

COMPLAINT NUMBER	20/326 Appeal 20/021
ADVERTISER	Goodman Fielder NZ Ltd
ADVERTISEMENT	Meadow Fresh Television
DATE OF MEETING	19 January 2021
OUTCOME	Upheld Advertisement not to be used again

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about a television advertisement for Meadow Fresh Calci Original milk which showed a girl riding her bike on the footpath. The Board said the advertisement condoned an illegal practice, as riding a bicycle on the footpath is an illegal activity in New Zealand. The Complaints Board acknowledged there is a process to review this, but the Land Transport (Road User) Rule 2004 currently applies.

Advertisement

The television advertisement for Meadow Fresh Calci Original milk shows a girl going to the local dairy by herself to buy some milk. The girl is shown walking her bike across a pedestrian crossing. Once she has purchased a bottle of milk, the girl is shown riding her bike on the footpath.

Summary of the Appeal

The Complainant was concerned the advertisement showed a child riding a bike on the footpath, which is an illegal activity in New Zealand. This complaint was considered by the Chair of the Complaints Board and ruled No Grounds to Proceed. The Complainant appealed the ruling. The Chairperson of the Appeal Board accepted the appeal under Ground (d) - it was against weight of evidence and Ground (e) - it was in the interests of natural justice and referred the matter to be reheard by the Complaints Board.

Issues Raised:

- Social responsibility
- Safety

Summary of the Advertiser's Response

The Advertiser said they stand by their decision to show the young girl riding safely for three metres on the footpath as she arrives home. Children are far less likely to be killed riding a bike on a footpath than a road. The Advertiser said the advertisement aired for the last time on 7 November 2020, and there are no plans to use it beyond this date.

Relevant ASA Codes of Practice

The Acting 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.

Relevant precedent decision

In considering this complaint the Complaints Board referred to a precedent decision, Decision 09/317, which was Upheld in part and Settled in part.

Decision 09/317 concerned a television advertisement for the Heart of Auckland which showed a man riding his bike through the streets of Auckland City, in the early hours of the morning. He is not wearing a helmet and does not have a rear light on his bike. At one stage he is shown cycling on the footpath.

The Complaints Board ruled that the matter was Upheld in relation to the issue of the man riding on the footpath, and without a rear light. The Complaints Board noted that riding on the footpath, unless delivering newspapers, mail or leaflets, was prohibited in New Zealand.

Complaints Board Discussion

The Acting Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was Meadow Fresh Calci Original milk is good for the whole family. It also has extra calcium.

Did the advertisement encourage or condone a dangerous, illegal or unsafe practice, or portray a situation which encourages or condones a disregard for safety?

The Complaints Board agreed the advertisement condoned an illegal practice, by showing a child riding a bicycle on the footpath. The Board referred to precedent decision 09/317 and said it was relevant to this complaint.

The Complaints Board noted the Complainant had provided some evidence about the dangers associated with cycling on the footpath. The Board noted that the data which compared the safety of riding on the footpath with riding on the road was limited.

The Complaints Board noted that some parents prefer their children to ride on the footpath rather than on the road, because they believe this to be safer.

The Complaints Board noted that a collection of rule changes known as the Accessible Streets Regulatory Package has been proposed by the Associate Minister of Transport. These proposals, with some options for footpath cycling and footpath speed limits, went out for public consultation in March 2020.

The Complaints Board agreed that despite current practices and proposed changes, the existing rules, in particular the Land Transport (Road User) Rule 2004, still apply. Riding on the footpath, unless delivering newspapers, mail or leaflets, is currently prohibited in New Zealand.

In light of this and the requirement of Rule 1(e) on safety and illegal practices in advertising, the Complaints Board considered it had no choice but to uphold the complaint.

Is the advertisement socially responsible?

The Complaints Board said the advertisement was not socially responsible, taking into account context, medium, audience and product and was in breach of Principle 1 and Rule 1(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement not to be used again.

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. Original Complaint
 2. Appeal Application
 3. Additional Information from Complainant
 4. Response from Advertiser
 5. Response from Media
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Appendix 1

ORIGINAL COMPLAINT

Television Ad Details: TV1 Different programmes 7 adverts seen 2020-09-02 Different times

Complaint Details:

This relates to an advert where a young girl Lily goes to a dairy to pick up milk. In previous adverts she walked, but the advert has changed. I first saw the new advert last month and sent the company an email, no response.

