

COMPLAINT NUMBER	21/368
ADVERTISER	The New Zealand Quit Chinese Communist Party Centre
ADVERTISEMENT	The New Zealand Quit Chinese Communist Party Centre, Print
DATE OF MEETING	7 September 2021
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a newspaper advertisement in the *The Star* by The New Zealand Quit Chinese Community Party Centre on behalf of an international organisation. The advertisement was asking supporters to sign a petition to end the Chinese Communist Party and help stop forced organ harvesting. The Complaints Board said the political advocacy advertisement stated robust opinions which are permitted under the Advertising Standards Code and the New Zealand Bill of Rights Act. The Board said any offence was mitigated as the statements were aimed at a political party as opposed to a person or group of people. The Board said the Advertiser had provided adequate substantiation to support its advocacy position on the subject of forced live organ harvesting.

Advertisement

The full-page print advertisement contains two sections. The top section is headed “END THE EVIL CHINESE COMMUNIST PARTY and keep New Zealand safe. Your voice matters. Sign the petition. Visit endccp.com.” The advertisement shows images of a woman in a mask and protesters in China. The advertisement also includes a QR code for the website.

The lower section of the advertisement is headed “A call to conscience: End this crime against humanity.” The image shows a scalpel aiming towards a woman with prices listed for various organs of her body. The website address www.StopOrganHarvesting.org appears at the bottom of the image.

The second section also contains the heading “MEDICAL GENOCIDE Help stop forced live organ harvesting of Falun Gong practitioners in China.” The advertisement contains a quote from a 2016 update report by Kilgour, Matas, Gutmann about the latest estimates of organ transplant volumes in China, claiming that most organs are from Falun Gong prisoners of conscience. The advertisement promotes two books, *The Slaughter* and *Bloody Harvest*, and a documentary, *Hard to Believe*, which explore the subject of organ harvesting. The advertisement includes a QR code which links to a BBC report on the China Tribunal’s Judgement.

Summary of the Complaint

The Complainant was concerned the advertisement is extremely disturbing and questions the evidence to support the accusations levelled at the Chinese Communist Party. The Complainant said the advertisement is extreme and could cause harm to the community especially to those who are still citizens of China.

Issues Raised:

- Social Responsibility
- Offensiveness
- Fear and Distress
- Truthful Presentation
- Advocacy Advertising

Summary of the Advertiser's Response

The Advertiser questioned the ASA's jurisdiction and whether the newspaper publication constituted advertising.

The Advertiser said identity and position is clear and is a call to action to sign a petition calling for the end of the Chinese Communist Party as an expression of the worldwide public view and learn more about organ harvesting. The Advertiser quotes the Bill of Rights Act. The Advertiser said there is factual background about the CPP's controversial history.

The Advertiser says the advertisement includes robust criticism of the CCP as an entity but does not refer to individuals or groups of people. The Advertiser said it provided justifiable views on the CCP and forced organ harvesting and invites the audience to express their views peacefully, through an online petition. It says the stop organ harvesting website and the BBC report has information to support the claims and provides additional links to other materials as a form of substantiation for its position.

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(c) Decency and Offensiveness: Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.

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.

Preliminary Matter

Jurisdiction

The Complaints Board agreed the content in the newspaper was an advertisement and the Advertising Standards Code applied. This is because it met the definition of an advertisement as the content was controlled by the Advertiser and had the intent of influencing those to whom it is addressed. The Complaints Board has previously accepted and ruled on complaints on advocacy content that communicate a political message rather than purely commercial or consumer advertising.

The current ASA definition of advertisement states:

“Advertising and advertisement(s)” are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

The Advertising Standards Code, under the heading Application of the Code states: “This Code applies to all advertisements placed in any media.”

About Advocacy Advertising

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. It will consider whether the advertisement includes statements of fact or opinion and decide 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 Board referred to the ASA Guidance Note on Advocacy which says:

“Evidence may be cited in support of the opinion, but it should be clear it supports an opinion rather than being the full factual position. Evidence in support of an opinion should be clearly cited and readily obtainable. Academic studies are often cited as evidence. Such studies are treated as expert opinion rather than the full factual situation...the Board will not determine which of competing academic studies or other evidence is correct. The Complaints Board’s only role is to determine whether there has been a breach of the ASA Codes, taking into account the Advocacy Principles.”

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. Therefore, the Complaints Board considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

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

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 three precedent decisions, Decision 16/198 Appeal 16/008, Decision 13/450 and Decision 21/294, which were all Not Upheld.

