

COMPLAINT NUMBER	19/134
COMPLAINANT	R Scovell
ADVERTISER	Spark New Zealand Trading Limited & OUTLine NZ
ADVERTISEMENT	Spark & OUTLine NZ, Digital Marketing
DATE OF MEETING	14 May 2019
OUTCOME	Not Upheld

SUMMARY

There are two advertisements for the OUTLine charity. Advertisement 1 is a Spark sponsored video advertisement and shows a woman talking about the journey of her child, Hunter, transitioning from female to male. The text graphic says: "Let's talk. Even if you don't know what to say. OUTLine offers confidential support to LGBTIQI+ people, their friends and whānau." The advertisement ends with the Spark and OUTLine logos.

Advertisement 2, an OUTLine leaflet on its website, Community Embrace - Parents, has a question and answer format aimed at parents whose children have just come out or have questions about their gender or sexuality. One question in the leaflet addresses what medical transition means. The advertisement includes the Spark Logo and acknowledges its role as a strategic partner.

The Complainant is concerned that through Advertisement 1, Spark is endorsing an organisation which has a positive view of puberty blockers without noting the potential adverse effects.

The Complainant is also concerned about content in the leaflet advertisement, particularly a statement about puberty blockers which says the effects are "100% reversible."

Spark said the video advertisement is designed to raise awareness of the OUTLine phone support service and a call to action to encouraging to people to talk even if you don't know what to say. The advertisement does not promote specific medical choice.

OUTLine NZ said the leaflet reflects the advice of the Hauora: Tāhine Pathways to Transgender Health Services which comes under the Auckland District Health Board.

The Complaints Board agreed the advertisements met the criteria to be considered advocacy advertising and the identity of both the Advertisers was clear.

The Complaints Board said the video advertisement was promoting a counselling service and did not promote any particular medical treatment.

The Complaints Board agreed the leaflet contents advises parents about the range of information available and suggests starting by visiting a doctor to discuss options.

The Complaints Board unanimously agreed the advertisements were not encouraging a disregard for safety. The Complaints Board said the advertisements had been prepared with a due sense of social responsibility, taking into account context, medium, audience and product and were not in breach of Principle 1, Principle 2 and Rules 1(e) and 2(e) of the Advertising Standards Code.

The Complaints Board ruled the complaints were Not Upheld.

[No further action required]

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

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the complaints with reference to Principle 1, Principle 2, Rule 1(e) and Rule 2(e) of the Advertising Standards Code.

Principle 1 required the Board to consider whether the advertisements had been prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(e) required the Board to consider whether the advertisements had unless justified on educational or social grounds, encouraged or condoned dangerous, illegal or unsafe practices, or portrayed situations which encourage or condone a disregard for safety.

Principle 2 required the Board to consider whether the advertisements were truthful, balanced and not misleading.

Rule 2(e) required the Board to consider whether the advertisements were advocacy advertising, and, if so, whether the identity and position of the advertiser was clearly stated. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant is concerned that through Advertisement 1, Spark is endorsing an organisation which has a positive view of puberty blockers without noting the potential adverse effects.

The Complainant is also concerned about content in the leaflet advertisement; Advertisement 2, particularly a statement about puberty blockers which says the effects are "100% reversible." The Complainant referred to review articles about the risks of treatment suppressing puberty.

The Advertiser Response from Spark – Advertisement 1

The Advertiser said the advertisement is designed to raise awareness of the OUTLine phone support service and a call to action to encouraging to people to talk even if you don't know what to say. The advertisement does not promote specific medical choice and is intended to encourage acceptance of transgender people through a humanised and authentic story.

The Advertiser Response from OUTLine NZ – Advertisement 2

The Advertiser said the leaflet reflects the advice of the Hauora Tāhine: Pathways to Transgender Health Services which comes under the Auckland District Health Board.

Complaints Board Discussion

Are they advocacy advertisements?

The Complaints Board said the advertisements before it, which intend to educate on a social issue, 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 state:

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.

Are the identities of the Advertisers clear?

The Complaints Board agreed the Advertisers had met the identity requirements under Rule 2(e). The video advertisement appears on Spark's Facebook page and contains information about the OUTLine service and logos for both organisations.

The OUTLine leaflet is available on the OUTLine website and contains contact details for OUTLine and the Spark logo.

The Complaints Board said identities of the Advertisers were clear.

The Complaints Board observed that in a free and democratic society, differences of opinion should be openly debated without undue hindrance or interference from authorities such as the Complaints Board, and in no way should lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations. Therefore, the Complaints Board considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

Having established the advocacy nature of the advertising, the Complaints Board addressed each advertisement in turn:

The video advertisement - Advertisement 1

Consumer Takeout

The Complaints Board considered the likely consumer takeout of the video and agreed it was a call to action to talk about challenging issues and that the OUTLine support service is available to provide information and support for those within the LGBTQIA+ community, along with family and friends.

