

COMPLAINT NUMBER	21/208
ADVERTISER	The Trusts
ADVERTISEMENT	The Trusts, Print
DATE OF MEETING	8 June 2021
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a print advertisement for the Portage Licencing Trust and Waitakere Licencing Trust (the Trusts) which said 100% of profits go into West Auckland. The Complaints Board said the reference to profits would generally be understood to be after the deduction of operating costs and accepted that independent auditing was in place to ensure the Trusts complied with legislative requirements about profit distribution.

Advertisement

The print advertisement for the Trusts which appeared in The Fringe community newspaper states “100% of Profits Go Back Into West Auckland.” The advertisement shows images of the Police/Plunket Care Seat Initiative, Vision West x Fair Food and Ranui Primary School MDM2. The advertisement includes the Trusts logo and website address “shop.thetrusts.co.nz”

Summary of the Complaints

Two Complainants were concerned the advertisement is misleading to state 100% of profits go back into West Auckland when figures from 2014-2019 show only 15% was given back to the community. One Complainant is also concerned the Advertiser is using public money to promote themselves.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser said the target audience would be aware of the Trusts purpose and would therefore understand that it has assets to manage and incurs other business and operational costs (including advertising) in running the organisation. It said the average consumer would appreciate these business expenses must be settled before surplus funds can be diverted to community projects and initiatives. The Advertiser said the Trusts annual reports and financial statements are independently audited and made public. In the spirit of co-operation, the Advertiser is willing to refer to “surplus profits” in future advertising and include a disclaimer to explain the specifics of profit distribution.

Summary of the Media Response

The Fringe newspaper gave its support to the Advertiser confirming the on-going support to the community. The Media confirmed online editions of the advertisement have been replaced at the request of the Advertiser pending the complaint outcome.

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 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.

Preliminary Matter

The Complaints Board noted the complaint before it was not raising an advocacy issue. The Board said the advertisement's intent was to raise awareness about the Trusts' operating model and as such did not fall under advocacy advertising.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 19/291 which was Upheld and 18/383 which was Not Upheld.

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

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

Decision 19/291 concerned a print advertisement for the Trusts explaining where profits are invested. The advertisement included a graph showing a figure of 47% and the wording "giving back now." The Complaints Board upheld the complaint because the Advertiser had not provided sufficient substantiation to support the claim.

Decision 18/383 concerned a Facebook advertisement for Massey University which claimed the university was ranked in the world's top 1.3%. The Complaints Board did not uphold the complaint because the Advertiser was able to provide substantiation to support the claim.

Complaints Board Discussion

The 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, which in this case is:
 - Context: The Trusts sell alcohol through licenced retail stores and hospitality venues in West Auckland
 - Medium: Monthly community publication
 - Audience: West Aucklanders
 - Product: Alcohol licencing Trust

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was that 100% of profits from the sale of alcohol within the Trusts catchment is given back to the West Auckland community.

The Complaints Board agreed the recognised definition of the word “profit” was:

“The financial benefit realised when revenue generated from a business activity exceeds the expenses, costs, and taxes involved in sustaining the activity in question.”

Is the advertisement likely to mislead, deceive or confuse consumers?

The Complaints Board noted one complainant challenged the 100 % profit claim by providing an example. The Complaints Board agreed that the average consumer would understand the not-for-profit business model the Trusts operates under. They would expect the reference in the advertisement to 100 % of profits would be 100% of what was left over after the costs of running the Trusts organisation were deducted. Those costs included advertising .

The Complaints Board noted that all of the Advertiser’s operations are constrained to the West Auckland region and this community is the sole beneficiary by law¹ of any profits left after the deduction of operating costs. The Board said the fact the Advertiser produced annual reports and financial statements which were independently audited to verify this was sufficient substantiation for the claim made in the advertisement.

The Complaints Board ruled the advertisement was not likely to mislead or deceive consumers and was not in breach of Principle 2 or Rule 2(b) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaints were **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.

