

COMPLAINT NUMBER	20/087
APPEAL NUMBER	20/008
COMPLAINT ON BEHALF OF	Direct Action Everywhere New Zealand (DxE NZ)
ADVERTISER	Inghams Enterprises (NZ) Pty.Ltd
APPLICANT	Direct Action Everywhere New Zealand (DxE NZ)
ADVERTISEMENT	Inghams Waitoa Free Range Chicken, Website
DATE OF MEETING	28 April 2020
OUTCOME	Appeal Declined Complaint Not Upheld

SUMMARY

The Complaints Board ruled on 7 April 2020 the complaint made by Direct Action Everywhere New Zealand (DxE NZ) about a website advertisement for Inghams Waitoa Free Range Chicken was Not Upheld.

The Complainant appealed the decision. The Complainant identified the grounds on which to appeal the decision as the evidence provided had been misinterpreted to the extent that it affected the decision.

The appeal application was considered by the Chairperson of the Appeal Board. She noted in respect to Decision 20/087, the Complainant said the Complaints Board had misinterpreted the nature of Animal Welfare Science.

The Chairperson agreed with the decision made by the Complaints Board. She said the advertisement was not misleading given the likely consumer takeout of the statements and the remit of the Advertising Standards Authority's jurisdiction.

The Chairperson said there were no grounds on which the appeal could proceed, and the application was declined.

Please note this headnote does not form part of the Decision.

CHAIRPERSON'S RULING

The Chairperson of the Appeal Board viewed the application for appeal. She noted there are five grounds upon which an appeal is able to proceed. These are listed at Clause 6.4 of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and are as follows:

- (a) The proper procedures have not been followed.
- (b) There is new evidence of sufficient substance to affect the decision.
- (c) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (d) The decision is against the weight of evidence.
- (e) It is in the interests of natural justice that the matter be reheard.

The Chairperson noted the Complainant had identified the grounds on which to appeal the decision as (c), the evidence provided had been misinterpreted to the extent that it affected the decision.

The Chairperson reviewed the complaint, the advertisement, the Advertiser's response, the Complaints Board Ruling and the appeal application from the Complainant.

Has the evidence provided been misinterpreted to the extent that it affected the decision?

The Chairperson looked at each of the claims made in the advertisement pertaining to Decision 20/087 to consider where the evidence may have been misinterpreted by the Complaints Board.

"Our team of dedicated farmers are committed to raising healthy, free range chickens with Waitoa's farmers working daylight-till-dusk to ensure every aspect of the chickens' care is provided for."

The Chairperson agreed with the Complaints Board that this statement was not misleading. She said it was a positioning statement which had to be taken at face value, given that Ingham's had meet all appropriate New Zealand animal welfare laws and regulations as well as the additional obligations connected with the use of the SPCA tick.

"The birds are kept in the exact environment they need to be in to thrive".

The Chairperson agreed with the Complaints Board that the claim was not misleading as the likely consumer takeout of the statement was that the Advertiser was comparing its free range birds to those of caged chickens.

"This means, when choosing Waitoa, customers can be assured the products they are buying have been farmed to the high animal standards of the SPCA Blue Tick."

The Chairperson agreed with the Complaints Board that the claim was not misleading. She said the Advertiser had confirmed Waitoa had met the additional obligations required under the SPCA Blue Tick accreditation programme.

The Chairperson said in her view, the Complainant's appeal submission did not raise new issues, but rather restated the Complainant's initial position on the current welfare standards used within the poultry industry.

With regard to the misinterpretation of the nature of Animal Welfare Science, the Chairperson agreed with the Complaints Board's assessment that the Complainant raised issues regarding fundamental concerns based on perceived flaws in the overall welfare standards under which the poultry industry is held to account in New Zealand.

The Chairperson confirmed the Advertising Standards Authority's stance that it was not an arbiter of scientific fact nor was it within its jurisdiction to verify the efficacy of standards made by an independent body such as the SPCA Blue Tick accreditation certification.

Instead, its focus was to consider the likely consumer take out of an advertisement in the context of the requirements set out in the Advertising Codes.

The Chairperson agreed with the Decision made by the Complaints Board. The Chairperson said that while the Complainant disagreed with the Decision, this was not a ground for appeal. The Chairperson ruled there were no grounds on which the appeal could proceed, and the application was declined.

Chairperson's Ruling: Appeal application **Declined** Complaint **Not Upheld**

APPENDICES

1. Description of Advertisement
 2. Summary of Complaints Board Decision
 3. Appeal Application
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Appendix 1

DESCRIPTION OF ADVERTISEMENT

The website for Inghams Waitoa free range chicken contained three statements about their commitment to animal welfare in broiler chickens that are the subject of this complaint:

“Our team of dedicated farmers are committed to raising healthy, free range chickens with Waitoa’s farmers working daylight-till-dusk to ensure every aspect of the chickens’ care is provided for.”

“The birds are kept in the exact environment they need to be in to thrive”.

“This means, when choosing Waitoa, customers can be assured the products they are buying have been farmed to the high animal standards of the SPCA Blue tick.”

Appendix 2

SUMMARY OF COMPLAINTS BOARD DECISION

The Complaints Board did not uphold a complaint about a website advertisement for Waitoa free range chicken. The Complaints Board said the claims made in the advertisement were not misleading and the statements were substantiated.

Description of Advertisement

The website for Inghams Waitoa free range chicken contained three statements about their commitment to animal welfare in broiler chickens that are the subject of this complaint:

“Our team of dedicated farmers are committed to raising healthy, free range chickens with Waitoa’s farmers working daylight-till-dusk to ensure every aspect of the chickens’ care is provided for.”

