

COMPLAINT NUMBER	21/003
ADVERTISER	The Warehouse Group
ADVERTISEMENT	Television
DATE OF MEETING	23 February 2021
OUTCOME	Not upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a television advertisement for a swimming pool which was for sale at The Warehouse. The Board said the advertisement did not condone an illegal practice and it was not misleading.

Advertisement

The Warehouse television advertisement for a swimming pool showed a photo of some young people having fun in a swimming pool in the back garden. A wooden fence was shown in the background behind the pool. The text said “Bestway Steel Pro 16ft Pool Price Drop now \$699”. The advertisement also featured inflatables and children’s swim shorts on sale.

Summary of the Complaint

The Complainant was concerned the advertisement didn’t show the pool had a child safety fence. The advertisement was therefore misleading to imply a fence was not necessary.

Issues Raised:

- Social Responsibility
- Safety
- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser defended the complaint and said a fence was shown in the advertisement. As required by the legislation, the Advertiser said they provide the appropriate pool safety information to consumers who purchase the pool. This information is also provided on the product itself and in other media such as on their website.

Relevant ASA Codes of Practice

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

ADVERTISING STANDARDS CODE

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

Rule 1(e) Safety: Advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.

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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 20/326 Appeal 20/021 which was Upheld.

The full version of this decision can be found on the ASA website:

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

Decision 20/326 Appeal 20/021 concerned a television advertisement for Meadow Fresh milk which showed a girl riding her bike on the footpath. The Board said the advertisement condoned an illegal practice, as riding a bicycle on the footpath is an illegal activity in New Zealand. In light of the requirement of Rule 1(e) on safety and illegal practices in advertising, the Complaints Board considered it had no choice but to uphold the complaint.

Complaints Board Discussion

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was: The Warehouse has some great bargains for summer, including an outdoor swimming pool. There was no consumer takeout in relation to whether the advertised pool required fencing or not.

Did the advertisement condone an illegal practice and was it misleading?

The Complaints Board said the advertisement did not condone an illegal practice and was not misleading.

The Complaints Board noted there are legal requirements relating to residential pools, which are contained in the Building Act 2004. Pool owners or operators must ensure compliance with the regulations regarding restricting access. Manufacturers or retailers have responsibility to ensure that when a new owner purchases a pool, they are provided with the relevant safety information. The Advertiser said that the fencing information was displayed in store.

The Complaints Board said the pool in the advertisement was not shown to be in breach of the legal requirements. The advertisement showed a closely cropped photo of a pool with a fence behind it. It is not clear from this photo whether the fence was enclosing the pool, or not. Therefore, the advertisement was not condoning an illegal practice.

The Complaints Board said the advertisement was not misleading because it did not contain anything that implied that the regulations regarding restricting access to pools did not apply to the advertised pool. The Board also noted the Advertiser's response that it is commonplace for pools to be advertised without showing fencing.

Was the advertisement socially responsible?

The Complaints Board said the advertisement was socially responsible, taking into account context, medium, audience and product and was not in breach of Principle 1, Principle 2, Rule 1(e) or Rule 2(b) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

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. Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
 3. Response from Media
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Appendix 1

COMPLAINT

Television Ad Details: Tv2 During batman forever 2021-01-10 4.33pm

Complaint Details: The Warehouse advertisement of a best buy swimming pool, doesn't have a child safety fence. This implies it's not necessary, I'm fairly sure it's needed. This creates a greater expense than what's advertised - therefore it's false and misleading

Appendix 2

RESPONSE FROM ADVERTISER, THE WAREHOUSE GROUP

Thanks for the below email and details of the complaint submitted to you.

As you can see in **Attachment A**, the screenshot of the pool shown in our TV advert (key number TWL 15 21 2302) does in fact show a fence in the advert. The advert does not show a fence in 'front' of the pool, however a fence is in evidence in the advert behind the pool. This advert is a 15 second advert which shows the pool for 3 seconds on screen. Advert can be supplied if required.

Legislation of the Building Act 2004 states that the persons who must ensure compliance are the owner of the pool, the pool operator, owner of the land the pool is on, occupier of the property, the lessee of the pool or if subject to a hire purchase agreement, the purchaser of the pool.

The legislation at clause 162E states that as a manufacturer or retailer, our responsibility is to ensure that any new pool product *when supplied* is done so with a notice approved by the chief executive setting out or summarizing the responsibilities of owners. As such, any of our static advertising such as in mailer or press or on our website contains messaging around Pool Regulations across all mediums, including on the product itself, as shown in **Attachment B**. Messaging is also displayed in-store where the range is available.

In relation to the complainants claim that the advert is false and misleading due to 'implying' a fence is not required and that the advert doesn't have a 'child safety fence', as noted above, this is not actually correct. The advert does in fact have a 'child safety fence' evident in the advert, it is simply shown behind the pool as opposed to in front of it. We do not believe there is any implication in the advert that a fence is not required.

I also note that the perspective shown in the advert of the uninhibited view of the pool with a fence showing behind it is a commonly used tool when featuring pools in adverts. My research shows many pool advertisements where a fence is shown behind the pool but no fence is shown in front of the pool to inhibit the view of the product itself. See examples at **Attachment C**. I also note that none of the websites I viewed stated any information around the requirements for fences around pools, however as per legislation I'm sure that these manufacturers/retailers would supply this information as part of their due diligence when approached by a potential customer.

In conclusion, we do not believe this advert is false or misleading as to the requirement of a fence. It is a 3-second product offer on a TV advertisement where a fence IS shown, and therefore do not believe any implications can be made around what requirements are needed for the purchase and use of a pool.

I hope the above and attachments answer this complaint, but let me know if you need further information from me.

Appendix 3

RESPONSE FROM COMMERCIAL APPROVALS BUREAU

Complaint 21/003 The Warehouse Limited TWL 15 21 2302 General classification

One complainant is of the view that the pool advertised by The Warehouse did not comply with safety requirements.

While clearly there are two boundary fences which meet New Zealand safety requirements in view in the scene, the pool picture is so closely shot it is impossible to show barriers such as a wall, fence or building on remaining sides.

Without proof of lack of barriers on remaining boundaries there appears to be no reason to uphold this complaint.