

COMPLAINT NUMBER	19/233
COMPLAINANT	L Webster
ADVERTISER	New Zealand Aids Foundation
ADVERTISEMENT	Ending HIV, TVNZ OnDemand
DATE OF MEETING	23 July 2019
OUTCOME	Settled - Media Error No Further Action Required

Description of Advertisement

The television advertisement from the New Zealand Aids Foundation screened on TVNZ OnDemand and is part of the Ending HIV programme. It shows a six second video of close up black and white male profiles with the words “I bring condoms. You bring lube.” It shows the URL “rulesofafuckbuddy.com” with the word “fuck” pixelated and the Ending HIV logo.

Summary of the Complaint

The Complainant is concerned the advertisement is playing on the TVNZ OnDemand channel at inappropriate times during programmes such as MKR, Wife Swap and RuPaul’s Drag Race.

Issues Raised

- Decency and Offensiveness
- Advocacy Advertising

Summary of the Advertiser’s Response

The Advertiser said the advertisement is part of the community-focused HIV prevention programme. The message is to use protection during sex with casual partners and not to trust that casual partners are not having unprotected sex with multiple people.

The Advertiser confirmed its media buy was tightly targeted on TVNZ OnDemand and was restricted to an 18+ audience. The advertisement placement was on the OUTtv channel, which has content catering to the LGBTQ community.

Summary of the Media’s Response

TVNZ said the screening of the advertisement during inappropriate programmes outside the tight targeting group was caused by a media error which resulted in the advertisement being served to audiences outside the prescribed target group of over 18+ males watching Adult Only rated content on OUTtv.

Summary of the Complaints Board Decision

The Complaints Board said the media error had meant the placement of the advertisement breached Principle 1 and Rule 1(c) of the Advertising Standards Code. The Complaints Board agreed the media’s acknowledgement of this error and its efforts to ensure this did not occur again meant the complaint was settled.

Relevant ASA Codes of Practice

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

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 likely consumer takeout of the advertisement is that it is a safe sex message about using protection.

Is it an advocacy advertisement?

The Complaints Board considered whether the advertisement before it, which was presenting a public health message about safe sex, 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 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 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.

Is the identity of the Advertiser clear?

The Complaints Board referred to the Guideline for Rule 2(e) in the Advertising Standards Code which says: "The identity of the advertiser must be obvious and easily recognised. Where an advertiser is not well known, additional information such as a physical address, website address or phone number may be appropriate to include."

The Complaints Board noted the advertisement had used the Ending HIV logo, together with the URL "rulesofafuckbuddy.com". The majority of the Complaints Board said the clarity of the URL used by the Advertiser was problematic once the swear word 'fuck' was pixelated to reduce the likelihood of offence. This made the URL difficult to identify. The Complaints Board also agreed the Ending HIV logo was small and not immediately obvious. The Board said there was no mention of the name of the Advertiser.

The majority of the Complaints Board said the identity of the Advertiser is not sufficiently clear in the advertisement to allow the more liberal interpretation of the Rule 2(e) of the Advertising Standards Code, which may otherwise have been available under the Advocacy Principles.

A minority of the Complaints Board said that given the context and intended placement of the advertisement, the identity of the Advertiser was sufficient for consumers to understand the identity and position of the advertisement's message. For the minority this meant the advertisement could be considered under the Advocacy Principles.

Does the advertisement contain anything that is likely to cause harm, or serious or widespread offence?

The Complaints Board acknowledged the Advertiser's attempt to target the advertisement towards an appropriate OnDemand audience of adult subscribers over the age of 18 who were watching Adult Only rated programming on the OUTtv channel. However, the Board said action taken by the media to extend the reach of the advertisement resulted in untargeted viewers being exposed to the adult content of the advertisement. The Complaints Board said this was a breach of Principle 1 and Rule 1(c) of the Advertising Standards Code.

The Complaints Board noted the media, TVNZ, confirmed the serving of the advertisement during inappropriate programming was an error on its part and processes would be reviewed to prevent this reoccurring. The Complaints Board said the media error had meant the placement of the advertisement breached Principle 1 and Rule 1(c) of the Advertising Standards Code. The Complaints Board agreed the media's acknowledgement of this error and its efforts to ensure this did not occur again meant the complaint was settled.

Outcome

The Complaints Board ruled the complaint was **Settled – media error**

No further action required

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. Response from Advertiser
 3. Response from Media
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Appendix 1

COMPLAINT FROM L WEBSTER

I have been watching TVNZ on demand a lot recently and I have seen an ad for what seems like a porn site on there during several shows breaks- MKR, wife swap and RuPaul's Drag race, as a 17 year old female I am super disturbed at the fact that that ad was being shown on family shows like MKR and even slightly older but not by a lot such as RuPaul. I would like to request this ad being removed from TVNZ on demand. If you would like more details about the ad, I've seen it so many times (Much to my disgust) now I could tell you

Appendix 2

RESPONSE FROM ADVERTISER, NEW ZEALAND AIDS FOUNDATION

Our response is in relation to each of the relevant sections of the Advertising Codes of Practice:

Principle 1 - All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

The New Zealand AIDS Foundation (NZAF) developed this advertisement as part of our community-focused HIV prevention programme, *Ending HIV*. Gay, bisexual and other men who have sex with men are overwhelmingly the group most at risk of acquiring HIV in New Zealand and continue to be significantly over-represented in annual HIV diagnoses, with 79% of locally-acquired HIV transmission in 2018 occurring among this group.