“The birds are kept in the exact environment they need to be in to thrive”.

“This means, when choosing Waitoa, customers can be assured the products they are buying have been farmed to the high animal standards of the SPCA Blue tick.”

Summary of the Complaint

The Complainant is concerned the advertisement is making the following misleading claims:

- Claims of healthy chickens incorrect as meat chickens are top heavy Ross & Cobb breeds which often have skeletal lameness and heart issues.
- Claims the birds are thriving when they are lame, in pain and constantly hungry are untrue.
- The Blue Tick certification does not provide assurance the birds are not in pain as it allows the fast-growing breeds to be used so is therefore no guarantee.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser's Response

The Advertiser stands by the statements made on the website and is proud to carry the SPCA Blue tick which is an independent accreditation that goes beyond animal welfare code requirements. The Advertiser said the company meets all appropriate New Zealand animal welfare laws and regulations as well as additional obligations in connection with the use of the SPCA tick.

Appendix 3

APPEAL APPLICATION FROM COMPLAINANT

Complaint by Direct Action Everywhere NZ (DxE NZ) against the Inghams (complaint no. 20/087)

The original complaint referred to claims made by Waitoa (Inghams) concerning animal welfare. DxE NZ asserts that the advertisement is misleading because it misleads the consumer into thinking that poultry sold in New Zealand has high standards of animal welfare. The website makes specific claims about animal welfare stating "every aspect of the chickens' care is provided for", and "the birds are kept in the exact environment they need to be to thrive"

In its decision, the Advertising Standards Authority (ASA) referenced a previous complaint against Inghams and stated that this particular advertisement "was a positioning statement about animal welfare and contained no specific welfare claims about the chickens."

They also state that the complainant's concerns related to what the complainant "considered" as flaws in the animal welfare code.

The grounds for seeking an appeal are that "Evidence provided to the Chairperson of the Complaints Board has been misinterpreted to the extent that it has affected the ruling".

There are two instances where evidence has been misinterpreted.

1. Misinterpreting the term 'specific' and the wording used in the advertisement

In stating that 'no specific welfare claims' have been made, the ASA have either misunderstood what the word 'specific' means, or they have misunderstood the wording used in the advertisements.

The advertisement states "every aspect of the chickens' care is provided for" (emphasis mine). The word 'every' when used in the English language has a specific meaning. It means that there is nothing lacking in the chickens' care. This is most emphatically not the case. As mentioned in the complaint (with recent scientific references to back this up), leg health is one specific aspect where care is not provided for. To be specific, it causes continuous pain in up to 38% of the older chickens, according to a government report, as summarised in the complaint.

Since leg health is a sub-set of 'every', and this is a specific claim, then the advertisement is making specific claims about animal welfare, and these claims are false.

Similarly, the advertisement states that "the birds are kept in the *exact* environment they need to be to thrive" (emphasis mine). Once again, in using the word 'exact' rather than 'approximate' or 'sort of' or 'something we think might do,' the advertisers are making a specific claim. In fact it would be hard to be more specific. Once more, this claim is false. The environment they are in is one where they are subject to acute and unrelenting pain from

lameness, and where they are always hungry. There is no way that any animal could be said to 'thrive' in that sort of environment.

2. Misinterpreting the nature of Animal Welfare Science

Animal welfare is a scientific discipline. While there is always some interpretation in establishing how someone else is feeling (the only person whose feelings I can claim to know absolutely are my own), the field of Animal Welfare Science uses rigorous and accepted scientific methodology to make strong inferences on animal welfare. There are several peer reviewed publications on the science of animal welfare, and a number of books, by scientists established in the field, such as Dr John Webster, Dr Neil Broom, Dr Ian Duncan and Dr Joy Mench.

I have contributed myself to this field and the ethical implication of animal welfare in 8 peer reviewed publication in the *Journal of Agricultural and Environmental Ethics*, spanning a 20 year period.

The basis for modern Animal Welfare Science are the Five Freedoms, established by the Farm Animal Welfare Council of the United Kingdom. These are:

1. Freedom from hunger or thirst
2. Freedom from discomfort
3. Freedom from pain, injury or disease
4. Freedom to express normal behaviour
5. Freedom from fear and distress

These Five Freedoms are established in law under Sections 4 and 10 of the Animal Welfare Act. They set out the minimum standards that those keeping animals are required to adhere to. They also correspond to common sense ideas of consumers. Most lay people would assume, based on the argument from analogy, that anything that causes them to suffer (hunger, thirst, discomfort, pain, injury, disease, boredom, fear, distress) would also make animals miserable.

In their ruling, the ASA have misinterpreted the evidence and made a category error in stating that animal welfare is a matter of interpretation. They state that the scientific basis for the animal welfare code being flawed are simply a matter of what DxE NZ 'considers'.

Animal welfare is not a matter of 'consideration'. It is a matter of the findings from science. It is also a legally mandated obligation to producers. As stated in the original complaint, with references from the peer reviewed scientific literature, chickens in New Zealand are in constant pain through lameness and ascites, and are constantly hungry. Whatever the industry may 'consider' to be the case, the welfare of the chickens, as defined scientifically under the Five Freedoms, and as mandated in the Animal Welfare Act, is being compromised. Claims to the contrary are therefore misleading.

Summary of appeal

DxE claims that the ASA has misinterpreted evidence to the extent it has affected their ruling. There are two ways the ASA has done this.

1. It has misinterpreted the nature of the statements made in the advertisement. The advertisement is making specific claims about animal welfare, contrary to the ASA ruling.
2. It has made a category error in conflating scientifically based factual information with 'consideration'