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

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

Decision 16/198 Appeal 16/008 concerned a billboard advertisement from the New Zealand Palestine Human Rights Campaign and featured two maps which detailed the proliferation of ‘Israeli and Occupied Land’ versus ‘Palestine Land’.

The Complaints Board ruled the complaints about the advertisement’s use of maps being misleading were Not Upheld and the decision was appealed by the Complainants. The Appeal Board considered whether the maps were presented as fact or opinion in the context of the advertisement in its entirety. The Appeal Board ruled the use of the maps was a clear expression of opinion that was unlikely to mislead most people. The Appeal Board dismissed the appeal saying the advertisement was clearly presented from a particular perspective and met the provisions of robust opinion required of an advocacy advertisement.

Decision 13/450 concerned a bus advertisement from Stop Organ Harvesting campaign which promoted a petition to stop forced live organ harvesting for Falun Gong practitioners in China.

The Complaints Board ruled the complaint about the advertisement being offensive, misleading and promoting fear and violence was Not Upheld. The Board was satisfied the Advertiser had provided sufficient evidence to support the claims that indicated there was international concern that the practice of organ harvesting was occurring in China. The Board said Advertiser had a democratic right to express its opposition to that practice occurring in China in robust terms.

Decision 21/294 concerned a poster advertisement from The New Zealand Quit Chinese Communist Party Centre (ENDCCP) which asked supporters to sign a petition to end the Chinese Communist Party.

The Complaints Board ruled the complaint about the advertisement being inappropriate and racist was Not Upheld. The Board said the political advocacy advertisement stated robust opinions which were permitted and any offence was mitigated as the statements were aimed at a political party as opposed to a person or group of people.

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, which in this case is:
 - Context: Allegations of human rights abuse in China
 - Medium: Full page newspaper advertisement
 - Audience: Readership of the Star newspaper
 - Product: Advocacy advertising to sign a petition

Consumer Takeout

The majority of the Complaints Board agreed the likely consumer takeout of the advertisement was it promoted a call to action to sign a petition to end the government of the Chinese Communist Party (CCP) and highlighting a number of the party's alleged actions as support for this position. The consumer takeout of the second half of the advertisement is focusing on forced live organ harvesting and allegations that this practice is still happening to Falun Gong practitioners and other minorities in China.

A minority of the Complaints Board said, on initial viewing, the two parts of the advertisement could have been seen as different entities, given the green line dividing them and the presence of two separate URL addresses. However, the minority of the Board agreed that because of the print medium used, viewers had time to digest the content and the links between the two topics became clear.

Has the advocacy advertisement been adequately identified?

The Complaints Board agreed the advertisement had been identified as an advocacy advertisement. The Board said the identity of the Advertiser, The Global Service Center for Quitting the Chinese Communist Party, in the overall advertisement, was not as clear as it could be, given the layout of the content. The inclusion of a second URL in the second part of the advertisement had the potential to confuse some consumers, although overall the identity of the advertiser would be sufficiently clear once all the content had been considered.

The Complaints Board noted the Advertiser is the New Zealand Quit Chinese Communist Party Service Centre (“**NZ Centre**”). The NZ Centre is a local centre of the Global Service Center for Quitting the Chinese Communist Party. It is also sometimes referred to by an abbreviated name, “End CCP”. The Complaints Board also noted the advertisement contained a website address and QR Code. The Board said the position of the Advertiser was clear from the organisation’s name and the content of the advertisement provided the necessary context for the messaging. The Board said the section of the advertisement addressing the subject of forced live organ harvesting was providing additional justification for call to action to sign the ENDCCP petition.

The Complaints Board said the advocacy advertisement had met the identity requirements of Rule 2(e) of the Advertising Standards Code.

Is the advertisement stating fact or opinion?

The Complaints Board said the first part of the advertisement contained strong opinion-based statements within the context of political advocacy. The Board said it would be clear to most consumers the first section of the advertisement was promoting a particular political perspective and the robust statements would be interpreted as the opinions of the advertiser.

The Complaints Board said the second part of the advertisement contained factual statements about forced live organ harvesting practices and required substantiation. The consumer takeout of the advertisement is that there are international concerns that the practice of organ harvesting is still occurring in China.

The Complainants Board said the advertisement cited a quote from a 2016 update report by Kilgour, Matas, Gutmann about the latest estimates of organ transplant volumes in China, claiming that most organs are from Falun Gong prisoners of conscience. The Advertiser also directs viewers to two books, *The Slaughter* and *Bloody Harvest* as substantiation for the position taken on forced organ harvesting. The Complaints Board also noted the Advertiser refers to a documentary, *Hard to Believe*, which explores the subject of organ harvesting and includes a QR code which links to a BBC report on the China Tribunal’s Judgement.

