

COMPLAINT NUMBER	19/065
COMPLAINANT	J McMillan
ADVERTISERS	Spark NZ Ltd and Apple
ADVERTISEMENT	Spark NZ Ltd and Apple, Television
DATE OF MEETING	30 April 2019
OUTCOME	Not Upheld No further action

SUMMARY

The television advertisement for the iPhone X and iPhone X S Max shows two hands holding the two phones. The image of what appears to be a planet is on both of the phones' display screens and has a black background. This black background surrounds the top panel of the phone where the top speaker, the camera and FaceID technology are located. This black panel, which is not part of the display screen, is referred to as "the notch".

The Complainant said the advertisement for the iPhone Xs and Xs Max purposely hides the "massive notch" in the display.

Apple said the advertisement, which first appeared in September 2017, is no longer running in New Zealand. Apple said the notch houses the top speaker, the camera and FaceID technology and in advertisements where the screen background is black, the notch is not clearly seen. Apple said customers are aware of the notch.

The Complaints Board agreed the advertisement was not misleading. This is because when purchasing a product in this price range, most consumers would be likely to undertake a reasonable amount of research before making a purchase decision. Most consumers would be likely to look at the product itself and study the product specifications.

The Complaints Board said the advertisement was not in breach of Principle 2 and Rule 2(b) 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 Principle 2 and Rule 2(b) of the Advertising Standards Code.

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

Rule 2(b) required the Board to consider whether the advertisement was misleading or likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant said the advertisement for the iPhone Xs and Xs Max purposely hides the “massive notch” in the display.

The Advertisers’ Responses

Spark New Zealand advised the images used in the television advertisement had been sourced from Apple and deferred to Apple for a response on the issue raised by the Complainant.

Apple said the advertisement, which first appeared in September 2017, is no longer running in New Zealand.

Apple said the notch houses the top speaker, the camera and FaceID technology and in advertisements where the screen background is black, the notch is not clearly seen.

Apple said customers are aware of the notch.

The Media’s Response

The Television Commercial Approvals Bureau (CAB) responded on behalf of the media and noted the advertisement had been in the market for five months prior to a complaint being received. CAB said, on the basis of presentation, there is no element that can be found misleading or untrue.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the consumer takeout was the new versions of the Apple iPhone are sleek and attractive and available via Spark in New Zealand.

Is the advertisement misleading?

The Complaints Board agreed the advertisement was not misleading. This is because when purchasing a product in this price range, most consumers would be likely to undertake a reasonable amount of research before making a purchase decision. Most consumers would be likely to look at the product itself and study the product specifications. The Board noted that there was a range of images for this product, a number of which showed the screen and the notch.

The Complaints Board said “the notch” is not particularly big and does not make the screen unusable. People who are users of Apple products are likely to know about the existence of “the notch”.

The Complaints Board said the advertisement was not in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code.

The Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The television advertisement for the iPhone X and iPhone X S Max shows two hands holding the two phones. The image of what appears to be a planet is on both of the phones' display screens and has a black background. This black background surrounds the top panel of the phone where the top speaker, the camera and FaceID technology are located. This black panel, which is not part of the display screen, is referred to as "the notch".

COMPLAINT FROM J MCMILLAN

The ad for the iPhone Xs and Xs Max purposely hides the massive notch in the display. They clearly chose that wallpaper for the display to hide it in advertising media.

CODES OF PRACTICE

ADVERTISING STANDARDS CODE

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2(b): Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

RESPONSE FROM ADVERTISER, SPARK NEW ZEALAND AND APPLE

Advertiser response from Spark New Zealand

The complaint states that the images of the iPhone XS and XS Max (included in a TV on-demand commercial) show phones set to their pre-set wallpaper and this wallpaper "*purposely hides the massive notch in the display*" and "*they clearly chose the wallpaper for the display to hide it in advertising media*", allegedly breaching Rule 2(b) of the Advertising Standards Code.

By way of background, the images within the TV commercial are of the iPhones when set to their Apple default wallpaper. This wallpaper shows when the phones are set to the home screen.

We think Apple is best placed to discuss the technical features of the phone and their selection of images.

