

COMPLAINT NUMBER	20/044
ADVERTISER	Vodafone
ADVERTISEMENT	Vodafone Out of Home
DATE OF MEETING	24 March 2020
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about an out of home advertisement at the Big Gay Out event for Vodafone, a sponsor, which said: “Go balls deep with Vodafone”. The Board said although the phrase has two meanings the meaning which applies directly to playing in the ball pit is the meaning that children at the event are more likely to take from the advertisement.

Description of Advertisement

The out of home advertisement for Vodafone was written on the outside of a ball pit it sponsored at the Big Gay Out. The advertisement said “Go balls deep with Vodafone”.

Summary of the Complaint

There were seven complaints about this advertisement. The Complainants were concerned the sexual innuendo in the advertisement was inappropriate for a play area likely to appeal to children.

Issues Raised:

- Social Responsibility
- Decency and Offensiveness

Summary of the Advertiser’s Response

The Advertiser defended the advertisement saying it was an advocacy advertisement, it was contextually appropriate at the Big Gay out and the ball pit was not targeted at children, it was for all ages. The Advertiser said the double entendre did not link to sex for audiences not already well familiar with the meaning linked to sex.

The event organiser, the NZ AIDS Foundation, also defended the advertisement. It said the ‘Ending HIV Big Gay Out’ is an opportunity to educate about the risks of HIV. The event needs to be fun and entertaining to encourage the target audience to attend.

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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 19/134 and 19/417, both of which were Not Upheld.

The full versions of decisions can be found on the ASA website:

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

Decision 19/134 concerned two advertisements for the OUTLine charity, a Spark sponsored video advertisement about Hunter, who transitions from female to male and a leaflet aimed at educating parents about gender and sexuality.

The Complaints Board agreed the advertisements met the criteria to be considered advocacy advertising and the identity of both the Advertisers was clear. The Complaints Board unanimously agreed the advertisements were not misleading and did not encourage a disregard for safety.

Decision 19/417 concerned a poster advertisement for a play at Circa Theatre called “Cock”. The poster was located on the Wellington waterfront and showed a photo of two men hugging and the word “Cock” in big red letters.

The Complaints Board said the advertisement did not reach the threshold to cause serious or widespread offence. The Board said the word “Cock” has several different meanings, some of which were relevant to the themes in the play.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was Vodafone supports the rainbow community and the Big Gay Out event and this includes sponsoring the ball pit. The phrase “Go balls deep” is a play on words as it has two meanings.

Audience

The Complaints Board noted the Big Gay Out was a family-friendly event, open to all ages. The Board said attendance at the event was up to the individual and given a theme of the event was “Ending HIV”, there were likely to be exhibits at the event relevant to this topic.

Is the advertisement advocacy advertising?

The Complaints Board said the advertisement did not fit the definition of an advocacy advertisement. The definition of Advocacy Advertising is as follows:

Advocacy advertising is often characterised by parties having differing views that are expressed in robust terms. This is especially so when there is proposed legislation or a referendum on an issue. Examples include abortion, fluoridation, immunisation and legalisation of marijuana. Government advertising on a range of health and safety initiatives are also likely to be advocacy advertising.

The Complaints Board said the phrase “Go balls deep” is not advocating an argument or a point of view, it is a humorous play on words which is part of an advertisement for Vodafone, a commercial company.

Is the advertisement offensive?

A majority of the Complaints Board said the advertisement did not reach the threshold to be likely to cause serious or widespread offence. This is because the phrase “Go balls deep” has two meanings. The meaning which applies directly to playing in the ball pit is the meaning that children are likely to take from the advertisement. The other meaning, encouraging deep sexual penetration, is not likely to be understood by children

The majority said although the event was open to all ages the audience at an event like the Big Gay Out would expect to see some material with sexual connotations, particularly given the main theme of the event “Ending HIV”. The Board noted there was mobile HIV testing and free condoms available at the event. The Advertiser said the vast majority of attendees were adults.

The majority referred to a precedent decision, 19/417, and said it was relevant to this complaint. The precedent concerned a poster advertisement for a play at Circa Theatre called “Cock”. The minority said that advertisement was located on the Wellington waterfront and was available to an unrestricted audience. The Complaints Board ruled the complaint was Not Upheld.

A minority disagreed. The minority said the Vodafone advertisement was likely to be offensive to certain groups in society due to the sexually explicit nature of the phrase “Go balls deep”. The minority said while some young people might not know what the phrase “Go balls deep” means they could easily discover the definition by doing a search on the internet. The minority said the advertisement was more suitable for a restricted audience, not for a family event.

In Summary

In accordance with the majority, the Complaints Board ruled the complaint was Not Upheld.

