

COMPLAINT NUMBER	21/548
ADVERTISER	Ministry of Health
ADVERTISEMENT	Ministry of Health, website
DATE OF MEETING	29 November 2021
OUTCOME	No Grounds to Proceed

Advertisement: The Ministry of Health web page titled, "COVID-19: Vaccine effectiveness and protection", provides information on how effective the vaccine is, how efficacy is measured, the importance of a second dose of the vaccine and its impact on transmission.

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

Complaint [summarised]: The Complainant is concerned specifically with the statement on the website, "However, it [the vaccine] is highly effective if people have both doses". The Complainant states that "[n]one of those claims are made by the manufacturer". The Complainant says the manufacturer highlights "missing information" which indicates unknown safety risks, therefore the Complainant believes that it is "grossly irresponsible to claim these inoculations are "safe"". The Complainant also states that this messaging is "fuelling an environment of hostility, contempt, abuse, and ridicule against uninoculated persons" by "relentlessly insinuating that uninoculated persons are a source of disease... are a threat to public and personal health and safety... are selfish, irresponsible..." etc.

The relevant provisions were Advertising Standards Code – Principle 1, Rule 1(c), Principle 2, 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.

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.

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 the Ministry of Health at the top of the page and the page was part of the Ministry of Health website. The position of the Advertiser was also clear. The advertisement promotes the vaccine rollout by providing information on the Ministry of Health’s views about benefits of the vaccine. 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 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 acknowledged that the Complainant was concerned that the advertisement makes an unsubstantiated claim about the safety and efficacy of the vaccine and fuels discrimination towards unvaccinated people.

The Chair examined the claim in the advertisement that the Complainant was concerned about the claim:

"However, it [the vaccine] is highly effective if people have both doses".

The Chair noted that the statement was followed by information about results from clinical trials. She confirmed that the safety and efficacy of the vaccine itself and the approval process followed by Medsafe is not a matter the ASA can adjudicate on. She noted the [Datashheet](#), which provides relevant information about the vaccine, was available on the Medsafe website, in addition to information about [Medsafe's approval process](#) and [approval of COVID-19 vaccines](#).

The Chair then turned to the Complainant's concern that the advertisement encourages hostility and discrimination towards unvaccinated people. 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. She said that the advertisement contained factual information from the Ministry of Health about the efficacy of the vaccine and was intended to support the nationwide rollout of the vaccine. She considered it unlikely that these statements would cause serious or widespread offence.

The Chair said the advertisement was not misleading and had been prepared with the due sense of social responsibility and was not in breach of Principle 1, Rule 1(c) Principle 2, Rule 2(b) or Rule 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.