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| COMPLAINT NUMBER | 20/094 |
| ADVERTISERS | Department of Conservation & Waikato Regional Council |
| ADVERTISEMENT | Department of Conservation & Waikato Regional Council Print |
| DATE OF MEETING | 9 June 2020 |
| OUTCOME | Not Upheld No further action required |

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a newspaper advertisement for the Department of Conservation and Waikato Regional Council regarding a proposed aerial 1080 operation over Pirongia Forest Park and Te Kauri Park Scenic Reserve. The Board said it was an advocacy advertisement and the Advertisers had provided sufficient information to substantiate the statements made in it.

Description of Advertisement

The full-page newspaper advertisement for the Department of Conservation and the Waikato Regional Council was published in the Te Awamutu Courier. The advertisement concerned a possum and rat control operation planned for the Pirongia Forest Park and Te Kauri Park Scenic Reserve. The main heading for the advertisement was “Struggle for Survival in Pirongia and Te Kauri forests.” Other headings included “Our taonga/treasures”, “Healthy forest, stable catchment”, “Aerial predator control operation” and “Working together to achieve better outcomes”. The logos and contact details for the Department of Conservation and the Waikato Regional Council were across the bottom of the advertisement.

Summary of the Complaint

The Complainant had a wide range of concerns about this advertisement, including whether it has been suitably identified as advertising. The Complainant identified fourteen different statements in the advertisement which they believe breach eleven different ASA Codes. Specifically the Complainant said the advertisement encourages an unsafe practice, causes fear, undermines health and wellbeing, is misleading, uses data in a way which is misleading, is comparative advertising which makes inaccurate and denigrating statements about its competitor (the ground control of pests by volunteers) and it makes environmental claims which can't be substantiated.

Issues Raised:

- Social Responsibility
- Safety
- Fear and Distress
- Health and well-being
- Truthful Presentation
- Identification
- Use of Data
- Comparative Advertising
- Advocacy Advertising
- Environmental Claims

Summary of the Advertisers' Responses

The Advertisers defended the advertisement and said it is not in breach of the ASA Codes. The Department of Conservation said it is legally and operationally required to engage in pre-operation consultation and notification, to help the public understand why the Department is undertaking the predator control operation, using aerial 1080. The Department does not believe the notice should be treated as an advertisement. However, if the Complaints Board rules that it is an advertisement, in future they will put "Public notice advertorial" across the top.

The Waikato Regional Council said the advertisement is accurate, factual and socially responsible. It supported the Department of Conservation response.

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(e) Safety: Advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.

Rule 1(g) Fear and distress: Advertisements must not cause fear or distress without justification.

Rule 1(h) Health and well-being: Advertisements must not undermine the health and well-being of individuals.

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2(a) Identification: Advertisements must be identified as such.

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.

Rule 2(c) Use of data: Advertisements must not use tests, surveys, research results or quotations from technical and scientific literature in a manner which is misleading or deceptive.

Rule 2(d) Comparative advertising: Comparative advertisements, or advertising that identifies a competing product or service, must be factual, accurate, make clear the nature of the comparison, must not denigrate competitors and must be of 'like' products or services available in the same market.

Rule 2(e) Advocacy advertising: Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

Rule 2(h) Environmental Claims: Environmental claims must be accurate and able to be substantiated by evidence that reflects scientific and technological developments.

The Complaints Board agreed that Rule 2(d) Comparative advertising did not apply in this case, as the advertisement did not identify and denigrate a competing product or service.

The Complaints Board agreed that the advertisement was making environmental claims, under Rule 2(h).

The Complaints Board said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 2(e) of the Advertising Standards Code. This Rule required the identity of the advertiser Advertisers to be clear; opinion to be distinguished from factual information and factual information must be able to be substantiated. The Advocacy Principles developed by the Complaints Board in previous decisions considered under rule 11 of the Code of Ethics remain relevant. They say:

1. That section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people's rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the rights granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

The Complaints Board observed that in a free and democratic society, issues should be openly debated without undue hindrance or interference from authorities such as the Complaints Board, and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations. Therefore, the Complaints Board considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the consumer takeout of the advertisement was the Department of Conservation and the Waikato Regional Council were informing the local community about a proposed aerial 1080 operation over Pirongia Forest Park and Te Kauri Park Scenic Reserve. The Advertisers were also providing information about the rationale in support of this 1080 operation. The Board noted that the advertisement provided contact details for consumers wanting more information about the Advertisers and the 1080 operation.

Is it an advertisement and has it been adequately identified under Rule 2(a) - Identification?

The Complaints Board agreed the full page newspaper item fitted the definition of an advertisement, which is as follows: "... any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed." The Advertisers intended to both inform the public about the proposed 1080 operation and to promote it. The information was part of its consultation with affected individuals but was also an advertisement.

Is it an advocacy advertisement?

The Complaints Board agreed the advertisement fitted the definition of an advocacy advertisement. The Complaints Board noted that the use of 1080 poison as predator control is a controversial topic and strong views are held by opposing parties.

The Complaints Board referred to the Advocacy Advertising guidelines in the Advertising Standards Code which says: "The identity of the advertiser must be obvious and easily recognised. Where an advertiser is not well known, additional information such as a physical address, website address or phone number may be appropriate to include." The Complaints Board said the identities of the Advertisers, the Department of Conservation and the Waikato Regional Council, were sufficiently clear, and both are well-known organisations. Contact details for both organisations were included in the advertisement.

Role of the ASA when considering an advocacy advertisement

The Complaints Board noted its role is to consider the likely consumer takeout of an advertisement and decide whether the claims made in the advertisement have been adequately substantiated by the Advertisers. The Complaints Board noted that it is not the role of the ASA to judge the science provided as substantiation for a particular point of view, nor is the ASA an arbiter of scientific analysis. The Board referred to the ASA Guidance Note on Advocacy which says:

"Evidence may be cited in support of the opinion, but it should be clear it supports an opinion rather than being the full factual position. Evidence in support of an opinion should be clearly cited and readily obtainable. Academic studies are often cited as evidence. Such studies are treated as expert opinion rather than the full factual situation...the Board will not determine which of competing academic studies or other evidence is correct. The Complaints Board's only role is to determine whether there has been a breach of the ASA Codes, taking into account the Advocacy Principles."

Do any of the fourteen statements in the advertisement breach any of the ASA Codes?

The Complaints Board noted the complaint related to fourteen different statements made in the advertisement. The Complaints Board considered each of the fourteen statements in turn, in the context of an advocacy advertisement, to decide whether they were in breach of any of the relevant ASA codes. The Board noted that in defending the advertisement the Advertisers had provided references to research studies and reports conducted by several governmental organisations, including the Parliamentary Commissioner for the Environment, the Environmental Protection Agency and the Department of Conservation, in addition to various

scientific studies. (Full details of the substantiation provided by the Advertisers are contained in Appendix 2).

Statement 1

“Every day, rats and possums are killing our native birds... Possums are also browsing our native forests, destroying trees and preventing regeneration.”

Does the advertisement cause fear or distress without justification?

The Complaints Board agreed the above statements did not cause fear or distress without justification. The Board said while the statements may cause some fear about the potential extinction of some native species, this fear is not unjustified.