The Complaints Board said the advertisement was socially responsible, taking into account context, medium, audience and product and was not in breach of Principle 1 or Rule 1(c) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required

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 calendar days of receipt of this decision.

APPENDICES

1. **Complaint**
 2. **Response from Advertiser, Vodafone**
 3. **Response from Event Organiser, New Zealand AIDS Foundation**
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Appendix 1

COMPLAINTS

There were seven complaints about this advertisement:

Complaint 1

Children should not be connected in any way with sex. In this instance, it can be likened to grooming children. This may also constitute as an offence under the Crimes Act 1961. Basically it is distasteful. No sexuality should be expect with promoting sex outside of the bedroom.

Complaint 2

Making sexual references towards a children's play area at big gay out auckland

Complaint 3

The attached slogan was used to promote a children's play area at the 2020 Big Gay Out. The phrase "balls deep" is sexually explicit and highly inappropriate for children, regardless of whether or not they are familiar with the phrase.

I would ask that Vodafone and/or the ASA provide a definition (readily available on the internet) of the phrase in your response or ruling

Complaint 4

Vodafone used sexual references in a children's ball pit area. When I complained to them, they emailed back, "Any young children were supervised by parents/guardians and we believe it is unlikely that young children would know what it meant."
This is not good enough.

They do not know how many children understood their sexual reference. It is disgusting

Complaint 5

Go Balls Deep with Vodafone is a highly inappropriate slogan to display on a childrens ball pit area at the big gay out.

Homosexuality does not mean the sexualisation of our tamariki/children and this sort of thing cannot be let to slide as tounge in cheek.

Complaint 6

I want to make an official complaint about the inappropriate nature of the advertisement used by Vodafone at the Big Gay Out 2020 Festival being the a disgusting sexual slang term that was used in an adults and children's ball play pit.

The words "go balls deep" with Vodafone was an obvious play on sexual terminology which is completely unsuitable for children and gross sexualizing of children. Vodafone should stick to their job, telecommunications!

Complaint 7

The advertisement was seen printed on a ball pit at the Big Gay Out, which is promoted as a family-friendly event.

On a play structure which appeals to children, I find this choice of phrase distasteful, inappropriate and particularly harmful in that it normalises linking minors with sexual content.

Appendix 2

RESPONSE FROM ADVERTISER, VODAFONE

1. Thank you for your letter dated 25 February 2020 asking for our comments on the complaints you have received about Vodafone's "Go Balls Deep with Vodafone" headline, which was situated above our rainbow ball pit at the Big Gay Out on 9 February 2020 (the **Advertisement**).
2. For the reasons set out below, Vodafone does not consider that the Advertisement is in breach of Rule 1(c) of the Advertising Standards Code.

The Advertisement was contextually appropriate

3. The Big Gay Out has become NZ's largest annual gathering of the rainbow community, welcoming all gender identities and sexualities, their whānau and allies. The event was hosted by Ending HIV, a community-led prevention campaign established by the New Zealand AIDS Foundation, which specifically markets to men who have sex with men. This is the context in which the Advertisement was placed: an event where safe sex is spoken about openly.
4. As a corporate partner of the Big Gay Out, Vodafone's presence was in the Sponsor Zone, situated in between the "Big Gay Dance Party" area and the grassroots trust Main Stage. In other words, the Advertisement was very specifically targeted at the LGBTQIA+ community by its placement.

Target audience understood the message - that Vodafone is a proud supporter of the rainbow community

5. Vodafone is proud to be part of the rainbow community and participated in the Big Gay Out as part of our ongoing commitment to diversity and inclusion. Event attendees (the target audience) would have understood that Vodafone's use of double-entendre at the ball pit was a playful way of showing its support for the community.

No explicit link to sex for those not already familiar

6. There was no sexual imagery or overt sexual language in the Advertisement of any kind. The Advertisement contained a simple yet playful double-entendre, which did not explicitly link to sex for audiences not already well familiar with sex.
7. We refer the Board to its November 2019 decision in respect of a Peaches & Cream billboard for an adult toy (19/418) in which the Board took into account the fact there was no overt reference to sex in the advertisement and that the play on words in that advertisement was unlikely to resonate with younger viewers. The Board said "the advertisement was promoting an adult product in a manner which did not explicitly link it to sex for audiences not already familiar with its purpose". It's Vodafone's position that the Advertisement similarly contains no overt sexual reference.

The ball pit was not targeted at children.

8. The complaints you have supplied regarding the Advertisement incorrectly assume that Vodafone's Big Gay Out ball pit was a "children's play area" or otherwise targeted at children. We want to be clear that the Vodafone ball pit was for all Big Gay Out attendees; the vast majority of whom were adults. You will be able to see from the images we have previously supplied that the size of the ball pit was clearly designed with adults in mind (although it was open to all attendees).

