

COMPLAINT NUMBER	20/077
APPEAL NUMBER	20/006
COMPLAINT ON BEHALF OF	Direct Action Everywhere New Zealand (DxE NZ)
ADVERTISER	Poultry Industry Association of New Zealand
APPLICANT	Direct Action Everywhere New Zealand (DxE NZ)
ADVERTISEMENT	Poultry Industry Association Website
DATE OF MEETING	16 April 2020
OUTCOME	Appeal Declined Complaint No Grounds to Proceed

SUMMARY

The Chair of the Complaints Board ruled on 4 March 2020 the complaint made by Direct Action Everywhere New Zealand (DxE NZ) about a website advertisement for the Poultry Association of New Zealand (PIANZ) had No Grounds to Proceed.

The Complainant appealed the decision. The Complainant identified the grounds on which to appeal the decision as the evidence provided had been misinterpreted to the extent that it affected the decision.

The appeal application was considered by the Chairperson of the Appeal Board. She noted the Complainant considered the advertisement was misleading to claim PIANZ have exacting standards with regard to animal welfare and that it works closely with MPI.

The Chairperson agreed with the decision made by the Chair of the Complaints Board. She said the advertisement was not misleading given the likely consumer takeout of the statements and the remit of the Advertising Standards Authority's jurisdiction.

The Chairperson said there were no grounds on which the appeal could proceed, and the application was declined.

Please note this headnote does not form part of the Decision.

CHAIRPERSON'S RULING

The Chairperson of the Appeal Board viewed the application for appeal. She noted there are five grounds upon which an appeal is able to proceed. These are listed at Clause 6.4 of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and are as follows:

- (a) The proper procedures have not been followed.
- (b) There is new evidence of sufficient substance to affect the decision.
- (c) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (d) The decision is against the weight of evidence.
- (e) It is in the interests of natural justice that the matter be reheard.

The Chairperson noted the Complainant had identified the grounds on which to appeal the decision as (c) The evidence provided had been misinterpreted to the extent that it affected the decision.

The Chairperson reviewed the complaint, the relevant website pages of the advertisement, the Chair's Ruling and the appeal application from the Complainant.

Has the evidence provided been misinterpreted to the extent that it affected the decision?

The Chairperson said the evidence provided had not been misinterpreted to the extent that it affected the decision. The Chairperson noted the Complainant considered the Chair had misinterpreted the nature of Animal Welfare Science and ignored the claim that PIANZ work closely with MPI. The Chairperson said in her view, the Complainant's appeal submission did not raise new issues, but rather restated the Complainant's initial position on the current welfare standards used within the poultry industry.

The Chairperson agreed with the Complaint Board Chair's assessment of the likely consumer takeout of the claim that PIANZ works with MPI and the Government-appointed bodies. She said that by meeting the welfare requirements, consumers could be confident the industry had a good level of compliance and co-operation with the national standards and any changes to them.

With regard to the misinterpretation of the nature of Animal Welfare Science, the Chairperson of the Appeal Board agreed with the Chair's assessment that, the Complainant raised issues regarding fundamental concerns based on perceived flaws in the overall welfare standards under which the poultry industry is held to account in New Zealand.

The Chairperson confirmed the Advertising Standards Authority's stance that it was not an arbiter of scientific fact nor was it within its jurisdiction to verify the efficacy of standards made by an independent expert body such as NAWAC (National Animal Welfare Advisory Committee).

Instead, its focus was to consider the likely consumer take out of an advertisement in the context of the requirements set out in the Advertising Codes.

The Chairperson agreed with the Decision made by the Chair of the Complaints Board. The Chairperson said that while the Complainant disagreed with the Decision, this was not a ground for appeal. The Chairperson ruled there were no grounds on which the appeal could proceed, and the application was declined.

Chairperson's Ruling: Appeal application Declined

APPENDICES

1. Complaint
 2. Description of Advertisement
 3. Chair of Complaints Board Decision
 4. Appeal Application
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Appendix 1

COMPLAINT

On behalf of Direct Action Everywhere New Zealand (DxE NZ): Nature of complaint:
Breach of Rule 2 (b) of the Advertising Standards Code

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

In particular, we refer to the following:

PIANZ CLAIM

<https://www.pianz.org.nz/who-we-are/>

“It ensures that producers meet exacting standards in animal welfare, stockmanship and food safety.”

