

COMPLAINT NUMBER	20/227
ADVERTISER	New Zealand Drug Foundation
ADVERTISEMENT	New Zealand Drug Foundation Television, Print and Website
DATE OF MEETING	23 June 2020
OUTCOME	Upheld in part Not Upheld in part TV Advertisement to be removed or amended

Summary of the Complaints Board Decision

The Complaints Board upheld complaints received about two television advertisements for the New Zealand Drug Foundation, promoting a Yes vote in the upcoming Cannabis Control Referendum. The Board said the identity of the Advertiser was not sufficiently clear. This is because the information identifying the Advertiser as the New Zealand Drug Foundation only appeared very briefly at the end of the advertisements.

The Complaints Board did not uphold complaints about a digital advertisement on the Stuff news website or two New Zealand Herald print advertisements on the same topic.

Description of Advertisements

Five different advertisements were complained about: a digital advertisement on the Stuff website, a 30 second television advertisement, a 60 second television advertisement, a front-page Weekend Herald advertisement and a two page “false cover” New Zealand Herald advertisement.

Advertisement 1:

The digital advertisement on the Stuff website had a head and shoulders photo of a woman looking towards the camera. The text said “It’s time to take control of cannabis – Vote Yes on our terms – Cannabis Control Referendum 19 September 2020 - Authorised by the NZ Drug Foundation, 265 Wakefield St, Wellington” and “NZ Drug Foundation – Te Tuāpapa Tarukino o Aotearoa”.

Advertisement 2:

The 30 second television advertisement opens with a woman sitting on a couch saying “On September 19 we have the choice to make cannabis legal, but what we’re really voting for is to do this our way and on our terms”. The advertisement then features comments from ten other people explaining why they support a Yes vote in the Cannabis Control Referendum. The reasons include “...having a greater Police focus on serious crime... improved health and education... better access to medical treatment”. One participant says “And absolutely remaining illegal to anyone under 20.” At the end of the advertisement the following text appears on screen: “Vote Yes on our terms – Cannabis Control Referendum 19 September 2020 – onourterms.org.nz -Authorised by the NZ Drug Foundation, 265 Wakefield St, Wellington” and “NZ Drug Foundation – Te Tuāpapa Tarukino o Aotearoa”. A voiceover also says “So check them out at onourterms.org.nz”.

Advertisement 3:

The 60 second television advertisement has a similar format to the 30 second advertisement, with the same participants, and a few more. Additional reasons provided for supporting the

Cannabis Control Referendum include: "...Not in Canada's or the Netherland's" [terms], "terms that could give those that would benefit from medicinal treatment much better access", "that would generate funding for nationwide health and education", "but also on the terms that there'll be much safer potency levels", "it won't be allowed in public spaces". The advertisement ended with the same information about the Advertiser and their contact details.

Advertisement 4:

The first page of the two-page "false cover" New Zealand Herald advertisement showed seven different-sized photos of people featured in the television advertisements for this same campaign. The word "Advertisement" is written at the top right of the page. Below the photos is the text: "It's time to take control of cannabis - Vote Yes on our terms – Cannabis Control Referendum 19 September 2020 – NZ Drug Foundation – Te Tuāpapa Tarukino o Aotearoa". To the left of the advertisement, written vertically in small print, is "Authorised by the NZ Drug Foundation, 265 Wakefield St, Wellington".

The second page of the two-page "false cover" New Zealand Herald advertisement had the word "Advertisement" written at the top right of the page. Below this was the following text:

"Our terms for making cannabis legal include:

1. Tax revenue will go towards drug education and treatment.
2. It will free up police time to focus on serious crime.
3. Better access for those who use it for medical treatment.
4. Cannabis will remain strictly illegal for anyone under 20 years old.
5. Potency will be limited for safety.
6. Sales restricted to licensed premises.
7. No consumption in public spaces.
8. There will be plain packaging with clear warning labels, and zero advertising.

