

COMPLAINT NUMBER	19/362
COMPLAINANT	M Colhoun on behalf of the NZ Dental Association
ADVERTISER	Fluoride Free NZ
ADVERTISEMENT	Fluoride Free NZ Print
DATE OF MEETING	30 September 2019
OUTCOME	No Grounds to Proceed

Advertisement: The newspaper advertisement for Fluoride Free NZ is headed “New Study Top Medical Journal Fluoridated Water Unsafe During Pregnancy”. The body of the advertisement contains information about various studies on the effects of fluoride intake. On the top right of the advertisement is the word “Advertisement”. Across the bottom is the Fluoride Free NZ logo and website address.

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

Complainant, M Colhoun, said:

Re Fluoride Free NZ Advertisement (various daily newspapers 2 September 2019)
 The New Zealand Dental Association (NZDA) is the professional association for New Zealand dentists. The NZDA has over 2800 members (98% of New Zealand's dentists). As well as providing services for its members, the NZDA is the one body able to speak on behalf of NZ dentistry as a whole.

The NZDA believes that there is a breach of the Advertising Standards Code 2018, specifically Rule 1 (g), (h) and Rule 2 (b).

Code:

Rule 1 (g) fear and distress states that advertisements must not cause fear or distress without justification

Rule 1 (h) relates to health and well-being stating advertisements must not undermine the health and well-being of individuals.

Rule 2 (b) regards truthful presentation that 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.

Description of issue:

Fluoride Free NZ (FFNZ) placed adverts in several New Zealand daily newspapers on 2 September 2019 (see attachment PDF FFNZ Advert NZ Herald 2 September 2019). There are also media reports of billboards at various locations around New Zealand.

Rule 1 (g)

Our view is this rule fear and distress is breached with use of a heading (capitals as used by advertiser) NEW STUDY TOP MEDICAL JOURNAL FLUORIDATED WATER UNSAFE DURING PREGNANCY. Fear and distress could be placed on pregnant women, including those seeking to become pregnant. There is no current New Zealand Government or Ministry of Health advice to suggest that fluoridated water is unsafe for consumption by pregnant women, as a result fear and distress of readers is a likely and predictable outcome of selecting this wording for the headline.

Rule 1 (h)

An instance of the advertiser undermining policies of the Government and the Ministry of Health. NZ government website Fluoride Facts states, "Community Water Fluoridation is an effective, safe and affordable way to prevent and reduce tooth decay for everyone."

Rule 2 (b)

Several specific claims in the advert are likely to mislead, deceive or confuse and exploit lack of knowledge, including by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation.

1) The claim that 97% of Europe is not fluoridated is one of omission, with readers left with the impression that fluoridation is not in use in Europe, when the reality is incorrect, as salt fluoridation is the most widely used approach in Europe. The claim refers to water fluoridation but is not sufficiently stated.

2) The subsequent claim is the quote "I would advise them to drink bottled or filtered water" opined the editor Dimitri Christakis JAMA Pediatrics, "the effect [of fluoride] is on par with lead"

Christakis had actually stated that "the effect size on a par with lead" in reference to causes of a drop of five IQ points by lead itself not to fluoride. The JAMA Pediatrics Editors' Summary podcast is clear on this. The quote from the advert is a false representation.

3) Another quote is "I think that this is a really concerning study" editor Dr Fred Rivera (sic) JAMA Network Online Journal.

Dr Frederick Rivara expressed concerns about the study, yet they were around confounding factors that were not taken into account, he mentioned that the IQ range observed was a humongous range he suspected the paper did not adequately include a "sensitivity analysis" and "unmeasured confounders". The JAMA Pediatrics Editors' Summary podcast audio is also clear on this, resulting in both quotes being an omission and false representation.

The relevant provisions were Advertising Standards Code - Principle 1, Principle 2, Rule 1(g), Rule 1(h), Rule 2(b) Rule 2 (e)

The Chair noted the Complainant's concerns the advertisement was misleading, causes fear without justification and undermines the health and well-being of individuals.

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 referred to a precedent, Decision 18291 Appeal 18018, which was ruled Not Upheld, Appeal Allowed. The complaint concerned a newspaper advertisement for Fluoride Free New Zealand which showed a photo of a child drinking a glass of water with the heading “Fluoride is a Neurotoxin that Reduces Children’s IQ”. 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 also said the advertisement did not reach the threshold to unjustifiably play on fear and therefore was not socially irresponsible.

Turning to the complaint before her the Chair said the precedent decision was directly relevant as the Advertiser was referring to recently published studies to support their views on the fluoridation of water debate.

The Chair noted that this is a current matter of public debate with media coverage about the studies referred to in the advertisement. The advertisement also contains the Advertiser’s logo and website address and makes its position in the debate clear.

The Advertiser has listed the studies in the advertisement that support the claims made and provided links to them. In the context of an advocacy advertisement, the content did not meet the threshold to be misleading or cause fear without justification.

Regarding the question of whether the advertisement undermines the health and well-being of individuals, the Chair said the Advertiser has a contrary view to the Complainant about what might cause the health and well-being of individuals to be undermined. Under Rule 2(e) the Advertiser has a right to express this view.

The Chair said the advertisement was not in breach of Principle 1, Principle 2, or Rules 1(g), 1(h), 2(b) or 2(e) of the Advertising Standards Code.

The Chair ruled the complaint had No Grounds 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.