¹ Section 350(1)(d) of the Sale and Supply of Alcohol Act 2012 – a licencing trust “must not spend or distribute any of its net profits outside the trust district.”

APPENDICES

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

COMPLAINT 1:

The Trusts have advertised that 100% of profits go back into West Auckland. The Trusts are well known to provide community funding through profits from their retail stores, bars and venues, and investment portfolios. By advertising that 100% of profits go back into West Auckland is implying that 100% of their profits is providing community funding. In the past 6 years from 2014 - 2019 only \$6,429,000 of their total \$42,603,000 profit was given back to the community. That is only 15% of their profits – not 100% of their profits as being advertised. Therefore, this advertisement is an extremely misleading statement.

COMPLAINT 2:

This has appeared in a previous edition of this magazine and is a blatant lie. It is misleading, untrue and paints a picture far from the truth. They are also using their position to promote themselves in a misleading and untrue way. They are also using public funds to do this which is what I personally find most galling.

Appendix 2

RESPONSE FROM ADVERTISER, THE TRUSTS

Re: The Trusts Print – Complaint 21/208

Re: The Trusts Print – Complaint 21/208

1. We refer to your letter dated 4 May 2021 in relation to the complaints received concerning the advertisement placed in The Fringe newspaper (Advertisement) by the Portage Licensing Trust and Waitakere Licensing Trust (Trusts) on 1 April and 1 May 2021.
2. We understand the claim “100% of profits go back into West Auckland” contained within the Advertisement to be the basis of the complaints.
3. We wish to defend the complaints and provide our comments in response to the complaints below.

Breach of the Advertising Standards Codes (ASA Code)

4. You have referred us to the following sections of the ASA Code that are arguably breached by the Advertisement:
 - a) **Principle 2: 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.

- b) **Principle 2: 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.

5. For the reasons set out below, we do not consider that the Advertisement breaches the ASA Code, and accordingly believe that the complaints should not be upheld.

Our reasoning

The Likely Consumer Takeout

6. The Advertisement was placed in The Fringe, which is a community newspaper for the West Auckland region. The intended audience, and therefore the relevant consumer group, is the residents of West Auckland.
7. The Trusts have been operating in West Auckland for almost 50 years, and as acknowledged in one of the complaints, their purposes as licensing trusts are well known to the West Auckland community.
8. We consider that an average West Auckland resident understands that the very purpose of a licensing trust is to sell and supply alcohol, and operate retail and hospitality outlets where such alcohol is sold in the relevant district². Therefore, this average consumer understands that the Trusts have assets to manage and incur other business and operational costs (including advertising) in running the Trusts. This average consumer appreciates that these business expenses must be settled before surplus funds can be diverted to community projects and initiatives.
9. This understanding is consistent with Auckland Council's description of licensing trusts and their purposes on its website³, which states that "The trusts return surplus profits to the community through grants, rebates to clubs, sponsorships and other support for community activities" [our emphasis].
10. With the above in mind, we do not consider the likely consumer takeout of the claim "100% of profits go back into West Auckland" to be that 100% of gross profits are distributed to community organisations, which appears to be the basis upon which the complaints are made. Instead, the only feasible interpretation is that 100% of profits (less costs/expenses) are spent in West Auckland, and ultimately for the benefit of West Auckland.
11. The images provided in the Advertisements are simply examples of how the Trusts' profits go back into West Auckland, and do not alter the core message that the Trusts are established and exist exclusively for West Auckland.

Has there been a breach of Principle 2: Rule 2(b)? Is the claim "100% of profits go back into West Auckland" misleading?

12. For the reasons set out below, based on the likely consumer takeout of the claim, we consider the claim to be truthful and not misleading.

