

COMPLAINT NUMBER	19/095
COMPLAINANT	E Vere Jones
ADVERTISER	1Law4All
ADVERTISEMENT	1Law4All pamphlet
DATE OF MEETING	4 June 2019
OUTCOME	Upheld in part Advertisement to be removed

Description of Advertisement

The pamphlet which was published by 1Law4All and distributed by volunteers to households in a suburb in Auckland was headed "One Treaty, One Nation". The pamphlet included the following statements: "The benefits of colonisation for Maoris, lifting them out of a violent Stone Age existence, far outweighed any negative consequences. The treaty put an end to cannibalism, slavery, infanticide, and the constant inter-tribal wars which had killed about a third of the population in the previous 20 years. With Western medicine Maori life expectancy has risen from 20 to 25 years (1840) to 75 years today", "An end to the stranglehold that one minority group has over the culture and life of a nation" and "The Maori people ceded sovereignty to Queen Victoria in 1840..."

Summary of the Complaint from E Vere Jones

The Complainant was concerned the advertisement was racist and included false statements about Maori.

Issues Raised

- Advocacy Advertising
- Social Responsibility
- Offensiveness
- Truthful Presentation

Summary of the Advertiser's Response

The Advertiser said the Advertising Standards Authority has no jurisdiction in this case and the Advertising Standards Code does not apply to this pamphlet. This is because the Advertising Standards Code applies to all advertisements placed in any media and the Advertiser, 1Law4All, is not "media".

The Advertiser said the pamphlet calls for democracy and equality and it does not believe the pamphlet is racist.

Summary of the Complaints Board Decision

The Complaints Board confirmed a 1Law4All pamphlet distributed to households in an Auckland suburb is an advertisement and upheld in part a complaint about it.

A majority of the Complaints Board said one of the statements in the pamphlet, which describes "the benefits of colonisation" for Maori, was likely to cause serious offence. The majority noted that while the pamphlet is advocating a certain political perspective, the examples used to illustrate this perspective are derogatory and likely to cause serious offence.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

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(c): Decency and Offensiveness: Advertisements must not contain anything that is indecent, or exploitative or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt abuse or ridicule.

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.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the consumer takeout was the pamphlet is a call to action to support the "Rolling Thunder" political campaign, which is advocating for all New Zealanders to be on the same voting roll. The pamphlet also conveys the Advertiser's concern there is racial privilege and separatism for Maori in the New Zealand political system.

Is the pamphlet an advertisement?

The Complaints Board agreed the pamphlet was an advertisement and the Advertising Standards Code applies. This is because the pamphlet met the definition of an advertisement as the content was controlled by the advertiser and had the intent of influencing those to whom it is addressed. And the Complaints Board has previously accepted and ruled on complaints regarding pamphlets as an advertising medium.

The current ASA definition of advertisement states: "Advertising and advertisement(s)" are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

The Advertising Standards Code, under the heading Application of the Code states: "This Code applies to all advertisements placed in any media."

When the ASA updated its definition of "advertisement" in 2016 it removed the list of media platforms, as that information dated as more platforms developed, so the focus is now advertiser control of the content.

The Complaints Board referred to precedent decisions, 09/280 (Pamphlet for the Fluoride Action Network), 15/134 (Flyer for the National Party, Northland By-election) and 17/203 (Flyer for Hobson's Pledge Trust) (See Appendix 4.) The full versions of all ASA decisions since 2012 can be found on the ASA website: <https://www.asa.co.nz/decisions/>

Is the pamphlet advocacy advertising?

The Complaints Board agreed the pamphlet before it was clearly an advocacy advertisement calling for changes to the New Zealand political system.

The Complaints Board referred to the ASA Guidance Note on Advocacy Advertising, which includes the following definition of Advocacy Advertising: “Advocacy advertising is often characterised by parties having differing views that are expressed in robust terms. This is especially so when there is proposed legislation or a referendum on an issue. Examples include abortion, fluoridation, immunisation and legalisation of marijuana. Government advertising on a range of health and safety initiatives are also likely to be advocacy advertising.”

The Chair noted the requirements of Rule 2(e) of the Advertising Standards Code. This Rule requires the identity and position 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 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 advertiser 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 Complaints Board referred to a precedent decision, 18/340 Appeal 18/016 (WAVES NZ Billboard) (see Appendix 4). The Appeal Board said in the context of a billboard advertisement WAVES NZ is not a well-known organisation and the purpose of the organisation is not clear from the name. It was therefore not appropriate to apply a more liberal interpretation of the Codes.