The Complaints Board agreed the Advertiser had provided sufficient evidence to support the claims that there was international concern that the practice of organ harvesting was still occurring in China.

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

Does the advertisement contain anything which is degrading, offensive or gives rise to hostility?

The Complaints Board considered whether language used in the advertisement, such as “The Evil Chinese Communist Party” and “End this crime against humanity” was likely to offend or give rise to hostility. The Complaints Board noted that the language was directed at a political party in a foreign jurisdiction. The Board said that although the language and imagery about organ harvesting was provocative, it did not reach the threshold to cause serious or widespread offense or hostility because it was aimed at a political party rather than individuals or specific groups of people. The Complaints Board said strongly held opinions were acceptable in a political advocacy environment and the advertisement had not breached Rule 1(c) of the Advertising Standards Code.

The Complaints Board ruled the advertisement was not in breach of Rule 1(c) of the Advertising Standards Code.

Does the advertisement cause fear or distress without justification?

The Complaints Board agreed the advertisement did not cause fear or distress without justification. The Board said while some consumers may find the forced organ harvesting references confronting, the advertisement had included links to background information as substantiation for ENDCCP's position. The Board said the advertisement was promoting the peaceful action of signing a petition and was directed at an overseas organisation which would limit the level of engagement of many consumers in New Zealand.

The Complaints Board ruled the advertisement was not in breach of Rule 1(g) of the Advertising Standards Code.

Is the advertisement socially responsible?

The Complaints Board said the advertisement had met the requisite level of social responsibility when viewed through the lens of advocacy advertising and was not in breach of Principle 1 of the Advertising Standards Code.

The Complaints Board said, taking into account context, medium, audience and advocacy, the advertisement was not in breach of Principle 1, Principle 2 or Rules 1(c), 1(g), 2(b) or 2(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **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 with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.

APPENDICES

1. **Complaint**
 2. **Response from Advertiser**
 3. **Response from Media**
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Appendix 1

COMPLAINT

I have found this advertisement extremely disturbing and would like to know what evidence they have with the accusations levelled at the CCP. This kind of advertisement seems to be very extreme to the point of outrageous. Not to mention the harm this may cause the community, especially people who are still citizens of The Peoples Republic of China.

Appendix 2

RESPONSE FROM ADVERTISER,

COMPLAINT 21/368

1. As you know, we act for Wendy Cao Akarana-Rewi. Ms Akarana-Rewi is a volunteer at the New Zealand Quit Chinese Communist Party Service Centre ("**NZ Centre**"). The NZ Centre is a local centre of the Global Service Centre for Quitting the Chinese Communist Party. It is also sometimes referred to by an abbreviated name "End CCP". It is not a legal entity and consists entirely of volunteer individuals.
2. On 02 August 2021, we wrote on behalf of Ms Akarana-Rewi in relation to a complaint numbered 21/368 ("**Complaint**"). The complaint had been provided under cover of an ASA Complaints Board ("**Complaints Board**") letter dated 29 July 2021. The 29 July Letter indicated that the relevant sections of the Advertising Standards Code ("**Code**") appeared to be Principle 1, Principle 2, Rule 1(c), Rule 1(g), Rule 2(b), Rule 2(e).

Complaint

3. The Complaint is in relation to a Print Advertisement which was published in The Star Community Newspaper, Thursday 1 July 2021.
4. We provide a digital media file copy of the advertisement.
5. The advertisement was prepared by the NZ Centre. The NZ Centre is happy for Ms Akarana-Rewi to respond to the Complaint on its behalf.

Jurisdiction

6. Our client is concerned about whether the Complaints Board has jurisdiction to determine the Complaint for the reasons set out below.
7. While it is accepted that the definition of "advertising" and "advertisement" is worded broadly in the Code, there are also indications in the Code that there should be some commercial or consumer element to the material. For example, under the heading "Interpreting the Code", the Code specifies that the Complaints Board will have regard

to all relevant matters, including “the *consumer* takeout from the advertisement” and “the *product or service* being advertised” (emphasis added). The Print Advertisement does not advertise any product or service and is not addressing consumers of anything. Before considering the Complaint, Ms Akarana-Rewi requires the Complaints Board to consider and determine whether it has jurisdiction to determine the Complaint.

