

COMPLAINT NUMBER	19/054
APPEAL NUMBER	19/001
COMPLAINANT	R Clements
ADVERTISER	Heart Foundation NZ
APPLICANT	R Clements
ADVERTISEMENT	Heart Foundation NZ. Television
DATE OF MEETING	4 March 2019
OUTCOME	Declined

SUMMARY

The Chair ruled on 11 February 2019 the complaint made by R Clements had no grounds to proceed.

The Complainant appealed the Decision. The appeal application was considered by the Chairperson of the Appeal Board. She noted the Applicant queried the reasons the Chair of the Complaints Board ruled their complaint had no grounds to proceed.

The Chairperson agreed with the Ruling and said the Advertiser was able to choose to highlight one aspect relating to heart attacks, in this case, awareness of possible symptoms.

The Chairperson said the exaggerated acting of the characters in the advertisement was not likely to cause serious or widespread offence.

The Chairperson noted the concerns of the Complainant, however, disagreement with a decision was not a ground on which an appeal could be accepted and the application was declined.

Please note this headnote does not form part of the Decision.

CHAIRPERSON'S RULING

The Chairperson viewed the application for appeal. She noted that there were five grounds upon which an appeal was able to proceed. These were listed at Clause 6.4 of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and were as follows:

- (a) The proper procedures have not been followed.
- (b) There is new evidence of sufficient substance to affect the decision.
- (c) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (d) The decision is against the weight of evidence.

- (e) It is in the interests of natural justice that the matter be reheard.

The appeal application was considered by the Chairperson of the Appeal Board.

The Complaint and Appeal

The Chairperson noted the Complainant had two key concerns in their initial complaint. The first was that the images of the people in the foreground of the advertisement pretending to have heart attacks were offensive. The second was that the advertisement should have provided instruction on defibrillator use or the current manual compression technique to train people to help others who are having heart attacks.

The Chair of the Complaints Board ruled the advertisement was not in breach of Rules 4 and 11 and Basic Principle 4 of the Code of Ethics.

In their Appeal, the Complainant said the Chair's reasons for ruling their complaint had no grounds to proceed were not correct and only one person's opinion.

ASA complaints procedure

The Chairperson confirmed the Advertising Standards Authority runs a self-regulatory process to support standards in advertising. The Codes of Practice set the rules that advertisements should comply with. Following receipt of a complaint, the Chair of the Complaints Board, a public member, assesses whether there is a likely breach of the Codes. This role has been delegated to the Chair by the Advertising Standards Complaints Board. Under this process, the advertisement is able to be displayed or broadcast while a decision is made. Under the ASA Rules, the Chairperson of the Appeal Board is required to consider whether an appeal of a ruling or decision has met the grounds for appeal.

Advocacy advertising

The Chairperson referred to Rule 11 in the Code of Ethics about advocacy advertisements. This Rule allows Advertisers to present information including images, that may be confronting for some people. The Heart Foundation advertisement is seeking donations to support its work relating to education on heart disease and its risks. The Chairperson confirmed the Advertiser is entitled to choose the focus of its advertisement – in this case, heart attack symptoms.

Serious or widespread offence

Rule 4 of the Code of Ethics states advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).

The Chairperson acknowledged the Complainant's view of the distress and pain portrayed by the actors in the advertisement. The Chair noted these images were the focus of the first part of the advertisement with most of the advertisement containing information about heart disease and the Heart Foundation's need for financial support to continue its work, providing context. The Chairperson said the exaggerated acting of the characters in the advertisement was not likely to cause serious or widespread offence.

The Chairperson agreed with the Ruling from the Chair of the Complaints Board and considered while the Complainant disagreed with it, this was not a ground for appeal.

The Chairperson ruled there were no grounds on which the appeal could proceed, and the application was declined.

Chairperson's Ruling: Appeal application **Declined**

DESCRIPTION OF ADVERTISEMENT

The Heart Foundation NZ television advertisement shows a variety of people in the foreground acting out what it looks like to have a heart attack with the voiceover asking "Who gives the most realistic performance of a heart attack?" In the background another person is sitting holding his chest in a less dramatic manner. The voiceover and text at the end of advertisement identifies the Advertiser with the email address - heartfoundation.org.nz

APPEAL APPLICATION FROM COMPLAINANT, R CLEMENTS

1. Previous Rulings comparisons do not apply as put forward ie car accidents, ChCh earthquake etc these do not show sudden anguish (where the shock tactic is suddenly introduced from an unrelated previous advert) & is in very different context. Reaction time to change channel is possible then - NOT SO IN Complaint Advert Advocacy advertising in breach of good taste is breached according to alternative considerable opinion.
2. Robust expression of Opinion is NOT shown in this advert "Pain & Anguish IS. - clearly that needs to be understood & clarified the difference - which means Rule 11 is not applicable as you have put forward. Early detection in a (sensationally graphic) manner exhibited not required or wanted end of story.
3. The focus of the advert in this case is elementary to mitigate - don't show prolonged face discomfort & make light of a serious event whether pretend or otherwise. le / do ambulance hospital services illustrate Life "threatening" Procedures not at all. Helicopter paramedics & their shows do NOT show patients facial discomfort in any Advertising & in programme's one can avoid that with prior knowledge but is edited out usually.
4. The Chair states defibrators chest compression techniques not the focus of advert well we can see that & not debating that issue was an adjunct provided as a better way of getting their message through in a less intrusive manner.
5. The Chair states no breaches occur in associated rules I have clearly outlined above there is - that's clearly an opinion only by believed to be a 1 person interpretation possibly, & they are possibly in breach themselves by omitting to supply that fact to the complainant.

My submissions have a number of supporters names to validate it which though not provided can be in comparison - need their permission obtainable

Conclusion- the above points fully serve as logical rebuttal to your analysis & not opiated.

It is apparent that because the Chair have no other relating complaints & further (have failed to say in your review) which you should have - the impact of my complaint seems diminished.

The Nz Heart Foundation / Advertising agent clearly has a public negative response to this advert as amply demonstrated from victims & others but is unable to comprehend the damage, is more than the good they could achieve by modifying their profile in Tv advertising.

No lessons have been learnt thus it seems.

SUMMARY OF CHAIR'S RULING

The Chair noted the Complainant's concern the advertisement was demeaning in its portrayal of heart attack symptoms and is offensive to victims and their families.

The Chair acknowledged the distress the advertisement has caused the Complainant and others.

The Chair confirmed the advertisement for Heart Foundation New Zealand was an advocacy advertisement intended to raise awareness about the early detection of heart attacks. The Chair agreed the images could be confronting, however, advocacy advertising is provided for under Rule 11 of the Code of Ethics and robust expression of opinion is allowed as long as the advertiser is clearly identified.

Turning to the complaint before her, the Chair said from time to time scenarios in advertising do resonate with consumers, for tragic reasons and it would be difficult to mitigate this in every case. Whilst the Chair agreed with the Complainant about the importance of educating about defibrillators and correct chest compression procedures, she said that was not the focus of this particular advertisement. The advertisement before her highlighted the importance of early detection and addressed misconceptions about the initial symptoms of a heart attack.

The Chair ruled the advertisement had been prepared with a due sense of social responsibility and had not reached the threshold to breach Basic Principle 4 or Rule 4 of the Code of Ethics. The advertisement complied with the requirements of Rule 11 of the Code of Ethics.