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| COMPLAINT NUMBER | 20/078 |
| APPEAL NUMBER | 20/007 |
| COMPLAINT ON BEHALF OF | Direct Action Everywhere New Zealand (DxE NZ) |
| ADVERTISER | Restaurant Brands NZ Ltd |
| APPLICANT | Direct Action Everywhere New Zealand (DxE NZ) |
| ADVERTISEMENT | Restaurant Brands 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 Restaurant Brands Ltd 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 the chickens used by Restaurant Brands Ltd are produced to “rigorous standards” with regard to animal welfare.

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 statement 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 that 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 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. 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 "All our chicken is produced to rigorous standards". She said the Advertiser was assuring consumers that it sources the chickens from producers who comply with the welfare standards overseen by the Ministry of Primary Industries and the NAWAC (National Animal Welfare Advisory Committee).

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.

Instead, its focus was to consider the likely consumer takeout 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

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

Restaurant Brands 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:

RESTAURANT BRANDS CLAIM From page 3.

“KFC chicken is grain-fed, barn-raised, hormone and steroid free, and is delivered fresh from Inghams and Tegel. All our chicken is produced to rigorous standards overseen by the Poultry Industry Association New Zealand, the Ministry for Primary Industries and the National Animal Welfare Committee.”

DXENZ RESPONSE

The code of Welfare for Meat Chickens is overseen by the Ministry for Primary Industries and the National Animal Welfare Committee, and sets out allowed husbandry processes for meat chickens in New Zealand. This is the ‘rigorous standards’ that the claim is referring to.

Like all Codes of Welfare, the Code for Meat Chickens does not reflect ‘rigorous standards’ 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.

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” (Section 73).

This is particularly the case for meat chicken production.

The modern vertically integrated meat chicken industry is designed to breed chickens as fast as possible to make money, and there is no consideration of animal welfare. The modern Cobb and Ross bird used in the industry world wide (including at Inghams and Tegel) is a genetic freak. It is bred to be top heavy and fast growing, so it can come to maturity in 6 weeks [1].

World wide studies 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]"

Birds in 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 for Meat Chickens 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-riddled 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, the Code of Welfare for Meat Chickens, overseen by NAWAC and MPI, does not prevent extreme suffering of chickens.

Relief sought

Immediate removal and retraction of the 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
Restaurant Brands have any commitment to animal welfare.

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.

Appendix 2

DESCRIPTION OF ADVERTISEMENT

The Restaurant Brands corporate website included the company’s Corporate Social Responsibility Report for 2018 for its New Zealand operations <http://www.restaurantbrands.co.nz/files/documents/corporateresponsibility/rb-csr-report-2018-v8/>. Under the heading “Ingredients” is the statement: “KFC chicken is grain-fed, barn-raised, hormone and steroid free, and is delivered fresh from Ingham’s and Tegel. All our chicken is produced to rigorous standards overseen by the Poultry Industry Association New Zealand, the Ministry for Primary Industries and the National Animal Welfare Committee.”

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 website advertisement is misleading with regard to their commitment to animal welfare and animal welfare standards.

The Chair noted the statement subject to complaint is from a corporate social responsibility report sourced from the Restaurant Brands website. The report refers to the producers that supply the chicken and compliance with what it describes as the "rigorous standards overseen by the Poultry Industry Association New Zealand, the Ministry for Primary Industries and the National Animal Welfare Committee."

In considering the likely consumer takeout of the statement about KFC ingredients, the Chair said it tells the consumer the type of fresh chicken its products are made from and that the producers comply with the animal welfare standards.

The Chair noted the Complainant's concerns with the advertisement stem from what they consider to be flaws in the current animal welfare code. However, the Chair said the description of the type of chicken used by Restaurant Brands and the reference to the standards overseen by the Ministry of Primary Industries and the National Animal Welfare Committee 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

Complaint by Direct Action Everywhere NZ (DxE NZ) against Restaurant Brands (complaint no. 20/077)

The original complaint referred to claims made by Restaurant Brands 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 'rigorous' standards of animal welfare.

In its decision, the Advertising Standards Authority (ASA) maintain that the threshold for being misleading is not reached. They dismiss the complainant's genuine concerns over objective animal welfare standards as being something the complaint merely "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".

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 Restaurant Brands are 'rigorous' about 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 what DxE NZ 'consider' as flaws in the animal welfare code.

Animal welfare is not a matter of '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 or the ASA 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.

Summary of appeal

DxE claims that the ASA has misinterpreted evidence to the extent it has affected their ruling. It has misinterpreted animal welfare claims as being based on opinion, and not scientifically and legally mandated fact.

We reur complaint 20/077 be upheld.