Response to Complaint

8. If the Complaints Board considers that it does have jurisdiction to determine the Complaint, our client wishes to make the following submissions in response to the Complaint. For the avoidance of doubt, the submissions are made without prejudice to our client’s position that the Complaints Board does not have jurisdiction to determine the Complaint.
9. Our client does not accept that the Print Advertisement has breached the Code in any way.

Applicable sections of the Code and relevant matters to consider in assessing complaint

10. We understand from the email of 29 July 2021 that the relevant sections of the Code appear to the ASA to be Principle 2, Rule 2(b) and Rule 2(e) and Principle 1, Rule 1(c) and Rule 1(g). These rules are addressed below.
11. We also note that, in determining whether a Principle has been breached, the Complaints Board will have regard to all relevant matters, including:
 - (a) generally prevailing community standards;
 - (b) previous decisions;
 - (c) the consumer takeout from the advertisement;
 - (d) the context, medium and intended audience; and
 - (e) the product or service being advertised.

(Advertising Standards Code, Interpreting the Code)
12. Principle 2 of the Code, Truthful Presentation, provides that advertisements must be truthful, balanced and not misleading.
13. Rule 2(e), Principle 2, applies to advocacy advertising. Our client accepts that the print advertisement is an example of advocacy advertising. Rule 2(e) provides that 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.
14. Previous ASA decisions have provided guidance on considering complaints in relation to 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.

...

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

(Complaint 21/020. Gianna’s Choice. Decision dated 26 January 2021.)

15. The ASA also provides a guidance note which sets out Advocacy Principles:

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 Code fetters 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 Code 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.

(Complaint Number 19/275, Appeal Number 19/013. NZ National Party. Appeal decision dated 28 January 2020).

Previous ASA decisions: (1) Complaint Number 20/556, the New Zealand Quit Chinese Communist Party Service Centre, Brochure, dated 25 May 2021, (2) Complaint Number 20/601, the New Zealand Quit Chinese Communist Party Service Centre, Billboard, dated 25 May 2021, (3) Complaint Number 21/294, the New Zealand Quit Chinese Communist Party Service Centre, Poster, dated 22 June 2021, and (4) Complaint Number 21/295, the New Zealand Quit Chinese Communist Party Service Centre, Poster, dated 22 June 2021, all show that the complaint considered here should not be upheld. Those decisions all concerned similar advertisements to the print advertisement in this case. The Complaints Board in those decisions acknowledged that political advocacy advertisements are permitted under the Advertising Standards Code and the New Zealand Bill of Rights Act where the statements made in an advertisement concern a political party as opposed to a person or group of people. The NZ Centre submits these four ASA decisions should be followed in the present case.

16. Rule 2(b), Principle 2, Truthful Presentation, provides that 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.
17. Principle 1 of the Code, Social Responsibility, provides that advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society. Rule 1(c), Decency and Offensiveness, provides that advertisements must not contain anything that is indecent, exploitative, degrading, likely to cause harm, serious or widespread offence, or give rise to hostility, contempt, abuse, or ridicule. Rule 1(g), Fear, and distress, provides that advertisements must not cause fear or distress without justification.

Submissions

18. This letter begins by setting out the context and factual background to the Print Advertisement, before addressing the specific concerns raised by the Complaint.

Context - Identity and position of advertiser

19. It is submitted that the identity and position of the advertiser is clear on the Print Advertisement. The "endccp.com" website is displayed prominently in large text. The Print Advertisement also displays the seal of the Global Service Centre for Quitting the Chinese Communist Party and a QR code for the website. It is self-evident from the information displayed on the Print Advertisement what the position of the advertiser is – the advertisement is setting out the concerns held by the advertiser about the Chinese Communist Party ("CCP"). It invites the audience to sign a petition calling for the end of the CCP available through its website. It also invites the reader to visit the website: <http://www.stoporganharvesting.org> to learn more about the practice of forced live organ harvesting of Falun Gong practitioners in China. The QR code at the bottom right-hand corner of the advertisement links to a BBC report on the China Tribunal's Judgement referred to later at paragraph 21(d). We provide the link to the BBC report: <https://www.youtube.com/watch?v=gjqUtCjZnsg>. We are

instructed that the petition is intended to be provided to different governments and organisations as an expression of the worldwide public's view on the CCP. In these circumstances, a liberal interpretation of the Code against section 14 of the Bill of Rights Act 1990 is appropriate.