Advertiser response from Apple

Apple appreciates the opportunity to respond to your letter and the complaint your letter refers to. Apple is committed to adhering to the New Zealand Advertising Standards Code.

Please note that the advertisement in question has been running in many countries around the world since the launch of the iPhone Xs and iPhone Xs Plus in September 2018. We are not aware of any similar complaints having been received during the running of the advertisement in question. We also note that the television advertisement in question is no longer running in New Zealand.

This is not the first iPhone with a notch on the screen. The notch, which houses the top speaker, camera and FaceID technology, first appeared on an iPhone with iPhone X in

September of 2017. Given the prominence of our marketing and the ubiquity of these iPhone X models since their launch over two years ago, the notch the complaint refers to is not a secret to consumers.

The prominence of the notch to a consumer depends on the wallpaper or screen background. Apple chooses a number of different screen backgrounds in its advertising. Some of the screens used prominently show the notch, while others do not. This mimics the actual experience of a user.

This particular advertisement shows an actual representation of what a user sees when a black screen background is present. In that case the notch is not clearly seen. However, as noted above, Apple uses a number of different screen background colours in its advertising. Viewers can see the notch in different circumstances depending on the screen background.

Given that an iPhone with a notch has been on the market for over two years and the iPhone in the advertisement, with the same design as the previous model, has been on the market for over a year, consumers are fully aware of the notch feature.

Additionally, the notch is on other iPhone products as well. It is also featured on the iPhone XR. The advertising for the iPhone XR also uses a number of different background screens. The notch feature is not hidden and is prominently featured in images on Apple's website, apple.com/nz, and various advertisements in New Zealand. Consumers could not be misled about the presence of the notch or the appearance of the screen which can change as the background changes.

Attached are a number of examples of images from apple.com/nz and other marketing in New Zealand showing the differing background screens used in advertising and showing the notch feature.

In conclusion, Apple shows its iPhone screens in a multitude of different scenarios, all of which are true and realistic to what a consumer would experience. The devices in question have been sold in New Zealand for over a year with the model design available for over two years with the notch being well known since the initial announcement. The notch has been well known since its inception because Apple has been open and transparent about its existence.

If you require further assistance or have any other questions please let me know.

Advertising complaint response form

Contact person for advertising complaints	Please see attached email
Name and contact at creative agency	
Name and contact at media agency	OMD
A basic, neutral description of the advertisement	Introduction of new product - iPhone XS and iPhone XS Max - with focus on the new, bigger screens than previous model. Visuals of front of phone, side of phone with gold finish, and back of phone. Phone moving to music, on black background, with phone held by hands.

Date advertisement began	OOH: September 30 th 2018 – December 9 th 2018
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	TV (carrier partners)
Is the advertisement still accessible – where and until when?	On the NZ website: https://www.apple.com/nz/iphone-xs/films/
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	Please see attached email
Who is the product / brand target audience?	All New Zealanders.
Clear substantiation on claims that are challenged by the complainant.	Please see attached email
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.	
For Broadcast advertisements:	
A copy of the script	VO
	No VO for the TVC.
	Song lyrics “Nothing Burns Like The Cold” by Snoh Aalegra:
	<i>Can we talk about us Like we care about us? You know, I know You know, yeah yeah Nothing burns like the cold, ay ay</i>
	On-screen text:
	<i>Welcome to the big screens iPhone XS iPhone XS Max</i>
A copy of the media schedule and spot list (Please remove all financial information)	TV (branded spots run by carriers themselves) Vodafone: Spark:

CAB key number and rating	
For Digital advertisements:	
What platform tools have you used to target your audience?	In NZ, these are run by carriers only, and at their discretion.

RESPONSE FROM MEDIA, COMMERCIAL APPROVAL

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

CAB approved this Spark commercial on 18/10/18 with a G classification.

At the time of complaint it had aired to a general audience for five consecutive months.

The commercial itself is quite straightforward, showing the shape and form factor of the new iPhone model. It is presented in a way that is generic within the advertisement of smartphones. It features a space-themed wallpaper which is a common lock-screen available to Apple phones.

On the basis of presentation, there is no element that can be found misleading or untrue. For a detailed description of the product, CAB will defer to the expertise.

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.