

COMPLAINT NUMBER	19/158
COMPLAINANT	J Bengston & C Cleverly
ADVERTISER	NZ Transport Agency
ADVERTISEMENT	NZ Transport Agency, Television
DATE OF MEETING	14 April 2019
OUTCOME	Not Upheld No further action required

SUMMARY

The television advertisement for the New Zealand Transport Agency featured two men in a car eating and drinking while driving at a slow speed. The driver was slow to react to the green light change. The driver was distracted by a bike that was making a pizza delivery and crossed onto the other side of the road crashing into an oncoming vehicle. The dazed driver sat in the car having flashbacks to smoking drugs. The onscreen text stated: “Hard to stay focused? Drive straight.”

The Complainants were concerned the advertisement normalises drug use and shouldn't be screened when children are watching TV.

The Advertiser said driving under the influence of cannabis is a significant road safety issue in New Zealand. The “Thoughts” advertisements target men in their early 30's, who don't think it's dangerous to get behind the wheel stoned.

The Complaints Board agreed the advertisement fitted the definition of advocacy advertising and the identity and anti-drug driving position of the Advertiser NZTA was clear.

The Complaints Board agreed the advertisement was justifiable on educational grounds due to the number of car accidents and road deaths in New Zealand caused by drivers impaired by drugs.

The Complaints Board said the advertisement was socially responsible, taking into account context, medium, audience and product and was not in breach of Principles 1 and 2 and Rules 1 (f) and 2(e) of the Advertising Standards Code.

The Complaints Board ruled the complaint was 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 complaint with reference to Principles 1 and 2 and Rules 1 (f) and 2(e) of the Advertising Standards Code.

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

Principle 2 required the Board to consider whether the advertisement was truthful, balanced and not misleading.

Rule 1(f) required the Board to consider whether the advertisement, unless justifiable on educational or social grounds, contained anything that condones, or is likely to show, violent or anti-social behaviour or damage to property,

Rule 2(e) required the Board to consider whether the advertisement was advocacy advertising.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

There were two complaints about this advertisement. The Complainants were concerned the advertisement normalises drug use and shouldn't be screened when children are watching TV.

The Advertiser's response

The Advertiser said driving under the influence of cannabis is a significant road safety issue in New Zealand. The "Thoughts" advertisements target men in their early 30's, who don't think it's dangerous to get behind the wheel stoned.

The advertisement is rated GXC, and was aired during a G rated programme, Home and Away.

Precedents

The Complaints Board referred to Complaint 16/067 which about the same NZTA television advertisement and was Not Upheld. This complaint was considered under the previous codes, which were in effect at that time. These codes were Rule 11 Advocacy, and Rules 5 and 12 Offensiveness and Safety, under the Code of Ethics. The Complaints Board said the advertisement contained an important safety message and did not encourage an illegal practice.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the consumer takeout of the advertisement was a warning to viewers about the dangers of driving under the influence of drugs.

The Complaints Board noted the advertisement was rated GXC (General except Children's Programmes) and the advertisement was played in accordance with its rating. Both the Home and Away and Storage Wars programmes in question were rated G and neither programme is regarded as children's programming. The Complaints Board noted the rating for Home and Away episodes can vary from programme to programme.

Does the advertisement fit the definition of advocacy advertising?

The Complaints Board agreed the advertisement fitted the definition of advocacy advertising because it advocated for safe driving and the identity and position of the Advertiser NZTA was clear.

The Complaints Board noted Rule 2 (e) of the Advertising Standards Code allows for expression of opinion in advocacy advertising. Under Rule 2(e) the following must apply:

- 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

Also applicable were the Advocacy Principles, developed by the Complaints Board in previous decisions under Rule 11 of the Code of Ethics, the predecessor to Rule 2 (e). 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.

Does the advertisement contain anything that condones, or is likely to show, violent or anti-social behaviour?