Context – Factual Background

20. In considering the Complaint, the Complaints Board must have regard to the context and the prevailing community standards.
21. The NZ Centre submits that the following factual context should be taken into account:
 - (a) There is a consensus among historians that the Great Leap Forward (1958-1962) and Cultural Revolution (1966-1976) under the CCP, including the Great Chinese Famine, directly or indirectly caused the deaths of millions of people.ⁱ
 - (b) Accusations of human rights abuses and concerns about negative social consequences have been raised about the controversial one child policy which was a CCP policy in place between the late 1970s until 2015.ⁱⁱ
 - (c) The 1989 Tiananmen Square Massacre, which is well-known to the general public, has an estimated death toll varying from several hundred to several thousand people, with thousands more wounded.ⁱⁱⁱ
 - (d) The CCP's 22 year long persecution of Falun Gong, including the practice of non-consenting organ harvesting, has been acknowledged around the world, including by a Special Rapporteur of the UN Commission on Human Rights and members of the US Senate.^{iv}
 - (e) The CCP's response to COVID-19 has been criticised in the mainstream media and concerns have been raised that the failures inherent in that response have allowed the virus to spread around the globe.^v
 - (f) In 2019, the New Zealand government signed a joint letter condemning the treatment of Uighurs in Xinjiang in China^{vi} and the New Zealand Prime Minister, Jacinda Ardern, has raised serious concerns over the treatment of the indigenous Muslim population directly with the ruling CCP's leadership.^{vii} Serious concerns about the treatment of the Uighur people by the CCP has also been the subject of recent New Zealand media features.^{viii} Other administrations, organisations and academics have also raised similar concerns regarding breaches of human rights.^{ix}
22. Having regard to this factual background, there is no question that the CCP has had a controversial history and is (and has previously been) the subject of serious and widespread concern or condemnation including by main-stream media and various governments, including New Zealand's.
23. The prevailing community standards in New Zealand are also relevant. New Zealand has a strong history of protecting and promoting human rights domestically and internationally, as shown through legislation such as the Bill of Rights Act 1990 and

New Zealand's ratification and support of international human rights, conventions and protocols.^x There are also particular cultural sensitivities in relation to organ donation from a Māori perspective, even when the organ donation is consented. Unsurprisingly, Māori leaders have condemned the practice of forced live organ harvesting of Falun Gong practitioners.^{xi}

24. It is against that background and standards that the Print Advertisement should be considered.

New Zealand Bill of Rights Act 1990

25. Under s 14 of the New Zealand Bill of Rights Act 1990 (“**NZBORA**”), the NZ Centre is entitled to express its views on the CCP and the CCP's practice of forced live organ harvesting of Falun Gong practitioners in China. Robust debate on issues such as human rights should be encouraged, including through the interpretation of the Code. The Print Advertisement contains statements which are obviously opinions held by the NZ Centre: that the CCP is described as “evil” and that its influence should be ended to keep New Zealand safe. These opinions are held in the factual context set out above and the NZ Centre has a right to express those views and considers that it is justified in doing so in light of the events and actions described in paragraph 21. It is not necessary for the audience to agree with the opinions held by the NZ Centre and there is nothing in the Print Advertisement likely to mislead, confuse or exploit the lack of knowledge of the audience. The NZ Centre's identity and position is clear, it sets out its opinions on the CCP and the CCP's practice of forced live organ harvesting of Falun Gong practitioners in China. The Print advertisement invites the audience to visit the endccp.com website and to sign a petition supporting the NZ Centre's views, if the audience wishes to. The Print Advertisement also invites readers to visit the website: <http://www.stoporganharvesting.org> to learn more about the practice of forced live organ harvesting of Falun Gong practitioners in China.
26. The Print Advertisement includes robust criticism of the CCP as an entity, but it does not refer to any individuals or groups of people. It does not encourage violence or harm. It instead invites the audience to express their views peacefully through an online petition. It submits that the Print Advertisement would not reasonably cause fear or distress to any person, unless that fear or distress was in response to the controversial events involving the CCP, which is justified. It is this persecution of groups of people, and violence and abuse against them, that the NZ Centre is concerned with in advertising its views on the CCP. Freedom of speech should protect political discourse unless actual malice or falsehood is shown – nothing close to malice or falsehood is shown here. Therefore, it is open to conclude that the material is not properly a subject of complaint.
27. Our client also considers that it is significant that the International Covenant on Civil and Political Rights (“**ICCPR**”), to which the NZBORA is intended to give effect, limits its obligation to prohibit incitement to hatred to incitement of national, racial or religious hatred (article 20(2)). This, our client submits, is an acknowledgement that in matters of political discourse people have the right to express their views and that this right should not be unduly or unreasonably restricted.
28. Our client also notes that while s 19 of the NZBORA (as well as article 26 of the ICCPR and the 1948 Universal Declaration of Human Rights (articles 2 and 7))

asserts a right to freedom from discrimination based on, among other grounds, political opinion, our client submits that not every differentiation is discrimination: The purpose of combatting discrimination is to promote equality, which in turn means addressing the plight of the disadvantaged. Discrimination is differentiation which disfavours those who are disadvantaged based on identity characteristics. The CCP is not disadvantaged and therefore differentiation of the CCP does not amount to discrimination under the NZBORA or applicable international human rights law instruments. As above, our client submits that in matters of political discourse, people have the right to express their views, that this right should not be unduly or unreasonably restricted and, in fact, robust debate in a democratic society is to be encouraged.

