

COMPLAINT NUMBER	20/086
APPEAL NUMBER	20/010
COMPLAINT ON BEHALF OF	Direct Action Everywhere New Zealand (DxE NZ)
ADVERTISER	SPCA
APPLICANT	Direct Action Everywhere New Zealand (DxE NZ)
ADVERTISEMENT	SPCA website
DATE OF MEETING	14 May 2020
OUTCOME	Appeal Declined Complaint Not Upheld

SUMMARY

The Complaints Board ruled on 21 April 2020 the complaint made by Direct Action Everywhere New Zealand (DxE NZ) about a website advertisement for the SPCA Blue Tick standard 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 20/086, the Complainant said the Complaints Board had misinterpreted the nature of Animal Welfare Science and the meaning of ‘animal welfare’.

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 to the Complaints Board been misinterpreted to the extent that it has affected the decision?

The Chairperson looked at the claims made in the advertisement pertaining to Decision 20/086, to consider whether the evidence may have been misinterpreted by the Complaints Board.

"Feel good about high animal welfare".

The Chairperson agreed with the Complaints Board that this statement was not misleading.

The Chairperson referred to a section of the Advertising Standards Code, "Interpreting the Code", which states "In determining whether a Principle has been breached, the Complaints Board will have regard to all relevant matters, including ... the consumer takeout from the advertisement".

The Chairperson noted the Complaints Board considered the consumer takeout of the advertisement, and agreed it was as follows: "Consumers can feel good about buying products with the SPCA Blue Tick. The SPCA Blue Tick is given to egg and meat products that have been farmed to SPCA standards. The standards focus on access to an outdoor area with shade, shelter, natural light, appropriately trained staff and a relatively low stocking density."

The Chairperson said the Advertiser has substantiated the claim that farms with the SPCA Blue Tick maintain standards that go beyond what is mandated in the Codes of Welfare.

The video about Farmer Dave which shows Dave's chickens walking on the grass outside their enclosure.

The Chairperson agreed with the Complaints Board that this video was not misleading. The Chairperson noted that the video showed footage of Farmer Dave's chickens walking on the grass outside their enclosure.

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 review the current animal welfare code and accreditation scheme in New Zealand.

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 SPCA Blue Tick is given to egg and meat products that have been farmed to SPCA standards. The website advertisement for the SPCA tells the consumer to “Feel good about high animal welfare”. A video about Farmer Dave shows Dave’s chickens walking on the grass outside their enclosure.

Appendix 2

SUMMARY OF COMPLAINTS BOARD DECISION

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about the website advertisement for the SPCA Blue Tick standard. The Complaints Board said the Advertiser has substantiated the claims that farms with the SPCA Blue Tick maintain standards that go beyond what is mandated in the Codes of Welfare.

Summary of the Complaint

The Complainant was concerned the advertisement made misleading claims about the standard of animal welfare at SPCA Blue Tick farms.

Issues Raised:

- Truthful presentation

Summary of the Advertiser’s Response

The Advertiser defended the advertisement. The Advertiser acknowledged the challenges in farming conventional chicken breeds but said at present, slower growing breeds are not commercially available in New Zealand.

The Advertiser said the SPCA has developed science-based standards that go beyond what is mandated in the Codes of Welfare, in order to deliver better welfare outcomes for the meat chicken breeds that are currently farmed in New Zealand.

Appendix 3

APPEAL APPLICATION FROM COMPLAINANT

Appeal against Advertising Standards Authority decision

Complaint by Direct Action Everywhere NZ (DxE NZ) against the SPCA blue tick (complaint no. 20/086)

The original complaint referred to claims made by DxE NZ that the advertisement is misleading because it misleads the consumer into thinking that poultry sold in New Zealand with the Blue Tick certification has high standards of animal welfare. The website implies this in its statements that we can 'feel good about animal welfare', and in a video that provides a science veneer over its misleading claims.

In its decision, the Advertising Standards Authority (ASA) referenced a previous complaint against Waitoa, where they stated 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 several cases where the evidence as been misinterpreted.

1. 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:

Freedom from hunger or thirst
Freedom from discomfort
Freedom from pain, injury or disease
Freedom to express normal behaviour
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.

2. Misinterpreting the meaning of 'animal welfare'

In its ruling, the Advertising Standards Authority appear to be under the mistaken impression that 'animal welfare' means going beyond the minimum requirements of the Code of Welfare. Because the SPCA have done this, they consider that consumers can feel good about the welfare of the chickens.

Another way that the ASA have misinterpreted the meaning of 'animal welfare' is in giving effect to a statement by the SPCA that slower growing breeds are not commercially available in New Zealand at the moment. In giving effect to this claim, the ASA are essentially saying that animal welfare means 'the best we can do, even if the birds continue to suffer from lameness, ascites and other conditions that violate the Five Freedoms'.

This is not what the term 'animal welfare' means.

"Animal welfare" has a specific meaning under the Animal Welfare Act, and in common English usage. In the latter meaning, it refers to animals being happy and free from pain and discomfort. In the former meaning it refers to the Five Freedoms summarised above and contained within Sections 4 and 10 of the Act.

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 animal welfare science, believing it to be more like art, and subject to several equally valid opinions, rather than a rigorous scientific discipline.

2. It has misinterpreted the meaning of 'animal welfare'.

No reasonable person could conclude that genetic freaks, who are continuously in pain due to lameness, are being reared in conditions where anyone can 'feel good about high animal welfare'

I request that complaint 20/086 be upheld.