The Complaints Board agreed the advertisement briefly showed the consumption of drugs, in particular a man smoking what appears to be cannabis from a bong. Cannabis is an illegal substance in New Zealand.

If so, is it justifiable on educational or social grounds?

The Complaints Board agreed showing the consumption of illegal drugs was justifiable on educational grounds. This is because New Zealand has a problem with car accidents and road deaths being caused by drivers impaired by drugs. The NZTA has made these advertisements to educate the public about the risks of drug driving.

Is the advertisement socially responsible?

The Complaints Board said the advertisement and its placement were socially responsible, taking into account context, medium, audience and product and was not in breach of Principles 1 and 2 and Rules 1 (f) and 2(e) of the Advertising Standards Code.

The Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The television advertisement for the New Zealand Transport Agency featured two men in a car eating and drinking while driving at a slow speed. The driver was slow to react to the green light change. The driver was distracted by a bike that was making a pizza delivery and crossed onto the other side of the road crashing into an oncoming vehicle. The dazed driver sat in the car having flashbacks to smoking drugs. The onscreen text stated: "Hard to stay focused? Drive straight."

COMPLAINT FROM J BENGSTON

During Home and away 2019-04-02 Approx 5:50pm

There is an add which is advertising anti 'drug driving ' during a 'g' rated program, home and away. During the add it shows someone, following a crash, flash backing to the driver smoking 'p' with a pipe. This is really inappropriate to be playing during this time slot. Should be played after 9pm. Children are watching TV and do not need to see this. I also see this as normalising drug use also which is wrong too.

COMPLAINT FROM C CLEVERLY

Storage Wars 2019-04-12 1850 hrs

This Advertisement infringes upon the special duty of care to younger viewers in which it may result in moral harm by exposure of adult themed visuals. and language. The advertisement involves two men driving in a car together with one having an insensible conversation with himself, thereafter crashing the car he is driving. Finally it shows that person smoking a pipe of illicit content, itself an illegal act. Apart from what appears to be making fun of drug use and potentially fatal car accidents, the timing of the advertisement is at a time when younger viewers are likely to be positioned in front of a television set. My problem is, as a parent, having to explain to my child what on earth it is all about! Kid are exposed to enough age inappropriate material on television without this and the target demographic is likely to be folk of driving age, not toddlers or our pre-teens. If it is important to make light of the impact of drugs in our society it must be done at a time that is appropriate to the message - this must screen post 8:30 pm as a rule.

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(f): Violence and anti-social Behaviour: Advertisements must not, unless justifiable on educational or social grounds, contain anything that condones, or is likely to show, violent or anti-social behaviour or damage to property.

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, NZTRANSPORT AGENCY

Thank you for your email of 15 April 2019 in which you ask for the NZ Transport Agency's response to a complaint about our Drug-driving television advertisement *Thoughts*.

You have indicated that the concerns of the complainant fall under the following areas:

Advertising Standards Code - Principle 1, Principle 2, Rule 1(f), Rule 2(e);

Driving under the influence of cannabis is a significant road safety problem in New Zealand, and consequently drug-impaired driving is a high priority in the New Zealand Road Safety Strategy 2010 – 2020. The key objective of the Strategy is to significantly reduce the incidence of drug-impaired driving, with fewer people losing their lives or suffering serious injuries as a result of drugged drivers.

A NZ Drugs Foundation survey [<https://www.drugfoundation.org.nz/cannabis/drug-trends>] found that almost 70% of cannabis users report driving under the influence of cannabis in the last year. And research carried out by the Institute of Environmental Science and Research

[[http://www.moh.govt.nz/NoteBook/nbbooks.nsf/0/B59AA2BC86B36EACCC257767007BBE/EF/\\$file/Alcohol-and-other-drug-use-in-NZ-drivers-2010.pdf](http://www.moh.govt.nz/NoteBook/nbbooks.nsf/0/B59AA2BC86B36EACCC257767007BBE/EF/$file/Alcohol-and-other-drug-use-in-NZ-drivers-2010.pdf)] also found that around one-quarter of all drivers killed in road crashes were found to have cannabis present in their system; with or without other drugs. This is not insignificant.

