

<b>COMPLAINT NUMBER</b>	21/549
<b>ADVERTISER</b>	Ministry of Health
<b>ADVERTISEMENT</b>	Ministry of Health, website
<b>DATE OF MEETING</b>	29 November 2021
<b>OUTCOME</b>	No Grounds to Proceed

**Advertisement:** The web page on the Ministry of Health website provides general information on vaccines in New Zealand. The page aims to answer "common questions" regarding development, monitoring, vaccine ingredients, storage and who can administer them.

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

**Complaint:** "New Zealand Ministry of Health's "Vaccine safety" web page - <https://www.health.govt.nz/yourhealth/healthy-living/immunisation/vaccine-safety> – states that "All vaccines approved for use in New Zealand have a good safety record". In relation to COVID-19 inoculations, this is false, as safety records for these products are unknown, as explicitly stated by manufacturers. That web page goes on to state, "Before a vaccine can be approved for use it goes through a long testing process by international scientists to check that it is safe, and that it works. This process usually takes several years and includes trials on people who volunteer to use it. [...] Phase 3: Large, randomised trial(s) to test the effect of a new vaccine against a control group. This phase tests safety and efficacy". Again, these standards have not yet been met with COVID-19 inoculations. That web page further states, "Vaccines include antigens (weakened or killed germs, or parts of germs) which help your body recognise and fight off disease." Again, this is not an accurate description of COVID-19 inoculations, which do not contain antigens as described by Ministry of Health, or any conventional vaccines. Terms such as "vaccine", "vaccinated", "vaccination" are misleading, when used to describe COVID-19 inoculations...".

**The relevant provisions were Advertising Standards Code – Principle 1, 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.

**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 a logo 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 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 Chair confirmed the agencies supporting the Government’s COVID-19 approach included the Department for the Prime Minister and Cabinet. 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's concern that the advertisement contained false statements regarding the safety, development, and ingredients of the Pfizer vaccine.

She examined the particular statements identified by the Complainant:

- "All vaccines approved for use in New Zealand have a good safety record";
- "Before a vaccine can be approved for use it goes through a long testing process by international scientists to check that it is safe, and that it works. This process usually takes several years and includes trials on people who volunteer to use it. [...] Phase 3: Large, randomised trial(s) to test the effect of a new vaccine against a control group. This phase tests safety and efficacy";
- "Vaccines include antigens (weakened or killed germs, or parts of germs) which help your body recognise and fight off disease".

The Chair noted that the web page was intended to provide general information about vaccines in New Zealand. It did not directly refer to COVID-19 vaccines. Given also that information specific to the COVID-19 vaccines was available elsewhere on the website, she said the advertisement was not misleading.

The Chair reiterated 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, including ingredients, was available on the Medsafe website, in addition to information about [Medsafe's approval process](#) and [approval of COVID-19 vaccines](#).

The Chair said the advocacy advertisement was not misleading, had been prepared with the due sense of social responsibility and was not in breach of Principle 1, 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](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.