

COMPLAINT NUMBER	20/080
COMPLAINT ON BEHALF OF	Direct Action Everywhere New Zealand
ADVERTISER	Egg Producers Federation of New Zealand
ADVERTISEMENT	Egg Producers Federation of New Zealand website
DATE OF MEETING	7 April 2020
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about the website for the Egg Producers Federation of New Zealand. The Board said the information about the Code of Welfare for Layer Hens was not misleading.

Description of Advertisement

The website for the Egg Producers Federation of New Zealand included the following statements:

“The new Code of Welfare for Layer Hens reflects the latest knowledge in welfare science, recommending colonies, alongside barn and free-range farming, as a sustainable and welfare-friendly option for New Zealand egg farming “

“As part of the review and development process for the new Code, NAWAC scientifically evaluated colony cage systems as providing equivalent welfare to barn and free-range systems”

Summary of the Complaint

The Complainant was concerned the advertisement was misleading. In relation to each statement the Complainant said:

- The Code of Welfare for Layer Hens does not reflect the latest knowledge in welfare science.
- any claims either that the Codes of Welfare are about best welfare practice, or that EPF have any concerns over animal welfare are false and/or misleading.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser refuted both claims, and responded as follows:

- The Animal Welfare (Layer Hens) Code of Welfare 2012, updated in 2018, does indeed reflect the latest knowledge in welfare science.
- The NAWAC report reflects the unanimous views of the NAWAC panel, provides extensive evidence and includes references to peer-reviewed scientific papers. The NAWAC did scientifically evaluate colony systems in relation to other systems of production such as free-range and barn.

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 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.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the consumer takeout of the advertisement was the colony cage system is a sustainable option that looks after chicken welfare and is just as good as the free range and barn options.

Is the advertisement misleading?

The Complaints Board said the advertisement was not misleading. The Board said the Advertiser had provided sufficient substantiation to support both statements made on the website.

The Complaints Board noted the Animal Welfare (Layer Hens) Code of Welfare 2012, which was updated in 2018, does reflect recent knowledge in welfare science. The Board noted the following response from the Advertiser:

The Code of Welfare is drawn up by NAWAC, an independent, Government-appointed panel of leading New Zealand animal welfare experts in animal health and welfare including a New Zealand Veterinary Association representative and a representative of the SPCA...The EPF again draws the ASA's attention to the attached 27-page report (Animal Welfare (Layer Hens) Code of Welfare Report) produced by NAWAC to accompany the release of the Animal Welfare (Layer Hens) Code of Welfare 2012.

The report, which reflects the unanimous views of the NAWAC panel, provides extensive evidence, including references to peer-reviewed scientific papers, that NAWAC did indeed scientifically evaluate colony systems in relation to other systems of production such as free-range and barn.

The Complaints Board also noted the following excerpt from the NAWAC report: "In NAWAC's assessment the enriched colony cages provide equivalent or superior overall welfare when compared with these other systems." [Free-range and barn.]

The Complaints Board agreed the Advertiser was entitled to rely on statements in the report from an independent, Government-appointed panel of animal welfare experts in order to support its claims.

The Complaints Board said the advertisement was not misleading, taking into account context, medium, audience and product and was not in breach of Principle 2 or Rule 2(b) 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
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Appendix 1

COMPLAINT FROM DIRECT ACTION EVERYWHERE NEW ZEALAND

Name of Complainant: Direct Action Everywhere New Zealand (DxE NZ).

Name of Respondent: Egg Producers' Federation of New Zealand (EPF)

Nature of advertisement: Corporate website. <https://www.eggfarmers.org.nz/> and <https://www.eggfarmers.org.nz/egg-farming-in-nz/the-code-of-welfare-2012>

Nature of complaint: Breach of Rule 2 (b) of the Advertising Standards Code
Rule 2(b) of Advertising standards code

“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.”

The Egg Producers Federation have made claims about their commitment to animal welfare, and animal welfare standards that are misleading and/or untrue.

In particular, we refer to the following:

EPF CLAIM “The new Code of Welfare for Layer Hens reflects the latest knowledge in welfare science, recommending colonies, alongside barn and free-range farming, as a sustainable and welfare-friendly option for New Zealand egg farming “

DXENZ RESPONSE The code of Welfare for Layer Hens (2012) like all Codes of Welfare, does not reflect the latest knowledge in welfare science. It reflects a compromise position between genuine concern for the welfare of animals, and economic factors favouring the industry.

The principal act under which Codes of Welfare are set up is the New Zealand Animal Welfare Act (1999). This Act has exacting standards on how animals should be treated to ensure their physical and behavioural needs are met (Sections 4 and 10).

If the provisions of the Animal Welfare Act were properly adhered to, then no type of commercial animal farming would be allowed, since all of them involve some levels of suffering. This is particularly true of hens kept in cages. Welfare issues include osteoporosis, frustrations at behavioural deprivation, and skeletal abnormalities [1].

In order to allow commercial farming to continue, the Animal Welfare Act allows Codes of Welfare for certain husbandry practices that do not fully comply with the principal act for reasons of “practicality and economic impact”.

The EPF have used dirty tactics to pressure the Ministry responsible for Codes of Welfare, including threats of legal action on 4 June 2003[1]. DFENZ can provide this letter from the EPF solicitor if requested. At the time, the EPF were vehemently opposed even to a move from battery cages to the slightly less inhumane colony cages.