Our drug-affected driving campaign is a long-term behavioural change campaign that aims to reduce the harm caused by drugged drivers. Cannabis users don't think they're taking a risk when they get behind the wheel of a vehicle. They argue driving stoned is harmless – they're a bit slow but they believe they can compensate by driving more slowly. Our challenge with this campaign was to flip this belief and get them to see that being stoned and a bit slower on the road is much more dangerous than they realise.

The campaign primarily focuses on guys in their early 30s who don't think of themselves as 'stoners' but they smoke regularly with their mates to have a good time and then drive home. They don't consider this behaviour to be a road safety issue. They're pretty relaxed about driving stoned - past experience has shown them how cannabis affects them and their driving; and they think they've got it under control. We had to very carefully produce a campaign that our audience could relate to and identify with.

Thoughts tested very well with the target audience [those who use cannabis for social or medicinal purposes, or know someone who does], with high relevance [70%], interest levels [80%] and 90% positive thoughts and impressions. Given the issue of drugged driving is still a relatively new one for road users and drug users alike, it is crucial for our campaign that the audience buys the message we are trying to communicate, and doesn't simply reject it as a message for someone else. The audience testing showed us that the ad is achieving this.

The complaints have both focused on the placement of the advertisement in what they perceive as inappropriate programming and at inappropriate times. They highlight their concerns that younger people may see / have seen the advertisement and that the ad shows the driver actually taking drugs [using a bong], potentially normalising the behaviour. The end of the ad very deliberately shows the juxtaposition of the stunned face of the driver in the car after the crash, with him actively using the bong before the crash. This was key in getting our audience to connect the reason for the crash back to his use of cannabis earlier on. It in no way endorses the drug taking, but the reality is people are using drugs which impair, and our job is to encourage people to not drive if they are impaired.

Thoughts is rated GXC [*General Except Children*] so is not targeted to children. Our placement of the advertisement has not been in breach of this rating. One specific complaint was that it ran in Home and Away, a G rated Programme with current themes that focus on

adult social issues such as sleeping pill abuse, a newly married couple where the husband is having an affair, and gang associations. Previous themes in Home and Away have focused on murder, drug use, drug overdose and arson, so we feel confident that our drug driving advertising is not inappropriately placed in this programme. We also contacted TVNZ to ensure they were comfortable with our placement in Home and Away, and you can see from their attached response that they do not have a problem with this at all.

However, given the illegal nature of cannabis use we have taken a cautious approach to placement, applying a principle of being in shows that require a level of parental guidance. Our media buyer at OMD is also being very careful to not place the ad in any films or programming likely to attract a young audience.

We certainly do not want the focus of the campaign to be on the inappropriate placement as opposed to the key message, so have committed to proactively monitoring all placements of the ad to ensure appropriateness before it goes to air.

RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU

NZTA TELEVISION ADVERTISEMENT

COMPLAINT: 19/158 KEY: NTG045551 RATING: GXC

We have been asked to respond to this complaint under the following codes:
Advertising Standards Code – Principle 1, Principle 2, Rule 1(f), Rule 2(e);

CAB approved this NZTA commercial on 27/03/19 with a 'GXC' classification.

The complaint at hand contains factual errors:

1. The commercial does not show a 'P' pipe;
2. 'Home and Away' is not a G-rated programme and is not suitable for child viewers.

Home and Away has a PG rating and the commercial has a GXC classification. This combination of factors means the ad is excluded from children's viewing time, and the programme during which it was viewed requires parental guidance.

Further to this, NZTA is condemning drug use and showing its negative effects.

In light of the above, there is no material basis for upholding the complaint under the applied codes.

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.