Is the advertisement misleading?

The Complaints Board agreed the above statements were not misleading. This is because the Advertisers had provided sufficient information to substantiate these statements. The impact of pests on New Zealand’s flora and fauna is well known and widely documented including by the Parliamentary Commissioner for the Environment.

Statement 2

“Possum and rat populations need to be kept at extremely low levels in order to achieve our conservation objectives in these forests.”

Is the advertisement misleading?

The Complaints Board agreed the above statement was not misleading. This is because the Advertisers had provided sufficient information to substantiate this statement, for example the 2015 Department of Conservation report in relation to Kakapo recovery.

Statements 3 & 4

“Tiakina ngā Manu/Save the Birds - *Tiakina ngā Manu* is the Department of Conservation’s ongoing campaign to protect our at-risk native species and ecosystems...Our native taonga/treasures. Protecting our taonga species: save our birds”

Is the advertisement misleading?

The Complaints Board agreed the above statements were not misleading. This is because they describe the campaign and the Advertisers had provided sufficient information to substantiate these statements.

Does the advertisement encourage or condone an unsafe practice without justification?

The Complaints Board agreed the above statements do not encourage or condone an unsafe practice without justification. The Board said while there are risks associated with the use of 1080 poison the Advertisers had provided sufficient justification to support this practice, in the context of an advocacy advertisement.

Statement 5

“FISH – Several species of native fish and a huge variety of aquatic invertebrates are found in the mountain streams.”

Does the advertisement encourage or condone an unsafe practice without justification?

The Complaints Board agreed the above statement does not encourage or condone an unsafe practice without justification. The Board said this statement refers to the fish found in the mountain streams, as examples of a native taonga/treasure.

Is the advertisement misleading or does it use tests or data in a way which is misleading?

The Complaints Board agreed the above statement was not misleading and did not use tests or data in a way which is misleading. The Board said the statement does not use specific data but refers to “several species” of native fish and “a huge variety of aquatic invertebrates”.

Statement 6

“Reducing the number of possums feeding on Mt Pirongia’s forest means fewer trees will die...”

Is the advertisement misleading?

The Complaints Board agreed the above statement was not misleading. This is because the Advertisers had provided sufficient information to substantiate this statement, in particular the Parliamentary Commissioner for the Environment report which describes the damage possums cause to trees.

Statement 7

“1080 is a biodegradable toxin”

Does the advertisement encourage or condone an unsafe practice without justification?

The Complaints Board agreed the above statement did not encourage or condone an unsafe practice without justification. The statement is a description of 1080 and the Advertisers had provided sufficient information to substantiate this statement.

Does the advertisement undermine the health and wellbeing of individuals?

The Complaints Board agreed the above statement did not undermine the health and wellbeing of individuals. The statement is part of the information promoting the operation, in the context of advocacy.

Does the advertisement use tests or data in a way which is misleading?

The Complaints Board agreed the above statement did not use tests or data in a way which is misleading.

Statement 8

“Fluoroacetate occurs naturally in poisonous plants in Australia, Africa and Brazil.”

Does the advertisement encourage or condone an unsafe practice without justification?

The Complaints Board agreed the above statement did not encourage or condone an unsafe practice without justification. The Board said this statement refers to a chemical contained in certain poisonous plants. Further information about the chemical nature of fluoroacetate, sodium fluoroacetate and potassium fluoroacetate is included in Appendix 2.

Does the advertisement undermine the health and wellbeing of individuals?

The Complaints Board agreed the above statement did not undermine the health and wellbeing of individuals. The statement is part of the information promoting the operation, in the context of advocacy.

Does the advertisement use tests or data in a way which is misleading?

The Complaints Board agreed the above statement did not use tests or data in a way which is misleading.

Statement 9

“It is also found in very low concentrations in tea and New Zealand’s native pūhā”

Does the advertisement encourage or condone an unsafe practice without justification?

The Complaints Board agreed the above statement did not encourage or condone an unsafe practice without justification.

Is the advertisement misleading or does it use tests or data in a way which is misleading?

The Complaints Board agreed the above statement was not misleading and did not use tests or data in a way which is misleading. The Board said the Advertisers had provided sufficient information to substantiate this statement.

Statement 10

“1080 does not bio-accumulate – it breaks down naturally in the environment into harmless compounds and does not leave permanent residues in soil, water, plants or animals.”

Does the advertisement encourage or condone an unsafe practice without justification?

The Complaints Board agreed the above statement does not encourage or condone an unsafe practice without justification.

Is the advertisement misleading or does it use tests or data in a way which is misleading?

The Complaints Board agreed the above statement was not misleading and did not use tests or data in a way which is misleading. The Board said the Advertisers had provided sufficient information to substantiate this statement.

Statement 11

“An operation was held in this area in 2014 and it reduced possum numbers to an almost undetectable level”

Is the advertisement misleading?

The Complaints Board agreed the above statement was not misleading. This is because the Advertisers had provided sufficient information to substantiate this statement by referring to monitoring data following a 1080 operation in 2014.

Statement 12

“Aerial operations have to be repeated usually every five to seven years because possums eventually move back in and multiply to levels that are detrimental to the health of the forest and surrounding areas”

Is the advertisement misleading?

The Complaints Board agreed the above statement was not misleading. This is because the Advertisers had provided sufficient information to substantiate this statement by referring to the Department of Conservation’s predator control experience.

Statement 13

“...this has allowed the reintroduction of 44 kōkako since 2017. Monitoring shows that kōkako nests are not successful outside this area”

Is the advertisement misleading?

The Complaints Board agreed the above statement was not misleading when read in context of the whole sentence. The Advertisers had provided sufficient information to substantiate this statement.

Statement 14

“DoC and WRC have consulted with our Treaty partner, and with adjoining landowners, key stakeholders and affected parties.”

Is the advertisement misleading?

The Complaints Board agreed the above statement was not misleading. This is because consultation is the exchange of information prior to decision making and the Advertisers had provided sufficient information to substantiate this statement.

In Summary

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, Rules 1(e), 1(g), 1(h), Principle 2, Rules 2 (a),2(b), 2(c), 2(d), 2(e),2(h) 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. Responses from Advertisers
 3. Response from Media
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Appendix 1

COMPLAINT

I write to complain about an advert and include three appendices to support the points made in this letter:

Appendix 1: the actual advert (with numerical points noted)

Appendix 2: Summary Table of misleading and incorrect information, with supplementary information

Appendix 3: The legally required Manufacturer's Safety Data Sheet for 1080 poison (see highlighted text).

A copy of the advertisement is enclosed: Published in the Te Awamutu Courier (NZME) Thursday, 8th December 2019. (Appendix 1)

Advert Title: "Struggle for Survival in Pirongia and Te Kauri Forests"

Title in breach of Principle 1 Rule 1 (g) Fear and distress: Advertisements must not cause fear or distress without justification. Advertisers must not use a shocking claim or image merely to attract attention.

A. Language is overly emotive and does not reflect the facts. OIAs to the Dept of Conservation make it clear there is no valid evidence to suggest that any species is "struggling for survival" on Mt Pirongia or Te Kauri. Nor is there any evidence that a 1080 poison aerial operation will provide a 'solution' to any claimed 'struggle for survival' (indeed, poison distributed aurally is likely to be the cause of a struggle for survival – see below).