This advertisement is a 6-second video, comprised of a series of shots of moving profile shots and their facial expressions, shot in black-and-white. The copy on the video says "I bring condoms. You bring lube." It then shows the URL "rulesofafuckbuddy.com" with the word 'fuck' obscured, and the Ending HIV logo.

The message to use a form of protection during sex with casual partners is an integral component of the programme. We aim to increase rates of condom use among this high-risk group to reduce HIV infection and subsequently reduce onward transmission. This is in line with the [consensus statement on comprehensive HIV prevention in New Zealand](#), and NZAF's Strategic Plan.

In a series of surveys of gay/bi men run by NZAF across 2016-2018, we found that of the men who said their main sexual partner was a fuckbuddy (around 30% when averaged across surveys), the top reason for not using condoms was "I trust my partner about their status".

This was extremely concerning. As it is very common to have more than one fuckbuddy, this means they or their partners are likely engaging in unprotected sex with multiple people. "Trusting their partners' status" is therefore not an effective strategy, and we need to promote strategies that *are* effective, i.e. condoms and lube.

Thanks to progressive legislation such as Homosexual Law Reform Act, Human Rights Act and Prostitution Reform Act, New Zealand enjoys a responsible, proactive and widely accessible approach to the sexual health of all New Zealanders. NZAF believes that the advertisement is socially responsible in that it positions HIV prevention as a “rule”, alongside other rules that people make with their casual partners.

This advertisement has been prepared with a due sense of social responsibility to society. We believe that discussing these behaviours in a non-explicit and light-hearted way should be celebrated, not censored. This will ultimately increase the health and wellbeing of one of our most vulnerable communities, who continue to be proportionally disadvantaged in most health indicators in New Zealand.

Principle 1, Rule 1 (c) Decency and Offensiveness Guidelines 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.

NZAF believes that it is generally socially acceptable to talk about sex and sexual health in the context of HIV and that this should not cause widespread offence.

The decision to place this advertisements in ‘mainstream’ mediums such as television on demand was based on two key considerations, the first being that gay, bisexual and other men who have sex with men live, work and socialise within the wider mainstream community; secondly, we know that most of these men cannot be reached through “gay” media alone. In 2016 the NZAF commissioned research into the media consumption habits of our audience. Results show that only 14% of gay and bisexual men read magazines or websites aimed at gay and bisexual men.

The media buy on TVNZ OnDemand was restricted to an 18+ audience and specifically placed on the ‘OUTtv’ channel within the TVNZ OnDemand platform. OUTtv is a channel that only has content catering to the LGBTQ community, such as *RuPaul’s Drag Race*, a show that speaks openly and regularly about gay sex. As TVNZ does not collect data on viewer gender, we were unable to narrow our targeting down to this level, but did make a sufficient effort to target as narrowly as possible. There was a re-targeting layer in the final days of the campaign, which served the ad again to those who had seen the asset in OUTtv content.

Before commencing the development of this campaign, we engaged the Advertising Standards Authority to seek advice and ensure it was in line with the appropriate standards. Upon their advice, we removed some of the more explicit imagery from our outdoor creative, and further obscured the word “fuck”.

NZAF acknowledges that the advertisement may be confronting for some people and it is not uncommon for us to receive feedback about the resources we produce to improve the health and wellbeing of gay, bisexual, and other men who have sex with men. However, in the context of the message and desired outcome, we believe it is appropriate. Importantly, it is not gratuitous and has not used sexualised references simply to draw attention to an unrelated product. The advertisement is entirely relevant to the message and the target audience.

Principle 2, Rule 2 (e) Advocacy Advertising – Advocacy advertising must clearly state the identity and position of the advertiser.

Ending HIV is an evidence-based social marketing programme specifically for gay, bisexual and other men who have sex with men, to encourage prevention, testing and early treatment amongst those most at risk of HIV.

Promoting the use of condoms and lube for anal sex has proven to reduce HIV transmission in our community. This led to the development of this advertisement and is a central component of the *Ending HIV* programme. This advertisement is sex positive and celebrates the normalcy of HIV prevention alongside other common rules associated with a casual partner.

NZAF has found a sex-positive, non-judgemental stance to be a successful strategy for engaging men in HIV prevention messages. We believe the advertisement to be an appropriate response to this challenge, and the way in which we engage with gay, bisexual and other men who have sex with men about their sexual health.

All *Ending HIV* promotional material, including the advertisement in question, are developed with this clear social marketing objective in mind.

We believe it is clear the message is intended for gay, bisexual and other men who have sex with men. We have made it clear that the advertiser is *Ending HIV* by including our logo at the end of the advertisement, as well as clear sexual health information and links to *Ending HIV* in the website the ad encourages the viewer to visit.

Appendix 3

RESPONSE FROM MEDIA, TVNZ

This is TVNZ's error and we apologise to the complainants for the inappropriate screening of the ad. The Sales team has advised me that *as a group we have a lot to learn from this around potentially sensitive advertising in an online environment and we have re-grouped to discuss future management of campaigns like this one. The online landscape is not always straightforward.*

To explain how this error happened:

The creative was originally approved with tight targeting – Males 18+, AO content, watching OUT TV content. This was set up correctly and the first round of the ad was delivered in this way, however it did not deliver as the impressions forecast due to the tight targeting. The Campaign Executive then liaised directly with the agency on ways to open up the targeting. Four targeting set-ups were created which were intended to still only deliver ads to this Males 18+ AO content group, but the way they were set-up had the unintended consequence of opening up screenings in inappropriate programmes and potentially individual viewers were served on multiple occasions.

We apologise profusely as this is not what we want for our viewers. We are aware that we need to put better practices in place and this has been actioned.