I have now seen the new advert 7 times, all on TV1 where Lily rides a bicycle on a footpath - this is against the law and dangerous as cars backing out can hit bikers, who are faster and less likely to hear the car.

I saw the advert again 2 September, I emailed them again, (cac@goodmanfielder.co.nz) and received a response saying that my email was sent to the marketing division, but I have heard nothing.

Thursday, 3 September, I saw 3 of the second advertisement in one day, on TV 1 at 1215 (Middy News), 1546ish on Tipping Point and again in the evening News at 1818 hrs.

On Sunday 6 September on TV1, @2041 hrs, I saw this advert again, but caught only part of what I have seen on earlier occasions. It was during the programme 'The Salisbury Poisoning'. Again, I saw it Sunday 6th on TV1, @2041, and Tuesday 8 September (the 7th time), on TV1 at 2141 hrs during 'The Salisbury Poisonings'.

I know that some people are advocating that children should be allowed to ride bikes on footpaths, but as far as I am aware, the legislation is still in force. This is inappropriate, of MeadowFresh and I suggest a breach of Rule (1)(e) - safety. My concern is that this will confuse not only children, but parents, who will assume that it is ok to let their children break traffic rules and ride on footpaths, when it is not.

It is over a week since I raised my complaint for the second time, the advert has appeared several times since it was referred to the marketing division, but I have heard nothing back. I am unsure how much time is reasonable to wait for a response, but certainly the ads seem more frequent now. I could not put the dates in the 'advertisement details' form and nor earlier on, did I know which programme the adverts appeared.

Appendix 2

APPEAL APPLICATION - FROM COMPLAINANT

Appeal - My Complaint:- 20/326 Meadowfresh Advertisement

On 9th September 2020, I set out my concerns about an advertisement (MeadowFresh milk, Goodman Fielder) to ASA on-line - attachment 1. I had contacted the firm earlier on 2 September, and was advised that my concerns would be sent to the Marketing team - I did not ever receive a response. The advertisements have continued.

The Chair responded (attachment 2) to the complaint on 13 November (1208), saying:-

"The Chair noted the Complainant's concern the advertisement showed a child riding a bike on the footpath.

The Chair acknowledged that it is currently illegal to ride a bike on the footpath in New Zealand. The Chair noted that the New Zealand Transport Agency/Te Waka Kotahi has undertaken a review of this law, in response to public opinion and current practices.

The Chair said the advertisement does not show, encourage or condone a disregard for safety. Rather, it reflects the reality that some parents encourage their children to ride their bikes on the footpath, believing it to be safer.

The Chair said while she acknowledged the concerns raised by the Complainant, the advertisement did not reach the threshold to breach Principle 1 or Rule 1(e) of the Advertising Standards Code."

Response:-

Research

In terms of the Chair's assumption that the parents think it is safer for a child to cycle on a footpath, the parents are wrong and against the weight of the evidence. The research shows that cycling on a footpath is more dangerous. The dangers have not been appreciated or understood - we are aware of several incidents in our road, where people riding on the footpath are hit by cars exiting properties, or people opening gates or garage doors with an automatic door-opener, or hit people walking from their property onto the footpath. No-one yet has been badly hurt, luckily. Because they are on a bike, children are going at a greater speed than if they were walking, and are less able to stop. The research seems to focus on cyclists on footpaths and pedestrian fatalities and I guess injuries - my concern is more for cyclists and vehicles leaving properties.

A paucity of information is commonly noted - eg, underreporting of cycling accidents on footpath accidents, the speeds reached by children cycling on the footpath (as higher speeds of course cause more damage to cyclists and pedestrians in a crash); the lack of data on numbers cyclists and pedestrians in terms of use of roads and footpaths.

A study by **Grzebieta, McIntosh and Chong (2011)** (Attachment 3) discusses the conflicting demands of motor vehicles, cyclists and pedestrians and the restriction and regulation of shared facilities, and the practices and budgets of councils and roading authorities.