Below this is the text: "... on our terms. On 19 September, we have the choice to make cannabis legal. What we're really voting for is to do this our way and on New Zealand's terms. Terms that we all feel make sense for us, for our nation. Terms that place strong public health controls over cannabis in a way that protects us, especially our families, communities and young people. To learn more about our terms, visit onourterms.org.nz. Vote Yes on our terms – Cannabis Control Referendum 19 September 2020 – NZ Drug Foundation – Te Tuāpapa Tarukino o Aotearoa".

Advertisement 5:

The full front-page advertisement in the Weekend Herald was identical to the first page of the two-page New Zealand Herald advertisement.

Summary of the Complaints

There were 60 complaints about these advertisements, covering a range of different issues. These issues included concerns that the identification of the Advertiser wasn't clear enough, the advertisements were misleading because the referendum is about recreational use, not medicinal use of cannabis, the advertisements were not balanced because they don't talk about the harm cannabis can cause, the advertisements legitimise drug use and shouldn't be seen by children or teenagers, it is inappropriate for a tax-payer funded agency to encourage legalisation of cannabis, and the advertisement claims it will allow Police to get on with other crimes when Police say they do not prosecute for personal use. A full list of the issues can be found in Appendix 1.

Issues Raised:

- Social Responsibility
- Decency and Offensiveness

- Truthful Presentation
- Advocacy Advertising

Summary of the Advertiser's Response

The Advertiser defended the advertisements. The Advertiser said the television advertisements were given a G rating and there are no images of cannabis or cannabis use. The Advertiser said they are advocating for a Yes vote in the Cannabis Control Referendum 19 September 2020, they are not promoting drug use. The Advertiser considers the medicinal cannabis law isn't working effectively and reform is needed so cannabis for medicinal use can be more easily accessed.

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(c) Decency and Offensiveness: Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.

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.

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.

The Complaints Board said the advertisements 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 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.

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. It will consider whether the advertisement includes statements of fact or opinion and decide whether any factual claims have been adequately substantiated by the Advertiser. 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.”

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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 17/392 which was Upheld in part and Not Upheld in part and Decision 19/158 which was Not Upheld.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 17/392 concerned a newspaper advertisement for the Universal Church of the Kingdom of God (UCKG). The newspaper editorial style advertisement for the UCKG Help Centre healing event contained details about the events, testimonials from those who had been helped by the power of prayer and details of the five centres holding events. The Complaints Board said the editorial layout of the advertisement made it difficult to easily ascertain who had placed the advertisement. The majority of the Complaints Board said the advertisement lacked the necessary context to clearly indicate its purpose was the promotion of a religious event and ruled the identity of the Advertiser was not clear. The Complaints Board agreed that had the Advertiser’s identity been clearer, the distinction between opinion and factual information would have been less confusing.

Decision 19/158 concerned a television advertisement for the New Zealand Transport Agency which featured a driver crashing into an oncoming vehicle, after being distracted by a pizza delivery bike. The dazed driver is shown sitting in the car having flashbacks to smoking drugs. The onscreen text stated: “Hard to stay focused? Drive straight.”

The Complaints Board agreed the advertisement fitted the definition of advocacy advertising and the identity and anti-drug driving position of the Advertiser NZTA was clear.

The Complaints Board agreed the advertisement was justifiable on educational grounds, due to the number of car accidents and road deaths in New Zealand caused by drivers impaired by drugs.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the consumer takeout of the digital and print advertisements was, they are advocacy advertisements for the New Zealand Drug Foundation, supporting a “Yes” vote for the 2020 Cannabis legislation and control referendum.

The Complaints Board agreed the consumer takeout of the television advertisements was, they are advertisements supporting a “Yes” vote for the 2020 Cannabis legislation and control referendum.

Funding issue – No Jurisdiction

The Complaints Board confirmed it does not have jurisdiction to consider any issues relating to the funding or expenditure of the New Zealand Drug Foundation.

