

COMPLAINT NUMBER	21/020
ADVERTISER	Gianna's Choice
ADVERTISEMENT	Gianna's Choice, Out of Home
DATE OF MEETING	26 January 2021
OUTCOME	No Grounds to Proceed

Advertisement: The Gianna's Choice advertisement is displayed on a large mobile van. Wording includes: the "Gianna's Choice- Pregnancy options and support" logo, the web address pregnancyoptions.org.nz, phone number and the text "Free pregnancy tests, confidential advice, practical support."

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

Complaint: Gianna's Choice operate a mobile van that travels around (and perhaps beyond) Wellington.

According to their sign writing, they offer "pregnancy options and support" including "pregnancy tests, confidential advice and practical support". This advertising violates both principles of the Therapeutic and Health Advertising Code. The messaging targets a vulnerable audience (pregnant women), and is misleading, as it masquerades as medical advice when it is actually a strongly biased, pro-life enterprise selectively utilising medical language and technologies. The messaging is broad enough to not be technically incorrect, but that does not make it truthful, and it is in violation of the principle of both truthful presentation and social responsibility. The stakes are extremely high for pregnant women, particularly those who perhaps cannot afford to see a GP and may be drawn to this service, which does not clearly disclose its religious or political affiliations.

The relevant provisions were Advertising Standards Code - Principle 1, Principle 2, Rule 1(g), Rule 2(b), Rule 2(e);

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

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

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 such as abortion.

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 that the advertisement is misleading because it does not disclose its affiliations, while targeting a vulnerable audience.

The Chair considered this to be advocacy advertising. It is signposting the Advertiser's position and access to the Advertiser's clear position is available through the website link.

The Chair said the Advertiser's identity was clear given the Advertiser's name, phone number and website address were included. The Chair confirmed the advertisement complied with the requirements of Rule 2(e) of the Advertising Standards Code.

The Chair confirmed the advertisement contained basic information and contact details, which could not in itself be considered misleading. The Chair said as soon as any consumer visited the website, the Advertiser's pro-life position would be clear.

The Chair said when considered in the context of advocacy advertising the advertisement does not meet the threshold to breach Principle 1, Principle 2, or Rules 1(g) and 2(b) 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. Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.