Should a more liberal interpretation of the Codes apply in this case?

The Complaints Board then discussed whether a more liberal interpretation of the Codes should apply in this case.

The Complaints Board noted 1Law4All was de-registered as a political party in 2015. The Complaints Board noted the pamphlet included a PO Box number and bank account number for the Rolling Thunder campaign and contact information for the publisher of the book “One Treaty, One Nation”.

A majority of the Complaints Board agreed a more liberal interpretation of the Code should apply. The majority noted that the main identity of the Advertiser was not completely clear

because the pamphlet referred to several different entities – a campaign called “Rolling Thunder”, a book called “One Treaty, One Nation”, (which can be purchased at Tross Publishing), in addition to the organisation 1Law4All, which is the publisher of the pamphlet. The majority agreed however, that the inclusion of the reference to the website for 1Law4All – www.1Law4All.kiwi.nz meant that the identity of the Advertiser was sufficiently clear in the context of a pamphlet. The Board said that the political position being advertised was also clear.

A minority disagreed. The minority noted the pamphlet referred to several different entities and that was confusing. They also said the reference to the website for 1Law4All alone did not make the identity of the Advertiser sufficiently clear because the organisation was not well-known.

Were the statements in the pamphlet misleading?

The Complaints Board considered each of the three statements complained of in turn.

Statement 1

“The benefits of colonisation for Maoris, lifting them out of a violent Stone Age existence, far outweighed any negative consequences. The treaty put an end to cannibalism, slavery, infanticide, and the constant inter-tribal wars which had killed about a third of the population in the previous 20 years. With Western medicine Maori life expectancy has risen from 20 to 25 years (1840) to 75 years today”.

The Complaints Board agreed the above statement is an expression of political opinion about the effects of colonisation, not a statement of fact. The Complaints Board agreed that in the context of an advocacy advertisement, with a more liberal interpretation of the Advertising Standards Code, and in particular Rule 2(e), it was not misleading.

Statement 2

"An end to the stranglehold that one minority group has over the culture and life of a nation".

The Complaints Board agreed the above statement is also an expression of political opinion about the political system in New Zealand, not a statement of fact. The Complaints Board agreed that in the context of an advocacy advertisement, with a more liberal interpretation of the Advertising Standards Code, and in particular Rule 2(e), it was not misleading.

Statement 3

"The Maori people ceded sovereignty to Queen Victoria in 1840..."

The Complaints Board agreed the above statement is an expression of political opinion about the interpretation of The Treaty of Waitangi and, in the context of an advocacy advertisement, with a more liberal interpretation of the Advertising Standards Code, and in particular Rule 2(e), it was not misleading.

The Complaints Board noted there are two versions of The Treaty of Waitangi/ Te Tiriti o Waitangi, one in te reo Māori and one in English. The Complaints Board noted the two versions have been the subject of ongoing debate. For example, according to the Māori text of article 1, Māori gave the British ‘kawanatanga’, the right of governance, whereas in the English text, Māori ceded 'sovereignty'.

Were the statements in the pamphlet offensive?

The Complaints Board considered each of the three statements in turn.

Statement 1

"The benefits of colonisation for Maoris, lifting them out of a violent Stone Age existence, far outweighed any negative consequences. The treaty put an end to cannibalism, slavery, infanticide, and the constant inter-tribal wars which had killed about a third of the population in the previous 20 years. With Western medicine Maori life expectancy has risen from 20 to 25 years (1840) to 75 years today".

A majority of the Complaints Board agreed the above statement was likely to cause serious offence, taking into account generally prevailing community standards. The majority said the statement has a condescending tone and is derogatory to Maori.

The Complaints Board noted the pamphlet was delivered by volunteers to residential mailboxes and the recipients had no choice about whether they would receive this pamphlet. For the majority this context added to the level of offensiveness for some consumers.

A minority disagreed. The minority said the statement is an expression of political opinion and, in the context of an advocacy advertisement, with a more liberal interpretation of the Advertising Standards Code, and in particular Rule 2(e), it did not reach the threshold to be considered offensive.

Statement 2

"An end to the stranglehold that one minority group has over the culture and life of a nation"

The Complaints Board agreed the above statement is an expression of political opinion and, in the context of an advocacy advertisement, with a more liberal interpretation of the Advertising Standards Code, and in particular Rule 2(e), it did not reach the threshold to be considered offensive.

