

COMPLAINT NUMBER	19/391
COMPLAINANT	T Bellamak
ADVERTISER	Voice for Life
ADVERTISEMENT	Voice for Life, Billboard
DATE OF MEETING	7 October 2019
OUTCOME	No Grounds to Proceed

Advertisement: The Voice for Life NZ billboard advertisement said: “Both lives matter both deserve better than an extreme abortion law”. It includes an image of a pregnant person with a 3D ultrasound image of a baby and the Advertiser’s website address, voiceforlife.org.nz.

The Chair ruled there were no grounds for the complaint to proceed.

Complainant, T Bellamak, said: Voice for Life has rented a billboard on Cuba Street in Wellington. It shows a healthy pregnant person with a large abdomen, clearly near the end of the pregnancy. She holds an ultrasound image of a healthy foetus before her abdomen. The ad copy refers to an extreme abortion law.

Please see the attached photo.

We believe the billboard ad is misleading because it implies:

- people commonly seek abortion care at gestations as late as that of the pregnant person in the ad
- people commonly abort healthy foetuses at late gestations as shown in the ad
- people do so for reasons unrelated to health risk

The reality is, in New Zealand the vast majority of abortions occur at early gestations when neither the foetus nor the pregnant person look anything like the pregnant person and foetus in the ad. In 2017, 94% of abortions occurred before the 14th week of pregnancy.

Very few abortions occur after 20 weeks gestation. In 2017, there were only 72 abortions out of 13,285 that occurred after 20 weeks gestation.

These abortions happen because of a medical risk to the life or health of the pregnant person, or fatal foetal anomaly. In 2017, 15% were for danger to the mother, and the rest because of fatal foetal anomaly.

By implying healthy pregnant people (as shown in the ad) seek to abort healthy foetuses (as shown in the ad) they misrepresent the reality of abortion at later gestations in NZ.

The result of these misrepresentations is an increase in stigma upon not only those whose ill health or ill luck force them to seek abortion care at later gestations, but also on those who seek terminations for their own reasons at earlier gestations. While the image depicts a person late in pregnancy, the copy is general, and clearly meant to apply to abortions generally.

By implying people who seek abortion care do so irresponsibly, they demean the one in four people capable of pregnancy who receive abortion care over the course of their lives.

Abortion care is already so stigmatised in our society that anti-abortion groups are able harass people seeking health care without legal consequence. The misrepresentations of which we complain make it more likely people seeking abortion care will meet with harassment, disapproval, and unkindness.

We complain the ad breaches the following rules and principles of the Advertising Standards Code:

Rule 1(c)

The ad is offensive and provocative because it implies pregnant people who seek abortion care behave in an irresponsible manner, thus demeaning them. It is likely to increase harassment and ill-treatment of people who seek abortion care.

Rule 1(g)

The ad is likely to cause fear and distress by increasing stigma against people who receive abortion care, because it implies that people who receive abortion care at later gestations do so for frivolous reasons, which is false.

Rule 2(b)

The ad is misleading because it implies people commonly receive abortion care at later gestations, and that those who receive abortion care at later gestation are healthy people with healthy foetuses.

The relevant provisions were Advertising Standards Code - Principle 1, Principle 2, Rule 1(c), Rule 1(g), Rule 2(b), Rule 2(e)

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.

Rule 1 (g) Fear and distress: Advertisements must not cause fear or distress without justification.

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.

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.

The Chair noted the Complainant's concern the advertisement is misleading and offensive to imply women commonly received late-gestation abortions. The Complainant is concerned this will evoke fear and distress for those affected by the subject of abortion.

The Chair said the advertisement before her 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 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.

The Chair said the Advertiser had met the identity requirements for an advocacy advertisement. The billboard advertisement in Cuba Street, Wellington was authorised by Voice For Life and contained a website address, which would allow consumers to find out more details about the organisation's views. The organisation's position regarding abortion was also clear. Therefore, the Chair said the context, placement and content made the identity of the Advertiser clear.

Having established the advertisement was from Voice For Life, the Chair noted that political commentary within advertising was not only acceptable but encouraged, as it is an essential and desirable part of the functioning of a democratic society.

The Chair also observed that in a free and democratic society, differences of political opinion should be openly debated without undue hindrance or interference from authorities such as the Complaints Board, and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations. Therefore, the Chair considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

In considering the complaint, the Chair referred to precedent Decision 17/322, which also concerned a Voice For Life advertisement about abortion reform and was ruled no grounds to proceed by the Chair of the Complaints Board.

That decision said in part:

“While she acknowledged the Complainant's concern the wording in the advertisement was misleading, the Chair said the Complaints Board had consistently ruled that an opinion held by a political party, person or organisation was not misleading just because of a different emphasis on the interpretation of detail, even if it was contrary to that of the Complainant.”

Turning to the complaint before her, the Chair said the Advertiser is presenting its interpretation of the Government's proposed changes to abortion legislation which it opposes. The Chair said the viewpoint represented in the advocacy environment is opinion rather than fact and does

not meet the threshold to breach Principle 1, Principle 2 or Rules 1(c), 1(g) and 2(b) of the Advertising Standards Code.

The Chair noted this was a matter of public interest which is currently being widely debated and covered by a range of media platforms.

The Chair ruled there were no grounds for the complaint to proceed.

Chair's Ruling: Complaint **No Grounds to Proceed**

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.