Do any of the five advertisements breach any of the ASA Codes?

The Complaints Board considered each of the five advertisements in turn, in the context of an advocacy advertisement, to decide whether they were in breach of any of the relevant ASA codes.

Advertisement 1: The digital advertisement on the Stuff website

Has the advocacy advertisement been adequately identified?

The Complaints Board agreed the advertisement had been adequately identified. The Board said the advertisement fitted the definition of advocacy advertising as the identity of the Advertiser, the New Zealand Drug Foundation, was clear along with its position on the cannabis referendum. The Board noted the advertisement included the following text “It’s time to take control of cannabis – Vote Yes on our terms – Cannabis Control Referendum 19 September 2020 -Authorised by the NZ Drug Foundation, 265 Wakefield St, Wellington” and “NZ Drug Foundation – Te Tuāpapa Tarukino o Aotearoa”. The Complaints Board said the identity and position of the Advertiser was sufficiently clear in the context of the advertisement.

Is the advertisement misleading?

The Complaints Board agreed the advocacy advertisement for the NZ Drug Foundation did not contain anything that was misleading. It set out the New Zealand Drug Foundations’ advocacy position on the upcoming referendum. Under the rules of advocacy advertising, Advertisers may express their opinions.

Is the advertisement socially responsible?

The Complaints Board agreed the advertisement was socially responsible. This is because it fitted the definition of an advocacy advertisement and was not misleading.

Advertisements 2 &3: The television advertisements

Have the advocacy advertisements been adequately identified?

The Complaints Board said the Advertiser had not been adequately identified in either of the two television advertisements. This is because the information about the New Zealand Drug Foundation only appeared at the end of the advertisements, and very briefly, for one or two seconds. The font size of the identifying information was very small and the logo for the New Zealand Drug Foundation occupied a very small proportion of the screen. Some viewers would not be able to identify the Advertiser on first viewing of the advertisements. The Board said unlike a print or website advertisement, unless it has been recorded, the consumer doesn't have the opportunity to re-read or enlarge a television advertisement, to consider the information more carefully.

The Complaints Board said the Cannabis Control Referendum is a significant social issue and it is important that the New Zealand public has context for the differing views on the legalisation of cannabis, in order to be able to take an active part in the debate. The Board said some consumers will not be aware of the New Zealand Drug Foundation and its role.

Audience

The Complaints Board noted that both the 30 second and the 60 second television advertisements were approved by Commercial Approvals Bureau with a G rating. The Board also noted that the advertisements played during the news programmes on TVNZ and TV3 and "Seven Sharp", which are categorised as Unclassified Programming.

The Broadcasting Standards Authority refers to Unclassified Programming as "news, current affairs, sports and live content that is not, because of its distinct nature, subject to classification. However, broadcasters must be mindful of children's interests and other broadcasting standards and include audience advisories (i.e. a warning) where appropriate." The advertisements also played during "Sunday" and "Eat Well for Less", which both screen after 7.30pm.

Is the advertisement offensive?

The Complaints Board agreed the advertisement did not contain anything that is indecent, exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule. One complainant was concerned that it was inappropriate to advertise illegal drugs during the 6pm news hour and others were concerned the advertisement was not appropriate viewing for children. The Advertiser advised the target audience for the television advertisements was 35-54 year olds. The Board noted that the advertisements screened during programmes with predominantly adult audiences. The Complaints Board said the advertisements had played within their afforded rating.

Is the advertisement misleading?

A majority of the Complaints Board said while overall the television advertisements did not contain anything that was misleading in the context of advocacy advertising, the limited ability to identify the Advertiser meant the television advertisements were in breach of Principle 2 of the Advertising Standards Code. The majority said where the identity of an Advertiser has been clearly identified there is more scope for them to express their point of view.

The Complaints Board then discussed two particular topics in the advertisements, where there were differing points of view amongst the Complaints Board members: the references to the use of cannabis for medicinal treatment and the ability for the Police to have a greater focus on serious crime.