All advertising must be legal, decent, honest and truthful and respect the principles of fair competition, so that the public can have confidence in advertising. The Principles and Rules set out in the Code are the standards expected in all advertising – that includes Government agencies which have a duty of social responsibility to guide and protect public safety. Bearing in mind the extent of the numerous and dangerous ways (set out below and on the attached Summary Table – Appendix 2) this advert breaches these principles and rules, the public cannot have confidence in the adverts from the New Zealand Government's Dept of Conservation.

"Advertising and Advertisement(s)" means any message, the content of which is controlled directly or indirectly by the Advertisers, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

B. This particular advert appears to intend to persuade the public of a paradoxical claim: that the use of an indiscriminate, World Health Organization Class 1a toxin distributed by helicopter over land and drinking water catchments, is 'safe'. The advert

was authorised for publication by Mr Grayson Bell, General Manager Waikato Region, NZME.

The Advertising Code sets out how the responsibility for complying with the Code is shared between all the parties to an advertisement, including the Advertisers, agencies and media organisations. In this case, this means NZME, the NZ Dept of Conservation and the Waikato Regional Council.

Rule 1 (e) Safety: Advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety. Activity that does not reflect current workplace health and safety requirements.

C. In points 3 & 4 & 5 (numbered in the advert and in the Summary Table attached) it is claimed and/or implied that [1080 poison] is “Protecting our taonga /native species and ecosystems”. However 1080 poison (Sodium Monofluoroacetate) is indiscriminate and is a hormone disrupting chemical that harms any biological cell that needs oxygen to survive (World Health Organization, 2004). It therefore cannot be substantiated in the science that the arbitrary distribution throughout an ecosystem of 1080 poison can ‘protect’ any specific species when in fact, it is likely to harm it (either in the short, medium or long term). (See also Appendix 3, which stipulates that anyone in contact with the poison should be adequately equipped with protective clothing etc. – however the distribution by helicopter over thousands of hectares of land and water in public and residential areas ignores these warnings). The USA EPA warns of the potential health Hazard: “This material is super toxic. The probable oral lethal dose in humans is less than 5 mg/kg, or a taste (less than 7 drops) for a 150-lb. person.” [sublethal effects are unknown] (US Environmental Protection Agency, 1998).

Advertisements for products that have legal restrictions for use must include appropriate statements that highlight specific responsibilities to the end user. Safety claims must not exaggerate the benefit to consumers.

D. Sodium Monofluoroacetate (Compound 1080) is a highly toxic, inhumane, synthetic metabolic poison. It has no antidote. Legally its use is restricted to authorised personnel only. It is unlicensed in many countries because of risks to public and food safety. The sublethal effects of the poison on humans are largely unknown (other than some deductions from animal models, accidental poisonings and suicide attempts). 1080 is a proven endocrine disruptor and impacts upon the body’s major organs (Eisler, 1995). It is manufactured in the USA by Tull Chemicals and transported to New Zealand’s two Government-owned poison bait factories, where it is stored in a watery solution before being mixed with cereal or other substances perceived to be attractive to ‘pest’ species (e.g. rats and possums). The manufacturers’ Material Safety Data Sheet [MSDS] (Appendix 3) points out that 1080 is highly toxic to all aquatic life and poisoned carcasses remain toxic and therefore must be immediately incinerated or buried appropriately in a hazardous waste facility. To date, there has been no independent studies of the claimed safety or ‘effectiveness’ of this policy and no epidemiological research has been undertaken.

Rule 1 (g) Fear and distress: Advertisements must not cause fear or distress without justification.

E. Point 1 (see Appendices 1 & 2): the advert overtly used unnecessary emotive language that claims that “everyday, rats and possums are killing our native birds” and that

“possums destroy trees and prevent regeneration”. This claim is unsubstantiated in the scientific evidence, and even if it WERE true, there has been no valid ‘pest’ monitoring on Mt Pirongia in order to validate any correlation or control area. There are no The FBI (Foliage Browse Index) monitoring in place does not follow the 1999 protocols and any results are therefore meaningless. The single study conducted on the Pirongia forest foliage is now 20 years old and bizarrely did not make any reference to, nor have any consideration of, any environmental and/or climate contextual data that may have influenced the report’s conclusions.

Rule 1 (h) Health and well-being: Advertisements must not undermine the health and well-being of individuals.

Refer to paragraph D above, plus the MSDS (Appendix 3)

Rule 2 (a) Identification: Advertisements must be identified as such.

F. There is no explicit acknowledgement of this text being an advert. I personally had to contact the editor of the newspaper (Dean Taylor) before learning that the article was officially an advert and therefore came under the brief of Grayson Bell, at the NZME Commercial dept.

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.

G. All Points in the advert and listed in the Summary Table (Appendix 2) are in breach of this Rule. I have outlined the specific details of HOW each of the items do not adhere to the rules in the Summary Table. For example, point 8 is deliberately misleading and designed to confuse consumers (public) when it is claimed that “Fluoroacetate occurs naturally in poisonous plants in Australia, Africa and Brazil.” This sentence omits a crucial word and refers to the natural substance POTASSIUM Fluoroacetate NOT the highly lethal synthetic toxin, SODIUM MONOfluoroacetate which is a totally different chemical structure with serious lethal differences. This is an abuse of the trust that the public places in our Government agencies, which have a social responsibility to present scientifically accurate information that protects health, safety and well-being of society. 1080 poison is NOT a ‘natural substance’ and is definitely not ‘safe’ – as this advert attempts to convey.

Rule 2 (c) Use of data: Advertisements must not use tests, surveys, research results or quotations from technical and scientific literature in a manner which is misleading or deceptive. Tests used to support a claim must be conducted or verified by an independent and objective body using industry-accepted methodology so there is no doubt as to the veracity of the test. In particular: Test results must be either current or accepted historical evidence that has not been superseded by new evidence and must support the claims in the advertising.

H. According to numerous OIA responses from Dept of Conservation (copies available on request), DoCs claims regarding the ‘safety’ of using 1080 poison in aerial operations such as Pirongia included in this advert are based upon toxicology testing methodology that is over 30 years old (Ozawa & Tsukioka, 1987). Valid pesticide residue testing requires high-level expertise and modern technology; knowledge about the presence and the potential harm from trace chemicals has increased exponentially over recent decades. It is now known that a miniscule amount of some pesticides, particularly endocrine disrupting chemicals, can cause serious harm. Because these old Dept of Conservation tests are not fit-for-purpose, the long-term impacts on public

health from a sub-lethal dose of 1080 poison are unknown. Over the 65 years of aerial 1080 poisoning operations, the New Zealand Government has ensured that only Government-funded laboratories may undertake any testing of potentially contaminated drinking-water, food or wildlife. No independent testing results have been allowed to be published. DOC's instructions to Landcare to use a method that is not fit-for-purpose, means that the major toxic agent from 1080 poison, fluorocitrate, repeatedly goes undetected. (Fluoroacetate is metabolised into fluorocitrate in the presence of aerobic life.) Professor Ian Shaw, toxicologist at the University of Canterbury has recently stated he is curious about why the Government testing does not include fluorocitrate. Hence there are multiple conflicts of interest inherent in the use of data to make the claims made in this advert: the experiments are conducted in laboratories and by staff that/who are financially tied to the Government agencies undertaking the 1080 poison aerial operations. Note that Australia is one of the few countries who also licence restricted use of 1080 poison where the toxicology tests conducted are based on modern methodologies established by the USA EPA (see below).