Dr Glen Koorey PhD ME Cantuar, CMEngNZ is a Senior Traffic Engineer and Transport Planner, and says in his article (Attachment 4):-

'In moving cyclists to the footpath however, additional crash problems may be introduced. More conflicts with pedestrians are likely for example and there may be less reaction time for driveway or side-road conflicts. Poor surfaces and geometrics are also likely to contribute to the footpath hazards. In fact, a number of studies have found that the crash rate involvement when cycling on footpaths (or "sidewalks") is considerably higher than on the road or off-road cycle paths.'

He also quotes a survey by Aultman-Hall & Hall (1998) which found that the likelihood of fall or injury (per 105 km) was four times higher on sidewalks than roads. They found data from Canada which showed the mean fall/collision rates on sidewalks were 2-10 times higher than equivalent incidents on roads. A common finding is that serious cycling accidents occur on roads, not pavements - over five years 1992-1996, 25 children were killed on roads in bicycle-related incidents in NZ. However, cyclists moving to use footpaths may mean that pedestrians sustain more serious injuries, although fatalities are rare. And the likelihood of "major" injuries was still about 1.7 times greater on footpaths than roads.

Moritz (1997) found similar findings from an internet/mail survey of "regular" commuters in US/Canada (2300 responses). Although "other" facilities (mainly sidewalks) accounted for only 0.8% of distances travelled, they accounted for 4.4% of crashes reported, Dr Koorey notes that 'Further investigation by Moritz (1998) on the relative crash rate for different facilities showed sidewalks to be extremely dangerous (16 times worse than other facilities)'.

Dr Koorey quotes Carlin *et al* (1995), who interviewed around 100 children admitted to hospital for bike injuries in Melbourne, Australia and compared them with 100 children who cycled but had not been injured. They found that 40% of injuries occurred on sidewalks or adjacent nature strips, a higher proportion than actual usage. He accepts that a crash for a cyclist with a 'motor vehicle is more likely to lead to serious injuries, hence the preference to take one's chances on the footpath'. Dr Koorey notes most bicycle-related fatalities involve a collision with a motor vehicle. But he also suggest that although serious injuries might be reduced by having cyclists off the road itself, this may result in more serious injuries to pedestrians hit by cyclists.

The **Footpath Cycling Discussion Paper** is a 2018 article in Living Streets Aotearoa (Attachment 5), commissioned by 3 different Australian organisations - Victoria Walks, Council On The Ageing, Vision Australia. The article sets out research by MRCagney, showing that cycling on footpaths is dangerous, for cyclists and pedestrians and says that it is a 'misconception' to believe that it is safer for cyclists than using the road. The Report discusses the safety risks for cyclists and pedestrians, and other studies and research, one of which "estimated that the crash rate for cyclists on the footpath was 5.6 times that of cyclists on the road." It found that between 6 and 17 per cent of all cyclist crashes in Australia and New Zealand occurred on footpaths, even though this was not allowed in most areas. Also, footpaths are not designed for cycles. The Reports mentions a study by the Amy Gillett Foundation found that 'over half of the child bike rider crashes [between 2002 to 2012] involved being hit after emerging from a footpath or driveway'. A commentator suggested riding on the footpath probably makes cyclists feel safer, although this is not so.

Finally, the NZ Transport Agency commissioned a study entitled **Footpath Cycling Rule Options**, by **Abley Transportation Consultants (2016)** I am happy to send this, but it was too large to send as an attachment. It found that cyclists on footpaths were involved in 10% of crashes. Again, there were few fatalities for cyclists, and pedestrians were more likely to be injured than cyclists. It also noted that 'ideally pedestrians, cyclists and motor vehicles should be separated'. It also spoke of organisations to legally train children to ride safely on footpaths. The Report's final recommendation was that children 12 years and under (and an accompanying adult) should be able to cycle on the footpath. Four years later, no government has made any moves in this. What research or advice (from Goodman Fielder,

NZTA or another source) was used in forming the Chair's decision is not given, making it impossible to formulate a response. This is exacerbated by the limited time frame - I am still waiting for a response from NZTA.

