

<b>COMPLAINT NUMBER</b>	21/413
<b>ADVERTISER</b>	Accident Compensation Corporation (ACC)
<b>ADVERTISEMENT</b>	Have a hmmm, Television, Website
<b>DATE OF MEETING</b>	7 September 2021
<b>OUTCOME</b>	Not Upheld No Further Action Required

### **Summary of the Complaints Board Decision**

The Complaints Board did not uphold a complaint about a television and website advertisement for ACC which showed a man contemplating jumping into a waterhole from a height but choosing a lesser jump after considering the risks. The Complaints Board said the advocacy advertisement about assessing dangers in advance was justified in showing the lesser risk of swimming beneath the waterfall within the context of the safety message.

### **Advertisement**

The Accident Compensation Corporation (ACC) television and website advertisement is part of the "Have a hmmm..." campaign aimed at preventing injuries. A waterfall is shown at the beginning of the advertisement, with a man asking his friend, "Bro, reckon I can jump from there?" and pointing to the top of the waterfall. The man then imagines himself in a series of situations as result of being injured from the jump. He wonders who would feed the fish, coach the sports team or wingman for his friend. The advertisement comes back to reality and the man shakes his head at the top of the waterfall. He dive-bombs into the waterhole from the lower height. The advertisement's text states, "If you get hurt, who gets harmed?" and "Have a hmmm". The final screen shows the ACC logo, slogan and website URL.

### **Summary of the Complaint**

The Complainant was concerned the advertisement was showing the dangerous practice of swimming at waterfalls. The Complainant stated there have been 53 drownings at waterfalls since 1980 and gave examples of hazards such as deep drop offs, lack of buoyancy and unpredictable depths and currents.

### **Issues Raised:**

- Social Responsibility
- Safety
- Advocacy Advertising

### **Summary of the Advertiser's Response**

The Advertiser said the 'Have a Hmmm' campaign encourages Kiwis to think about risks and how to avoid them, taking a moment to think about the consequences. The Advertiser agrees any freshwater swimming spot can have multiple risks but said the advertisement does not encourage an unsafe practice. The Advertiser consulted with Water Safety NZ and said the creative aligns with the water safety code which states "Be prepared, watch out for yourself and others, be aware of the dangers and know your limits." The Advertiser said it is showing a potentially dangerous environment to attract attention to the problem. The advertisement shows the water safety code in action with people swimming safely and watching out for each other. The focus of the story is the risk of jumping from heights, which has a high injury rate.

### Summary of the Media Response

The Commercial Approvals Bureau said the campaign is about avoiding preventable injuries which will not only affect yourself but also those people near and dear to you. As the graphic states: If you get hurt, who gets harmed? It confirmed the advertisement is an advocacy message where a sensible decision has been made about thinking of others before acting.

### 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.

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

**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: Addressing New Zealand's high rates of injury relating to water activities
  - Medium: Television and Website
  - Audience: New Zealanders who are active in the outdoors
  - Product: Advocacy message from ACC for water safety and minimising risky behaviours.

*Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was to stop and think before undertaking an activity which could be potentially dangerous. While the Board said the advertisement focused on the potential dangers associated with jumping from heights, the "Have a hmmm" message could apply to wider safety issues.

*Has the advocacy advertisement been adequately identified?*

The Complaints Board agreed the advertisement had been adequately identified as an advocacy advertisement.

The Complaints Board confirmed the Advertiser's identity is clear. The advertisement ends with ACC's name and website, [www.acc.co.nz](http://www.acc.co.nz), on the screen. The Complaints Board said the Government injury prevention and compensation organisation's call to action is clear. The final text in the advertisement "prevention. care. recovery" is ACC's message that nearly all injuries are preventable and predictable and if we can see it coming, we can stop it happening. The advertisement complied with the requirements of Rule 2(e) of the Advertising Standards Code.

*Does the advertisement encourage or condone an unsafe practice, or portray a disregard for safety?*

The Complaints Board said the very purpose of the "Have a hmmm" advertising campaign is to educate consumers about how to avoid unsafe behaviours. The Complaints Board acknowledged the Complainant's concerns around swimming in water holes and noted the Advertiser agreed there were risks associated with any swimming activity.

The Complaints Board said Rule 1(e) of the Advertising Standards Code allowed an unsafe practice to be shown when justified on educational grounds. The Board said the

advertisement focus was about the dangers of jumping from heights and the any lesser risk such as swimming as the base of waterfalls was mitigated by showing a calm day, a relatively small waterfall and waterhole and plenty of people swimming safely. The Board agreed the overall tone of the advertisement did not endorse risk-taking behaviour.

*Has the advertisement been prepared and placed with a due sense of social responsibility to consumers and to society?*

The Complaints Board unanimously agreed the advertisement had been prepared with the requisite level of social responsibility.

The Board said the purpose of the advertisement was to communicate an important safety message and the Advertiser was attempting to use a relatable way to reach new audiences. The Complaints Board noted the advertisement had been made with input from Water Safety NZ, who was satisfied the creative followed the water safety codes. The Board said it was appropriate to defer to the Advertiser, as the relevant expert body, in how best to advertise the important safety message.

