

COMPLAINT NUMBER	21/248
ADVERTISER	Family First
ADVERTISEMENT	Love Them Both, Billboard
DATE OF MEETING	8 June 2021
OUTCOME	Upheld Advertisement to be Removed

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about a Family First billboard advertisement. The Complaints Board said the advertisement had not met the identification requirements of an advocacy advertisement and was therefore likely to mislead or confuse consumers about who was behind the advocacy message.

Advertisement

The Family First Billboard advertisement shows a close up of a pregnant woman with the text “Human rights begin in the womb.” The Billboard includes the website address “LoveThemBoth.nz”

Summary of the Complaint

The Complainant was concerned the identity of the Advertiser, Family First is not obvious, either on the Billboard or on the website consumers are directed to. The Complainant said the position of the Advertiser, namely opposing the Abortion Legislation Act is not made clear on the advertisement.

Issues Raised:

- Truthful Presentation
- Advocacy Advertising

Summary of the Advertiser’s Response

The Advertiser said the billboard had been up for 18 months without any complaints and said it is making a simple statement. The Advertiser said the downloaded pamphlet featured on the website does have an authorisation statement.

Relevant ASA Codes of Practice

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

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not 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.

The Complaints Board said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 2(e) of the Advertising Standards Code. This Rule required the identity of the advertiser to be clear; opinion to be distinguished from factual information and factual information must be able to be substantiated. The Advocacy Principles developed by the Complaints Board in previous decisions considered under Rule 11 of the Code of Ethics remain relevant. They say:

1. That section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people's rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the rights granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

Role of the ASA when considering an advocacy advertisement.

The Complaints Board noted its role is to consider the likely consumer takeout of an advertisement and complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

The Board considers whether the advertisement includes statements of fact or opinion and then decides whether any factual claims have been adequately substantiated by the Advertiser. The Complaints Board noted that a fact is something that is objectively true and can be verified as such whereas an opinion is a personal belief. Others may agree or disagree with an opinion, but they cannot prove or disprove it. Some statements contain both fact and opinion.

The Complaints Board observed that in a free and democratic society, issues should be openly debated without undue hindrance or interference from authorities such as the Complaints Board, and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations.

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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 18/340, which was Upheld and 19/391 which was ruled No Grounds to Proceed.

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

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

Decision 18/340 concerned a billboard advertisement for WAVES NZ which showed a man holding a baby with the text “If you knew the ingredients in a vaccine, would you RISK it?”

The majority of the Complaints Board said the identity of the Advertiser, WAVES NZ, was not sufficiently clear and ruled the identification requirement of advocacy advertising had not been met.

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 progress of the New Zealand Abortion Legislation Act 2020
 - Medium: Billboard
 - Audience: Unrestricted audience via passing traffic
 - Product: Pro-life message

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was an anti-abortion message that an unborn baby also has human rights which need to be considered alongside the mother.

Has the advocacy advertisement been adequately identified?

The Complaints Board agreed the advertisement had not been adequately identified as an advocacy advertisement.

The Complaints Board noted the Guidelines for Advocacy Advertising state:

“The identity of the advertiser must be obvious and easily recognised. Where an advertiser is not well known, additional information such as a physical address, website address or phone number may be appropriate to include.”

The Complaints Board said the identity of the Advertiser, Family First, was not clear in the billboard advertisement. The Complaints Board said the URL address on the advertisement, “lovethemboth.nz” took the consumer to a website which did not make it clear to consumers that Family First was the Advertiser until the last page of the website in very small font. The Complaints Board also noted the ‘Contact Us’ tab on the website did not indicate to consumers that Family First were responsible for the content.

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

The Complaints Board unanimously agreed that although the position of the Advertiser was clear, the lack of information about the identity the Advertiser meant it was likely consumers could be misled or confused about which organisation was responsible for the messaging in the advertisement.

The Complaints Board ruled the advertisement had not met the identification requirements of an advocacy advertisement and was in breach of Principle 2 and Rule 2(e) of the Advertising Standards Code.

Outcome

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

Advertisement to be removed.

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
-

Appendix 1

COMPLAINT

Rule 2 (e) Advocacy advertising Advocacy advertising must clearly state the identity and position of the advertiser. Billboard appears on private property (1514 State Highway 2) showing an image of a pregnant woman, and the phrase 'human rights begin in the womb' followed by a website URL lovethemboth.nz. Here, the identity of the advertiser (Family First) is not made obvious. It is not evident on the billboard, nor obvious when visiting the website for further information. There should be a clear indication that it is Family First and easily seen by the viewer, instead it is hidden in the fine print at the bottom of the site in the copyright section. Furthermore, the position of the advertiser is not made clear. The billboard messaging and imagery are not aligned with position of advertiser where the website it promotes is specifically focussed on opposing the Abortion Legislation Act 2020.

Appendix 2

RESPONSE FROM ADVERTISER, FAMILY FIRST

The billboard has been up for 18 months with significant traffic travelling past – and no complaints.

It's just making a simple statement.

Ironically the download pamphlet on the website does have an authorisation statement.
<https://www.chooselife.org.nz/wp-content/uploads/2020/05/ABORTION-PAMPHLET.pdf>

We would encourage the committee to reject the complaint.