

COMPLAINT NUMBER	15/049
COMPLAINANT	K. Knobel and K. Reed
ADVERTISER	New Zealand AIDS Foundation
ADVERTISEMENT	Love Your Condom Billboard
DATE OF MEETING	16 February 2015
OUTCOME	No Grounds to Proceed

Complaint: The “Love Your Condom” billboard advertisement for the New Zealand AIDS Foundation showed a picture of a man dressed in boxing attire and said, in part:

“Getting in the ring? Gear Up
#loveyourcondom.”

Complainant, K. Knobel, said: “there is an offensive billboard with advertising by this foundation. It is visible from the motorways. It has nudity and is clearly not respecting the advertising codes.”

Duplicate Complainant, K. Reed, shared similar views the advertisement was sexually explicit and inappropriate for a public place.

The relevant provisions were Basic Principle 4 and Rules 5 and 11 of the Code of Ethics.

The Chairman noted the offence the advertisement caused the Complainants and their view that it was sexually explicit.

The Chairman then turned to consider the advertisement under Rule 11 of the Code of Ethics and noted that it provided for robust expression of belief or opinion being as expressed by the Advertiser and, therefore, such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an Advertiser in matters of public interest or political issues should also be clear.

Also applicable were the Advocacy Principles, developed by the Complaints Board in previous Decisions for the application of Rule 11. These said:

- 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 right 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.

The Chairman said the billboard was clearly identifiable as a "Love your Condom" advertisement by the New Zealand AIDS Foundation, advocating their stance on safe sex. She said the advertisement was in the category of advocacy advertising and included an important public health message to help reduce the rate of HIV infections within New Zealand. She also noted that the Advertiser was clearly identified by the logo and website address. Having made the above observations, the Chairman said the advertisement was not in breach of Rule 11 of the Code of Ethics.

In consideration of whether the advertisement was likely to cause serious and widespread offence, the Chairman noted the precedent Complaints Board Decision (14/621) about the same Advertiser and a similar billboard. That Decision stated, in part:

"the Complaints Board noted the campaign was targeted at gay and bisexual men. It said whilst it was clear that man was intended to be naked, no genitalia was shown, and while the image while provocative, it was not exploitative or salacious.

The Advertiser continued: "The decision to place these advertisements in 'mainstream' mediums such as billboards was based on two key considerations, the first being that gay and bisexual men live, work and socialise within the wider mainstream community; secondly, we know that the majority of gay and bisexual men cannot be reached through gay media alone."

Taking into account precedent Decision (11/806), the Complaints Board said it did not consider an advertisement that promoted an important health message to men, to be degrading. It said the use of the man in a provocative pose, was contextually congruent with the Advertiser's target audience of gay and bisexual men.

Therefore, while it acknowledged the offence the advertisement caused the Complainant, the Complaints Board said the advertisement did not reach the threshold to be said to contain anything which in the light of generally prevailing community standards was likely to cause serious or widespread offence taking into account the context, medium, audience and product it and had been prepared with a due sense of social responsibility to consumers and to society."

The Chairman said the above precedent was directly related to the complaints before her and was of the view the image before her was less provocative than that in the precedent. She further noted the advertisement did not contain any salacious images and was not of an

explicit nature and used humour to raise awareness about an important health issue, in line with their target audience.

While noting the offence caused to the Complainant, the Chairman said, taking into account generally prevailing community standards and precedent Decision (14/621), the advertisement was unlikely to caused serious and widespread offence to most people. The Chairman said the advertisement was not in breach of Rules 5 or 11 of the Code of Ethics, and had been prepared with a due sense of social responsibility to consumers and society.

Accordingly, the Chairman ruled that there were no grounds for the complaint to proceed.

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