Medicinal Cannabis

The majority said the statement that the reform of cannabis legislation "could give those that would benefit from medicinal treatment much better access" was not misleading. They

accepted the Advertiser's position, that it is likely that the proposed increased availability of legal cannabis products would lead to greater access for any purposes, including medicinal purposes, was a legitimate point of view. The majority said this statement is an opinion based on a prediction of the likely outcome, it is not a fact. The majority noted the comment from the Advertiser that "There is evidence from Canada and jurisdictions in the United States that demonstrate medical cannabis patients have better access to products after legalisation." (For further information see Appendix 2).

A minority disagreed. The minority said it was misleading to include the statement that the reform of cannabis legislation "could give those that would benefit from medicinal treatment much better access". This is because the referendum is about the control and regulation of cannabis, including how people can produce, supply, or consume cannabis. The Cannabis Legislation and Control Bill, which has already been drafted, does not cover medicinal cannabis, hemp, driving while impaired or workplace health and safety issues. These are covered by existing laws. Medicinal cannabis is already legal under the Medicinal Cannabis Scheme. The minority said the inclusion of a reference to medicinal treatment serves to blur the issues in a way that is likely to confuse consumers.

Police Focus on Serious Crime

The majority said the statement that the reform of cannabis legislation will mean "...having a greater Police focus on serious crime" was not misleading. This is because this statement is an opinion based on a prediction of the likely outcome, it is not a fact.

A minority disagreed. The minority said it was misleading to include the statement that cannabis reform will mean "...having a greater Police focus on serious crime". The minority said the Advertiser had not provided any substantiation to support this view, including any information about the extent to which the Police currently prosecute for personal use of cannabis or how they intend to change their practices if the majority of New Zealanders vote Yes in the referendum.

Was the placement of the advertisements socially responsible?

The Complaints Board agreed the placement of the advertisements was socially responsible. The Board noted that the advertisements have a G rating and were played during news programmes or after 7.30pm.

Advertisement 4: The two-page New Zealand Herald advertisement

Has the advocacy advertisement been adequately identified?

The Complaints Board agreed the advertisement fitted the definition of advocacy advertising. The Board said the identity of the Advertiser, the New Zealand Drug Foundation, was clear along with its position on the cannabis referendum. The Board noted the advertisement included the following text "It's time to take control of cannabis – Vote Yes on our terms – Cannabis Control Referendum 19 September 2020 - Authorised by the NZ Drug Foundation, 265 Wakefield St, Wellington" and "NZ Drug Foundation – Te Tuāpapa Tarukino o Aotearoa" and "To learn more about our terms, visit onourterms.org.nz."

Is the advertisement misleading?

A majority of the Complaints Board said overall the advertisement did not contain anything that was misleading. The majority said where the identity of an Advertiser has been clearly identified there is a lot of scope for them to express their point of view, in the context of advocacy advertising.

The Complaints Board also discussed the references to the use of cannabis for medicinal treatment and the ability for the police to have a greater focus on serious crime and came to

the same conclusions as they had in relation to the same claims in the television advertisements.

Is the advertisement socially responsible?

The Complaints Board agreed the advertisement was socially responsible. This is because it fitted the definition of an advocacy advertisement and was not offensive or misleading.

Advertisement 5; The front-page New Zealand Herald advertisement.

Has the advocacy advertisement been adequately identified?

The Complaints Board said the identity of the Advertiser, the New Zealand Drug Foundation, was clear and it was clear what they were advocating. The Board noted the advertisement included the following text “It’s time to take control of cannabis – Vote Yes on our terms – Cannabis Control Referendum 19 September 2020 - Authorised by the NZ Drug Foundation, 265 Wakefield St, Wellington” and “NZ Drug Foundation – Te Tuāpapa Tarukino o Aotearoa”. The Complaints Board said the identity and position of the Advertiser was sufficiently clear in the context of this print advertisement.

