

COMPLAINT NUMBER	20/436
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 complaint to proceed.

Complaint: The SAMA coalition ran an advertisement in this morning's Whanganui Chronicle and possibly the NZ Herald as part of their 'Say nope to Dope' campaign.

On the advertisement they depicted a fictional scene of children in front of a shop advertising cannabis.

The issue is that the advertisement breached laws regarding not using a depiction of a cannabis or hemp leaf.

These offences fall under the 2006 Misuse of Drugs Act, Hemp Amendment 62 and also the Misuse of Drugs Regulations 1977 Amendment 50 clause 2 (a) 'contains a conspicuous statement sufficient to indicate that the advertisement relates to a controlled drug, or, if the advertisement is comprised in a price list or similar publication, contains the abbreviation CD.'

I know of a firm that created a hemp gin and advertised the cannabis leaf and were forced to remove the leaf by the Ministry of Health so I am disappointed when I see advertisements in national and local newspapers ignoring these laws.

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

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 Complainants' concerns the advertisement's depiction of cannabis or hemp leaves was in breach of New Zealand law.

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 said the Misuse of Drugs Act 2006 was not relevant to this complaint and it is not illegal to display artwork in advertising about the referendum which contains cannabis leaves.

The Chair said in the context of advocacy advertising the advertisement did not reach the threshold to be misleading.

The Chair said the advertisement was not in breach of Principle 2, Rule 2(b) or Rule 2(e) 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.