Specific complaints

29. The NZ Centre addresses the specific points raised in the complaint below:
- (a) The complainant claims that the Print Advertisement is “extremely disturbing”. The Print Advertisement does not express hatred and does not contain any threatening messages or abusive or offensive language. It does not encourage or promote violence or harm. Rather, it provides its justifiable views on the CCP, and the CCP’s practice of forced live organ harvesting of Falun Gong practitioners in China, and invites the audience to express their views, peacefully, through an online petition.
 - (b) The Complainant states he/she would like to know “what evidence they have with the accusations levelled at the CCP.” The evidence can be easily found by visiting the website: <http://www.stoporganharvesting.org>, which appears in the Print Advertisement, where a wealth of information can be found supporting the conclusion that the Chinese Communist Party has, and continues to, engage in the practice of forced live organ harvesting of Falun Gong practitioners in China. We also refer you to the “Short form conclusion of the China Tribunal’s judgment” China Tribunal <chinatribunal.com>^{xii}. [mentioned above at paragraph 21 \(d\)](#). Further evidence can be found at the following link^{xiii}: <https://endtransplantabuse.org/an-update/>. Please also see the scholarly article^{xiv} “Cold Genocide: Falun Gong in China” <https://scholarcommons.usf.edu> by M Cheung, Torsten Trey, David Matas, and Richard An, in *Genocide Studies and Prevention: An International Journal, Volume 12/Issue 1: 38-62*. Mass killing of a group characterized by identity with the intent to destroy the group in whole or in part is genocide, no matter what means are used. Intent includes wilful blindness. Mass killings can occur through a wide variety of means. One means is killing through extraction of vital organs. It is therefore submitted that the materials set out above are sufficient to provide a factual basis for the opinions expressed by the NZ Centre. These materials are in the public domain, and are easily accessible to the reader, including by way of the materials cited in this letter. Significantly, the China Tribunal Judgement, and the evidence contained therein, has recently led Ms. Louisa Wall, Labour Party MP, to accuse the Chinese Communist Party of forced live organ harvesting of Falun Gong practitioners in China. Please see the following link^{xv}: <https://www.newshub.co.nz/home/politics/2021/07/labour-mp-louisa-wall->

[accuses-china-of-harvesting-organs-from-political-prisoners.html](#).

Therefore, the issue is clearly one of public importance.

- (c) The NZ Centre rejects the complainant's claim that the Print Advertisement seems "very extreme to the point of outrageous". That proposition cannot be sustained given the extensive amount of evidence available in the public domain that supports the conclusion that the Chinese Communist Party has, and continues to, engage in the practice of forced live organ harvesting of Falun Gong practitioners in China. The NZ Centre respectfully submits that any outrage ought properly to be directed towards the Chinese Communist Party for its egregious human rights abuses in this regard.
- (d) The NZ Centre rejects the complainant's claim that the Print Advertisement may cause harm to the community, especially people who are still citizens of the People's Republic of China. The Print Advertisement includes robust and justified criticism of the Chinese Communist Party as an entity (i.e. a political party) but does not make any comment on any community, race, ethnic group or nation. The Print Advertisement invites the reader to sign a petition calling for the end of the CCP available through its website. It also invites the reader to visit the website: <http://www.stoporganharvesting.org> to learn more about the practice of live organ harvesting of Falun Gong practitioners in China. These things do not constitute harm to the community. Furthermore, the Print Advertisement does not encourage violence or harm against any person or people. On the contrary, it instead invites the reader to express their view peacefully through an online petition if they wish to do so.