Rule 2 (d) Comparative advertising: Comparative advertisements, or advertising that identifies a competing product or service, must be factual, accurate, make clear the nature of the comparison, must not denigrate competitors and must be of 'like' products or services available in the same market.

I. There is an implied statement from section 13 of the advert that an Aerial 1080 Poison Operation is the only option compared to ground control on 'pests'. However, there has been no meaningful comparative data provided or made available because there has been no valid 'pest' monitoring undertaken anywhere on Mt Pirongia. It is also implied that the 1000 hectares currently maintained by volunteers in ground trapping is a result of 'successful' poison operations – when this area is unconnected and was buffered from the previous aerial poison operation. The proposed poison operation puts the re-located native birds at risk from primary and secondary poisoning (Eason et al., 2013). Because of the lack of data on 'pest' numbers on Mt Pirongia, it has been impossible for any professional interested in the work to create a tender in order to be considered for work on the ground control contracts of pests. There can therefore be no 'like-for-like' comparisons to any other 'pest' management strategies made or implied.

Rule 2 (h) Environmental Claims: Environmental claims must be accurate and able to be substantiated by evidence that reflects scientific and technological developments.

J. Because of the facts stated above (e.g. the toxicology testing methodology which is not fit for purpose, the gaps in comparisons using other methods of 'pest' species' management and the lack of any public health studies) there has been an artificial inertia placed on ANY developments that enable valid evidence regarding any claimed environmental gains/losses in connection with the use of 1080 poison aerial operations. (for example, Bowman, 1999)

The environment includes ecosystems and their constituent parts, including people and communities, natural and physical resources, and the qualities and characteristics of locations, places and areas.

(See paragraphs H & I above)

An "environmental claim" means any statement, symbol or graphic that indicates an environmental aspect of a service, product, component or packaging, and includes

references to sustainability, recycling, carbon neutrality, energy efficiency, use of natural products or impact on animals and the natural environment.

K. 1080 Poison is NOT a 'natural substance' and undoubtedly causes serious harm to the whole ecosystem (BBC, UK., 2013). The poison's wider and/or long-term impact has not undergone any valid assessment or review (see paragraph G & H above).

Absolute environmental claims will be assessed on the complete life-cycle of the product and its packaging, taking into account any effects on the environment of its manufacture, distribution, use, disposal, etc. Examples include, environmentally friendly / safe / kind.

L. In the Government ERMA (now EPA) 're-assessment of 1080 poison' it was noted that there were serious gaps in scientific knowledge about the time it took for the poison to degrade and under what conditions (see for example: <https://1080science.co.nz/biodegradation-in-soil/>). Also, in some studies, it has been shown that 1080 poison retains its toxicity for many months, if not years (see for example, Bowman, 1999). And when adsorbed into concrete drinking water pipes, was shown to be impossible to eliminate (USA EPA, 2014). See the USA EPA Guidelines for full details:

<https://pubchem.ncbi.nlm.nih.gov/compound/Sodiumfluoroacetate#section=Cleanup-Methods>

Qualified claims such as “environmentally friendlier / safer / kinder” require an ability to prove a meaningful environmental advantage over competitors or a meaningful improvement on previous formulations, components, packaging or method of manufacture or operation.

J. As explained in paragraphs E, G, (Eason et al., 2013) H & I above there has been no valid assessment or evidence provided of the need for the poison operations or of the claimed 'benefits' from using the poison – for the native species or the public. In the reports provided for 'evidence' of the need for poison, no control sites were identified – essential for meaningful comparative data.

Environmental benefit claims must be genuine and must meet relevant local or international standards as appropriate for claims, such as 'biodegradable' and 'organic'.

(see paragraphs K & L above)

I appreciate this is a long letter with some in depth appendices which I have tried to summarise as succinctly as I can. Further information is available upon request for any specific details required.

This is an important complaint that highlights how the Dept of Conservation and the Waikato Regional Council are ignoring a duty of social responsibility – not just once, but repeatedly. I am confident that the ASA's objective view of the facts will confirm this advert was unacceptable. I look forward to your response in due course.

References

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Appendix 2

RESPONSE FROM ADVERTISER, DEPARTMENT OF CONSERVATION

Re: Department of Conservation Print – Complaint 20/094

Introduction

1. This is a response to the Advertising Standards Authority by the Department of Conservation in relation to complaint 20/094.
2. The complaint relates to a communication published in the Te Awamutu Courier (published by NZME) on 8 December 2019 (attached). The communication was also published in the Raglan Chronicle, and the Waitomo News on 5 December 2019. It outlines the Department of Conservation's work to protect native species in specific and significant Waikato conservation areas.
3. The Department of Conservation (Department) considers that the "advertisement" in question complies with the Advertising Code of Ethics (Code). The Department considers that the communication is socially responsible, taking into account the context and the intended audience.
4. A function of the Department is to manage New Zealand's natural heritage. The Department manages over 8 million hectares of public conservation land. Many species are under threat from introduced species. The impact of pest species on New Zealand's indigenous fauna and flora is well known and widely scientifically documented.
5. The Department is planning to undertake a possum and rat control operation in the Pirongia Forest Park and Te Kauri Park scenic reserve this year. This operation sits within the Department's Tiakina Ngā Manu programme which is a nationally coordinated landscape-scale predator control programme.
6. As part of this operation, the Department intends to use the toxin sodium fluoroacetate (commonly known as 1080). 1080 is highly effective in controlling rat and possum populations, the biggest threat to our indigenous species. Despite various reviews and a considerable body of research and many regulatory controls on its application, some members of the public remain concerned about the use of 1080.
7. The purpose of the communication is to engage with the local community to help the public to understand why the Department is undertaking the predator control operation, including the use of aerial 1080. Such engagement aims for ongoing discussion with the community about local biodiversity issues and the outcomes the Department seeks to achieve.
8. The Department is legally and operationally required to engage in pre-operation consultation and notification.¹ The communication forms part of the engagement and notification in respect of the upcoming Pirongia Forest Park and Te Kauri Park operation.

Summary

9. The Department's view is that the content of the communication is accurate, factual, and truthful, and does not breach Rules 1 and 2 of the Code.
10. With respect of Rule 2(a): Identification, the communication is not labelled as an advertisement. Given the context of the communication as noted above, the Department's view is that the communication should not be treated as an "advertisement" for the purposes of the ASA Code.
11. If, however, the Board is of the view that the communication is an "advertisement", the Department suggests that future communications of this nature could state that it is a "public notice advertorial". The Department would be grateful for the Board's view on this proposal.

¹ See <https://www.epa.govt.nz/database-search/hsno-application-register/view/HRE05002;> and <https://www.doc.govt.nz/globalassets/documents/conservation/threats-and-impacts/pest-control/sops/operationalplanning/operational-planning-sop.pdf>

12. The remainder of this response is provided in the event the Board does indeed consider the communication to be an advertisement for the purposes of the Code.