Is the advertisement encouraging or promoting an unsafe practice?

The Complaints Board said the video advertisement was promoting a counselling service. It was not promoting any medical options, but rather encouraging the beginning of a discussion which could lead to a variety of outcomes.

Is the advertisement misleading?

The Complaints Board agreed the advertisement provided factual information and did not contain anything which was likely to mislead or deceive consumers.

The Complaints Board ruled the video advertisement was not encouraging a disregard for safety and had been prepared with a due sense of social responsibility. The Complaints Board ruled the video advertisement was not in breach of Principle 1, Principle 2 or Rules 1(e) or 2(e) of the Advertising Standards Code.

The Community Embrace - Parents Leaflet – Advertisement 2

Consumer Takeout

The Complaints Board considered the likely consumer takeout of the OUTLine leaflet and in particular, the section of concern to the Complainant which states:

“There are no hard and fast rules when it comes to medical transition – generally the youngest blockers will be prescribed is around the onset of puberty. Talk to your doctor (with your child!) about the options. The effects of some treatments, for example puberty blockers, are 100% reversible.”

The Board said the leaflet provides parents with a range of information on gender transition and suggests visiting a doctor to discuss options.

Is the advertisement encouraging an unsafe practice?

The Complaints Board said it was important to note the counselling service is not prescribing puberty blockers. They must be prescribed by a medical practitioner and would involve a consultation with the patient being informed about any harmful effects during the informed consent process.

The Complaints Board said the statement “The effects of some treatments, for example puberty blockers, are 100% reversible” is presented as a statement of fact. The Board noted the information provided by the Complainant about the risks of treatment suppressing puberty. The Board also noted the Advertiser confirmed the source of the statement was Hauora Tāhine: Pathways to Transgender Healthcare Services, a collective name for a range of secondary services under the auspices of the Auckland District Health Board.

The Board took into account the context for the statement in a leaflet for a counselling service. The reference to puberty blockers appears directly after a call to action to speak to a medical professional. The Board acknowledged the Complainant’s concern about the definitive nature of the statement but unanimously agreed that the advertisement was not encouraging a disregard for safety.

The Complaints Board said the advertisement had been prepared with a due sense of social responsibility, taking into account context, medium, audience and product and was not in breach of Principle 1, Principle 2 and Rules 1(e) and 2(e) of the Advertising Standards Code.

The Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENTS

Advertisement 1 is a Spark sponsored video advertisement and shows a woman talking about the journey of her son, Hunter, transitioning from female to male. The text graphic says: "Let's talk. Even if you don't know what to say. OUTLine offers confidential support to LGBTQI+ people, their friends and whānau." The advertisement ends with the Spark and OUTLine logos.

Advertisement 2, an OUTLine leaflet on its website, Community Embrace - Parents, has a question and answer format aimed at parents whose children have just come out or have questions about their gender or sexuality. One question in the leaflet addresses what medical transition means. The advertisement includes the Spark Logo and acknowledges its role as a strategic partner.

COMPLAINT FROM R SCOVELL

In my initial complaint (19/057), I made a general complaint about SparkNZ endorsing an organisation that endorses potentially harmful activities.

My new complaint is more detailed, provides evidence, and is based on Rule 1(e): "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."

I have reviewed the literature of 'OutlineNZ' and their leaflet 'Parents' (<http://www.outline.org.nz/wp-content/uploads/2018/08/Parents-WEB.pdf>) makes the following comment in response to a putative question from a concerned parent:

"There are no hard and fast rules when it comes to medical transition -- generally the youngest blockers will be prescribed is around the onset of puberty. ... The effects of some treatments, for example, puberty blockers, are 100% reversible."

I offer as evidence the following article, which discusses puberty blockers in detail: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5290172/>

This article is one of the few investigative scholarly works on the issue: the majority of writings are based on the ideological position of the author(s). Here are relevant extracts from the article (bold emphasis mine):

"The primary risks of pubertal suppression in gender dysphoric youth treated with GnRH agonists include adverse effects on bone mineralization, compromised fertility, and unknown effects on brain development.

