

COMPLAINT NUMBER	20/435
ADVERTISER	SAM (Smart Approaches to Marijuana) NZ Coalition
ADVERTISEMENT	Say Nope to Dope, Print
DATE OF MEETING	16 September 2020
OUTCOME	No Grounds to Proceed

Advertisement:

The one-page newspaper advertisement for the Smart Approaches to Marijuana (SAM) NZ Coalition newspaper advertisement in the Dominion Post advocates its “Say Nope to Dope” campaign. The advertisement refers to the upcoming referendum on the Cannabis Legalisation and Control Bill. The advertisement shows an image of a “Dope Shop” with three children passing by on the footpath in front. The shop has images of cannabis leaves and the words “Dopey” and “Kia-Ora Dopey” displayed on the shop frontage. The text above the shop says “Our way of life *is* too precious to be wasted.” Below the shop is the text “The latest Government report predicts more than 400 dope stores nationwide, with drug usage increasing by almost 30%...” The word “Advertisement” is written at the top right corner of the page. “Vote Nope to Dope” is used as a banner along the bottom of the advertisement. The advertisement contains an authorisation statement.

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

There were 31 complaints about this advertisement.

The Complainants were concerned the advertisement was misleading, scaremongering and racist. This is because:

- Signage like that on the shop in the advertisement would not be permitted under the proposed Bill
- The statement about “drug usage increasing by almost 30%” did not include source data and the report it is taken from goes on to model that demand will settle at a level unchanged from the current baseline
- The use of the word ‘drug’ implies other drug use will increase too, and there is no evidence to support this
- The reference to a Government report implies the Government endorses this advertisement
- It implied drugs will be sold to kids
- It was scaremongering, sensationalist and exaggerated
- The words “Kia Ora Dopey” on the outside of the shop implies white neighborhoods will be overrun with cannabis-using Māori
- Having US style misinformation campaigns funded by US SuperPAC style organisations will be extremely damaging for our political discourse

The following are some examples of these complaints:

Complaint 1:

This scare-mongering full page ad in the Herald contains a number of blatant inaccuracies.

1. The claim that "drug use will increase by 30%" is a lie. In jurisdictions which have legalised cannabis the opposite is in fact true.
2. The only three people shown in the ad are children, implying strongly that drugs will be sold to kids. This is also untrue and an unfair reflection of the intent of the legislation.
3. Branding - the ad displays branding which would be illegal under the proposed legislation. Again, this is highly misleading. As the intent of the advertiser is to mislead voters in the upcoming referendum, given the timing of this breach I would like to see a retraction published, full page, as part of the penalty.

Complaint 2:

I believe it breaks Principle 2 - it is untruthful and misleading. The proposed legislation will in no way allow cannabis to be sold in dairies in the way the advertisement depicts. It is misleading, deceptive and confusing to consumers who may not have read the proposed legislation or material relating to the proposed legislation.

Further the advertisement misleadingly claims that the "latest Government report" predicts x number of stores and x percentage increase in cannabis use, implying that the Government report factually supports the advertisement. This may break Rule 2(f) by implying that a Government report endorses the advertisement.

Finally I believe that this advertisement breaks Rule 1(c) by using the word Kia Ora on the front of the fictional dairy pictured. This is implicit racism, playing on people's racist ideas and fears. It implies that white neighborhoods will be overrun with cannabis-using Māori. It also implies that children will have easy access to cannabis, depicting children riding their bikes and scooters outside the dairy.

Complaint 3:

The advertiser intentionally tries to mislead the public into believing that this is how the cannabis control bill is going to be put into practice, when in fact quite the opposite is the case, with location of premises being carefully selected, no other products other than cannabis to be sold, and of course, absolutely no advertising.

Complaint 4:

This advertisement is completely false and misleading, as such a place as shown would be illegal under the proposed legislation. Printing such misinformation in the lead up to a referendum is not good faith reasoning, not to mention that SAM is a proxy of a US based organisation. Having US style misinformation campaigns funded by US SuperPAC style organisations will be extremely damaging for our political discourse and I for one, do not want this type of overseas influence to be present in our voting processes.

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

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.

Rule 2(f) Use of testimonials and endorsements: Advertisements must not contain or refer to any personal testimonial unless permission to use the testimonial has been obtained and it is verifiable, genuine, current, and representative of the typical not the exceptional. Advertisements must not claim or imply endorsement by any individual, government agency, professional body or independent agency unless there is prior consent and the endorsement is current and verifiable.

The Chair noted the Complainants' concerns the advertisement was misleading, scaremongering and racist.

The Chair said the advertisement is an advocacy advertisement because it promotes the views of an advocacy organisation on issues of current debate.

About Advocacy Advertising

Complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

In assessing whether an advocacy advertisement complies with the Advertising Standards Code, the freedom of expression provisions under the Bill of Rights Act 1990 must also be considered.

Section 14 of the Act says: "Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form." This freedom of expression supports robust debate on current issues in a democracy.

Under Rule 2(e) Advocacy advertising of the Advertising Standards Code:

- The identity of the advertiser must be clear
- Opinion must be clearly distinguishable from factual information, and
- Factual information must be able to be substantiated.