The Complaints

13. The complainant alleges breaches of Rules 1 and 2 of the Code. The complaints are set out in the complainant's letter under a series of headings and subheadings, and the letter cross-refers to appendices which allege a number of specific breaches. The Department's response follows the same general headings as the complainants' letter, and in the same order, set out below.

Fear or distress

14. The complainant says the title "Struggle for Survival in Pirongia and Te Kauri Forests" is in breach of Rule 1(g): "Advertisements must not cause fear or distress without justification". The complainant also says the words "everyday, rats and possums are killing our native birds" is a breach of this rule.

15. The complainant does not say how these statements could cause anyone to feel fear or distress, or what anyone could be in fear of. It is well known, and uncontroversial, that rats and possums are killing our native birds and damaging our forests. The Department does not consider this language is reasonably capable of causing fear and distress.

16. The Department does not consider the communication to be in breach of Rule 1(g).

Safety

17. The complainant cites Rule(1)(e) of the Code: "Advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety."

18. The complainant does not say how this rule is alleged to have been breached. The complainant refers to paragraphs in the communication that the complainant has numbered (3), (4), and (5):

a. The text at (3) states "DOC and the Waikato Regional Council are undertaking pest control in Pirongia Forest Park and Te Kauri Forest to protect kererū, kōkako, tūī and many other species from rats and possums."

b. The text at (4) states "the ancient forest and beautiful streams are homes to iconic native birds such as ... [list of native birds]."

c. The text at (5) states "several species of fish and a huge variety of aquatic invertebrates are found in the mountain streams."

19. There is nothing in these passages to suggest that pest control is to be undertaken in a way that is dangerous or illegal, and nothing to suggest that the Department condones illegal or unsafe practices. The Department does not consider that there is anything that can be taken from these statements that would encourage illegal or unsafe practices.

20. The complainant refers to the ASA guidance which states "advertisements for products that have legal restrictions for use must include appropriate statements that highlight specific responsibilities to the end user." The communication is not an advertisement for a product intended to influence an "end user" – it is a communication about a proposed operation of the Department and the Waikato Regional Council (Council). The Department and the Council are the users of the 1080 product, and so this part of the guidance is not applicable in the present context.

21. The Safety Data Sheet attached to the complaint as Appendix 3 is not the correct safety data sheet for bait containing 0.15% 1080 which are used for the Department's aerial 1080 operations. The Safety Data Sheet provided by the complainant is for "20% Stock Solution" which is irrelevant to the proposed 1080 operation that is the subject to the communication and the complaint.

Health and well-being

22. The complainant refers to Rule 1(h): advertisements must not undermine the health and well-being of individuals. The complainant refers to the toxicity of 1080 (which the

communication states will be used to control pests), however, does not say how the communication would undermine the health and well-being of individuals.

23. The Department does not consider that the communication undermines the health and well-being of individuals. What it does do is notify and inform people who live near Pirongia and Te Kauri forests that the Department and the Council plan to undertake pest control with 1080 to suppress rat and possum numbers. It provides contact information to allow people to seek further information. It appears that the complainant's real issue is with the use of 1080, and not the communication itself.

Identification

24. The complainant refers to Rule 2(a): Advertisements must be identified as such. The Department acknowledges that the communication does not identify itself as an advertisement.

25. The Department did not intend the communication to be an "advertisement", in the sense that it is not advertising a product or service for commercial gain. The intention of the communication is rather to provide public notification of the Department's and Council's predator control operation, and to provide the public with information about the operation.

26. However, the Department acknowledges that the communication is capable of being considered an "advertisement" in a broad sense, being a public notice. It could be said that the communication falls broadly within the Authority's definition of "advertisement", as it is a "message ... with the intent to influence the ... opinion ... of those to whom it is addressed". While the communication was not intended to influence the choice or behaviour of the intended audience, the Department acknowledges the information provided in the communication was intended to influence the opinion of the public. But that is only to the extent that the Department intends to properly inform the public about planned aerial predator control operations.

27. If the Complaints Board is of the view that the communication is an advertisement for the purposes of the Code, the Department considers that it would be appropriate for any similar future communication of this sort to state that it is a "public notice advertisement", or "public notice advertorial". The Department would be grateful for the Board's view on this proposal.

Advocacy advertising

28. The Chair of the Complaints Board has requested that the Department also respond to Rule 2(e): advocacy advertising.

29. The Authority defines advocacy advertising 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.

30. The Department does not consider the communication to be advocacy advertising. The communication instead notifies the public and provides information about planned aerial predator control. This is in contrast to previous examples considered by the Complaints Board that have been considered to be advocacy. For example, in complaint 15/425, the Board considered a complaint about advertising signs displayed in the runup to the Fluoride Referendum campaign. In that case, the signs strongly advocated for a particular position: stopping the fluoridation of drinking water.

31. That is not the case here. While the Department is well aware of the strong views of some members of the community on the use of 1080, the communication is not about advocating for the use of 1080. Rather, it is aimed at providing information about the planned predator control operation, including the use of 1080, and detail about how people can seek further information.

32. Even if the communication was considered to be advocacy by an “Advertisers”, the Department considers the communication would be in accordance with the requirements of Rule 2(e):

a. The communication clearly states the identity of the Advertisers. The communication includes the Department’s logo, and states “Department of Conservation”.

b. Factual information is able to be substantiated. The information informing the communication is robust and readily available. Relevant studies can be found on the Department’s website. A link to information about 1080 is on the main page of the Department’s website.²

Truthful presentation

33. The complainant refers to Rule 2(b): 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.

34. The complainant points specifically to a sentence in the communication that states “Fluoroacetate occurs naturally in poisonous plants in Australia, Africa and Brazil.” The complainant says the natural substance potassium fluoroacetate, and not sodium monofluoroacetate, occurs in nature. The complainant says 1080 is not a natural substance.

35. The Department does not consider the sentence to be misleading. The communication does not say that the synthetic form of 1080 is the same as the plant form. The preceding sentence states that fluoroacetate is the active ingredient of 1080. Fluoroacetate does occur naturally in poisonous plants in Australia, Africa and Brazil. This is information that is readily available on the Department’s website and is substantiated by peer reviewed publications.³

36. The complainant also alleges that all the points listed in the table are in breach of Rule 2(b). The Department addresses each of the complaints made in the complainant’s table of alleged “misleading and incorrect quotes”, below.

“Every day, rats and possums are killing our native birds ... Possums destroy trees and prevent regeneration.”

37. The complainant claims that “there has not been valid monitoring of ‘pests’ (or native species) on Mt Pirongia” and the monitoring data available is flawed and/or ambiguous, and that “possums are omnivores and rarely eat birds eggs” (and so, it is said, the statement is misleading, ambiguous or inaccurate).

38. The Department considers that the communication is unambiguous. Possum and rat control operations have previously been performed at Pirongia and Te Kauri Park, and monitoring data has confirmed that possum abundance has reduced after each operation. The Department disagrees with the complainant’s assertion that the data is flawed.