DxENZ RESPONSE

The modern vertically integrated meat chicken industry is designed to breed chickens as fast as possible to make money. There is no consideration of animal welfare. The Cobb and Ross bird used in the New Zealand poultry industry is a genetic freak. It is bred to be top heavy and fast growing, so it can come to maturity in 6 weeks. The chickens slaughtered and brought to supermarket shelves are still immature. [1].

World wide studies by international animal welfare experts have shown that lameness is a problem for meat chickens. In Europe, typically anywhere from 3% to 30% of chickens are in pain from lameness for the last week of their lives [2].

In New Zealand, a government report found that the proportion of lame birds was even higher. Up to 38% of meat chickens suffered from lameness [3].

Other issues directly arising from the top heavy Cobb and Ross breeds are metabolic diseases, sudden death syndrome and skeletal disorders. This comes about because the birds' hearts cannot stand the strain. The fast growing birds are also continually hungry. The breeding stock are not fed sufficiently, to avoid them becoming too large. The massive birds also suffer a high level of broken bones when being slaughtered [4].

Since chicken welfare compromises are problems with genetics, they cannot be mitigated by giving the birds more space or by any other rearing conditions. “Organic” and “Free range” meat chickens use the same top-heavy and fast growing breeds. Their suffering is just as intense.

It is no wonder that Dr John Webster, ‘international animal welfare expert’ and professor of animal welfare at Bristol University, describes broiler chicken production as “in both magnitude

and severity, the single most severe, systematic example of man's inhumanity to another sentient animal. [5]"

Chickens in commercial systems such as those practised by companies affiliated with PIANZ have none of the The Five Freedoms. These Freedoms were promulgated by the 1979 UK Farm Animal Welfare Council following the publication of Ruth Harrison's Animal machines in 1964, an expose of factory farming. They therefore have regulatory status and are supposed to be adhered to under the Animal Welfare Act. The associated Codes of Welfare, including the Meat Chicken Code however often ignore these in favour of increasing production [6].

Birds in PIANZ factory farms are lame, hungry and overweight. They certainly do not have freedom from hunger and thirst; freedom from discomfort; freedom from pain injury and disease; or freedom from fear and distress.

Chickens also have no freedom to express normal patterns of behaviour. The Code of Welfare allows a stocking density of .38kg of birds per square metre. A six week old meat chicken weighs approximately 2kg, so around 19 of these are legally allowed to be crammed in a square metre. There is no way that sick, lame and overweight birds crammed together so tightly can express any normal behaviour. The Code of Welfare for Meat Chickens describes 'normal behaviour' for chicken as including "feeding, drinking, sleeping, preening, walking, scratching, ground pecking, leg stretching, and vocalising."

Chickens that are collapsed in agony on the floor of an ammonia-soaked barn, and getting hock burn as a result, can express none of these behaviours.

The Code of Welfare for meat chickens makes no mention of the suffering caused by choice of breeds, and it doesn't cover breeding stock. But even the Ministry of Primary Industries cannot ignore the effect that high stocking density has on ability of chickens to express normal behaviour, stating.

"Fully-housed production systems risk producing birds that are unable to develop and display normal behaviours. The industry needs to take steps to ensure these trends do not create future welfare problems that will be ethically unacceptable to New Zealanders."

In conclusion therefore, animal welfare standards for Mat Chickens do not comply with any of the Five Freedoms. They are not 'exacting' and should not be described as such.

PIANZ CLAIM

Photographs and text on

<https://www.pianz.org.nz/who-we-are/health-welfare/>

This site contain a photograph of a recently cleaned and restocked barn. As such, the birds are small and yet to show the crippling lameness characteristic of the larger birds.

The site states that

"Animal health, welfare and well-being are given the highest priority by our producers within the systems we use. Stockmanship – the knowledgeable and skilful handling of hens that provides protection, comfort and respect for their needs – is the first standard set out in every poultry industry Code of Welfare. Our animal welfare standards are in fact rated as amongst the best in the world.

PIANZ works closely with MPI and the Government-appointed, independent body NAWAC (National Animal Welfare Advisory Committee) to review and develop new or enhanced standards as updated science-based research becomes available. We also regularly review animal welfare practises in our industry."