Is the advertisement socially responsible?

The Complaints Board agreed the advertisement was socially responsible. This is because it fitted the definition of an advocacy advertisement and was not misleading.

In Summary

Taking into account context, medium, audience and product, the Complaints Board made the following rulings:

Digital advertisement

The Complaints Board agreed the digital advertisement on the Stuff website was socially responsible, and was not in breach of Principle 1, Principle 2, Rule 2(b) or Rule 2(e) of the Advertising Standards Code.

Television advertisements

The Complaints Board agreed the two television advertisements were in breach of Principle 2 and Rule 2(e) of the Advertising Standards Code.

The Complaints Board agreed the two television advertisements were not in breach of Rule 1(c) of the Advertising Standards Code.

A majority of the Complaints Board agreed the two television advertisements were socially responsible and were not in breach of Rule 2(b) of the Advertising Standards Code.

A minority disagreed. The minority said the two television advertisements were not socially responsible and were in breach of Rule 2(b) of the Advertising Standards Code.

Print advertisements

A majority of the Complaints Board agreed the two-page advertisement in the New Zealand Herald was socially responsible and was not in breach of Rule 2(b) of the Advertising Standards Code.

A minority disagreed. The minority said the two-page advertisement in the New Zealand Herald was not socially responsible and was in breach of Rule 2(b) of the Advertising Standards Code.

The Complaints Board agreed the front-page advertisement in the New Zealand Herald was socially responsible and was not in breach of Principle 1, Rule 1(c), Principle 2, Rule 2(b) or Rule 2(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaints were **Upheld in part and Not Upheld in part.**

Television advertisements to be removed or amended.

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. Complaints
 2. Response from Advertiser
 3. Response from Media
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Appendix 1

COMPLAINTS

There were 60 complaints about these advertisements.

Complaint 15 (Example 1)

Television Ad Details: Tv1 One news 2020-06-07 Approx 6.30pm

Complaint Details:

Claims it will make medicinal marijuana more available when it already is available to those it is prescribed to. Claims that it will ensure it is in safe doses, that cannot be ensured. No honesty about the social harm it is widely accredited to cause. Claims it will allow police to get on with other crimes when police widely note they do not prosecute for personal use. During a time when children are watching. And placed by an entity that takes government funding which gives the impression that the government endorses voting yes

Complaint 48 (Example 2)

TV1

2020-06-11 - 9.30 pm

- (1) The ad is misleading as it seems like a Govt body is supporting legalisation
- (2) The ad is factually incorrect in saying legalisation is on "our terms"
- (3) The ad is misleading in saying legalisation is about medicinal use
- (4) The ad is misleading in saying legalisation will mean that people who were breaking the law, will now suddenly follow the new rules
- (4) The ad is immoral in that it is promoting drug use.
- (5) The ad can have an adverse affect on young teens and children as it promotes drug use, or at least says it is ok..

The following is a Summary of the Issues covered in the 60 Complaints:

1. Identification

- It is not clear who the Advertiser is
- The use of the title "On Our Terms" acts as a smoke screen for the funder (NZDF)
- The font describing the Advertiser is very small

2. Offensiveness

- It is inappropriate to advertise for illegal drugs during the 6pm news hour

3. Misleading

- The referendum is about Cannabis for recreational use, NOT for medicinal use (This is dangerous)

- The ad implies a Yes vote will mean increased access to cannabis for those who use it for medicinal reasons, this is false, the bill concerns recreational use
- Medical marijuana is already legal
- The ad will confuse people
- The ad claims it will ensure cannabis is in safe doses (See Complaint 15)
- There is insufficient evidence to support the safe use of cannabis for medicinal purposes for pain relief
- Information about the referendum should be unbiased, not persuasive
- There are no “terms” for voting, it’s either “Yes” or ‘No”
- The ad doesn’t mention the scientific evidence that proves the link between cannabis and mental health, and it should
- The ad claims it will allow Police to get on with other crimes when Police say they do not prosecute for personal use
- “On our Terms” is not defined. The actual terms of the legislation is not referenced.