Basis of Chair's decision

Threshold I am completely unaware of the threshold which would be considered when establishing a breach of Principle 1 or Rule 1, or what would qualify as an acceptable breach on an advertisement. I cannot find on the website any threshold or standard, which, if not reached, would mean that a breach of Rules and Principles could be found. The response of the Chair provided little information as to factors taken into account in the decision, apart from that parents might believe (erroneously) that it was safer for children to ride on footpaths, and ignored the danger of the sight of a child breaking the law in the advertisement. The absence of information about the threshold makes any response difficult, if not impossible. Whether or not a threshold applies, the reality is that it is still illegal, and subject to ASA's Rule 1 and Principle 1.

Parents believe footpaths are safer The safety issues outlined above need to be taken into account in order to come to a decision that is based on natural justice that the matter be reheard. Parents believing that a child is safer cycling on a footpath is not a reason for advertisements showing this continue - the contrary applies. If parents believe that it is safer to allow their children to ride on the footpath is safer, they are wrong. However, seeing this on tv, most parents would think that 'But it must be ok, it is on tv, it wouldn't be on tv if it wasn't ok.' The current decision of the Chair makes it more likely that children are now less safe, as the advertisement continues to screen.

Link cycling on footpath and consumption of milk The relevance of a child cycling on a footpath in an advertisement for milk is not mentioned by the Chair. Showing a child riding a cycle on the footpath is an unnecessary and irrelevant addition to this advertisement - it's an advertisement for milk! The earlier advertisement showed the child walking to the dairy for milk. So it is clear that is and was perfectly possible to advertise milk without including cycling on the footpath - the child could have taken, for example, a puppy, a skipping rope, a pogo stick, or a friend to the dairy. And it is a 'footpath', not a cycleway. By portraying riding a cycle on a footpath in a tv advertisement for milk makes an unacceptable and non-existent connection between cycling on footpath on one hand and milk, a healthy and nutritional food, on the other.

It is irresponsible for MeadowFresh to show the child cycle on the footpath. Why not just have the child cycle on the road, obeying the road rules? Why would this have an adverse effect on the advertisement? Why is this not a factor in the Chair's decision.

Change of law That the law might possibly change does not help and makes no sense - is it ok now to smoke marijuana? The answer is no, so would an advertisement showing a person returning home after a walk to the dairy to buy chocolate and then smoking marijuana be acceptable? Or would it be ok for a parent not to have their child travel in a car without a seat belt because the parent thought that was safer than using a seat belt as it might cause bruising if there was an accident. Or providing a child with alcohol or illegal drugs because the parent think it is safer for the child to experience this at home - is that acceptable? Even if a law is being considered for changing, that does not make it lawful before that actually happens. The proposal has been termed 'contentious', so it is likely to never happen.

I am aware that the NZTA was looking at the legislation, and have read the documentation. Apart from the Abley report,(discussed above last item Research), there is a cost-benefit analysis (April 2020), which concentrates on the health benefits of cycling - fitness and

exercise effects in health, and there is no mention of cycle accidents on footpaths. I contacted NZTA twice to ascertain what they knew about children having accidents while cycling on the footpath. The first request 12 November elicited a completely inadequate response, advising me that the advertisement was not placed by NZTA, I should contact ASA and then a 4 line explanation of work the New Zealand Police did. I had said in the original request that I had complained to ASA, and said that it was a MeadowFresh advertisement. As a former police prosecutor, I was familiar with police work. I then repeated the information I had given originally and asked again for someone to contact me, but no response until 24 November. This inadequate response from NZTA compromised my ability to appeal adequately to the Chair's decision in the required 10 working days. I immediately (20 November) requested figures showing accidents for cyclists of whatever age, but in particular children, using the footpath and being involved in accidents, and how this compares to accidents affecting cyclists on the road, for 2018 and 2019 but no response yet - I will send it on.

Simon Kennett, Principle Multi-modal Advisor, Safe and Sustainable Technical Services, Operational Policy, Planning & Performance, Transport Services NZTA - Attachment 6 - sets out the recent history of proposed changes to cycling on the footpaths for children (and also the elderly). He notes that although there has been public consultation - extended due to COVID-19, So the existing rules still apply, specifically Land Transport (Road User) Rule 2004. Further, the Rules define a footpath as “a path or way Principleley designed for, and used by, pedestrians; and includes a footbridge”. Further, the Rules prohibit a motor vehicle from driving on a footpath. Rule 11.11 applies to 'Riding cycles or mopeds on footpaths, etc' providing:-

- (1) A person must not ride a cycle or moped on a footpath or on a lawn, garden, or other cultivation forming part of a road.
- (2) Subclause (1) does not apply to a person who rides a cycle on a footpath in the course of delivering newspapers, mail, or printed material to letterboxes.”

