

COMPLAINT NUMBER	21/562
ADVERTISER	Waka Kotahi /NZ Transport Agency
ADVERTISEMENT	Waka Kotahi, Radio
DATE OF MEETING	14 December 2021
OUTCOME	No Grounds to Proceed

Advertisement: The Waka Kotahi/NZ Transport Agency radio advertisement promotes their current review of speed limits at certain locations. It is narrated by a female police officer with noise of passing traffic and an emergency vehicle siren in the background. She explains how roads have become a lot busier with traffic and states that safer speed limits will mean that there will be less need for emergency vehicles. The advertisement ends with a different narrator directing listeners to nzta.govt.nz for more information.

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

Complaint: The advert is regarding lowering speed limits - my complaint is the background noises, with vehicles, traffic, sirens etc, which are very distracting when listening to the advert while travelling by vehicle. A few times this had caught us out thinking there was a siren approaching, or a loud vehicle coming up on us. This causes an immediate reaction - slowing down, pulling to the left etc - which is Ok if everyone else is doing it, but dangerous if you are reacting to something on the radio that is overly realistic, and dangerously distracting.

The relevant provisions were Advertising Standards Code - Principle 1, Principle 2, Rule 1(e), 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(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 Chair 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 Chair noted her 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.

The Chair will consider whether the advertisement includes statements of fact or opinion and decide whether any factual claims have been adequately substantiated by the Advertiser. The Chair noted that a fact is something that is objectively true and can be verified as such whereas an opinion is a personal belief. Others may agree or disagree with an opinion, but they cannot prove or disprove it. Some statements contain both fact and opinion.

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 Complaints Board, and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations.

Under Rule 2(e) Advocacy advertising of 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.

The Chair acknowledged the Complainant's concern the background noise in the advertisement including sirens is "overly realistic" and could be distracting for drivers.

The Chair said the advertisement is from the Government agency, Waka Kotahi/NZ Transport Agency. The Chair noted it has responsibility to educate the public about safe

driving, on behalf of the Government. Waka Kotahi/NZ Transport Agency is currently identifying roads where reviewing speed limits could make a big difference in preventing deaths and serious injuries, and where communities are calling for change.

The Chair said the advertisement is set on a busy road to help highlight the risks of excessive speed with a high volume of traffic, and emergency vehicles. As a result, there is traffic noise and a short burst of sirens towards the end of the advertisement.

The Chair said the focus of the advertisement is the commentary from the Police Officer explaining the need to make sure speed limits are right, since roads are busier. The Chair said while there may be a low level of distraction in the advertisement for some listeners, this did not reach a level to encourage or condone unsafe practices or a disregard for safety.

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