If the identity and position of the Advertiser is clear, a more liberal interpretation of the Advertising Standards Code is allowed.

Role of the ASA when considering an advocacy advertisement

The Chair of the Complaints Board's role is to consider the likely consumer takeout of an advertisement. Then whether the advertisement includes statements of fact or opinion and decide whether any factual claims have been adequately substantiated by the Advertiser. A fact is something that is objectively true and can be verified as such whereas an opinion is a

personal belief. Others may agree or disagree with an opinion, but they cannot prove or disprove it. Some statements contain both fact and opinion.

The Chair observed that in a free and democratic society, issues 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.

About this complaint

The Chair confirmed the Advertiser's identity was clear and their position on the issue was clear. The advertisement set out the Smart Approaches to Marijuana (SAM) NZ Coalition's view on what could happen if the Cannabis Legalisation and Control Bill becomes law.

The Chair commented on each of the points raised in the complaints:

Signage like that on the shop in the advertisement would not be permitted under the proposed Bill

The Chair said the scenario depicted in the advertisement is a subjective interpretation of what a possible future could look like if the Cannabis Legalisation and Control Bill becomes law, and therefore comes under the category of opinion.

The Chair noted that while certain provisions are currently in the Bill, many changes could potentially be made during the Select Committee process, and it is not possible to predict with any accuracy what the final outcome might be. The Chair noted that while the signage on the shop in the advertisement might not comply with the provisions in the Bill, it assisted with conveying the Advertiser's view of what cannabis retail outlets may look like and how the New Zealand way of life might change if the Bill is passed.

The statement about "drug usage increasing by almost 30%" did not include source data and the report it is taken from goes on to model that demand will settle at a level unchanged from the current baseline. The use of the word "drug" implies other drug use will increase too, and there is no evidence to support this.

The Chair said while the advertisement did not include the source details about the Government report referred to in the advertisement, which is not ideal, it is available on the Say Nope to Dope website, the url for which is included in the advertisement. The Chair said the 139 page report "Evidence to inform a regulated cannabis market" was prepared by Business and Economic Research Limited (BERL), under commission from the Ministry of Justice. <https://www.berl.co.nz/sites/default/files/2020-09/Evidence-to-inform-a-regulated-cannabis-market-June-2020-PROACTIVE-FINAL.pdf>

Page 8 of this report says:

"On legalisation, we expect a short-term spike in levels of consumption. Based on evidence from the states of Colorado, Massachusetts, Washington and the District of Columbia, we model the short-term spike in demand as an approximately 30 percent increase in kilograms consumed across a 25 percent increase in the number of users. Data from Colorado and Washington, indicate a substantial decline in the use rates since legalisation suggesting that this initial effect may tail off over a period of three to five years."

The Chair said while the Advertiser has chosen to refer to the first statement from this quote, and not the second, this is allowable in the context of advocacy advertising.

The Chair noted that the 30% increase in cannabis usage suggested is a prediction of what might happen in New Zealand, based on data taken from studies conducted in the United States.

The Chair said while the report uses the word “cannabis”, the use of the word “drug” in the advertisement did not, on its own, imply that use of other drugs will increase too.

The reference to a Government report implies the Government endorses this advertisement

The Chair said the reference to a Government report did not imply the Government endorses this advertisement. The Chair said the reference to the report is included to support a statement in the advertisement.

It implied drugs will be sold to kids

The Chair said the advertisement did not imply that cannabis will be sold to kids. The Chair noted that the Bill proposes that 20 be the legislated legal age to access cannabis, and from licensed premises. The Chair said that if cannabis is available for purchase at shops children will be able to walk, scooter and bike past these shops, as shown in the advertisement, and this is not misleading.

It was scaremongering, sensationalist and exaggerated

The Chair said while the advertisement did have shock value, which is likely to have been deliberate, it did not reach the threshold to cause serious or widespread offence or cause fear without justification. The Advertiser is using provocative imagery to draw attention to the debate about an important social issue.

The words “Kia Ora Dopey” on the outside of the shop implies white neighborhoods will be overrun with cannabis-using Māori

The Chair said the words “Kia Ora” and “Dopey” are words in common usage in New Zealand. The use of the words together as the possible name of a cannabis retail outlet does not contain any racist innuendo.

Having US style misinformation campaigns funded by US SuperPAC style organisations will be extremely damaging for our political discourse

The Chair said it is not unusual for advertisements to include material that is sourced from overseas. In this case the name of the Advertiser is clear, and the consumer is able to do further research about the Advertiser, based on the information provided, if they wish.

The Chair said while she acknowledges the Complainants’ genuine concerns about this advertisement, it is important that organisations can freely contribute their opinions to the debate on the Cannabis Legalisation and Control Bill referendum. The Chair said in the context of advocacy advertising the advertisement does not reach the threshold to be misleading or offensive and the reference to a Government report was not inappropriate.

The Chair said the advertisement was not in breach of Principle 1, Rule 1(c), Rule 1(g), Principle 2, Rule 2(b), Rule 2(e) or Rule 2(f) of the Advertising Standards Code.

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. **NOTE:** Under the fast track process one month prior to the Election, appeals must be made in writing via email or letter within three (3) calendar days of receipt of this decision.