

COMPLAINT NUMBER	20/243
ADVERTISER	Electric Kiwi
ADVERTISEMENT	Electric Kiwi, Facebook
DATE OF MEETING	7 July 2020
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about an Electric Kiwi Facebook advertisement about a Powershop weekend pricing plan. The Complaints Board said the Advertiser had used the advertisement to publish its opinion on a competitor's pricing plan and had provided sufficient support for the statements made in the advertisement.

Advertisement

The Facebook post from Electric Kiwi is written as correspondence directly to Powershop NZ asking a number of questions about its 'Free Weekend Super Saver' plan. It queries why the offer is not open to existing customers or readily available on the Powershop website but is promoted through a power company comparison website. The advertisement outlines Electric Kiwi's opinion that the execution of the plan goes against published Powershop principles of customer equality. The advertisement ends with the suggestion for existing customers to make enquiries with Powershop or alternatively to contact Electric Kiwi to get a price comparison.

Summary of the Complaint

The Complainant says the advertisement is inflammatory and indecent and the content is inappropriate to tag a competitor's company and share their details.

Issues Raised:

- Social Responsibility
- Decency and Offensiveness
- Truthful Presentation
- Comparative Advertising

Summary of the Advertiser's Response

The Advertiser defended the complaint and says the post is not an advertisement, but rather a social media post on a forum designed to voice opinions.

The Advertiser said it plays a role exposing negative behaviour from large government companies¹, which in this case was a plan which went against Powershop's published principles of customer equality. The limited accessibility of the power plan has the potential to mislead consumers. The Advertiser said it had raised the issue directly with Powershop and the comparison site Powerswitch and had tagged Powershop into the Facebook post for them to have the opportunity to reply.

¹ Powershop is subsidiary company of Meridian Energy which is 51% owned by the New Zealand government.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

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(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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to precedent Decision 19/046 which was settled.

The full versions of decisions since 2015 can be found on the ASA website:

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

Decision 19/046 concerned a Netflix post on its Facebook page which used language the Complainant found offensive. The Advertiser questioned whether the Facebook post was an advertisement. The Complaints Board agreed the post did fit the ASA definition of an "advertisement" as it was on the company's Facebook page and was likely to influence consumer opinion in relation to Netflix.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement is that in Electric Kiwi's opinion Powershop are not providing equal or transparent pricing opportunities across their customer base.

Is the Facebook post an advertisement?

As a preliminary matter, the Complaints Board considered whether the Facebook post met the ASA definition of an "advertisement". The definition states:

"Advertising and advertisement(s)" are 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 Complaints Board took into account the post appeared on the Advertiser's Facebook page and was boosted, which meant the advertiser paid to further promote it to a wider audience. The Complaints Board agreed the Facebook post did fit the definition of an "advertisement" given its intent was to influence consumer opinion on electricity retailer pricing policies. The Board further noted there was a call to action at the end of the advertisement for consumers to contact the Advertiser, Electric Kiwi, to investigate its prices.

Does the advertisement mislead, deceive or confuse consumers?

The Complaints Board said the advertisement contained the Advertiser's opinion about how its competitor, Powershop, was treating its customers. The Complaints Board noted the post criticised what Electric Kiwi considered to be a lack of transparency and accessibility of the 'Free Weekend Super Saver' plan which it said was only promoted through a power company comparison website.

The Board said the Advertiser's response supported its opinion about Powershop's pricing offer and why it considered this to be contrary to the published principles of customer equality stated in a blog by Powershop's General Manager, Mark Soper who said "*One principle we've always believed in is customer equality. So we don't do special cut-price rates for new sign-ups, while milking our long-standing loyal customers.*"

The Complaints Board said the opinion advertisement was not misleading and did not breach Rule 2(b) of the Advertising Standards Code.

Does the advertisement denigrate a competitor?

The Complaints Board noted the context of the advertisement, a Facebook post from a power company, directed at a competitor power company. The Complaints Board took into account the electricity retail sector was large with robust competitor behaviour and pricing plans are regularly promoted to consumers.

The Complaints Board considered the threshold required for advertising to be said to denigrate competitors. The Board agreed such criticism would need to be clearly unfair. The Board agreed the Advertiser response supported the opinion statements in the advertisement. The Board agreed the threshold for denigration had not been met.

