

COMPLAINT NUMBER	20/412
ADVERTISER	Make It Legal NZ
ADVERTISEMENT	Make It Legal NZ, Facebook
DATE OF MEETING	14 September 2020
OUTCOME	No Grounds to Proceed

Advertisement: The Make it Legal NZ sponsored Facebook advertisement is headed "The bleak future of a no vote:" and promotes a yes vote in the Cannabis Legalisation and Control Referendum. A list of five negative outcomes from a no vote includes: "Patients with serious conditions can't access medicinal cannabis". It ends with the sentence "Your yes vote matters" and includes a promoter statement.

The Chair ruled there were no grounds for the complaint to proceed.

Complaint: The Complainant said the statement "Patients with serious conditions can't access medicinal cannabis" is false.

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e)

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

About Advocacy Advertising

Complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

In assessing whether an advocacy advertisement complies with the Advertising Standards Code, the freedom of expression provisions under the Bill of Rights Act 1990 must also be considered.

Section 14 of the Act says: "Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form." This freedom of expression supports robust debate on current issues in a democracy.

Under Rule 2(e) Advocacy advertising of the Advertising Standards Code:

- The identity of the advertiser must be clear

- Opinion must be clearly distinguishable from factual information, and
- Factual information must be able to be substantiated.

If the identity and position of the Advertiser is clear, a more liberal interpretation of the Advertising Standards Code is allowed.

About this complaint

The Chair acknowledged the Complainant's concern the statement about access to medicinal cannabis is misleading.

The Chair confirmed the Advertiser's identity was clear. The Make It Legal Aotearoa New Zealand Trust is a registered promoter for the Cannabis Legalisation and Control Referendum. The Advertiser's position on the issue was clear. The advertisement draws attention to the organisation's position regarding the upcoming referendum. The advertisement complied with the requirements of Rule 2(e) of the Advertising Standards Code.

The Chair said the statement "Patients with serious conditions can't access medicinal cannabis" was an opinion statement and reflected the Advertiser's position supporting a yes vote.

The Chair referred to a precedent decision on a similar statement, Decision 20/227 which was not upheld. This decision said in part:

"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.""

The Chair said Decision 20/227 applied to the complaint before her and the advertisement was not misleading.

The Chair said the Cannabis Legalisation and Control Referendum is a significant social issue and it is important the New Zealand public has context for the differing views on it, in order to be able to take an active part in the debate. The Chair confirmed the Advertiser's position supporting a yes vote provides context for consumers when viewing this advertising.

The Chair said the advertisement was not in breach of Principle 2, Rules 2(b) and 2(e) of the Advertising Standards Code.

The Chair ruled there were no grounds for the complaints to proceed.

Chair's Ruling: Complaint No Grounds to Proceed

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. **NOTE:** Under the fast track process one month prior to the Election, appeals must be made in writing via email or letter within three (3) calendar days of receipt of this decision.