4. Advocacy

- It is inappropriate to encourage a yes vote for drug legalisation, from a NZ tax-payer funded agency, this implies the Govt is in favour of legalisation
- Who is paying for this ad?
- The ad doesn’t show the other side of the argument, it should be balanced, and shown with an opposing advert
- The ad doesn’t talk about the social harm cannabis can cause
- Normalises cannabis use amongst younger people, without referring to the harm
- The ad doesn’t refer to the risk of harm cannabis can cause to the developing brain, up to 24 years of age, it can lead to reduced concentration and motivation, risk of schizophrenia
- The Drug Foundation should act more as a neutral party encouraging people to inform themselves about the referendum rather than widely advocating for yes votes.
- Conflict of interest for a government funded organisation to encourage voters to vote in favour of cannabis reform

5. Social Responsibility

- Placement - Children can view this ad, this is inappropriate
- Not suitable for those under 20
- This ad shouldn’t be broadcast on TV, in these time slots
- It is not the role of the Drug Foundation to promote drug use, but to support people to find better coping mechanisms, so they can live fulfilling lives.
- People of all ages will have this ad forced on them, if they access the stuff website. The only way to exit the ad is by using the X at the top of the screen. It is not appropriate content for children.
- Once something is legalised it is often deemed acceptable, safe and socially appropriate
- The ad is legitimising drug use with a very glossy smiley veneer, which bears no resemblance to the actual drug world.
- All the presenters are clean-cut, well-presented, seem well off

6. Other

- The ad is in breach of the SSC as a funded CCO and should not be allowed on TV or in print
- The ad makes a financial claim about where any potential taxation gain from the legal sale of marijuana may be spent, that cannot be verified as the Advertiser has no control over what the NZ Govt might spend its tax revenue on.

Appendix 2

RESPONSE FROM ADVERTISER, NEW ZEALAND DRUG FOUNDATION

This letter is in response to the complaints received by the Advertising Standards Authority regarding the New Zealand Drug Foundation's "On Our Terms" cannabis referendum campaign. Thank you for summarising the complaints you'd like addressed. We have responded to each point below. If you'd like further information on any of these points, please let us know. We are also attaching copies of all of the advertising, as requested.

Response to summarised complaints:

"Playing when children can see"

We're aware that the referendum has the potential to be a controversial topic, and that there are sensitivities around the content. Not only was the advertising carefully considered, we also sought TCAB approval for all of the advertisements during the script process and prior to broadcast/publication. The 30 second and the 60 second TVC were both approved by TCAB with a G rating (approval numbers were #00526011 and #00526012)

However due to the nature of topic as outlined above, with the exception of the TV advertising, all advertising had age targeting applied so that it was only seen by a 35 – 54 year-old demographic.

There were deliberately no images of cannabis or cannabis use in any of the advertising, or colloquial references to cannabis.

Advertisement is misleading

The advertisement uses real New Zealanders, not actors, who are personally voting yes and allows them to explain why they are making that choice. The different advertising placements also outline the eight key controls and benefits that the New Zealand Drug Foundation believe are the most important points for New Zealanders to understand in order to make an informed choice. The messages are transparent and honest. It is also important to note it is certainly not our intention to mis-lead anyone, but to point them to our website which can help them make an informed choice.

Advertiser identification is not clear

The advertiser, the New Zealand Drug Foundation, is clearly stated on all advertisements and is in accordance with the rules and guidelines around advocacy and election advertising as set out in Advertising Standards Code and the Electoral Commission.