The Complaints Board said the advertisement did not breach Rule 2(d) of the Advertising Standards Code.

Does the advertisement contain anything that is indecent or is likely to cause widespread offence?

The Complaints Board agreed the advertisement contained opinion statements from Electric Kiwi on the pricing practices of a competitor. The Board said although the Advertiser was challenging Powershop about the fairness of its new weekend plan, the advertisement did not contain anything which was indecent and did not meet the threshold to cause serious or widespread offence.

The Complaints Board said the advertisement did not breach Rule 1(c) of the Advertising Standards Code.

Is the advertisement socially responsible?

The Complaints Board said the advertisement had been prepared and placed with a due sense of social responsibility, taking into account context, medium, audience and product and was not in breach of Principle 1, Principle 2 or Rules 1 (c), 2(b) and 2(d) 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. Response from Advertiser
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Appendix 1

COMPLAINT

I noticed a fairly inflammatory post by Electric Kiwi specifically targeting Powershop. Goes against Rule 1 (c) Decency and Offensiveness Guidelines. Including tagging them and sharing their content details (which are publicly available). This post is indecent and inappropriate. I'm not a customer of Electric Kiwi and don't follow their content.

Appendix 2

RESPONSE FROM ADVERTISER, ELECTRIC KIWI

Thanks for your letter regarding our Facebook post.

I am writing to confirm that Electric Kiwi will **defend** Complaint 20/243 for breaching the Advertising Code as outline within your letter dated 23 June 2020.

The complaint expresses that Electric Kiwi breached the following Advertising Standards Code within a social media post created on 10 June 2020:

Advertising Standards Code – Principle 1, Principle 2, Rule 1(c), Rule 2(b), Rule 2(d):

Please find the below considerations. These constitute our defence:

1. The associated complaint was not related to an 'advert', but a social media post on Facebook, a forum in which Electric Kiwi has the right to voice opinions.
2. The opinion expressed is still available on Facebook within our post history, but no longer being promoted.
3. This post was promoted to the tune of \$150. Most consumer reach was organic.
4. Electric Kiwi 100% stand by the opinion expressed. Moreover, as one of the only independent voices in our industry, we consider it an important role that we play to expose negative behaviour from large government owned 'gentailers' when we see it (for your information Powershop is owned by Meridian).
5. In this instance, Electric Kiwi raised an issue with a competitor (Powershop);
 - a. Powershop had a new plan (Free Weekend Super Saver) that was only available for new customers this (in our opinion) went against their own published principles:
 - i. QUOTE: *One principle we've always believed in is customer equality. **So we don't do special cut-price rates for new sign-ups, while milking our long-standing loyal customers.** It's what I call 'non-discriminatory pricing'. No matter when you signed up with us, you have the same base rates as all customers in your area with the same meter setup and pricing option.* (source: <https://www.powershop.co.nz/blog/doing-the-right-thing>)
 - b. In addition, Electric Kiwi were made aware that the new plan was not on their website, you had to call the contact centre to access the rates.
 - c. The plan was available on the government funded comparison website 'Consumer Powerswitch'. This, along with its unavailability on the website, has

the potential to mislead consumers. It is our view that this customer confusion is deliberate (to maximise sales and price perception while minimising customers who join the new plan).

- d. Electric Kiwi honestly consider this behaviour to be against the best interests of Kiwi consumers. And the purpose of this post was to voice that opinion. We have also raised this issue with Powershop and Consumer Powerswitch formally.
- e. Electric Kiwi tagged Powershop within the Facebook post to give them the opportunity to reply and explain why the 'Free Weekend Super Saver' plan was only available to new customer and could not be found on their website.

- 6. On the matter of offensiveness. I see no grounds for this claim and we refer the authority to the content to make that judgment themselves. See below.

It should be noted that Electric Kiwi has no intention of deleting this post. It is a truthfully held opinion about a competitor in our industry, and it was shared in a public forum. We believe that, should this be taken seriously by the ASA, then serious questions need to be asked about the authorities role in our democracy. The inference (of this being upheld) is that the ASA seeks to silence the opinions of challengers to government owned companies. We would deem that worthy of serious public discussion and scrutiny.

We are very happy to discuss this further and provide more information should you require it.