Conclusion

- 30. For the reasons set out above, the Print Advertisement is not in breach of the Code, including rules 1(c) or 1(g) of Principle 1 or 2(b) and (e) of Principle 2:
 - (a) The Print Advertisement clearly meets the requirements of advocacy advertising (rule 2(e)). The identity and position of the advertiser are absolutely clear. The material on the Print Advertisement which is opinion is also apparent and, as set out in paragraph 21, the factual basis for that opinion is readily available and obtainable.
 - (b) The Print Advertisement is not misleading or likely to mislead, deceive or confuse consumers (rule 2(b)). It is clearly advocacy advertising, and the identity and position of the advertiser are clear. While the Print Advertisement includes robust criticism of the CCP, given the factual background as set out above, and this criticism used in the Print Advertisement, it is justified and does not mislead or otherwise breach rule 2(b).
 - (c) The Print Advertisement does not breach rule 1(c) or 1(g). It is not likely to cause serious or widespread offence^{xvi} or cause any fear or distress. As set out above, it does not contain any threatening messages. It does not encourage violence or harm against any person or people. The NZ Centre sets out its views and concerns regarding the CCP, robustly, which it is

entitled to do under s 14 of the NZBORA. It then invites the audience to seek further information and to sign a petition on its website.

31. For the reasons set out above, the NZ Centre submits that, even if the Complaints Board has jurisdiction to consider the Complaint, it should not be upheld.

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- ⁱ “Mass killings under communist regimes - China” (accessed 16 March 2021) Wikipedia <en.wikipeda.org> https://en.wikipedia.org/wiki/Mass_killings_under_communist_regimes#China; “Remembering the biggest mass murder in the history of the world” (4 August 2016) The Washington Post <washingtonpost.com/news/> <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/08/03/giving-historys-greatest-mass-murderer-his-due/>; “The Cultural Revolution: all you need to know about China’s political convulsion” (11 May 2016) The Guardian <theguardian.com> <https://www.theguardian.com/world/2016/may/11/the-cultural-revolution-50-years-on-all-you-need-to-know-about-chinas-political-convulsion>
- ⁱⁱ “Nanfu Wang: the untold history of China’s one child policy” (3 July 2019) Radio New Zealand <rnz.co.nz> <https://www.rnz.co.nz/national/programmes/ninetoon/audio/2018702437/nanfu-wang-the-untold-history-of-china-s-one-child-policy>; “One-child policy” (accessed 16 March 2021) Wikipedia <en.wikipeda.org> https://en.wikipedia.org/wiki/One-child_policy#Criticism
- ⁱⁱⁱ “1989 Tiananmen Square protests” (accessed 16 March 2021) Wikipedia <en.wikipedia.org> https://en.wikipedia.org/wiki/1989_Tiananmen_Square_protests
- ^{iv} “Torture, though on decline, remains widespread in China, UN expert reports” (2 December 2005) UN News <news.un.org/en/>. <https://news.un.org/en/story/2005/12/162092-torture-though-decline-remains-widespread-china-un-expert-reports>; “Short form conclusion of the China Tribunal’s judgment” China Tribunal <chinatribunal.com>. <https://chinatribunal.com/final-judgment/>; “Sens. Moran, Menendez Introduce Bipartisan Resolution in Support of Falun Gong” United States Senator for Kansas - Jerry Moran <moran.senate.gov/public/index.cfm/>. <https://www.moran.senate.gov/public/index.cfm/2019/7/sens-moran-menendez-introduce-bipartisan-resolution-in-support-of-falun-gong>.
- ^v “China Is Avoiding Blame by Trolling the World” (19 March 2020) The Atlantic <theatlantic.com/world/>. <https://www.theatlantic.com/ideas/archive/2020/03/china-trolling-world-and-avoiding-blame/608332/>; “Coronavirus: Dr Li Wenliang treated 'inappropriately' before death from Covid-19, Chinese officials admit” (20 March 2020) NZ Herald <nzherald.co.nz>. <https://www.nzherald.co.nz/world/coronavirus-dr-li-wenliang-treated-inappropriately-before-death-from-covid-19-chinese-officials-admit/RR4KMGG4R3K6VY76GTWV74MS5Y/>; “Holding the Chinese Communist Party Accountable for Its Response to the COVID-19 Outbreak” (12 May 2020) The Heritage Foundation <heritage.org> <https://www.heritage.org/asia/report/holding-the-chinese-communist-party-accountable-its-response-the-covid-19-outbreak>.
- ^{vi} UN Ambassadors “Open Letter from UN Ambassadors from 22 states” (8 July 2019) Human Rights Watch <hrw.org>. https://www.hrw.org/sites/default/files/supporting_resources/190708_joint_statement_xinjiang.pdf; Falun Gong ask PM to stand up to China” (19 July 2019) Newsroom <newsroom.co.nz> <https://www.newsroom.co.nz/falun-gong-ask-pm-to-stand-up-to-china>.
- ^{vii} “PM defends NZ stance after allegations of rape of Uighurs in Chinese camps” (5 February 2021) Stuff <stuff.co.nz>. <https://www.stuff.co.nz/national/politics/300222994/pm-defends-nz-stance-after-allegations-of-rape-of-uighurs-in-chinese-camps>
- ^{viii} Stuff Circuit investigation video clip available at: <https://www.stuff.co.nz/national/stuff-circuit/300257321/chinese-consulate-voices-displeasure-at-stuff-circuit-uyghur-investigation--deleted> Newshub feature video clip available at: <https://www.newshub.co.nz/home/shows/2019/07/kiwi-uyghur-man-claims-harassment-and-threats-by-chinese-embassy.html>
- ^{ix} “Canada’s parliament declares China’s treatment of Uighurs ‘genocide’” (23 February 2021) BBC <bbc.com/news>. <https://www.bbc.com/news/world-us-canada-56163220>; “Secretary of State Antony Blinken says he stands by Mike Pompeo’s designation that China committed genocide against the Uighurs” (28 January 2021) MSN <msn.com/en-us/news> <https://www.msn.com/en-us/news/world/secretary-of-state-antony-blinken-says-he-stands-by-mike-pompeo-s-designation-that-china-committed-genocide-against-the-uighurs/ar-BB1daxXE>; “Xinjiang: Landmark report finds China breaching every act of UN Genocide Convention with treatment of Uighurs” (10 March 2021) Newshub <newshub.co.nz> <https://www.newshub.co.nz/home/world/2021/03/xinjiang-landmark-report-finds-china-breaching-every-act-of-un>