The Complaints Board ruled the advertisement, when viewed through an advocacy lens and taking into account context, medium, audience and product, was not in breach of Principle 1, Principle 2 or Rules 1(e) and 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](http://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

This advertisement shows people swimming under a waterfall. <https://www.acc.co.nz/newsroom/have-a-hmmm/> There have been 53 drowning deaths at New Zealand's waterfalls since 1980, According to Water Safety New Zealand (WSNZ). What are the specific dangers of swimming in waterfalls? Hazards at the falls include sudden drop-offs into deep water beneath the falls and a lack of buoyancy associated with fresh water and aerated water at its base. Waterfalls can be very unpredictable and changeable, particularly after changes in weather like heavy rainfall. "So what was a nice, benign swimming hole one day, can actually turn into a pretty treacherous and unpredictable environment the next day after weather changes." Submerged rocks, debris, currents below the surface and changing depths were just some of the dangers to be aware of.

### Appendix 2

#### RESPONSE FROM ADVERTISER,

Thank you for your letter dated 18 August 2021 regarding **Complaint 21/413** which has been accepted to be put in front of the Advertising Standards Complaints Board for consideration. We take all complaints seriously particularly where safety is concerned.

We wish to **defend** the complaint.

The following outlines our defence of the complaint and addresses the relevant section(s) in the Advertising Codes outlined in the letter dated 18 August 2021 in particular: Advertising Standards Code – Principle 1, Principle 2, Rule 1(e), Rule 2(e). Information requested as part of Appendix 1 in the letter dated 18 August 2021 is contained within this document or supplied as attachments.

The Have a Hmmm campaign, of which this advertisement is part of, encourages Aotearoa to think about risks and how to avoid them – by taking a moment to think before doing something – in order to avoid injury and keep themselves, their whānau, friends and community safe and well.

**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.**

ACC agrees any freshwater swimming spot can have multiple risks. However, ACC believes the advertisement does not encourage or condone dangerous, illegal or unsafe practices nor portray situations which encourage or condone a disregard for safety.

In the campaign, with the support of Water Safety New Zealand, ACC aims to encourage people to know safe behaviour around water and to pause to take a safe action so they can have a fun time safely.

The water safety code (Water Safety New Zealand) states: Be prepared, watch out for yourself and others, be aware of the dangers and know your limits. ACC believes the advertisement aligns with the code. ACC acknowledges that an environment which may appear to be dangerous is being shown in order to attract attention to the problem.

The complainant also contacted Water Safety New Zealand. In their response (attached), Water Safety New Zealand note the code and their use of specific environments to attract attention. Water Safety New Zealand do not have an issue with the depiction of a waterfall or other freshwater swimming spots in advertising.

In our depiction of the waterfall scene, the intent was to show the water safety code in action by having a group of people in the water and on shore watching out for each other, by not peer-pressuring mates, and by showing swimmers already in the water to show that hazards had already been checked and mitigated before proceeding with swimming or jumping. The act of jumping into the water is only shown as necessary to engage and tell the story meaningfully. As such, other advertising, such as outdoor and static digital, show all actors out of the water on the shore.

In developing the campaign, ACC considered many of the risks identified in the complaint but chose to focus on the action of jumping from a height.

ACC claim data shows that jumping from a height into water has resulted in some significant injuries and is an increasing issue. There were 194 ACC claims for jumping from a bridge, cliff or rock, into water in 2018 and from 2014 to 2018, there was a two-fold increase in claims for jumping from a height into water.

ACC also acknowledges that young people jumping into the water is a Kiwi way of life in New Zealand. ACC believes it's not productive to try and stop people from having fun, and that people are more receptive to safety messages when it aligns with their own beliefs, values and behaviours, using environments or locations they can relate to. With young people especially, it's not about what you can't or shouldn't do, it's what you could do to make your behaviour safer and to take a pause to reconsider their actions.

Early results of campaign monitoring research give us confidence we are on the right track with key messages taken out of the campaign being about taking a moment to think before taking an action, about how injuries can impact others and about how ACC helps people prevent injury.

**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.**

ACC is clearly identified as the advertiser. Additional information about the campaign and ACC's role in the campaign is available on the ACC website ([acc.co.nz](http://acc.co.nz)) which is clearly shown in the advertising.

ACC used injury claim data to support the development of the Have a Hmmm campaign. As mentioned above, ACC claim data shows that jumping from a height into water has resulted in some significant injuries and is an increasing issue.

Water Safety New Zealand was involved in the development of the campaign and is comfortable with the creative approach used in the advertising. Water Safety New Zealand also communicated with the complainant and supported the approach used by ACC (communication attached).

### **Appendix 3**

#### **RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU**

**Complaint 21/413 Accident Compensation Corporation Key: ACC0262**

**45 Classification: G**

The complainant seems to have completely missed the entire message of this commercial.

This advertisement for the Accident Compensation Commission is part of their 'Have a hmmm' promotion. This campaign is about avoiding preventable injuries which will not only affect yourself but also those people near and dear to you. As the graphic states: If you get hurt, who gets harmed?

In other words, take a moment to have a quick think about what you are about to undertake. Can you do it in a safe way? If yes, then you'll be able to continue enjoying that action and importantly also without causing hurt, stress or the need of future care by those special people in your life such as family, friends and work colleagues."

In this scenario the young man says to his mate "reckon I could jump from there?" as he views the waterfall. He then pauses and footage shows him considering all the repercussions should he get hurt. Having reflected on them he instead makes the decision to jump off the small rocky outcrop beside the swimming hole and therefore enjoys having safe fun with his friends. All those shown either swimming or sitting watching are clearly adults.

CAB sees no cause to uphold this complaint of an advocacy message where a sensible decision has been made about thinking of others before acting.