DXENZ RESPONSE:

The photograph is misleading. By showing the chickens while they are still small and the litter is still fresh, it gives the impression that the chickens are not being kept in crowded ammonia-soaked sheds, where they collapse to the floor with lameness and undergo hock burn. The text is misleading or untrue. Animal health and welfare are NOT given priority by producers. If they were they would not be using top heavy unhealthy breeds. The priority is always profit. Stockmanship makes very little difference when the problem is genetics. The statement that New Zealand animal welfare standards are 'rated among the best in the world' is vague and meaningless, without knowing what organisation rated them and what criteria were used. In terms of lameness, which Professor John Webster describes as the "single most severe, systematic example of man's inhumanity to another sentient animal" [5], New Zealand animal welfare standards are actually lagging behind. Lameness rates are as high as 38%, compared to 3-30% in Europe [3].

The second claim, that PIANZ works closely with MPI is also misleading. PIANZ does indeed make submissions on the Codes of Welfare, and in fact industry bodies like PIANZ draft Codes of Welfare. A question of undue influence that has previously been commented on [6]. The drafts and the submissions are invariably tailored to favour the industry bottom line, and not designed to improve welfare. How can they be about welfare, as long as the Cobb and Ross top heavy breeds continue to be used?

Relief sought

Immediate removal and retraction of all offending statements, the offending photograph, and any other similar untrue or misleading statements or photographs on all advertising literature providing misleading implications that chickens and turkeys do not suffer in

References:

- [1] Morris, M.C. (2009). The ethics and politics of animal welfare in New Zealand. Broiler chicken production as a case study. *Journal of Agricultural and Environmental Ethics* 22, 15-30
- [2] Scientific Committee of Animal Health and Animal Welfare (SCAHAW). (2000). The welfare of chickens kept for meat production (broilers). Brussels: European Commission.
- Sanotra, G. S., Berg, C., & Lund, J. D. (2003). A comparison between leg problems in Danish and Swedish broiler production. *Animal Welfare*, 12, 677–683.
- [3] Bagshaw, C. S., Matthews, L. R., & Rogers, A. (2006). Key indicators of poultry welfare in New Zealand. Unpublished client report to MAF policy.
- [4] Weeks, C. A., & Butterworth, A. (2004). *Measuring and auditing broiler welfare*. Wallingford: CABI Publishing.
- [5] Webster, J. (2004). *Animal welfare: A cool eye towards Eden*. Oxford: Blackwell.
- [6] Morris, M.C. (2011). The use of animals in New Zealand: regulation and practice. *Society and Animals* 19, 366-380.

Appendix 2

DESCRIPTION OF ADVERTISEMENT

The Poultry Industry Association of New Zealand website (<https://www.pianz.org.nz/who-we-are/health-welfare/>) has a section on health and welfare. The section includes statements on "exacting standards in animal welfare" and information about the industry's working relationship with the Ministry of Primary Industries and the Government-appointed, independent body NAWAC (National Animal Welfare Advisory Committee) on animal welfare standards.

Appendix 3

CHAIR OF COMPLAINTS BOARD DECISION

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

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b)

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.

The Chair noted the Complainant's concerns the Poultry Industry Association (PIANZ) have made claims on its website about their commitment to animal welfare and poultry animal welfare standards that are misleading.

The Complainant referred to two statements from the website in their complaint. The first said "It ensures that producers meet exacting standards in animal welfare, stockmanship and food safety."

The second statement said "PIANZ works closely with MPI and the Government-appointed, independent body NAWAC (National Animal Welfare Advisory Committee) to review and develop new or enhanced standards as updated science-based research becomes available. We also regularly review animal welfare practises in our industry." It was accompanied by an image showing what the Complainant referred to as "a recently cleaned and restocked barn" which was also misleading.

In considering the likely consumer takeout of the first statement about exacting standards in animal welfare, the Chair said it expresses the industry's view of animal welfare programmes. The likely consumer takeout of the second statement was the industry worked with Government on welfare standards and these are reviewed regularly. The Chair said the image of the barn was one of a number on the site illustrating the poultry industry.

The Chair took into account the context of the advertisement, the website of the Poultry Industry Association of New Zealand. Along with the health and welfare section, it includes information on NZ turkeys, chickens and ducks, farm to table details and recipes.