[genocide-convention-with-treatment-of-uighurs.html](#); “China's ‘XXX Files’: ‘25 Thousand People Disappear Each Year, Their Organs Are Harvested’” (4 December 2020) Haaretz <Haaretz.com> <https://www.haaretz.com/world-news/MAGAZINE-china-s-xinjiang-xxx-files-thousands-uighur-disappear-organs-harvested-1.9340106>; “UK parliament declares genocide in China’s Xinjiang; Beijing condemns move” (23 April 2021) Reuters <reuters.com> <https://www.reuters.com/world/uk/uk-parliament-declares-genocide-chinas-xinjiang-raises-pressure-johnson-2021-04-22/>

^x This includes the ICCPR which New Zealand ratified in 1968 and the Universal Declaration of Human Rights. See also “Human rights and freedoms” (28 January 2021) New Zealand Government <govt.nz> <https://www.govt.nz/browse/law-crime-and-justice/human-rights-in-nz/human-rights-and-freedoms/> and “New Zealand Human Rights Action Plan 2019-2023: Advocacy Priorities” <https://www.mfat.govt.nz/assets/Peace-Rights-and-Security/Human-rights/NZ-Human-Rights-Action-Plan.pdf>

^{xi} Lewis G. & Pickering, N. 2003. Māori Spiritual Beliefs and Attitudes Towards Organ Donation. NZ Bioeth J. 4(1), p31-5. <http://www.nzlii.org/nz/journals/NZBioethJl/2003/9.pdf>; “New Zealand: Maori Chief Files Lawsuit Against Jiang Zemin” (13 August 2015) Mighui.org <en.minghui.org>. <https://en.minghui.org/html/articles/2015/8/13/152051.html>

^{xii} China Tribunal Short Form Judgement. <https://chinatribunal.com/final-judgment/>.

^{xiii} David Kilgour, David Matas, and Ethan Gutmann, “Bloody Harvest – The Slaughter 2017 Update”;
<https://endtransplantabuse.org/an-update/>

^{xiv} “Cold Genocide: Falun Gong in China” <https://scholarcommons.usf.edu> by M Cheung, Torsten Trey, David Matas, and Richard An, in *Genocide Studies and Prevention: An International Journal*, Volume12/Issue 1: 38-62

^{xv} Newshub interview with Ms. Louisa Wall MP. <https://www.newshub.co.nz/home/politics/2021/07/labour-mp-louisa-wall-accuses-china-of-harvesting-organs-from-political-prisoners.html>

^{xvi} It is not sufficient that a small number of individuals may feel offended by an advertisement. The offence that is likely to be caused must either be serious or widespread. (Selene Mize “From Goldstein to the Burger King Babes: People Issues in Advertising” in Ursula Cheer (ed) *The Real Deal!* (The Centre for Commercial & Corporate Law Inc, Christchurch, 2008) 109 at 111-112.