

COMPLAINT NUMBER	21/166
ADVERTISER	Electric Kiwi
ADVERTISEMENT	Electric Kiwi, Television
DATE OF MEETING	28 April 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 Electric Kiwi. The Complaints Board said the use of the term “No contracts” was likely to be understood by most consumers to mean customers did not have to sign up to a fixed-term contract.

Advertisement

The Electric Kiwi television advertisement shows people at the beach singing about the benefits of Electric Kiwi. They sing about guaranteed savings, an hour of free power and also say “We don’t have any contracts.”

Summary of the Complaint

The Complainant was concerned the advertisement is misleading to claim there are no contracts when there are clearly terms and conditions which would form part of a contract between the customer and the energy company.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser defended the advertisement and said it uses “no contracts” as shorthand for “no fixed term contracts” which consumers would understand to mean not locked in or on a fixed term. The Advertiser said most consumers would not expect that there would be no terms applied to the relationship with the provider. The Advertiser provided examples of how “no contracts” is a common term used with this meaning when marketing to consumers in retail services such as electricity providers, mobile and broadband.

Summary of the Media’s Response

The Commercial Approvals Bureau deferred to the Advertiser’s response.

Relevant ASA Codes of Practice

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

ADVERTISING STANDARDS CODE

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.

Complaints Board Discussion

The Acting 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 energy company was describing why it is a good power provider because it has guaranteed savings, free power deals and no locked in contract arrangements.

Is the advertisement likely to mislead or confuse consumers?

The Complaints Board unanimously agreed the advertisement was not likely to mislead or confuse the average consumer. It said, in this context, the term 'No contracts' would be considered by most people to be a reference to a relationship between a business and a consumer which is not bound by a commitment to a certain period of time or a fixed term.

The Board noted the Advertiser had provided several examples of the term and its use across a variety of industries and agreed that customers would still expect the relationship to include some binding terms and conditions, such as the obligation to pay for the electricity used.

The Complaints Board said the advertisement was not misleading and was not in breach of Principle 2 and 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

My concern is about TV adverts that have been frequently aired recently for Electric Kiwi. I have seen these ads on TV1 around 6-7pm. One of EK's main claims is that there are no contracts. However, this is not true. If you go onto their website one of the first things you see is that "terms and conditions apply". These terms and conditions would presumably form part of a contract between the customer and EK once the customer has signed up. This is blatantly false advertising and being a central aspect of their vigorous advertising should in my view be corrected.

Appendix 2

RESPONSE FROM ADVERTISER, ELECTRIC KIWI

We write to confirm that we wish to defend the complaint. Our defence is summarised below:

Advertising Standards Code - Principle 2, Rule 2(b) concerns truthful representation and, in this case, whether our description of "No Contracts" is likely to mislead consumers.

We use "No Contracts" as short hand for "No Fixed Term Contracts" and we are confident that this is a common use of the term in NZ. The overall impression in a consumers mind would be, that the relationship with the provider won't cause them to be locked-in or on a fixed term. A consumer would not form the view that there are no terms at all that apply to the relationship.

There are many examples that indicate "No Contracts" is a common use when marketing to consumers; this includes our competitors (major electricity retailers), personal medical alarms, home security monitoring, direct to consumer product subscriptions (such as MyFoodBag and MeatBox), online learning platforms, telecommunications, mobile and broadband, energy (gas) and LPG tank hire, online gaming memberships/subscriptions.

I have included just a few examples and links below. There are many more out there.

Based on the prevalence of the use of "No Contracts" in the Kiwi context, our view is that "No Contracts" is a commonly understood term referring to "No Fixed Term Contracts", and due to this a consumer will not be misled. Our ad is therefore not in breach of the code and we ask that you rule as such.

1. Media file can be found here: <https://vimeo.com/515079945>
2. Note that the ad is no longer on TV, but the wording "No Contracts" exists in other forms, so we wish to defend this complaint to ensure we do not end up having a future campaign interrupted

3. This video file was available on TV, and is still available on Facebook, YouTube, our website and other digital channels

The target audience is Kiwis (adults) who are looking for a better power deal

Appendix 3

RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU

CAB approved this Electric Kiwi commercial on 12/03/21 with a 'G' general classification.

The commercial is a sing-along montage with details of Electric Kiwi's service.

At stake is the common interpretation of 'no contract' terms for service, which the complainant claims are misleading.

Since this is primarily a service issue, CAB will defer to the advertiser for a full description of their terms.