

<b>COMPLAINT NUMBER</b>	21/510
<b>ADVERTISER</b>	Hamilton Electric Vehicles
<b>ADVERTISEMENT</b>	Hamilton Electric Vehicles, Facebook
<b>DATE OF MEETING</b>	7 December 2021
<b>OUTCOME</b>	Upheld Advertisement removed

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

The Complaints Board upheld a complaint about a sponsored Facebook advertisement for Hamilton Electric Vehicles. The Board said the advertisement was misleading because it included an image of a poster which was visually very similar to the Government Unite Against Covid advertisements and this could be confusing for consumers when it appeared in their feed as a sponsored post.

### **Advertisement**

The sponsored Facebook post advertisement for Hamilton Electric Vehicles was in the Complainant's 'feed'. The advertisement included a photo of the entrance to the business which displayed three COVID related posters. At the top was a "The Freedom and Rights Coalition" poster in the style of the Government Unite Against COVID-19 posters. This poster had the text "All welcome – Vaxed & Unvaxed. Our business does not discriminate. Unite against Discrimination". The name of the Advertiser "The Freedom & Rights Coalition New Zealand" was written on the bottom left of the poster. The poster included an image of two black figures in a circle waving. The background for the image was horizontal yellow and white stripes.

The poster was next to the official Unite Against Covid poster, which is used for scanning in at the business. In the post, to the right of the photo was the text:

"Friday feels (heart and car emojis) – freedom is a thought expressed through our actions, fear and division does not lurk in our EV world. (heart emoji) – sharing a COVID-19 update."

### **Summary of the Complaint**

The Complainant was concerned the advertisement was misleading because it implied the Government supported the message that vaccinated and unvaccinated people were equally welcome at the Hamilton Electric Vehicles retail premises. It also used government official Covid branding without permission.

### **Issues Raised:**

- Truthful presentation
- Comparative advertising
- Advocacy advertising

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

The Advertiser defended the advertisement and said it was not misleading or in breach of copyright.

## Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

### ADVERTISING STANDARDS CODE

**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(d) Comparative advertising:** Comparative advertisements, or advertising that identifies a competing product or service, must be factual, accurate, make clear the nature of the comparison, must not denigrate competitors and must be of 'like' products or services available in the same market.

#### Guidelines

- An advertisement must not appear to look like another as this is likely to mislead or cause confusion.

**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.

### Complaints Board Discussion

The 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: Covid-19 global pandemic
  - Medium: Facebook
  - Audience: Hamilton Electric Vehicles target audience for its sponsored advertisements and visitors to the Hamilton Electric Vehicles Facebook page.
  - Product: Electric vehicle retail business

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was Hamilton Electric Vehicles does not support the use of vaccine passports and will welcome vaccinated and unvaccinated people alike into its business premises.

*Was it advocacy advertising?*

The Complaints Board agreed the advertisement was not advocacy advertising under Rule 2(e) of the Advertising Standards Code. The Board said as Hamilton Electric Vehicles is a business, the advertising is a commercial message to consumers, not advocacy advertising on behalf of an interest group and a more liberal interpretation of the Code did not apply.

*Was the advertisement misleading?*

The Complaints Board agreed the advertisement was misleading because the image in the sponsored post included a poster that was visually very similar to the template used for Government Unite Against Covid advertisements, yet contained a different Covid-19 message. The advertisement used the same yellow stripes and general layout and design of the Government Unite Against Covid advertisements, but did not advocate widespread vaccination against Covid-19. The Board said this advertisement was misleading because it created confusion for consumers about Government COVID-19 messaging, when it appeared in their Facebook feed. This was especially of concern in the context of the COVID-19 global pandemic.

*Was it 'comparative advertising'?*

The Complaints Board ruled the complaint was not comparative advertising and Rule 2(d) did not apply. The Complaints Board said the advertisement did not refer to a competing product or service.

*In Summary*

The Complaints Board said the advertisement was misleading, taking into account context, medium, audience and product and was in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code.

**Outcome**

The Complaints Board ruled the complaint was **Upheld**.

Advertisement removed.

**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
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### Appendix 1

#### COMPLAINT

Rule 2 (b) Advertisements must not mislead or be likely to mislead, deceive or confuse consumers Rule 2 (d) [Guidelines]: An advertisement must not appear to look like another as

The post was a sponsored add in my feed.

The business is using signs/ posters which look just like the official government covid posters but with their own messaging on them - in this case saying that vaxxed and unvaxxed people are welcome. This is fine to say, they can do what they want.

However they shouldn't be using the government official covid branding as it misleading to the public. Rule 2 (b) Advertisements must not mislead or be likely to mislead, deceive or confuse consumers Rule 2 (d) [Guidelines]: An advertisement must not appear to look like another as this is likely to mislead or cause confusion. By paying for Facebook advertising they have turned a poster on their window into an advertisement that is all over facebook that has misleading content.

### Appendix 2

#### RESPONSE FROM ADVERTISER, HAMILTON ELECTRIC VEHICLES

What a joke, we downloaded them from the MBIE website.  
I'm not interested in entertaining this "WOKE" dribble.

The ASA can do what it likes with whatever muppet took the time to complain.  
The signage remains.

It is NOT misleading, it is NOT illegal, it is NOT copyright or a breach in anyway shape or form.

Over 3,200 people have liked, seen or commented on the post and NOT one single person has taken exception to it, except this muppet.