

COMPLAINT NUMBER	19/410
COMPLAINANT	S Good
ADVERTISER	Family First
ADVERTISEMENT	Family First Digital Marketing
DATE OF MEETING	29 October 2019
OUTCOME	No Grounds to Proceed

Advertisement: A video advertisement on the Family First Facebook page titled “NZ Abortion Debate #1- Human Rights Explained” featured a woman explaining, in a deliberately ironic way, how fetuses “magically” become human beings at the moment of birth, and acquire human rights. The website address LoveThemBoth.nz is displayed at the end of the advertisement.

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

Complainant, S Good, said: This advertisement miss-represents the truth in legal and practical terms regarding when abortions take place. It is also targeted at people who find this content offensive, causing mental stress.

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

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 (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 and offensive and could cause mental stress.

The Chair said the advertisement before her fell into the category of 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 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 Chair said the Advertiser had met the identity requirements for an advocacy advertisement. The advertisement is located on the Family First New Zealand Facebook page. The video ends with a website address: LoveThemBoth.nz and "Family First New Zealand_Advertisement_Facebook".

Therefore, the Chair said the context, placement and content made the identity of the Advertiser clear.

Having established the advertisement was from Family First New Zealand, the Chair noted that political commentary within advertising was not only acceptable but encouraged, as it is an essential and desirable part of the functioning of a democratic society.

The Chair also observed that in a free and democratic society, differences of political opinion should be openly debated without undue hindrance or interference from authorities such as the Complaints Board, and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations. Therefore, the Chair considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

In considering the complaint, the Chair referred to precedent Decision 19/325, which concerned a Voice For Life advertisement about abortion reform and was ruled no grounds to proceed by the Chair of the Complaints Board.

That decision said in part:

“While she acknowledged the Complainant’s concern the wording in the advertisement was misleading, the Chair said the Complaints Board had consistently ruled that an opinion held by a political party, person or organisation was not misleading just because of a different emphasis on the interpretation of detail, even if it was contrary to that of the Complainant.”

Turning to the complaint before her, the Chair said the Advertiser is using a dramatic presentation of a baby exiting the birth canal with a view to getting the viewer to think about when they believe a foetus becomes a human being. The video uses an ironic tone in saying “Before the baby, or foetus, is born it is not a human being...” This statement is ironic because the Advertiser does not appear to believe this to be true but is making this statement to provoke the audience to ask questions relating to the abortion debate. The video does not state when the Advertiser believes this happens. The video does not refer to the stages of gestation when an abortion may take place.

The Chair said while the advertisement may cause distress to some people it does not reach the threshold to cause harm, or serious or widespread offence.

The Chair said the viewpoint represented in the advocacy environment does not meet the threshold to breach Principle 1, Rule 1(c), Principle 2 or Rule 2(b) of the Advertising Standards Code.

The Chair noted this was a matter of public interest which is currently being widely debated and covered by a range of media platforms.

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.