Statement 3

"The Maori people ceded sovereignty to Queen Victoria in 1840..."

The Complaints Board agreed the above statement is an expression of political opinion and, in the context of an advocacy advertisement, with a more liberal interpretation of the Advertising Standards Code, and in particular Rule 2(e), it did not reach the threshold to be considered offensive.

Was the advertisement socially responsible?

Taking all of the above into account, the majority of the Complaints Board said as Statement 1 was in breach of Rule 1(c) the advertisement was not socially responsible and was in breach of Principle 1 and Rule 1(c) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld in part**. Advertisement to be removed.

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.

APPENDICES

1. Complaint
 2. Responses from Advertiser
 3. Response from Media
 4. Summary of Relevant Precedent Decisions
-

Appendix 1

COMPLAINT FROM E VERE JONES

Leaflet Arrived 2 April 2019, delivered to letter box

Complaint Details:

This material is racist. It is asking for people to financially support a campaign and political party, but includes numerous false statements about Maori.

FURTHER INFORMATION FROM COMPLAINANT

1: Here are some specific examples of the ways in which the pamphlet is racist:

The benefits of colonisation for Maoris, lifting them out of a violent Stone Age existence, far outweighed any negative consequences. The treaty put an end to cannibalism, slavery, infanticide, and the constant inter-tribal wars which had killed about a third of the population in the previous 20 years. With Western medicine Maori life expectancy has risen from 20 to 25 years (1840) to 75 years today

The phrase Stone Age is clearly inflammatory, and tries to give the picture of a race who are stupid and uneducated. It is clearly inaccurate to compare the culture of Maori in NZ in the 1800s with stone age people. It is a racist comment which is degrading and is likely to cause offence.

Re slavery... this was a practice continued by Europeans long after it was practised by the Maori, therefore the pamphlet is singling one population out on the basis of race, but failing to make comparison with other races and therefore racist

Re the claims that inter-tribal wars had killed a third of the population in the previous 20 years...while presented as fact, this is questionable. It's worth taking a look at some of these facts from Te Ara, The Encyclopedia of New Zealand <https://teara.govt.nz/en/death-rates-and-life-expectancy/print>

There is a common belief that musket warfare between 1810 and 1840 caused heavy mortality among Māori. However, war deaths were not great in number compared with the deaths from other causes. From 1810 to 1840 there were around 120,000 deaths from illness and other 'normal' causes, an average of 4,000 a year. In the same period warfare caused perhaps 700 deaths per year.

Again, in relation to the life expectancy claims, they are inaccurate and misleading. I would suggest you have a look at these facts.

Evidence suggests that Māori life expectancy at the time of Captain James Cook's visits to New Zealand (between 1769 and 1777) was similar to that in some of the most privileged 18th-century societies. Māori may have had a life expectancy at birth of about 30. After European contact, however, there was a major decline in Māori life

expectancy. By 1891 the estimated life expectancy of Māori men was 25 and that of women was just 23.

Te Ara goes on to suggest that in fact the decline in Maori population was due to diseases introduced by Europeans and the loss of land....

Loss of land

The influx of settlers led to a demand for land, and from the 1840s Māori were under great pressure to sell their ancestral territories. Loss of Māori land – through confiscation following the 1860s wars, Crown purchase and the Native Land Court – led to the displacement of large numbers of Māori. Deprived of their land, tribes were in many instances reduced to poverty, with no option but to live in overcrowded and unhygienic conditions. Losing land, they also lost access to traditional food sources. Lack of resources, overcrowding and poor diet helped disease to take hold and spread.

I'd also direct you to the phrase:

"An end to the stranglehold that one minority group has over the culture and life of a nation."

Again this is inflammatory and not true. I'd be interested to see any evidence to show that Maori has a "stranglehold" over the culture and life of a nation. In fact, there's excellent evidence to show the opposite. Maori face inequity and racism in our health and education system, have lower life expectancy, greater rates of poverty.... and the list goes on.

"The Maori people ceded sovereignty to Queen Victoria in 1840..."

The pamphlet states categorically that Maori ceded Sovereignty but in 2014 the Waitangi Tribunal ruled this wasn't the case (as the pamphlet itself notes later on). The pamphlet calls this finding as **"gross error or deliberate lie"** - but this is merely opinion (with no supporting evidence).

While, these a few specific examples, I believe the pamphlet as a whole is racist. There are many statements in this pamphlet which are opinion but presented as fact. Also the tone of the pamphlet as a whole is designed to incite negative attitudes towards Maori using misinformation and out of context statements. That is racist.

