

COMPLAINT NUMBER	21/506
ADVERTISER	Department of Prime Minister and Cabinet
ADVERTISEMENT	Unite Against Covid-19, Television
DATE OF MEETING	8 November 2021
OUTCOME	No Grounds to Proceed

Advertisement: The Department for Prime Minister and Cabinet "Two Shots" advertisement promotes double vaccination against COVID-19. The female voiceover opens by saying that "it's two shots for summer, fam", then lists a number of scenarios in which "two shots is the key", such as "to share a feed", "to do the deed", "beach hangs" and "house parties". The advertisement shows a number of images, text and animation overlaid on each other for emphasis. The voiceover closes by encouraging viewers to "Get your first [vaccination] now and your second one ASAP" and then shows the logos for Karawhiua, "Unite Against COVID-19" and the Ministry for Pacific Peoples.

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

Complaint: "Two Shots For Summer" COVID-19 Public Service Announcement. Two individuals engaging in passionate kissing, two ladybirds mating, skinny-dipping. Rule 1(c) Decency and Offensiveness. Three scenes depict (in conjunction with narration) things of a nature not only inappropriate for children, but almost encourage unhealthy choices during a time of a national health 'crisis'. Two shots of a vaccine so that it's implied now OK to go outside your bubble for nudity. Rule 1(e) Safety and Rule 1(h) Health and well-being. Two shots of a vaccine so that it's implied now OK to go outside your bubble and contract and/or spread a sexually transmitted infection. This is a totally inappropriate message for the young people this ad is aimed at and makes no sense for a national 'Health' campaign. Rule 2(a). Identification. Given the above rules 1(c), (e) and (h) It is a disappointing message given by the NZ Government as a public service announcement and this is almost masked by a VERY short end still containing the 'Unite Against COVID-19' logo (amongst others that a gone too quickly to recognise). Is it an ad? Is it a PSA? Rule 2 (b) Truthful presentation. I don't believe there is any solid evidence that two vaccine shots can be safely relied upon to keep ones self and their contacts from contracting COVID-19.

The relevant provisions were Advertising Standards Code - Principle 1, Principle 2, Rule 1(c), Rule 1(e), Rule 1(h), Rule 2(a), Rule 2(b), Rule 2(e)

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

Rule 1(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(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.

Rule 1(h) Health and well-being: Advertisements must not undermine the health and well-being of individuals.

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

Rule 2(a) Identification: Advertisements must be identified as such.

Rule 2(b) Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

Rule 2(e) Advocacy advertising: Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

About Advocacy Advertising under the Advertising Standards Code

The Chair confirmed the advertisement from the New Zealand Government on matters relating to the COVID-19 vaccination programme was advocacy advertising under the Advertising Standards Code.

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.

The Chair observed that in a free and democratic society, issues should be openly debated without undue hindrance or interference from authorities such as the Advertising Standards Authority (ASA), and it should not unduly restrict the Government's role in communicating public health information to the public.

Complainants sometimes ask the ASA to in effect decide which side in an advocacy debate is correct, but the Advertising Standards Complaints Board has consistently declined to have a view. The ASA is not an arbiter of scientific fact. 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. In the first instance the Chair's role is to decide if there are any grounds for the complaint to proceed.

Under Rule 2(e) Advocacy advertising in 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.

Application of the identity requirements of the Advertising Standards Code

The Chair confirmed the Advertiser's identity was clear. The advertisement included logos for Karawhiua, the Ministry for Pacific Peoples, and the Unite Against COVID-19 campaign seen throughout the pandemic response. The position of the Advertiser was also clear. It is an advertisement to promote vaccination to eligible people. The Chair said the advertisement complied with the identity requirements of Rule 2(e) of the Advertising Standards Code.

The Chair noted the advertisement was from the New Zealand Government. The Chair confirmed the agencies supporting the Government's COVID-19 approach included the Ministry of Health, an expert body with regard to its statutory role relating to public health matters. The role and jurisdiction of the ASA in advertising from expert bodies was addressed in *Electoral Commission v Cameron* [1997] 2 NZLR 421. In accordance with the findings of the Court of Appeal, the Advertising Standards Authority was required to "tread carefully" and ensure that it did not substitute its opinion for that of the expert body.

Application of the Advertising Standards Code to this advocacy advertisement

In reviewing the complaint about this advertisement, the Chair took into account the role of advocacy advertising, the liberal interpretation of the Codes required by the [Advocacy Principles](#), the application of *Cameron*, the likely consumer takeout, and the context for the advertising; the New Zealand Government's response to the COVID-19 pandemic with an audience of all New Zealanders. The Chair also noted the large amount of information available from a variety of sources about COVID-19, including the Government, the science community, news media and interest groups.

The Chair noted the Complainant was concerned the advertisement contained sexual references, which were inappropriate for children, and expressed concern about whether the identity of the Advertiser was clear and if the message that two vaccine shots would keep people safe from getting COVID-19 was supported by evidence.

The Chair carefully reviewed the advertisement and said the likely consumer takeout of the advertisement was it is encouraging people to get vaccinated for Covid-19 to make the most of activities during the summer. The Chair considered the advertisement was designed to appeal to certain sectors of the population, especially young people. It conveys the warning that all forms of social interaction can potentially result in the spread of Covid-19. The Chair noted the advertisement was rated G and played at 7.45pm on Duke +1 during Motorway Patrol, which is rated PG (Parental Guidance Recommended for Younger Viewers).

The Chair said that the advertisement was part of the Government's campaign to vaccinate New Zealanders aged over 12 years. The Delta variant of COVID-19 was more transmissible than previous strains and Government-mandated lockdowns and restrictions had been in place for some time, particularly in the northern part of the North Island. These restrictions had impacted people's ability to get together with family and friends. She noted the advertisement focused on the sense of freedom and security that could be afforded by a high vaccination rate. It highlighted the vaccine as a tool to mitigate the risk of transmission and allow people to spend time together.

The Chair stated that as both the identity and position of the advertiser were clear, viewers would understand the advertisement as part of the broader Government campaign to vaccinate the population. The Chair confirmed matters relating to the efficacy of the vaccine were outside the ASA's jurisdiction. The Chair said the advertisement did not breach Principle 2, Rule 2(a), Rule 2(b) or Rule 2(e) of the Advertising Standards Code.

The Chair then considered matters raised by the Complainant under Rule 1(c) regarding serious or widespread offence. Rule 1(c) of the Advertising Standards Code required the Chair to consider whether the advertisement was likely to cause serious or widespread offence, in light of generally prevailing community standards. The Chair said that despite the Complainant's objection to the advertisement, the sexual references in the phrase "two to do the deed" combined with the images of two ladybirds copulating and two people kissing, and the reference to skinny-dipping, did not reach the threshold to cause serious or widespread offence. The advertisement was not in breach of Rule 1(c) of the Advertising Standards Code.

The Chair also considered whether the images or script in the advertisement encouraged or condoned a disregard for safety or were likely to undermine the health and well-being of individuals. The Chair said advertisement from the New Zealand Government in support of its vaccination programme was not in breach of Rules 1(e) or 1(h) of the Advertising Standards Code.

The Chair said the advertisement had been prepared with the due sense of social responsibility required and it was not in breach of Principle 1, Rules 1(c), 1(e), 1(h), Principle 2 or Rules 2 (a), 2(b) and 2(e) of the Advertising Standards Code.

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

Chair's Ruling: Complaint **No Grounds to Proceed**

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing 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.