The Chair noted the Complainant's concerns stemmed from what they considered flaws in the current animal welfare code. However, she said the statements by the Poultry Industry Association on what they consider to be exacting standards and their working relationship with Government did not meet the threshold to mislead or deceive consumers.

The Chair said the advertisement was not misleading and was not in breach of Principle 2 or Rule 2(b) 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**

Appendix 4

APPEAL APPLICATION FROM COMPLAINANT

The original complaint referred to claims made by the PIANZ concerning animal welfare. DxE NZ asserts that the advertisement is misleading because it misleads the consumer into thinking that poultry sold in New Zealand has high standards of animal welfare.

In its decision, the Advertising Standards Authority (ASA) maintain that the threshold for being misleading is not reached. They state that “it expresses the industry’s view of animal welfare programmes.” The ASA contrast this with what the complainant “considered” as flaws in the animal welfare code.

The grounds for seeking an appeal are that “Evidence provided to the Chairperson of the Complaints Board has been misinterpreted to the extent that it has affected the ruling”.

There are two instances where evidence has been misinterpreted.

1. Misinterpreting the nature of Animal Welfare Science

Animal welfare is a scientific discipline. While there is always some interpretation in establishing how someone else is feeling (the only person whose feelings I can claim to know absolutely are my own), the field of Animal Welfare Science uses rigorous and accepted scientific methodology to make strong assumptions on animal welfare. There are several peer reviewed publications on the science of animal welfare, and a number of books, by scientists established in the field, such as Dr John Webster, Dr Neil Broom, Dr Ian Duncan and Dr Joy Mench.

I have contributed myself to this field and the ethical implication of animal welfare in 8 peer reviewed publication in the *Journal of Agricultural and Environmental Ethics*, spanning a 20 year period.

The basis for modern Animal Welfare Science are the Five Freedoms, established by the Farm Animal Welfare Council of the United Kingdom. These are:

1. Freedom from hunger or thirst
2. Freedom from discomfort
3. Freedom from pain, injury or disease
4. Freedom to express normal behaviour
5. Freedom from fear and distress

These Five Freedoms are established in law under Sections 4 and 10 of the Animal Welfare Act. They set out the minimum standards that those keeping animals are required to adhere to. They also correspond to common sense ideas of consumers. Most lay people would assume, based on the argument from analogy, that anything that causes them to suffer (hunger, thirst, discomfort, pain, injury, disease, boredom, fear, distress) would also make animals miserable.

The ASA have therefore misinterpreted the evidence provided in the original complaint that PIANZ are not giving ‘priority’ to animal welfare.

In their ruling, the ASA have made it clear that they consider animal welfare to be a matter of interpretation. It is a matter of the industry’s ‘view’ and what DxE NZ ‘consider’ as flaws in the animal welfare code.

Animal welfare is not a matter of ‘views’ or ‘consideration’. It is a matter of the findings from science. It is also a legally mandated obligation to producers. As stated in the original

complaint, with references from the peer reviewed scientific literature, chickens in New Zealand are in constant pain through lameness, ascites and are constantly hungry. Whatever the industry may 'consider' to be the case, the welfare of the chickens, as defined scientifically under the Five Freedoms, and as mandated in the Animal Welfare Act, is being compromised. Claims to the contrary are therefore misleading.

2. Ignoring one of DxE NZ's claims

The ASA failed to address the claim that PIANZ do not in fact 'work closely with MPI'. A reasonable consumer, reading the PIANZ claim, would conjure up images of MPI and PIANZ staff meeting regularly to determine what is best for the chickens. As mentioned in the original complaint, with a peer reviewed reference to back up the claims, this is not the case. The evidence provided has been misinterpreted to the extent that it has affected the ruling.

Summary of appeal

DxE claims that the ASA has misinterpreted evidence to the extent it has affected their ruling. There are two ways the ASA has done this.

1. It has misinterpreted animal welfare claims as being based on opinion, and not scientifically and legally mandated fact, based on established scientific and legal principles.
2. It has ignored evidence claiming that the PIANZ do not in fact work in partnership with MPI to improve welfare, but instead attempt to influence MPI and NAWAC to suit their own agenda. We request that our complaint 20/077 be upheld.