2: I would suggest the following rules have been breached:

Rule 1 (c) Decency and Offensiveness

Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.

The advertisement contains comments that are degrading and will cause offence

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.

The advertisement includes numerous statements that about the Treaty and Maori people that are inaccurate and/or ambiguous and might mislead people reading the pamphlet.

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.

In many places opinion is presented as fact, and not substantiated.

Appendix 2

RESPONSE FROM ADVERTISER, 1LAW4ALL

Some pamphlets by that name were distributed in Point Chevalier.

1Law4All is the publisher of the pamphlet and accepts responsibility for it.

It was <<http://1law4all.kiwi.nz/2017/03/10/parliaments-ohariu-harlot-blows-his-trumpet/>> first published some time back and was the subject of ill-informed and prejudicial political and media comment, <<http://1law4all.kiwi.nz/2017/03/12/those-brochures/>>back then.

No commercial distribution entity was involved. The pamphlet was distributed by private individuals - friends and supporters of 1Law4All Incorporated.

FURTHER RESPONSE FROM ADVERTISER, 1LAW4ALL

After perusing the Advertising Standards Code, the society has had regard to the excerpt below:

>Application of the Code

>This Code applies to all advertisements placed in any media. Ultimately, the responsibility to be aware of and comply with all aspects of advertising regulation is shared between all the parties to an advertisement, including the advertiser, agencies and media organisations.

In the absence of an 'Interpretation' or 'Glossary' section in the Code that defines the word in a special way that applies only to the Code, the meaning of the word "media" in the overall context of the Advertising Standards Code excludes non-profit incorporated societies such as 1Law4All.

Therefore it is the society's view that the Advertising Standards Code does not apply and therefore the Advertising Standards Authority has no jurisdiction, pursuant to that Code.

FURTHER RESPONSE FROM ADVERTISER, 1LAW4ALL

As the society has observed earlier, it is not "media," so the assertion that any advertising code or standard or whatever applies is nullified by the statement on the ASA web site, <<https://www.asa.co.nz/codes/codes/advertising-standards-code/>>here, and quoted below.

>Application of the Code

>This Code applies to all advertisements placed in any media.

The society is the publisher of the pamphlet complained about. The information in it is factual and a reference source is provided therein, also. The pamphlet calls for democracy and equality. If the complainant feels that 'democracy' and 'equality' are racist nouns, it is personal opinion, imaginary and unsupported by any apposite evidence, including a dictionary.

The stark reality is that there nothing worthy of the society's attention in the complainant's frivolous and vexatious allegations. However, by way of illustrative counter-point and dealing with one section alone, the Society has no interest in debating or rebutting what the complainant's opinion is on what the complainant asserts to be, "clearly inflammatory," nor what is asserted to be, "likely to cause offence," or, "degrading," nor what the complainant speculates that the pamphlet tries to achieve.

...[Abridged]

The complainant's assertion contains this confabulation:

>The phrase Stone Age is clearly inflammatory, and tries to give the picture of a race who are stupid and uneducated. It is clearly inaccurate to compare the culture of Maori in NZ in the 1800s with stone age people. It is a racist comment which is degrading and is likely to cause offence.

In the history of civilisation, various eras are referred to by historians, archeologists, etc. as "ages," "periods," "epochs," or the like, Certain ages took their names from the tools in general use by humans during the period. Commonly-known examples of such historical era expressions would include:

- * Ice Age
- * Stone Age
- * Bronze Age
- * Iron Age.

The last three relate to the tools materials that were discovered and utilised at that time. When settlers arrived in New Zealand, most of the rest of the world was well advanced into the Iron Age. The Maori and Moriori of New Zealand were in the Stone Age, because they used stones for tools.

FYI: reproduced below is a letter to the Editor of a <<https://www.sunlive.co.nz/news/207370-one-reality.html>>Tauranga-based <<https://www.sunlive.co.nz/news/207370-one-reality.html>>newspaper, as reported by a 1Law4All (Inc) Board member.

<http://www.1law4all.kiwi.nz/articles/sunlive_Tauranga_letter.jpg>

Appendix 3

RESPONSE FROM MEDIA

1Law4All distributed the pamphlet.

Appendix 4

SUMMARY OF RELEVANT PRECEDENT DECISIONS

Decision 08/280 -Fluoride Pamphlet from the Fluoride Action Network

The Complaints Board reviewed the complaint and the flyer advertisement along with the response from the Fluoride Action Network headed “Protest to Competent Jurisdiction”.