The advocacy principles apply, enabling Vodafone to engage the audience with more robust messaging

9. Vodafone is a corporate sponsor of the Big Gay Out because it is a proud supporter of the rainbow community. The Advertisement is part of Vodafone's ongoing advocacy for diversity and inclusion.
10. As per the ASA's [Guidance Note on Advocacy Advertising](#), "the ASA has agreed, where advertising meets certain conditions, a more liberal interpretation of the Code is appropriate. This allows all sides to advocate their position – clearly identified – and avoid a technical interpretation of potential breaches."
11. For a more liberal interpretation of the Codes to apply, the following is required:
- (a) **The identity of the advertiser must be obvious and easily recognised.** It is abundantly clear the Advertisement is from Vodafone, a well-known New Zealand company.
 - (b) **It must be clear in the advertisement what view the advertiser advocates and ideally this should be clear in their identity.** It is clear from the Advertisement, viewed in context, that Vodafone supports diversity and inclusion and the LGBTQIA+ community. Vodafone makes this even more clear by changing its internationally-recognised logo to rainbow colours in the execution.

Whilst we appreciate that the Advertisement has upset a small number of complainants, we are not of the view that the Advertisement has caused serious or widespread offence. As a proud supporter of diversity and inclusion, Vodafone stands by the intent, and the execution, of the Advertisement.

Appendix 3

RESPONSE FROM NEW ZEALAND AIDS FOUNDATION

I am writing in response to your letter dated 25 February 2020 regarding **Complaint 20/044**.

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) is New Zealand's national HIV prevention and health services organisation. The work of NZAF includes HIV prevention, support for people living with HIV, science, and advocacy. NZAF delivers the annual Big Gay Out festival as part of our community-focused HIV prevention programme, *Ending HIV*. Gay, bisexual and other men who have sex with men (MSM) 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.

The 'Ending HIV Big Gay Out' (BGO) is the largest annual LGBTIQ+ (lesbian, gay, bisexual, transgender, intersex, queer) community event in New Zealand, and is part of the Auckland Pride Festival. It is the single largest opportunity for the New Zealand AIDS Foundation (NZAF) and other LGBTIQ+ organisations to create a safe and inclusive environment for our community to tackle marginalisation and fear, improving the health and well-being of a community that is over represented in all major societal and health inequalities. We also use the event to educate those at high-risk of HIV about combination HIV prevention tools.

People of sexual and gender minorities are also at significantly higher risk of suicide compared with other people living in New Zealand, due to experiences of living in a heteronormative world of social exclusion and discrimination. Non-targeted initiatives that aim to prevent suicide across the whole community are not likely to address LGBTIQ+ specific risk factors.

Having the generous participation of committed partners such as Vodafone is vital to the ongoing success and sustainability of this crucial event.

A key goal of the BGO is to create a safe and celebratory way to talk with MSM positively about safe sex, distribute condoms and test them for HIV and other STIs. Without fun and entertaining activations at the event, this audience simply wouldn't come. Our team of staff and volunteers were roaming the event all day with mobile HIV testing and free condoms. Having light-hearted activations that event-goers engage with is vital to us achieving our mission of ending new HIV transmissions in Aotearoa by 2025.

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 activation organised by Vodafone achieves our goal of providing sex-positive and inclusive spaces for all rainbow people. Thus, supporting NZAF to engage with this key audience on the day.

This advertisement has been prepared with a due sense of social responsibility to society. We believe that discussing sex 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 the sexual health of the rainbow community and that this should not cause widespread offence. Especially when done in the context of a festival for people of sexual and gender minorities that is advertised explicitly in this manner and is notified to all affected people as approved by the Auckland Council event permit.

The reach of the Vodafone activation was limited to the event itself and kept away from 'mainstream' mediums so not to cause offense in the wider community. The message "Go balls deep with Vodafone" was a pun that related to a ball pit activation for attendees at the BGO in which they were photographed falling into a ball pit. This would not have been explicitly tied to sexual behaviour by children at the event. The activation was not a "children's play area" that was sexualised by Vodafone as mentioned in a few the complaints, it was a custom-built activation that was erected by Vodafone. Nor did the activation relate in any way to sexual behaviour. There were no sexual images, iconography or other references to sex at this activation.

Regarding the necessity for any sexual language or imagery needing to be appropriate to the audience and the medium of the advertisement – we feel that the placement was entirely appropriate. We know that the use of pun and using language commonly used in our audience is an effective public health engagement strategy. NZAF uses this strategy in our own Ending HIV campaigns.

It is unclear whether any of the complaints were from people who attended the event and for whom it was intended. Our post-event survey only received positive feedback about Vodafone's presence at the event.

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