39. The Department considers the communication is accurate. As reported by the Parliamentary Commissioner for the Environment (having conducted an extensive review of the literature) possums are the major cause of the decline of a number of native trees and can change the composition and structure of native forests. They destroy the nests of some species of native birds, and they have been recorded as killing adults or young of certain bird species, and bird eggs.⁴ Rats also eat young birds, as well as plant life.⁵

² <https://www.doc.govt.nz/nature/pests-and-threats/methods-of-control/1080/>

³ See L E X Leong, S Khan, C K Davis, et al. Fluoroacetate in plants - a review of its distribution, toxicity to livestock and microbial detoxification. (2017) *Journal of Animal Science and Biotechnology* 8, 55.

⁴ See photograph at: <https://www.doc.govt.nz/nature/pests-and-threats/animal-pests/possums/>

⁵ Parliamentary Commissioner for the Environment: Evaluating the use of 1080: Predators, poisons and silent forests, 8 June 2011.

“Possum and rat populations need to be kept at extremely low levels in order to achieve objectives”

40. There is nothing misleading or untruthful about this this statement. The control of ship rats and possums to very low levels (< 10% rat tracking, and < 10% possum residual trap catch over the kōkako breeding season) is regarded as essential for kōkako recovery (for example).⁶

“Protecting our taonga species: ‘save our birds’”

41. The complainant has incorrectly quoted the communication. This complaint refers to the parts of the communication that states that “DOC and Waikato Regional Council are undertaking pest control in Pirongia Forest Park and Te Kauri Forest to protect kererū, kōkako, tūī and many other species from rats and possums.” This is precisely what is being done. The Department considers there is nothing misleading or ambiguous about this statement.

The implication that fish and aquatic species will be ‘protected’ by poison

42. The complainant has indicated that this particular complaint relates to the sentence: “Fish: several species of native fish and a huge variety of aquatic invertebrates are found in the mountain streams”. This sentence falls under the subheading “our native taonga/treasures”. The Department considers this sentence to be plain and unambiguous. The Department does not consider that this sentence implies these species will be protected by 1080.

“Reducing possums means fewer trees will die ...”

43. The Department does not consider this statement to be misleading or deceptive. There is ample evidence that possums destroy particular native tree species, as noted above.

“1080 is a biodegradable toxin”

44. There is nothing misleading or untruthful about this this statement. Information about 1080 degradation is available on the Department’s website, which contains links to relevant peer-reviewed publications.⁷

“Fluoroacetate occurs naturally in poisonous plants in Australia, Africa and Brazil.”

45. The response to this complaint is addressed above.

“[1080] is also found in tea and in NZs native Puha”

46. The complainant has incorrectly cited the communication, which instead should be read as: “[Fluoroacetate] is also found in very low concentrations in tea and in New Zealand’s native pūhā.” This statement is substantiated by peer reviewed publications, readily available on the Department’s website.⁸

⁶ Brown, K., Elliott, G., Innes, J., & Kemp, J. (2015). Ship rat, stoat and possum control on mainland New Zealand: An overview of techniques, successes and challenges. Wellington: Department of Conservation.

⁷ See, for example, LH Booth, C Ogilvie, GR Wright, CT Eason (1999) Degradation of sodium monofluoroacetate (1080) and fluorocitrate in water. Bull. Environ. Contam. Toxicol. (1999) 62:34-39.

⁸ See, for example, S Ogilvie, J Ataria, J Waiwai, J Doherty, M Lambert, & N Lambert (2004) Uptake and persistence of 1080 in plants of cultural importance. Lincoln University Wildlife Management Report No. 49.

“1080 does not bioaccumulate – it breaks down naturally in the environment into harmless compounds and does not leave permanent residues in soil, water, plants or animals.”

47. There is nothing misleading or untruthful about this this statement. Fluoroacetate is readily degraded by different microorganisms or anabolised by higher organisms.⁹

“An operation was held in this area in 2014 and reduced possum numbers to an almost undetectable level.”

48. The complainant is critical of the quality of the monitoring data following the 2014 operation, and on this basis, contends that the statement is misleading. The Department does not consider this statement to be misleading. The data showed that possum abundance reduced from 6.8% ± 1.4 residual catch trap (RTC) to 0.48% ± 1.4 RTC. To put this into perspective, an RTC number of less than 1% is roughly equivalent to 0.1 possums per hectare.

“Aerial operations have to be repeated usually every 5-7 years because possums eventually move back in and multiply...”

49. The complainant appears to take issue with this sentence on the basis that it is alleged that there is insufficient site-specific evidence to substantiate this statement.

50. The Department undertakes pest control in Pirongia Forest Park approximately every six years to enable a periodic knockdown of pest species numbers. This cycle takes into account the life expectancy of possums, the resources available to the Department and the species present that are likely to benefit from pest operations. There is ample evidence to show that rat and possum populations recover in the absence of ongoing control. The Department does not consider this statement is in any way misleading or inaccurate.

“...this has allowed the reintroduction of 44 kokako and monitoring shows that kokako nests are not successful outside this area.”

51. The Department does not consider this statement to be misleading, as alleged. The communication expressly attributes the reintroduction of 44 kokako to the work of the Pirongia Te Aroro o Kahu Restoration Society. The complainant contends that it is misleading to connect the community ground control work with the aerial operations. However, the communication is quite clear that the aerial operation is intended to support the ground control operations by covering a much larger area than volunteers can cover on the ground. This is a factually correct statement, and is not misleading in any respect.

“DoC and WRC have ‘consulted’ with relevant stakeholders...”

52. The complainant says that because the information provided by the Department, in consultation, is said to be incorrect, and because the “key fact sheets” used are said to be inaccurate, the use of the word ‘consulted’ is incorrect.

53. The Department does not consider the information provided in consultation is incorrect or inaccurate. The fact sheet that was provided to landowner’s states that 1080 is biodegradable, does not accumulate in the environment and rapidly breaks down into harmless substances,

⁹ See, for example Leong, L. E. X., Khan, S., Davis, C. K., Denman, S. E., & McSweeney, C. S. (2017). Fluoroacetate in plants - a review of its distribution, toxicity to livestock and microbial detoxification. *J Anim Sci Biotechnol*, 8, 55; Gentle, M., & Cother, E. (2014). Biodegradation of 1080: Testing soils in south-eastern Australia for sodium fluoroacetate-degrading microorganisms. *Ecological Management & Restoration*, 15(1), 52-57; Orthcott, G., Jensen, D., Ying, L., & Fisher, P. (2014). Degradation rate of sodium fluoroacetate in three New Zealand soils. *Environ Toxicol Chem*, 33, 1048–1058.

such as carbon dioxide and water. The complainant says that because fluorocitrate is a metabolite of fluoroacetate degradation, which is not a harmless substance, the fact sheet is incorrect. However, fluorocitrate, like 1080, is also rapidly degraded in water.¹⁰

Use of data

54. The complainant refers to Rule 2(c): advertisements must not use tests, surveys, research results or quotations from technical and scientific literature in a manner which is misleading or deceptive. The complainant refers to the responses of the Department to requests made by the complainant under the Official Information Act, which the complainant says refer to the Department's reliance on toxicology testing to verify the safety of 1080.

55. Scientific literature is referred to in the complainant's own letter. However, the communication does not use or refer to any such testing, and it does not quote any technical and scientific literature. Nor does the communication discuss the safety of 1080. The Department therefore considers that Rule 2(c) is not applicable here.

