

COMPLAINT NUMBER	20/506
ADVERTISER	Advance New Zealand Party
ADVERTISEMENT	Advance New Zealand Party, Unaddressed Mail
DATE OF MEETING	13 October 2020
OUTCOME	Upheld Advertisement not to be used again

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about the flyer advertisement for the Advance New Zealand Party and the New Zealand Public Party. This is because the reference to mandatory vaccinations in the advertisement had not been substantiated and its use to support statements about Government overreach in the response to the COVID-19 pandemic was not socially responsible.

Advertisement

The Advance New Zealand Party unaddressed flyer cover says: "Vote Advance NZ to reclaim NZ back for all the people". Inside the flyer there are photos of the co-leaders and their families and a section entitled: "What Advance NZ will do for you and our proud nation". Under the heading "Rebuild NZ back into a democracy" it says: "Stop the attack on Kiwi freedoms by removing laws that force mandatory testing, mandatory vaccinations, and forced entry into homes without a warrant."

Summary of the Complaint

The Complainant was concerned the advertisement was misleading and irresponsible as there is no such law forcing mandatory testing or vaccines.

Issues Raised:

- Social Responsibility
- Truthful Presentation
- Advocacy Advertising

Summary of the Advertiser's Response

No response was received from the Advertiser.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

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 Complaints Board said the advertisements before it 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 say:

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.

Role of the ASA when considering an advocacy advertisement

The Complaints Board noted its role is to consider the likely consumer takeout of an advertisement and complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

The Board will consider whether the advertisement includes statements of fact or opinion and decide whether any factual claims have been adequately substantiated by the Advertiser. The Complaints Board noted that 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 Board referred to the ASA Guidance Note on Advocacy which says:

“Evidence may be cited in support of the opinion, but it should be clear it supports an opinion rather than being the full factual position. Evidence in support of an opinion should be clearly cited and readily obtainable. Academic studies are often cited as evidence. Such studies are treated as expert opinion rather than the full factual situation...the Board will not determine which of competing academic studies or other evidence is correct. The Complaints Board’s only role is to determine whether there has been a breach of the ASA Codes, taking into account the Advocacy Principles.”

The Complaints Board 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.

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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 20/377 which was not upheld and 20/440 which was upheld.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 20/377 concerned a billboard advertisement from the New Zealand Public Party (NZPP) which said in part, “It’s time: to protect our tamariki from forced medical tests”. The Complaints Board agreed the opinion statement was not misleading and reflected the Advertiser’s position on the Covid-19 Public Health Response Act 2020.

Decision 20/440 concerned a print advertisement for the Advance New Zealand Party and the New Zealand Public Party in the Te Awamutu Courier and Bay of Plenty Times newspapers. The advertisement is headed “Update COVID-19” with red and white diagonal stripes. The advertisement says: “COVID-19 DEATH RATE NOW KNOWN TO BE COMPARABLE TO SEASONAL FLU.

Yet in New Zealand:

Rising Cases = Rolling Lockdowns

Refusing Mask = Expensive Fine

Refusing Test = Longer Detention

Refusing Detention=Go to Prison”

The Complaints Board upheld the complaints because the reference to seasonal flu in the advertisement had not been substantiated and its use to support statements about Government overreach in the response to the COVID-19 pandemic was not socially responsible.

Complaints Board Discussion

Consumer Takeout

The Complaints Board considered the likely consumer takeout of the advertisement. The Board said it was that the Advance New Zealand Party is critical of the Government response to the COVID-19 pandemic which it considers has broken down democracy in a number of ways including the examples listed on forced testing, vaccinations and entry to homes.

Has the advocacy advertisement been adequately identified?

The Complaints Board agreed the advertisement had been adequately identified as an advocacy advertisement.

The Board said the identity of the Advertisers, the Advance New Zealand Party and the New Zealand Public Party was clear. The Board said the Advertiser's position on the Government response to the COVID-19 pandemic was clear.

Is the statement in the advertisement likely to mislead?

The Complaints Board considered the statement to assess whether it is a statement of fact, supported by adequate substantiation, or opinion.

The part of the advertisement complained about was the statement "Stop the attack on Kiwi freedoms by removing laws that force mandatory testing, mandatory vaccinations, and forced entry into homes without a warrant."

The Complaints Board agreed this is presented as a statement of fact because it refers to removing laws. The likely consumer takeout of the statement is there is current legislation that authorises "forced mandatory testing, mandatory vaccinations, and forced entry into homes without a warrant."

The Complaints Board noted the Complainant considered the statement to be misleading and irresponsible.

The Board noted no response was received from the Advertiser.

The Complaints Board confirmed the importance of open debate during an election campaign. However, under the ASA complaints process, the onus is on the Advertiser to support factual statements made in advertisements, if challenged.

The Complaints Board ruled the statement "Stop the attack on Kiwi freedoms by removing laws that force mandatory testing, mandatory vaccinations, and forced entry into homes without a warrant" was misleading. This is because the reference to a current law requiring mandatory vaccinations had not been substantiated by the Advertiser.

The Complaints Board ruled the statement "Stop the attack on Kiwi freedoms by removing laws that force mandatory testing, mandatory vaccinations, and forced entry into homes without a warrant" was not socially responsible. This is because it was not supported by the required substantiation. The Board also noted the COVID-19 pandemic has resulted in heightened fear about vaccination and the use of the unsubstantiated statement was likely to cause fear or distress without justification.

The Complaints Board unanimously ruled the advertisement was in breach of Principle 1 and Rule 1(g) and Principle 2 and Rules 2(b) and 2(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld**.
Advertisement not to be used again.

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.

APPENDICES

1. **Complaint**
 2. **Response from Advertiser**
 3. **Response from Media**
-

Appendix 1**COMPLAINT**

The advance nz party has done a leaflet drop which states they are going to 'stop the attack on kiwi freedoms by removing laws that force mandatory testing, mandatory vaccinations, and forced entry into homes without a warrant'. This is misinformation, and lying on political party election advertising surely cannot be legal? There is no such law forcing mandatory testing or vaccines. If I am mistaken, then please lead me to those laws, but if I'm right, then should advance nz not be forced to correct the record otherwise they are misleading voters in this democratic process.

Appendix 2**RESPONSE FROM ADVERTISER, THE ADVANCE NEW ZEALAND PARTY**

No response was received from the Advertiser.