Advertisement not being neutral

The advertising clearly outlines why the New Zealand Drug Foundation is advocating for a yes vote, which is based on our experience as a public health organisation on the front line of harm reduction. Our Vote Yes point of view is fact and evidence based, and the advertising seeks to point out the controls that we believe are important factors for voters to consider

when making their decision. We're also encouraging people to find out more so they can also make an informed choice, whatever that may be.

Advertising drugs is illegal and should not be allowed on TV

We are not advertising drugs, we are helping New Zealanders to make an informed choice about a piece of proposed legislation. We do not show any visuals of illegal substances and deliberately only use the word cannabis as it relates to the referendum throughout the advertising.

Pressuring people to vote yes

We are outlining the key controls and benefits that the proposed legislation offers. Our view is fact and evidence based, and we're sharing the points of view from real New Zealanders who based on their own experience, agree. We're encouraging people to head to the website to find out more so they can also make an informed choice, whatever that may be.

Showing an unbalanced view

Under the advocacy principles we have the right to express our views and we are stating our view based on facts and evidence. We are advocating for a Vote Yes on this basis.

Repetitive use of the word yes

As above.

Advertisement being offensive

The advertising was submitted for review to TCAB and was given a G rating. Therefore it has not been classed as offensive.

Gives the impression that Government is voting yes

The advertiser is clearly stated on all advertising. It does not mention the government, but specifically the controls and benefits outlined in the proposed legislation.

Talking about Medicinal Cannabis which is not included in the referendum

Patients have told us that the current law is not working, that prescription cannabis is very expensive, there is not a broad range of products available for difference needs, that doctors are unwilling to prescribe and many patients are too afraid to ask their doctor about medical cannabis because of stigma.

The Cannabis Control Bill will provide more affordable and equitable access to more products. These products will have specified potency levels and will be manufactured to quality standards. Patient advocacy groups tell us that because of the existing barriers and difficulties entrenched in the current law patients are left sourcing products from the criminal black market.

The New Zealand Drug Foundation strongly believes that the referendum gives New Zealanders a chance to ensure safer access to patients who can benefit from cost and choice. We have also included evidence as an appendix to this letter.

Advertisement should not be on a news site

This is an advertisement that follows all of the rules and guidelines around advocacy and election advertising and was a paid placement like any other advertising.

We trust that we have addressed the complaints as requested. If you'd like to clarify anything outlined above, please do let us know how we can further assist the review.

Appendix: Medicinal cannabis

The New Zealand Drug Foundation has made efforts throughout to ensure people understand that the referendum concerns adult use and that there is a separate piece of medicinal legislation already in force. We are also clear that the medicinal regime does not provide sufficient access at affordable prices to meet the needs of patients. Links to our web materials where we have explained the difference between the two regimes can be found here:

- <https://www.drugfoundation.org.nz/policy-and-advocacy/medicinal-cannabis/>
- <https://onourterms.org.nz/about-the-bill/> (click on the medicinal cannabis button to see the pop out)

On the 28th May we also hosted a webinar on medical cannabis in which patient groups talk about the lack of current access to products and how the referendum is what they are all pinning their hopes on. This webinar was planned well in advance of the complaints being made: <https://www.drugfoundation.org.nz/news-media-and-events/cannabis-control-bill-what-it-means-for-medicinal-cannabis-users-live-chat-recording/>. We can also provide a written summary of this webinar.

We have strong patient support for our position that the referendum is necessary to provide better access for patients:

- A patient advocacy group Medical Cannabis Awareness New Zealand has made this public statement: <https://mcanz.org.nz/mcanz-press-release-referendum-does-give-better-access-for-medical-users/>
- Rebecca Reider, a medical cannabis patient and a member of the Ministry of Health's Medical Cannabis Advisory Group, wrote this article in support of our position: <https://www.newshub.co.nz/home/new-zealand/2020/06/opinion-why-medicinal-cannabis-patients-are-desperate-for-a-yes-vote-in-the-referendum.html>
- This interview, published in the NZ Herald, with a medical cannabis patient outlines many barriers still faced in accessing medical cannabis: https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12326752
- And we also published this article in our *Matters of Substance* magazine that canvassed similar issues: <https://www.drugfoundation.org.nz/matters-of-substance/november-2019/unawareness-and-cost-block-cannabis-prescriptions/>

There is evidence from Canada and jurisdictions in the United States that demonstrate medical cannabis patients have better access to products after legalisation. Note too that in Canada and the US States that have legalised cannabis, there was already widespread access before legalisation. We expect this increased access after legalisation will be even more profound in NZ, where patients currently have very little access.