A 6-year longitudinal, observational study assessed bone mineral density (BMD) in 34 transgender adolescents (15 MTF, 19 FTM) who had received GnRH agonist beginning at an average age of 14.9–15 years (individuals were mid-late pubertal at study onset by

testicular volume or breast stage), had initiation of cross sex hormones at 16.4–16.6 years, followed by gonadectomy with discontinuation of GnRH agonist at a minimum age of 18 years⁴⁹). Over the 6-year observation period, areal BMD Z-scores decreased significantly in MTF individuals with a trend for a decrease in FTM individuals, **suggesting either a delay in attainment of peak bone mass, or an attenuation of peak bone mass**, itself⁴⁹). As acknowledged by the authors, potential study limitations included a relatively small "n," the fact that individuals were already late pubertal at the time of GnRH agonist initiation, the possibility that relatively low doses of cross sex hormones were used during the initial period of that phase of treatment, and that information was not available regarding dietary calcium intake, Vitamin D levels, and weight bearing exercise, all of which can influence BMD⁴⁹). It would seem important, particularly during GnRH agonist treatment, to ensure adequate intake of calcium and Vitamin D, to encourage weight-bearing exercise, and to routinely monitor levels of 25-OH Vitamin D¹⁶).

Any use of pubertal blockers and cross-sex hormones in transgender youth should include an informed consent process and a discussion about implications for fertility.

Transgender adolescents may wish to preserve fertility, which may be otherwise compromised if puberty is suppressed at an early stage and the patient completes phenotypic transition with the use of cross-sex hormones ¹⁶). While full in vitro maturation of germ cells has not yet been achieved in humans, promising studies have been carried out in mice^{50,51}).

The Conclusion of the article is as follows (bold emphasis mine):

"While significant advances in our understanding of gender nonconforming/transgender youth have been achieved, many gaps in knowledge remain. Compelling studies have demonstrated that gender identity is not simply a psychosocial construct, but likely reflects a complex interplay of biologic, environmental, and cultural factors¹⁶). The replacement of "disorder" with "dysphoria" in DSM-5 removes the connotation that a transgender identity, itself, is pathologic, and instead, focuses on dysphoria as the clinical concern²). A landmark study from the Netherlands indicates that mental health co-morbidities in gender-dysphoric youth significantly diminish or resolve when such individuals are subject to a gender-affirming model of care, optimally delivered in a multi-disciplinary clinical setting⁴⁸).

Further prospective studies focused on long-term safety and efficacy are necessary to optimize medical and mental health care for transgender youth

Further evidence regarding the risks of puberty blockers is to be found in the following scrutiny article, which has been published since I made my initial complaint. The scrutiny article analyses documentation emerging from work done by the Tavistock Centre in the UK, and notes that ideological pressure from transgender activist organisations has led to the Tavistock Centre muting results that are not 100% positive.

<https://www.transgendertrend.com/tavistock-experiment-puberty-blockers/>

The above scrutiny article links to the following abstract:

<http://wpath2016.conferencespot.org/62620-wpathv2-1.3138789/t001-1.3140111/f009a-1.3140266/0706-000523-1.3140268>

"For the children who commenced the blocker, feeling happier and more confident with their gender identity was a dominant theme that emerged during the semi-structured interviews at 6 months. However, the quantitative outcomes for these children at 1 years time suggest that they also continue to report an increase in internalising problems and body dissatisfaction, especially natal girls."

The essential issue is this: Spark has endorsed an organisation that takes a wholly positive view of puberty blockers based on an ideological position, not based on evidential research. OutlineNZ does not seem to take a responsible, objective approach to advising children and parents, which would be to provide full information on the potential adverse effects of puberty blockers on its site and in its information for parents. Spark, by endorsing OutlineNZ, may be perceived by many as encouraging dangerous or unsafe practices, not directly, but by endorsing an organisation that does encourage those practices. Of course, an important point is that Spark does not have the necessary expertise to analyse what OutlineNZ endorses, as Spark's competence is in the area of telecommunications.

CODES OF PRACTICE

ADVERTISING STANDARDS CODE

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 justified 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.

RESPONSE FROM ADVERTISER, SPARK

Introduction

1. Thank you for your letter of 28 March 2019, and for the opportunity to respond to R Scovell's complaint about the video featuring the story of Hunter and his mother.
2. The ASA has also invited Spark's comments in relation to OUTLine's "Community Embrace – Parents" brochure. Our partners at OUTLine will respond separately about this publication, as they are independently responsible for the contents. We note, however, that OUTLine is a carefully chosen community partner of Spark's and we are supportive of their community outreach work including through help brochures.

Background to the video

3. As background, since February last year Spark has partnered with OUTLine, a charitable organisation that offers free support and confidential counselling to those within the LGBTQIA+ community, as well as their family and friends. For Spark, it was a carefully made decision to partner with OUTLine. In doing so, we have of course taken the time to understand their objectives as an organisation.¹
4. By telling the true story of Hunter and his mother Dee's experience, we hope to raise awareness of the OUTLine service. The video's call to action is to encourage people

to talk: “Let’s talk. Even if you don’t know what to say”. As a telecommunications company, Spark feels there is a natural synergy in encouraging connection through its services and also promoting OUTLine’s phone support service, which it believes is an important community programme.