Comparative advertising

56. The Chair of the Complaints Board has determined that the advertising is not comparative for the purposes of Rule 2(d) so the Department is not required to respond to the complaints relating to this rule.

Environmental claims

57. The complainant refers to Rule 2(h): environmental claims must be accurate and able to be substantiated by evidence that reflects scientific and technological developments. In Appendix 2 to the complaint letter, the complainant identifies particular language in the communication alleged to be in breach of Rule 2(h):

- a. "1080 is a biodegradable toxin".
- b. "Fluoroacetate occurs naturally in poisonous plants in Australia, Africa and Brazil".
- c. "[1080] is also found in tea and in NZs native puha".
- d. "1080 does not bioaccumulate - it breaks down naturally in the environment into harmless compounds and does not leave permanent residues in soil, water, plants or animals".

58. The responses to these complaints are addressed above under the subheading 'truthful presentation'.

59. The Chair of the Complaints Board has determined that the advertising is not comparative for the purposes of Rule 2(d) so the Department is not required to respond to the complaints relating to this rule.

Conclusion

60. The Department's view is that the content of the communication is accurate, factual, and socially responsible.

61. Please contact me if you require further information regarding the Department's response

¹⁰ LH Booth, C Ogilvie, GR Wright, CT Eason (1999) Degradation of sodium monofluoroacetate (1080) and fluorocitrate in water. Bull. Environ. Contam. Toxicol. (1999) 62:34-39, at 36.

FURTHER INFORMATION FROM ADVERTISER, DEPARTMENT OF CONSERVATION

Re: complaint 20/094 - Further information about fluoroacetate, sodium fluoroacetate and potassium fluoroacetate.

To help the Board consider this complaint you asked us to explain the difference between fluoroacetate, sodium fluoroacetate and potassium fluoroacetate. This relates to our response to Rule 2 (b) Truthful presentation:

34. The complainant points specifically to a sentence in the communication that states “Fluoroacetate occurs naturally in poisonous plants in Australia, Africa and Brazil.”

The complainant says our communication omitted “a crucial word and refers to the natural substance POTASSIUM Fluoroacetate NOT the highly lethal synthetic toxin, SODIUM MONOfluoroacetate which is a totally different chemical structure with serious lethal differences.” We do not agree with the complainant’s view.

Identification of fluoroacetate:

The potassium salt of monofluoroacetic acid (now known as potassium fluoroacetate) was first isolated in 1943 by Marais, who dried and ground up the poisonous South African plant ‘gifblaar’ (*Dichapetalum cymosum*). He then extracted the poisonous ‘component’ of the plant via 96% alcohol, filtration and ether. This left an acid which Marais neutralised with potassium hydroxide (i.e. he caused a chemical reaction between the potassium hydroxide and the acid). After further purification, he was left with a potassium salt which he named ‘potassium cymonate’. Due to a lack of plant material Marais couldn’t identify what ‘potassium cymonate’ was, but showed it was highly toxic. However, the following year Marais (1944) was able to clearly identify that potassium cymonate was the potassium salt of monofluoroacetic acid (now known as potassium fluoroacetate). So, the toxic substance in gifblaar is fluoroacetate, but it is not necessarily potassium fluoroacetate. In effect, the potassium fluoroacetate was synthetically made as a result of a chemical reaction between the fluoroacetate from the plant and the potassium hydroxide. It is possible a misunderstanding of this early research has contributed to the notion that potassium fluoroacetate is a more ‘natural’ compound than sodium fluoroacetate.

In fact, neither conform to the definition of a naturally occurring chemical:

- (a) an unprocessed chemical occurring in a natural environment; or
 - (b) a chemical occurring in a natural environment, being a substance that is extracted by:
 - (i) manual, mechanical or gravitational means; or
 - (ii) dissolution in water; or
 - (iii) flotation; or
 - (iv) a process of heating for the sole purpose of removing uncombined water without chemical change in the substance.
- <https://www.legislation.gov.au/Details/C2012C00082>

These plant toxins still present difficulties in identifying which chemical the fluoroacetate is bound to. Even modern techniques such as High-Performance Liquid Chromatography and spectroscopy can only identify that fluoroacetate is present, not which salt (potassium, sodium or some other chemical) it is.

Why use sodium fluoroacetate and not potassium fluoroacetate?

Both sodium fluoroacetate and potassium fluoroacetate can be manufactured. The active ingredient used in NZ pest control products comes from a company in the US. This company

manufactures sodium fluoroacetate in quantities large enough for our needs. If another company produced potassium fluoroacetate in enough quantity, we could consider purchasing it for pest control products. However, this would require NZEPA approval to import and use potassium fluoroacetate – this would be a huge expense, and the toxicity of fluoroacetate is the same whether it is in the potassium salt form or sodium salt form, so there would be no benefit for pest control. The use of 'natural' fluoroacetate made from plants has been investigated for use in NZ, but the costs were prohibitive and the chemical process too complex.

In summary

Sodium fluoroacetate (1080)¹¹ and potassium fluoroacetate are both salts of an organic molecular compound, fluoroacetic acid, which is found in some toxic plant species (Leong et al. 2017; Camboim et al. 2012)

https://pubchem.ncbi.nlm.nih.gov/compound/sodium_fluoroacetate#section=Top Sodium fluoroacetate (CH₂FCOO-Na⁺) and potassium fluoroacetate (CH₂FCOO-K⁺) are both synthetic compounds (Leong et al. 2017,1; Quin & Clark 1947)

They have the same toxic effect, caused by fluoroacetate (CH₂FCOO⁻), an anion of fluoroacetic acid (Marais,1944).

<https://www.sciencelearn.org.nz/resources/2685the-chemistry-of-1080>

We have attached the following references:

Camboim EK, Tadra-Sfeir MZ, de Souza EM, Pedrosa Fde O, Andrade PP,McSweeney CS, Riet-Correa F, Melo MA (2012): Defluorination of sodium fluoroacetate by bacteria from soil and plants in Brazil. *The Scientific World Journal* 2012, 149893

Leong LEX, Khan S, Davis CK, Denman SE, McSweeney CS (2017): Fluoroacetate in plants - a review of its distribution, toxicity to livestock and microbial detoxification. *Journal of animal science and biotechnology* 8, 55.

Marais JS. (1944): Monofluoroacetic acid, the toxic principle of "gifblaar" *Dichapetalum cymosum*. *Onderstepoort Journal of Veterinary Science*. 20:67– 73.

Quin JI, Clark R (1947): Studies on the action of potassium monofluoroacetate (CH₂FCOOK) [*Dichapetalum cymosum* (Hook) Engl.] toxin on animals *Onderstepoort Journal of Veterinary Science and Animal Industry* 22, 241246

¹¹ The complainant says the correct term is sodium MONOfuoroacetate, however the "mono" prefix is simply an early scientific naming protocol that is no longer used.

RESPONSE FROM ADVERTISER, WAIKATO REGIONAL COUNCIL

Thank you for your letter of 20 May 2020, notifying me of Complaint 20/094. The complaint relates to a communication published jointly by the Department of Conservation (DOC) and Waikato Regional Council (the Council) in the Te Awamutu Courier (published by NZME) on 8 December 2019. We wish to defend the complaint jointly with the Department of Conservation.