These articles show people buy fewer medicinal products following legalisation, suggesting more of them are using products from the adult use market instead (Note that the products are often exactly the same products as they can access on the medicinal market):

- <https://mjbizdaily.com/medical-cannabis-sales-stall-in-canada-after-adult-use-legalization-affordability-access-also-considered-factors/>

- <https://mjbizdaily.com/chart-can-medical-marijuana-programs-survive-in-states-with-recreational-markets/>

Patients continue to use illegal cannabis despite medicinal cannabis being in theory available. Access is hampered by a number of factors including cost barriers and doctors' unwillingness to prescribe.

This research published very recently in the New Zealand Medical Journal illustrates this:

- "Medical cannabis: knowledge and expectations in a cohort of North Island NZ GPs" (NZMJ, 17 January 2020, Vol 133 No 1508). The study is attached and here is a link to a news article summarising the study: Article on the study: <https://www.rnz.co.nz/news/national/407506/medicinal-cannabis-prescriptions-limited-by-cost-barriers-lack-of-evidence-survey>

Another recently published study, also in the New Zealand Medical Journal, "Exploring medicinal use of cannabis in a time of policy change in NZ" (NZMJ 22 May 2020, Vol 133 No 1515) found:

- Despite medicinal cannabis products being in theory legal at the time, the vast majority of people using cannabis medicinally or therapeutically got it from illegal sources. Less than 5% obtained it via prescription
- Only one in three patient requests for a prescription were successful.
- 34% of the 2402 respondents who didn't ask for a prescription from their doctor were reluctant to ask for a prescription due to the fear of being judged and 40% didn't ask for a prescription because they thought they wouldn't prescribe
- A number of patients did not intend to engage with the new medicinal cannabis scheme when it came into force. Some of the top reasons were due to perceptions of what the cost would be, perceptions about the difficulty of obtaining prescriptions or preferring to grow their own.

Appendix 3

RESPONSE FROM COMMERCIAL APPROVALS BUREAU

We have been asked to respond to complaints regarding the identification of an advertiser within a political advocacy advertisement.

This commercial for the NZ Drug Foundation was approved on 26/05/20 after a period of pre-production consultation with the advertising agency. That consultancy period was robust, productive and led to a fully-compliant CAB approval.

This advertisement concerns the upcoming Cannabis legalisation and control referendum, scheduled for Saturday 19th September, 2020.

A number of complainants have said that the advertiser was not identified during the commercial. Conversely, a number of complainants easily identified the advertiser but did not believe that advocacy around a referendum issue should be allowed. Both groups are mistaken.

The NZ Drug Foundation is easily identified as the advertiser, having fulfilled the statutory obligation for authorisation and furthermore adding their Foundation logo and slogan, and a clear direction to their website for additional information.

The guidelines for Principle 2, Rule 2(e) state the following: "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 NZ Drug Foundation have followed these ASA guidelines to the letter.

On the matter of advocacy, the NZ Drug Foundation has a right to present their beliefs and arguments for either the benefits or drawbacks of proposed legislation. In the event of referenda, it is especially important that democratic advocacy is available within the public sphere as the body public are invited to vote on the issue.

The free and principled exchange of information on matters of public interest are vital to the health of an electoral democracy, and the NZ Drug Foundation have fulfilled every obligation to public safety. CAB does not believe the complaint should be upheld and eagerly awaits the Board's decision.