefore a more liberal interpretation of Rule 2 (e) of the Advertising Standards Code was not possible. The Complaints Board said the advertisement was likely to cause serious or widespread offence, particularly given the placement of the advertisement on a billboard at a set of traffic lights near a motorway off-ramp.

### Complaints Board Discussion

#### *Consumer Takeout*

The majority of the Complaints Board agreed the likely consumer takeout of the billboard advertisement is that it is a safe sex message. A minority said it could be an advertisement for condoms or lubricant.

#### *Does the advertisement fit the definition of an advocacy advertisement?*

The Complaints Board agreed that while the advertisement was presenting a public health message about safe sex, it did not fit the definition of an advocacy advertisement. This is because it did not meet all the requirements of Rule 2(e) of the Advertising Standards Code and, in particular, the rule that the identity and position of the advertiser must be clear.

The Advocacy Principles developed by the Complaints Board in previous decisions considered under Rule 11 of the Code of Ethics remain relevant. They state:

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 Complaints Board noted the advertisement had used the "Ending HIV" logo, together with the URL "rulesofafuckbuddy.com". The Complaints Board said the clarity of the URL used by the Advertiser was problematic once the swear word 'fuck' was obscured and this made the URL difficult to comprehend in the billboard medium. The Complaints Board also agreed the Ending HIV logo was small and not immediately obvious. The Board said there was no mention of the name of the Advertiser.

The Complaints Board said the identity of the Advertiser was not sufficiently clear to allow for a more liberal interpretation of the Rule 2(e) of the Advertising Standards Code, which may otherwise have been available under the Advocacy Principles.

*Is the advertisement offensive?*

The Complaints Board said the advertisement was likely to cause serious or widespread offence. This is because of the use of the word "fuck" in the URL "rulesofafuckbuddy.com", with the word "fuck" partially obscured. The use of the expletive in the URL and its subsequent editing to try and reduce offence then created an identification issue.

The Complaints Board said the placement of the advertisement was also relevant. The advertisement was located on a billboard in a side street in the Wellington CBD. Although there are some gay bars in the CBD there is also a significant number of pedestrians, of all ages. This means the adult message in the advertisement could reach an unrestricted audience.

*Is the advertisement misleading?*

The Complaints Board agreed Principle 2: Truthful Presentation was not relevant as the complaint was not about whether the advertisement was misleading.

*Is the advertisement socially responsible?*

The Complaints Board said the content and placement of the outdoor advertisement was not socially responsible, taking into account context, medium, audience and product and was in breach of Principle 1 and Rules 1(c) and 2(e) of the Advertising Standards Code.

The Complaints Board acknowledged the importance of the public health message the Advertiser was promoting. However, it said that the use of provocative images and

language in an unrestricted medium meant an increased risk of offence to an untargeted audience.

**Outcome**

The Complaints Board ruled the complaint was **Upheld**.

Advertisement to be removed.

**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.

## APPENDICES

1. Complaint
  2. Response from Advertiser
  3. Response from Media
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### Appendix 1

#### COMPLAINT FROM S PAURINI

The "Rules of a fuck buddy" campaign.

The billboards are posted in the central Wellington area CBD.

[ *deleted...* ] Issues related to sexual behavior, desire, sexual innuendo and pornography are personal and should not be promoted in the central City spaces where the general public gather regularly. Most concerning is the deliberately provocative (vulgar) way this kind of coercive marketing is situated in the city.

People with children and toddlers have to walk past it. There is no need to promote condom use/sexual deviance in such a vulgar and immature way. If the promotion of safe sex was straight forward and educative rather than blatant and arrogant (arguably encouraging the opposite of safe sex) there would be no complaint for me to make. I believe that NZAF uses this kind of advertising to promote its 'brand'. The billboards promote a superficial stereotype that has no educative value at all.

### Appendix 2

#### RESPONSE FROM ADVERTISER, NEW ZEALAND AIDS FOUNDATION

I am writing in response to your letter dated 5 August 2019 regarding **Complaint 19/276**.

Our response is in relation to each of the relevant sections of the Advertising Codes of Practice:

#### **Principle 1 - All advertisements should be prepared with a due sense of social responsibility to consumers and to society.**

The New Zealand AIDS Foundation (NZAF) developed this advertisement as part of our community-focused HIV prevention programme, *Ending HIV*. Gay, bisexual and other men who have sex with men are overwhelmingly the group most at risk of acquiring HIV in New Zealand and continue to be significantly over-represented in annual HIV diagnoses, with 79% of locally-acquired HIV transmission in 2018 occurring among this group.

This advertisement is a billboard with an image of a man's face, pictured entirely from the mid-chest up. The copy on the ad says "I bring condoms. You bring lube." It also shows the URL "rulesofafuckbuddy.com" with the word 'fuck' obscured, and the Ending HIV logo.

The message to use a form of protection during sex with casual partners is an integral component of the programme. We aim to increase rates of condom use among this high-risk group to reduce HIV infection and subsequently reduce onward transmission. This is in line with the consensus statement on comprehensive HIV prevention in New Zealand, and NZAF's Strategic Plan.

In a series of surveys of gay/bi men run by NZAF across 2016-2018, we found that of the men who said their main sexual partner was a fuckbuddy (around 30% when averaged across surveys), the top reason for not using condoms was "I trust my partner about their status".

This was extremely concerning. As it is very common to have more than one fuckbuddy, this means they or their partners are likely engaging in unprotected sex with multiple people. “Trusting their partners’ status” is therefore not an effective strategy, and we need to promote strategies that *are* effective, i.e. condoms and lube.

