

COMPLAINT NUMBER	19/235
COMPLAINANT	L Dixon
ADVERTISER	New Zealand Aids Foundation
ADVERTISEMENT	New Zealand Aids Foundation, Billboard
DATE OF MEETING	23 July 2019
OUTCOME	Upheld Advertisement to be removed

Description of Advertisement

The billboard advertisement, which appeared at a site on the off-ramp of an Auckland motorway, is from the New Zealand Aids Foundation. The advertisement is part of the Ending HIV programme and shows the image of a man's face from the mid-chest up. The copy says "I bring condoms. You bring lube. What's your rule?" It shows the URL "rulesofafuckbuddy.com" with the word 'fuck' obscured and the Ending HIV logo.

Summary of the Complaint

The Complainant is concerned the billboard advertisement, situated at a set of lights at an off-ramp of an Auckland motorway, is not the correct medium for such a deliberately provocative and sexually explicit message, given that children would be exposed to it.

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 said the placement of the billboard was chosen due to its proximity to Karangahape Road, a well-known area for gay men to congregate with several gay bars within one kilometre of the billboard.

Summary of the Media Response

The media, APN Outdoor, said that children would be unlikely to understand or comprehend the message and confirmed the advertisement run had finished.

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about a billboard advertisement from the New Zealand Aids Foundation which said "I bring condoms. You bring lube." The Complaints Board said the identity of the Advertiser was not sufficiently clear for it to qualify as an advocacy advertisement. The Complaints Board said the placement of the advertisement had breached Principle 1 and Rule 1(c) of the Advertising Standards Code.

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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to precedent Decision 17/396 which was Not Upheld.

The full version of this decision can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 17/396 concerned an advertisement by the same Advertiser, the New Zealand Aids Foundation, regarding a poster promoting HIV testing which showed two men kissing.

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The Complaints Board said the advertisement was an advocacy advertisement promoting an important public health message. The majority of the Board considered the wording on the advertisement, "We test because we care. Test for HIV. Search Ending HIV. Stay safe + test often + treat early = Ending HIV", was sufficiently clear in terms of the identity and position of the Advertiser.

Complaints Board Discussion

Consumer Takeout

The majority of the Complaints Board agreed the likely consumer takeout of the billboard advertisement is that it is a safe sex message. A minority said it could be a condom or lubricant advertisement.

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 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 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 Complaints Board said the clarity of the URL used by the Advertiser was problematic once the swear word 'fuck' was obscured and this made the URL difficult to comprehend in the billboard medium. 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 Complaints Board said the identity of the Advertiser was not sufficiently clear to allow for a more liberal interpretation of the Rule 2(e) of the Advertising Standards Code, which may otherwise have been available under the Advocacy Principles.

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

In making its decision, the context and placement of the advertisement was a key element in the Complaints Board's consideration. The placement of the advertisement on a billboard at a set of traffic lights as motorists left the motorway meant the Advertiser would reach an unrestricted audience. The Complaints Board said the likelihood of children being exposed to the adult message in the advertisement was high, given the close proximity of several schools in the area. The Complaints Board said the advertisement was likely to cause both serious and widespread offence and was in breach of Rule 1(c) of the Advertising Standards Code.

Is the advertisement socially responsible?

The Complaints Board acknowledged the importance of the public health message the Advertiser was promoting. However, it said that the use of provocative images and language in an unrestricted medium meant an increased risk of offence to an untargeted audience. The Complaints Board noted that previous outdoor advertising by the New Zealand Aids Foundation had made its identity clearer. The use of the expletive in the URL and its subsequent editing to try and reduce offence, created an identification issue in the medium concerned.

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

Outcome

The Complaints Board ruled the complaint was **Upheld**.

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. Response from Advertiser
 3. Response from Media
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Appendix 1

COMPLAINT FROM L DIXON

I wish to lay a complaint about the billboard on Newton Rd, right near the corner of Winchester Street and opposite the traffic lights as you come up the off-ramp of the motorway. I refer to the Advertising Standards - Principle 1 - Rule 1 (c) Decency and Offensiveness. Particularly in relation to sub section - Sexual imagery or language must be appropriate to the audience and medium.

This billboard is right opposite the traffic lights and so we are forced to stop there. This content is deliberately provocative and sexually explicit, and I object to this content being in front of children - especially my 5 year old who is learning to read. I support the message of this billboard, but this is not the right medium for something this explicit. Something in a magazine would be more appropriate. I respectfully ask that this billboard be removed.

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 billboard with an image of a man's face, pictured entirely from the mid-chest up. The copy on the ad says "I bring condoms. You bring lube." It also 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.

Sexual language or imagery must be appropriate to the audience and medium.

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 advertisement in ‘mainstream’ mediums such as the Newton Road billboard 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, NZAF commissioned research into the media consumption habits of our audience. Results showed that only 14% of gay and bisexual men read magazines or websites aimed at gay and bisexual men.

The placement on Newton Rd was chosen due to its proximity to Karangahape Road, a well-known area for gay men to congregate. Several gay bars are within 1km of this billboard, as well as New Zealand’s largest sex club for gay men, Centurian.

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 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 – “condoms” and “lube” are very clearly stated on the billboard. 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 within 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, APN OUTDOOR

We review any potentially 'risky' executions before they are installed/loaded. Looking at the code we had no concerns about this execution, though recognise that certain elements of society may find this offensive due to their personal beliefs.

Having young children myself I struggle to believe a 5 year old would understand and comprehend the messages.

This execution's advertising period ended on 30 June and is no longer on our sites.