5. By telling Hunter and Dee’s story, we show an example of how OUTLine can support people having similar experiences and increase awareness of this charity.
6. We understand that R Scovell considers that the video promotes specific medical options for transgender people. We do not agree that it promotes a specific medical choice. Rather it is intended to raise awareness of the OUTLine service, and to encourage acceptance of transgender people through a humanised and authentic story.

¹ Published online at <http://www.outline.org.nz/about/>

The Advertising Standards Code

7. In response to the sections of the Advertising Standards Code identified in the letter:
 - a. Social responsibility: Spark’s sense of social responsibility is at the core of our partnership with OUTLine and in producing videos such as Hunter and Dee’s story. Members of the LBGTQIA+ community, and their friends and family, face significant challenges and often need support. The video is part of a campaign to promote the dedicated support that OUTLine offers the wider community as a charitable organisation.
 - b. Safety: We do not consider that the video promotes unsafe practices. The video is intended to promote the OUTLine service and to encourage acceptance of transgender people. The only call to action is to encourage people to talk, and to use the OUTLine service. In choosing to tell Hunter’s story, we were also careful to show that he is a fully grown adult.
 - c. Truthful Presentation: The video tells the true story of Hunter and his mother’s experience. We consider that this story is told in a way that is honest and genuine.
 - d. Advocacy Advertising: We do not consider that the video is advocacy advertising in the sense of rule 2(d). It is not targeted at promoting a political or public policy position. Rather, the video focusses on promoting the use of the OUTLine charity’s counselling service and Spark’s affiliation with them.
8. For completeness we have also appended a complaint response form.

Conclusion

- 9 It takes a movement of people, families, communities, corporate organisations and governments working together to overcome stigmatisation and discrimination of the LBGTQIA+ community and to encourage acceptance of transgender people. This is a movement that Spark fully supports.
- 10 Please do not hesitate to contact me if you have any questions.

A basic, neutral description of the advertisement	An ad in partnership with OUTLine NZ, telling the story of a mother's journey with her son's transition and the strength of their relationship now. Reminding the nation that that when we talk, love wins.
Date advertisement began	4 Feb 2019
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	Facebook, Youtube, Twitter, Instragam, TV, TVNZ On Demand.
Is the advertisement still accessible – where and until when?	The video is available on the Spark Facebook page and Spark Youtube channel. The campaign period has ended. It is now housed under the 'videos' section, and is no longer promoted.
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	The video can be accessed here: https://www.youtube.com/watch?v=ggmoe7D-QLQ
Who is the product / brand target audience?	The LGBTQIA+ community and their parents.
Clear substantiation on claims that are challenged by the complainant.	N/A.
The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	Noted
For Broadcast advertisements:	Attached
A copy of the script	Attached
A copy of the media schedule and spot list (Please remove all financial information)	Attached
CAB key number and rating	CAB: 90204017 – Approved on Feb 4 th IMD: SPK 060 00635

For Digital advertisements:	
What platform tools have you used to target your audience?	Social and TV targeting

RESPONSE FROM ADVERTISER, OUTLINE NZ

Thank you for the opportunity to provide comments to the Complaints Board in regards to this appeal.

We are writing this letter to provide extra information to the board about the Community Embrace – Parents brochure. Our corporate community partner Spark will be providing extra information to the board about the video featuring Hunter.

We understand that the concern in the complaint centres around the following statement in the Community Embrace - Parents brochure produced by OUTLine:

5. I'm concerned about what medical transition means.

That is a totally fair reaction! It sounds scary. There are no hard and fast rules when it comes to medical transition – generally the youngest blockers will be prescribed is around the onset of puberty. Talk to your doctor (with your child!) about the options. The effects of some treatments, for example puberty blockers, are 100% reversable.

The complainant referenced Rule 1(e): Safety of the Advertising Standards Code:

Advertisements must not, unless justified on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.

We wish to direct the attention of the Complaints Board to the information provided by Hauora Tāhine: Pathways to Transgender Healthcare Services who provide the following medical information in regards to puberty blockers:

Blockers are typically used throughout adolescence to prevent the onset of puberty, or halt its progress (recognising that pubertal changes continue through into early adulthood). This prevents/halts the development of secondary sex characteristics, such as breast tissue, hair growth or bony facial changes.

The effects of blockers are completely reversible, and can decrease distress associated with the body changes of puberty.

<https://www.healthpoint.co.nz/public/sexual-health/hauora-tahine-pathways-totransgender-healthcare/im:679675/>

We have reflected the advice of the Hauora Tāhine: Pathways to Transgender Health Services in our Community Embrace - Parents brochure. This service comes under the Auckland District Health Board.

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 via email or letter within 14 days of receipt of this decision.