Under Ministry of Health guidelines, New Zealand enjoys a responsible, proactive and widely accessible approach to the sexual health of all New Zealanders. NZAF believes that the advertisement is socially responsible in that it positions HIV prevention as a “rule”, alongside other rules that people make with their casual partners. This advertisement has been prepared with a due sense of social responsibility to society. We believe that discussing these behaviours in a non-explicit and light-hearted way should be celebrated, not censored. This will ultimately increase the health and wellbeing of one of our most vulnerable communities, who continue to be proportionally disadvantaged in most health indicators in New Zealand.

**Principle 1. Rule 1 (c) Decency and Offensiveness Guidelines. Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule. Sexual language or imagery must be appropriate to the audience and medium.**

NZAF believes that it is generally socially acceptable to talk about sex and sexual health in the context of HIV and that this should not cause widespread offence.

The decision to place this advertisement in ‘mainstream’ mediums was based on two key considerations, the first being that gay, bisexual and other men who have sex with men live, work and socialise within the wider mainstream community; secondly, we know that most of these men cannot be reached through “gay” media alone. In 2016, NZAF commissioned research into the media consumption habits of our audience. Results showed that only 14% of gay and bisexual men read magazines or websites aimed at gay and bisexual men.

With further regard to the necessity for any sexual language or imagery needing to be appropriate to the audience and the medium of the advertisement - the placement on Christeson Lane in Wellington CBD was chosen due to its proximity to Cuba Street, a well-known area for gay men to congregate. Several gay bars are within 1km of this billboard, Ivy Bar & Cabaret is 200m away and S&M’s Cocktail Bar is 650m away.

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NZAF acknowledges that the advertisement may be confronting for some people and it is not uncommon for us to receive feedback about the resources we produce to improve the health and wellbeing of gay, bisexual, and other men who have sex with men. However, in the context of the message and desired outcome, we believe it is appropriate. Importantly, it is not gratuitous and has not used sexualised references simply to draw attention to an unrelated product – “condoms” and “lube” are very clearly stated on the billboard. The advertisement is entirely relevant to the message and the target audience.

The complainant’s phrasing, “NZAF have promoted the same sexual deviance stereotypes for at least 25 years. Issues related to sexual behaviour, desire, sexual innuendo and pornography are personal and should not be promoted in the central City spaces where the general public gather regularly”, suggests a personal grievance with NZAF as an organisation and a personal belief that public health messaging should not address specific communities with some of the very real and important issues they can encounter when it comes to sexual wellbeing. The suggestion that people should keep their sexual practices hidden and not receive the tools and information needed to navigate sexual encounters safely is exactly what NZAF has to combat in its social marketing objectives. As such the

imagery and messaging displayed here is, in NZAF's opinion, appropriate to the medium and intended audience

**Principle 2 – Advertisements must be truthful, balanced and not misleading.**

NZAF knows this advertisement to be truthful – years of research have proven that condoms and lubricant are a key way to prevent HIV (evidence can be seen in *Effectiveness of condoms in preventing sexually transmitted infections* and *Condom effectiveness for HIV prevention by consistency of use among men who have sex with men in the United States*). The prevention messaging of this campaign is balanced with community-submitted rules about their own fuck buddy relationships.

As mentioned, surveys showed that around 30% of respondents stated that their main sexual partner was a fuckbuddy – therefore, the usage of this term is also truthful and balanced, using the language that people are actually using in their encounters is an important part of maximising the acceptability of sexual health messaging and public health outcomes.

This street poster recognises the diversity of relationships other than the prevailing monogamous pairings, and this audience need to have targeted HIV prevention messaging that empowers them to make the best decisions for their health. [deleted...]

**Principle 2. Rule 2 (e) Advocacy Advertising – Advocacy advertising must clearly state the identity and position of the advertiser.**

*Ending HIV* is an evidence-based social marketing programme specifically for gay, bisexual and other men who have sex with men, to encourage prevention, testing and early treatment amongst those most at risk of HIV.

Promoting the use of condoms and lube for anal sex has proven to reduce HIV transmission in our community. This led to the development of this advertisement and is a central component of the *Ending HIV* programme. This advertisement is sex-positive and celebrates the normalcy of HIV prevention alongside other common rules associated with a casual partner.

NZAF has found a sex-positive, non-judgemental stance to be a successful strategy for engaging men in HIV prevention messages. We believe the advertisement to be an appropriate response to this challenge, and the way in which we engage with gay, bisexual and other men who have sex with men about their sexual health.

All *Ending HIV* promotional material, including the advertisement in question, are developed with this clear social marketing objective in mind.

We believe it is clear the message is intended for gay, bisexual and other men who have sex with men. We have made it clear that the advertiser is *Ending HIV* by including our logo within the advertisement, as well as clear sexual health information and links to *Ending HIV* in the website the ad encourages the viewer to visit.

We acknowledge the recent ruling about ensuring the *Ending HIV* brand is more prominent on advertising. This feedback has already been incorporated into all collateral developed since the ruling. However, this complaint relates to an advertisement that was already produced and completed before that ruling was made.

Please let me know if you or the Complaints Board require any additional information.

### Appendix 3

#### RESPONSE FROM MEDIA, SHOUT

When we received this campaign a couple of months ago the creative was far more risqué than what went live. We referred the client to ASA and discussions took place between the client and ASA. [deleted...]

The campaign has finished.

These were our standard poster size – 920mm x 1320mm. The booking was for 180 posters over 4 different bursts. The locations were only CBD, no suburban placements.