

COMPLAINT NUMBER	20/085
APPEAL NUMBER	20/005
COMPLAINT ON BEHALF OF	Direct Action Everywhere New Zealand (DxE NZ)
ADVERTISER	BurgerFuel
APPLICANT	Direct Action Everywhere New Zealand (DxE NZ)
ADVERTISEMENT	BurgerFuel 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 BurgerFuel 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 BurgerFuel “Must be ethically raised.”

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 that the 100% free-range chickens "must be ethically raised". She said the Advertiser was assuring consumers that Burger Fuel sources the chickens from producers who comply with the ethics and 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):

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

In particular, we refer to the following:

BURGER FUEL CLAIM (attached advertisement)

<https://www.burgerfuel.com/nz/our-food/pure-ingredients>

“Our chicken is the real deal - we never use fillers and it must be ethically raised. That's why we serve only 100% free range natural chicken breast, for ultimate flavour - and say no to processing, hormones, additives and GMO's.”

DxENZ RESPONSE

Burger Fuel are claiming that their chickens are ‘ethically produced’ because they are ‘free range’. In the context in which it is written, this implies that the chickens are reared in a manner where they are free from pain, stress, hunger and thirst and able to express normal patterns of behaviour. In other words, their welfare is high.

DxE maintains that this is false and misleading.

To some extent improving husbandry techniques for layer hens and large mammals can assist producers in achieving better animal welfare outcomes[1].

This is not the case for broiler chickens, where the welfare issues are a direct result of genetics, not husbandry.

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. All commercial chicken producers in New Zealand, including free range and organic producers, use the Ross and Cobb breeds. These are genetically selected to be top heavy and fast growing, so they can come to maturity in 6 weeks [2].

World wide studies have shown that lameness is a welfare issue 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 [3].

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 [4].

Other issues directly arising from the top heavy Ross and Cobb 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 [2,3].

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 [2,3].

It is no wonder that Dr John Webster, international animal welfare expert and professor of animal welfare at Bristol University, describes lameness in broiler chicken production as “in both magnitude and severity, the single most severe, systematic example of man’s inhumanity to another sentient animal.” [5]

To put this into terms we can all understand, if you have a broken leg, feel constantly hungry and have pains in your chest from your heart working overtime, it would make very little difference to you whether you are suffering on litter close to your other suffering comrades, or if you are suffering in a relatively isolated spot of grass.

In conclusion, chickens that are in continual pain from skeletal deformities, including lameness, cannot be described as being ‘ethically produced’. The claim made by Burger Fuel is therefore misleading.

Relief sought

DXE NZ request that the offending statement and any other statements implying or stating that Burger Fuel chicken products are ‘ethically produced’ be removed.

DXE NZ notified Burger Fuel of concerns by a telephone message on 25th January, inviting them to discuss our concerns with us, and giving them until 10 February to respond. Our invitation was ignored.

References:

- [1] Weaver, S.A. and Morris, M.C. (2004). Science, pigs and politics: a New Zealand perspective on the banning of sow stalls. *Journal of Agricultural and Environmental Ethics* 17, 51-66.
- 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] K.M. Hartcher & H.K. Lum (2019) Genetic selection of broilers and welfare consequences: a review, *World's Poultry Science Journal*, DOI: 10.1080/00439339.2019.1680025
- 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.
- [3] 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.
- [4] Bagshaw, C. S., Matthews, L. R., & Rogers, A. (2006). Key indicators of poultry welfare in New Zealand. Unpublished client report to MAF policy.
- [5] Webster, J. (2004). *Animal welfare: A cool eye towards Eden*. Oxford: Blackwell.

Appendix 2

DESCRIPTION OF ADVERTISEMENT

The BurgerFuel website (<https://www.burgerfuel.com/nz/our-food/pure-ingredients>) has the following statement on its Pure Ingredients page: “Our chicken is the real deal - we never use fillers and it must be ethically raised. That's why we serve only 100% free range natural chicken breast, for ultimate flavour - and say no to processing, hormones additives and GMO's.

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 concern the website advertisement is misleading as consumers may think the term "ethically produced" means "the chickens are reared in a manner where they are free from pain, stress, hunger and thirst and able to express normal patterns of behaviour."

In considering the likely consumer takeout of the statement, the Chair said the Advertiser is confirming that it uses 100% free range chicken that meets their particular requirements.

The Chair noted the Complainant's concerns with the advertisement stem from what they consider to be flaws in the current animal welfare code and a lack of awareness about what the term "ethically produced" may mean in relation to the code. However, the Chair said the statement from the Advertiser describes its approach in sourcing chicken for its products and it was not likely 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 Burger Fuel (complaint no. 20/085)

The original complaint referred to claims made by Burger Fuel concerning animal welfare. In particular, Burger Fuel claimed that their free range chicken was 'ethically' sourced. DxE NZ asserts that the advertisement is misleading because it misleads the consumer into thinking that because it is free range, it is 'ethically' raised.

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 inferences 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 refuting the claim that Burger Fuel free range chickens are 'ethically' raised.

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 objective 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. This includes free range chickens. Consumers are misled into thinking that “free range” chickens are more ‘ethically’ produced because of their perception that they have better welfare. As the peer reviewed scientific papers cited in the original complaint show, welfare issues in chickens are issues of genetics, not husbandry.

Whatever the industry or the ASA may ‘consider’ to be the case, the welfare of free range chickens, as defined scientifically under the Five Freedoms, and as mandated in the Animal Welfare Act, is being compromised. Claims to free range chickens being ‘ethical’ 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 request that complaint 20/085 be upheld.