² See section 305 of Sale and Supply of Alcohol Act 2012

³ <https://www.aucklandcouncil.govt.nz/licences-regulations/alcohol-bans-policies/Pages/licensing-trusts-west-auckland.aspx>

13. The Trusts are made up of two licensing trusts, namely, the Portage Licensing Trust and the Waitakere Licensing Trust. The Portage Licensing Trust was established to cover the communities between New Lynn, Waikumete Cemetery, Glen Eden and Titirangi. The Waitakere Licensing Trust covers the communities around Glendene, Piha, Henderson, Te Atatu and Kumeu. Each trust is 100% community owned and established to operate in their respective districts; and their profits return to these districts, as opposed to other districts or a private individual.
14. The statement that the Trusts spend their profits in West Auckland are consistent with, and in compliance with section 350(1)(d) of the Sale and Supply of Alcohol Act 2012 which provides that a licensing trust “must not spend or distribute any of its net profits outside the trust district” [our emphasis]. The Trusts are required by law to operate and distribute profits within their boundaries. As the Trusts comply with this requirement, the claim “100% of profits go back into West Auckland” is truthful and not misleading.
15. By way of substantiation, the Trusts make their annual reports publicly available on their website. The annual reports include independently audited annual financial statements, which confirm that all surplus profits are kept within and return to the West Auckland districts. By way of example only, in the year ended 31 March 2020, 3.2 million dollars were granted to 57 West Auckland based community organisations. The Trusts also employ 352 people in their stores, venues and support office [all of which are located in West Auckland.] A copy of the most recent annual report is attached for verification purposes.

Has there been a breach of Principle 2: Rule 2(e)? Does the Advertisement clearly state the identity and position of the advertiser? Does the Advertisement contain factual information that is able to be substantiated?

16. We do not accept that the Advertisement has breached Principle 2: Rule 2(e) of the Advertising Standards Code, for the following reasons:
 - a) The Trusts’ logo and link to their website is prominently displayed on the Advertisement, making it clear who the advertiser is; and
 - b) The information provided on the Advertisement is factual – there is no opinion included. Further, this information can be easily verified by consumers as the Trusts’ annual reports are publicly accessible [on their website].

Conclusion

17. While the Trusts reject that the Advertisement breaches the relevant sections of the ASA Code and that it misleads consumers in any way, in the spirit of cooperation and by way of good gesture, we are willing to amend future advertisements. Going forward, the claim or any other similar claims will be amended to refer to “surplus profits” instead of “profits” and a disclaimer may be placed in the advertisement to explain more specifically how profits are distributed.
18. Please find the additional information requested in Appendix 1 of your letter in the appendix to this letter.
19. Thank you for the opportunity to address the complaints. Please contact me if I can be of further assistance.

Appendix

1. *Digital Media File Copy of the Advertisement* – please see attached copy.
2. *Is the Advertisement still accessible?* – yes, in the online version of the publications in which the Advertisement was placed.
3. *List all media where the advertisement is placed* – Three West Auckland community newspapers and their online versions.
4. *If the complaint is about unsubstantiated claims, please provide appropriate substantiation* – please see attached a copy of the most recent annual report of the Trusts which includes a copy of the most recent financial statements.

Appendix 3

RESPONSE FROM MEDIA, THE FRINGE

The advertiser in question has been a loyal supporter of both the West Auckland community and *The Fringe* (and the *Titirangi Tatler* before it) over many years, spending many millions on a wide range of projects. Indeed, without the advertiser's support over the last twelve months, I do not think the magazine could have survived. I understand that they are intending to defend the claim made in this advertisement.

I do not know what other comment I can make at this stage, other than mentioning that there is quite an active campaign going on at the moment to remove The Trusts from their supportive role in the West. (This campaign has very little community support.)

Incidentally, although I was unable to remove the ad from the printed copies of the magazine, it has been replaced in the online editions, at the request of the advertiser – pending the result of your hearing.

Please let me know if there's anything else I should be doing at this point – this is the first such problem we've had in the 40+ years we've been involved in editing and publishing magazines.