

COMPLAINT NUMBER	19/361
COMPLAINANT	P Belli
ADVERTISER	NZ Transport Agency
ADVERTISEMENT	NZ Transport Agency Television
DATE OF MEETING	30 September 2019
OUTCOME	No Grounds to Proceed

Advertisement: The television advertisement for the New Zealand Transport Agency (NZTA) shows several different men, all of different circumstances, drinking and driving, getting stopped by the Police and being found to have consumed excess alcohol. The advertisement ends with the text: “Drinking? Don’t Drive”.

The Chair ruled there were no grounds for the complaint to proceed.

Complainant, P Belli, said: The ad showed only men being stopped for drink driving. Are men the only ones in this country who drink drive? You’d think so if you saw this ad, very misleading!

The relevant provisions were Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2(b): Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be 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.

The Chair noted the Complainant’s concerns the advertisement was misleading because it suggests that men are the only ones in New Zealand who drink and drive.

The Chair confirmed the advertisement was advocacy advertising and noted the requirements of Rule 2(e) of the Advertising Standards Code. This Rule required the identity of the advertiser to be clear; opinion to be distinguished from factual information and factual information must be able to be substantiated. The Advocacy Principles developed by the Complaints Board in previous decisions considered under Rule 11 of the Code of Ethics remain relevant. They say:

- 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 Chair noted that according to information provided on the NZTA website this advertising has "purposely focused on a hard-to-reach, core group of young male drunk drivers, 20 – 29 years of age."

The Chair said although young males are not the only group that is found guilty of drink driving, in the context of an advocacy advertisement, it is reasonable for the Advertiser to decide to focus its campaign on this particular group, based on its own research.

The Chair said the advertisement was not in breach of Principle 2, Rule 2(b) or Rule 2(e) of the Advertising Standards Code.

The Chair ruled there were No Grounds for the Complaint to Proceed.

Chair's Ruling: Complaint No Grounds to Proceed

APPEAL INFORMATION

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