This means that the present Code of Welfare for Layer Hens is not only a compromise position, but one that was strongly influenced and impeded by the EPF. It is quite probable a phase out of both battery and colony cages would have been faster if the EPF had been genuinely concerned with animal welfare. The Regulations Review Committee determined that prolonging a phase out of battery cages went beyond the intent of the principal Act, stating that:

“We are of the view that the failure to specify what new practices are required and to set a time frame for the transition from current to new practices goes beyond what the Act envisages as exceptional circumstances. This is an unusual or unexpected use of powers under the Act. [2]”

In conclusion the Code of Welfare is not about best practice for animal welfare, but a compromise position, and one that was impeded by the EPF, and involved interpretations that the Regulations Review Committee determined were ultra vires the Animal Welfare Act.

EPF CLAIM “As part of the review and development process for the new Code, NAWAC scientifically evaluated colony cage systems as providing equivalent welfare to barn and free-range systems”

DXENZ RESPONSE The EPF link to the Code of Welfare for Layer Hens, and to NAWAC’s report explaining the changes they made to the 2012 Code of Welfare, which include phasing out barren battery cages for enriched and slightly more roomy ‘colony cages’.

In neither of these documents did NAWAC evaluate colony cage systems as providing equivalent welfare to barn and free-range systems. They did however state on p. 23 of the Code of Welfare that,

“Section 73(3) of the Animal Welfare Act 1999 provides that the National Animal Welfare Advisory Committee (NAWAC) may, in exceptional circumstances, recommend minimum standards that do not fully meet the obligations to ensure that the physical, health and behavioural needs of the animal are met. In making this recommendation NAWAC must have regard to, among other things, the feasibility and practicality of effecting a transition from current practices and any adverse effects that may result from such a transition, and the economic effects of any transition from current practices to new practices. NAWAC considers that the use of layer hen cages providing less than 750 sq cm per hen and no perches, discrete nesting areas or scratching surfaces, does not fully meet the obligations of the Act. Minimum Standards 12 (b), (c), and (d) provide for a transition from these cages to alternative ways of housing and managing layer hens – i.e. colony cages and barns”

NAWAC here is referring to battery cages that are still legally in place until 2022. NAWAC have acknowledged that these existing cages, which the EPF opposed getting rid of, do not provide for the physical, health and behavioural needs of hens.

The amendment report, also linked by EPF, failed to mention anything about colony cages having equivalent welfare outcomes to barn or free range systems. Most of it was discussion over the phase out dates for battery cages.

In conclusion therefore, any claims either that the Codes of Welfare are about best welfare practice, or that EPF have any concerns over animal welfare are false and/or misleading.

Relief sought:

Immediate removal and retraction of all offending statements, and any other statements or photographs that either state directly or imply that; The Codes of Welfare are promulgated to provide best welfare outcomes EPF have any commitment to animal welfare.

References:

[1] Morris, M.C. (2006) The ethics and politics of the layer hen debate in New Zealand. Journal of Agricultural and Environmental Ethics 19,495-514.

[2] Final report on complaint about Animal Welfare (Layer Hens) Code of Welfare 2005 Report of the Regulations Review Committee

Appendix 2

RESPONSE FROM ADVERTISER, EGG PRODUCERS FEDERATION OF NEW ZEALAND

Thank you for your letter of 10 March regarding the complaint received from Direct Action Everywhere [...]

We wish to defend this complaint. Our rebuttal of DxE's' two claims is as follows:

1.DxE CLAIM

The new Code of Welfare for Layer Hens does not reflect the latest knowledge in welfare science, recommending colonies, alongside barn and free-range farming, as a sustainable and welfare-friendly option for New Zealand egg farming.

EPF RESPONSE

The Animal Welfare (Layer Hens) Code of Welfare 2012, updated in 2018, does indeed reflect the latest knowledge in welfare science. The Code of Welfare is drawn up by NAWAC, an independent, Government-appointed panel of leading New Zealand animal welfare experts in animal health and welfare including a New Zealand Veterinary Association representative and a representative of the SPCA. NAWAC also draws up the Codes of Welfare governing the conditions of all farmed animals in New Zealand.

In the 27-page report (Animal Welfare (Layer Hens) Code of Welfare Report) accompanying the release of the Animal Welfare (Layer Hens) Code of Welfare 2012, the NAWAC panel specifically mentioned that the Colony system allows birds to express a range of natural behaviours including nesting, perching, scratching and spreading their wings. NAWAC's unanimous view was that the Colony system was the way forward in providing affordable eggs in volume along with good welfare for the birds. A copy of the NAWAC report is attached and is available on the website of the Ministry for Primary Industries, which administers the Codes of Welfare.

While the New Zealand egg industry does not set the rules relating to layer hen welfare, it is happy to follow the rulings of distinguished animal welfare experts and to adhere to their proposed standards.

2. DxE CLAIM

As part of the review and development process for the new Code, NAWAC did not scientifically evaluate colony cage systems as providing equivalent welfare to barn and free-range systems.

EPF RESPONSE

The EPF again draws the ASA's attention to the attached 27-page report (Animal Welfare (Layer Hens) Code of Welfare Report) produced by NAWAC to accompany the release of the Animal Welfare (Layer Hens) Code of Welfare 2012.

The report, which reflects the unanimous views of the NAWAC panel, provides extensive

evidence, including references to peer-reviewed scientific papers, that NAWAC did indeed scientifically evaluate colony systems in relation to other systems of production such as free-range and barn.

It should be noted in particular that on page 19 of the NAWAC report: "In NAWAC's assessment the enriched colony cages provide equivalent or superior overall welfare when compared with these other systems." [Free-range and barn.]

The EPF refutes both claims made by the Complainant.