DOC has liaised with the Council on the issues raised in the complaint. We have reviewed the letter DOC sent to you on the 7 May 2020 responding to the complaint and assisted in preparing the response to the additional questions you sent Jonathan Rudge by email 19 May 2020.

It is the Council's view that the content of the communication published in the Te Awamutu Courier is accurate, factual, and socially responsible. The Council fully supports the answers provided by DOC in their correspondence with the ASA Complaints Board and we consider that the evidence DOC has presented addresses all the issues raised by the complainant. We therefore hope the ASA Complaints Board accepts DOC's evidence in its entirety and find in favour of DOC and the Council.

Appendix 3

RESPONSE FROM MEDIA, NZME

We write on behalf of NZME (the Publisher) in response to the above complaint regarding DOC's advertisement in Te Awamutu Courier.

This advertisement was designed and submitted on behalf of the client, but accepted by NZME for publishing, as we believe it does not contravene ASA codes.

The ASA has identified Advertising Standards Code - Principle 1, Principle 2, Rule 1(e), Rule 1(g), Rule 1(h), Rule 2(a), Rule 2(b), Rule 2(c), Rule 2(e), Rule 2(h) as potentially being relevant.¹²

Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(e) Safety: Advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.

Rule 1(g) Fear and distress: Advertisements must not cause fear or distress without justification.

Rule 1(h) Health and wellbeing: Advertisements must not undermine the health and well-being of individuals.

Advertisements must be truthful, balanced and not misleading.

Rule 2(a) Identification: Advertisements must be identified as such.

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.

Rule 2(c) Use of data: Advertisements must not use tests, surveys, research results or quotations from technical and scientific literature in a manner which is misleading or deceptive.

Rule 2(e) Advocacy advertising: Advocacy advertising must clearly state the identity and position of the Advertisers. Opinion in support of the Advertisers's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

¹² We note that the complainant has referenced Rule 2(d) (Comparative Advertising), however, as the ASA has not identified this rule in its referral, this has not been dealt with in our response.

Rule 2(h): Environmental claims must be accurate and able to be substantiated by evidence that reflects scientific and technological developments.

We understand that the Department of Conservation has already provided a fulsome response to the Board; as such, we ask this be read alongside that response.

Firstly, we note that the advertisement is advocacy advertising. The advertisement is clearly in favour of the use of 1080, justifying its use and the negative impacts of this by referring to its efficacy in killing pests and assisting in reintroduction of native species. However, the use of 1080 as pest control is extremely controversial (and well known for being so). It also appears that there is a significant amount of research both supporting and discouraging the use of 1080. It is in this context that we respond as follows:

1. We disagree that the advertisement's headline would cause fear and distress. We do not consider it is contentious that identified pests do endanger the safety of native birds, therefore a "struggle for survival". Forest and Bird state that "[t]oday, 80% of our birds, 88% of our lizards and 100% of our frogs are threatened with extinction" due to introduced pests.¹³
2. The advertisement does not state that 1080 is "safe". In fact, on its own website, DOC states: "no poison is completely humane and 1080 has been ranked as being 'moderately' humane by the National Animal Welfare Advisory Committee (NAWAC)." The website also provides substantiating evidence as to why 1080 is the chosen pest control solution for inaccessible and rugged areas of New Zealand bush,¹⁴ and what Ministry of Health controls are used where 1080 is used near water catchment areas.
3. It is also not misleading to state that possum populations have a negative impact on vegetation. Project Crimson states that "an estimated 30 million possums consume over 20,000 of the 300,000 tonnes of foliage produced each day by our forests. Although this appears to be a modest amount, the preference of possums for certain species such as pōhutukawa, rātā, kāmahī, tree fuchsia, totara, māhoe, tawa and kaikawaka, can and has caused catastrophic collapse of forests dominated by these species."¹⁵
4. The advertisement states that fluoroacetate is a naturally occurring compound. It does not state that 1080 is naturally occurring. It states that it is biodegradable; that it breaks down naturally, and into harmless compounds.¹⁶ While the Advertisers will be able to clarify this point further, we note that studies presented to Parliament do corroborate this claim.¹⁷

¹³ <https://www.doc.govt.nz/nature/pests-and-threats/methods-of-control/1080/faqs/>

¹⁴ <https://www.doc.govt.nz/globalassets/documents/our-work/tiakina-nga-manu/tiakina-nga-manu-2019/tnm-faqs-2020.pdf>

¹⁵ <https://projectcrimson.org.nz/wp-content/uploads/2016/05/Possum-Brochure-Jan-2014-web.pdf>

¹⁶ <https://www.doc.govt.nz/nature/pests-and-threats/methods-of-control/1080/faqs/>

¹⁷ Parliamentary Commissioner for the Environment Dr J. Wrights (2011). *Evaluating the use of 1080: Predators, poisons and silent forests*, p 45: "1080 ... naturally breaks down in the environment and does not leave permanent residues in water, soil, plants or animals." Note also studies outside of NZ have confirmed such claims: "This provides strong indication that 1080 is subject to microbiological degradative processes in this environment following removal from the bait substrate. Such soil micro-organism activity, in combination with uptake from plants and physical breakdown from ultra-violet radiation and heat, indicates that prolonged persistence of fluoroacetate in soils and natural waterways is unlikely to occur... The results of this study also suggest the likelihood of longer term environmental persistence of fluoroacetate is low, helping to support the continued, sustainable use of 1080

5. While the complainant is correct that there is a difference between the synthetic sodium fluoroacetate and naturally occurring potassium fluoroacetate, our understanding is that is the fluoroacetate which is the key toxic component.¹⁸ Again, DOC's website provides further information on this, stating that "[1080's] active ingredient is found in poisonous plants in Brazil, Africa and Australia. Bait pellets contain 0.15% of 1080 – sodium fluoroacetate – and the rest is cereal, glucose, cinnamon and glue."
6. We also disagree that it is not clear that this is an advertisement. While not explicitly labelled as such, the format, typeface, and clear identifier of the Department of Conservation at the foot of the page indicate that this is not editorial content.
7. Finally, we again note that the advertisement is clearly advocacy advertising; the Advertisers's identity is clear, as is contact information (including website with physical addresses of DOC offices), phone numbers, and email addresses.

As an example of advocacy advertising of a topic which has been the subject of a significant amount of debate for some time, the advertisement cannot canvas all research or all points of view (and, as advocacy, would not be expected to). However, we do consider that a) the claims within the advertisement can be substantive, and b) the information available on DOC's website for those wanting further information, demonstrate that the advertisement is socially responsible.

Please let the writer know if you have any queries or concerns.

for pest animal control in south-eastern Australia." Matthew Gentle and Eric Cother, 07 November 2013 Biodegradation of 1080: *Testing soils in south-eastern Australia for sodium fluoroacetate-degrading micro-organisms* <https://onlinelibrary.wiley.com/doi/abs/10.1111/emr.12071>

¹⁸ Charles Eason, Aroha Miller, Shaun Ogilvie and Alastair Fairweather (2010), An updated review of the toxicology and ecotoxicology of sodium fluoroacetate (1080) in relation to its use as a pest control tool in New Zealand <https://newzealandecology.org/nzje/2968.pdf>