The Complaints Board noted that the Advertiser raised a number of issues with regard to competent jurisdiction and agreed to address the matter of jurisdiction in the first instance.

The Acting Chairman directed the Complaints Board to consider the issue of jurisdiction taking into account the definition of advertisement which is detailed on page 16 of the Advertising Standards Authority Codes of Practice Booklet.

The definition is:

“For the purposes of the Codes:

- The word "advertisement" is to be taken in its broadest sense to embrace any form of advertising and includes advertising which promotes the interest of any person, product or service, imparts information, educates, or advocates an idea, belief, political viewpoint or opportunity.
- The word “product” includes goods, services and facilities whether paid or given free.
- The word “consumer” refers to any person to whom an advertisement is addressed or is likely to be reached by it whether as a final consumer or as a trade customer or user.
- The definition includes advertising in all traditional media and new media such as online advertising, including websites. Emails and SMS messaging that are selling or promoting a product, service, idea or opportunity are also covered by the codes, as are neck labels and promotions attached to a product. Other examples include posters, pamphlets and billboards (whether stationary or mobile) and addressed or unaddressed mail.”

The Complaints Board confirmed that in the matter before them, the flyer advertisement did come under the above definition where it included advertising which “imparts information, educates, or advocates an idea, belief, political viewpoint or opportunity.” The Complaints Board also noted that the definition included reference to the type of media used to deliver the advertising – and the examples listed included “pamphlets” and “addressed or unaddressed mail”.

The Complaints Board was therefore in no doubt that the advertisement before it came within the definition of advertisement as detailed in the ASA Codes of Practice.

Decision 15/134 National Party Northland By-election Flyer

A flyer advertisement for the Northland By-Election included the question “Why would you vote for a new MP for NORTHLAND who lives in INVERCARGILL?” Another statement said “Only a vote for MARK OSBORNE will retain the current number of MPs for Northland.” The advertisement also included a piece from a story in the Southland Times about a list candidate for NZ First.

The Complainant said the advertisement was misleading.

The Chairman said the provisions of Rule 11 and the Advocacy Principles allowed for robust statements in advertising of this kind. Therefore, the Chairman said there was no apparent breach of Rules 2 and 11 of the Code of Ethics. The Chairman also said there was no apparent breach of the requirement for a due sense of social responsibility under Basic Principle 4 of the Code of Ethics. Accordingly, the Chairman ruled there were no grounds for the complaint to proceed.

Decision 17/203 Hobson's Pledge Trust flyer

The Hobson's Pledge flyer is headed "Honour Hobson's Pledge - He Iwi tahi tatou: We are now one people" It asks readers to "Use your vote to end National's race-based policies. It provides a list of pledges made by the National Party and then lists actions taken by the party which are contrary to those commitments, as well as measures the government should take.

The Complainant said the advertisement was racist. ...

Taking the above ruling into account and turning to the advocacy advertisement before her, the Chair noted that the issue around race-based policies continues to be debated publicly by politicians with differing views expressed by parties.

The Chair considered this was a matter for the electors to decide on in the upcoming election.

The Chair said the advertisement complied with the identification requirements of Rule 11 and the robust expression of views were also provided for. While offensive to some, the Chair took into account requirement for a liberal interpretation of the Codes under the Advocacy Principles and ruled there was no apparent breach of the Code of Ethics.

Decision 18/340 Appeal 18/016 Waves NZ Billboard

The billboard advertisement for WAVES NZ showed a photo of a man holding a baby. The man had a prominent tattoo on his right arm. Next to the photo were the words: "If you knew the ingredients in a vaccine, would you RISK it?" (The word "Risk" was in red and in capital letters). At the bottom right of the advertisement was "www.wavesnz.org.nz"

The Appeal Board agreed care must be taken to ensure the consumer would readily be able to identify the material was an advertisement containing the advertiser's view.

The Appeal Board noted the advertisement before it included the text: "www.wavesnz.org.nz" in white lettering, at the bottom right of the billboard.

The Appeal Board said WAVES NZ is not a well-known organisation and the purpose of the organisation is not clear from its name.

The Appeal Board agreed with the Complaints Board decision that the identity of the Advertiser was not clear enough to prompt the more liberal interpretation of the Code, which may have otherwise been available under the Advocacy Principles. The Appeal Board ruled the identification requirement of Rule 11 had not been met.