Age of the cyclist is irrelevant, as is being accompanied (or not) by an adult. The one relevant issue is the size of the wheels.

There is the possibility to apply to Waka Kotahi – NZTA - for an exemption to the rule.

Process

I am not aware what evidence, data or statistics, if any, was provided to and relied on the Complaints Board when coming to a decision, so cannot comment on that. I do not know whether MeadowFresh was consulted or saw my complain. Any 'defence' they may have offered was not available to me, so I am unable to comment on it.

The time frame for my response - 14 calendar days, so 10 working days, when it took over 2 months for a ASA response (although the date of the 'meeting' was 21 September 2020) - was insufficient for me to get responses from NZTA, as outlined above - requests for data and consultation have not yet been responded to. I understand that it has been a busy time for government agencies, with corona virus complication. However, as a complainant, I am compromised by delays in other government agencies.

I emailed ASA to ask 'To appeal your decision, is there any particular format or form to use?' This was not answered- I was told 'Just email your appeal to asa@asa.co.nz', nothing about what is expected.

Conclusion

I believe Principle 1 and Rule 1(e) at 'Safety' and 'Social Responsibility' have been breached. Principle 1 requires that 'Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society. Rule 1(e) provides that '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.' There are no educational or social grounds which justify this advertisement being shown. It portrays behaviour that is both illegal and dangerous, and unnecessary.

Whether the parent thought the child was safer or not is in fact quite irrelevant. In any event, research shows that cycling on the footpath is more dangerous, particularly for other users. So parent's belief that it is safer for a child to cycle on the footpath is wrong, and is not a reason to allow the advertisement to remain. Further, the law remains - this is illegal - see attachment 6.

In conclusion, showing an advertisement with a child modelling behaviour that is dangerous, still illegal and completely irrelevant to the product being advertised is unacceptable and irresponsible - people seeing it will gather that this is fine, and expose their children, themselves or other users to physical harm.

I apologise for any errors or mistakes in this document - it required me to do more, I had to wait for people to get back to me, and so it was rushed, in order to meet the deadline.

Attachments

APPEAL - MY COMPLAINT:- 20/326 MEADOWFRESH ADVERTISEMENT

1. On-line form ASA
 - 2 Decision by Chair 19 November 2020
 3. Pedestrian-Cyclist Collisions: Issues and Risk - Paper presented at the Australasian College of Road Safety National Conference - Pedestrian-Cyclist Collisions: Issues and Risk, Melbourne, 1-2 September, 2011.
 4. Cycling Research Is it Safer to Ride on the Footpath? Article by Dr Glen Koorey
 5. Research Finds Cycling on Footpaths is Dangerous - For Cyclist
 6. Relevant legal situation - Simon Kennett Principle Multi-modal Advisor, Safe and Sustainable Technical Services, Operational Policy, Planning & Performance, Transport Services NZTA
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Appendix 3

ADDITIONAL INFORMATION FROM COMPLAINANT

Of course - the NZTA info demonstrates that there is no evidence showing that it is safer if cyclists ride on the footpath - no mention of safety of pedestrians. The evidence does not consider injury to pedestrians or any other user of the footpath. It is quite inadequate. There is no way of knowing the percentage of cyclists using a footpath, as opposed to the road, and they are not in any event coded separately. The statistics are very limited. In any event, the safety issue is only one of the issues I am raising.

Appendix 4

RESPONSE FROM ADVERTISER, GOODMAN FIELDER NZ LTD

Thank you for your email, it is a disappointing reversal of the original ruling on this matter. As the research provided by the complainant shows, children are far less likely to be killed riding a bike on a footpath than a road, and we stand by our decision to show the young girl riding safely for three metres on the footpath as she arrives home.

This Meadow Fresh Calci Original milk ad aired for the last time on 7 November 2020, and there were never any plans to air it beyond this date.

Appendix 5

RESPONSE FROM MEDIA

The Commercial Approvals Bureau is not providing a response to this appeal as they have nothing further to add.