

COMPLAINT NUMBER	20/556
ADVERTISER	The New Zealand Quit Chinese Communist Party Centre
ADVERTISEMENT	The New Zealand Quit Chinese Communist Party Centre, Brochure
DATE OF MEETING	25 May 2021
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a brochure issued by The New Zealand Quit Chinese Communist Party Centre on behalf of an international organisation asking supporters to sign a petition to end the Chinese Communist Party. The Complaints Board said the political advocacy advertisement stated robust opinions which are permitted under the Advertising Standards Code and the New Zealand Bill of Rights Act. The majority of the Board said any offence was mitigated as the statements were aimed at a political party as opposed to a person or group of people.

Advertisement

The New Zealand Quit Chinese Communist Party Centre, also known as End CCP brochure advertisement says “END CPP” and “Eliminate the Demon CCP” and has a call to action to sign the petition. It says the CPP cover-up of the pandemic has led to a global pandemic with thousands of deaths. The brochure lists historic tragedies linked to the Chinese Communist Party and quotes from supporters. The brochure includes the name of the Advertiser, a website address and a QR Code.

Summary of the Complaint

The Complainant was concerned the advertisement is spreading hate and misleading information. The Complainant said that although they support free speech, this advertisement is promoting discrimination of China and its people.

Issues Raised:

- Social Responsibility
- Offensiveness
- Fear and Distress
- Truthful Presentation
- Advocacy Advertising

Summary of the Advertiser’s Response

The Advertiser questioned the ASA’s jurisdiction and whether the brochure constituted advertising.

The Advertiser defended the advocacy advertisement saying their identity and position is clear and it is a call to action to sign a petition calling for the end of the Chinese Communist Party as an expression of what they say is a worldwide public view. The Advertiser quotes the Bill

of Rights Act. The Advertiser said there is factual background about the CPP's controversial history including Tiananmen Square massacre, the persecution of Falun Gong and its response to Covid-19. It said NZ has a strong history of protecting and promoting human rights. The Advertiser denies the use of hate speech but rather robust criticism of the CCP as an entity and uses either facts backed up by the citations quoted or opinion.

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 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.

Preliminary Matter

Jurisdiction

The Complaints Board agreed the brochure was an advertisement and the Advertising Standards Code applied. This is because the brochure met the definition of an advertisement as the content was controlled by the Advertiser and had the intent of influencing those to whom it is addressed. The Complaints Board has previously accepted and ruled on complaints on brochures as an advertising medium.

The current ASA definition of advertisement states:

“Advertising and advertisement(s)” are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

The Advertising Standards Code, under the heading Application of the Code states: “This Code applies to all advertisements placed in any media.”

About Advocacy Advertising

The Complaints Board said the advertisement 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. It 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. Therefore, the Complaints Board considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

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

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 16/198 Appeal 16/008, which was Not Upheld and Decision 19/095, which was Upheld in Part.

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

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

Decision 16/198 Appeal 16/008 concerned a billboard advertisement from the New Zealand Palestine Human Rights Campaign and featured two maps which detailed the proliferation of 'Israeli and Occupied Land' versus 'Palestine Land'.

The Complaints Board ruled the complaints about the advertisement's use of maps being misleading were Not Upheld and the decision was appealed by the Complainants. The Appeal Board considered whether the maps were presented as fact or opinion in the context of the advertisement in its entirety. The Appeal Board ruled the use of the maps was a clear expression of opinion that was unlikely to mislead most people. The Appeal Board dismissed the appeal saying the advertisement was clearly presented from a particular perspective and met the provisions of robust opinion required of an advocacy advertisement.

Decision 19/095 concerned a pamphlet advertisement from 1Law4All which was headed "One Treaty, One Nation." The political advocacy advertisement called for changes to the New Zealand political system. The advertisement contained a statement about the benefits of colonisation for Māori which the Complaints Board said was derogatory to Māori and likely to cause serious offence, resulting in the complaint being Upheld in Part.

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 a brochure promoting a call to action to sign a petition to end the government of the Chinese Communist Party (CCP) and highlighting a number of the party's policies and actions as support for this position.

Has the advocacy advertisement been adequately identified?

The Complaints Board agreed the advertisement had been identified as an advocacy advertisement. The Board said the identity of the Advertiser, The Global Service Center for Quitting the Chinese Communist Party, was clear.

The Complaints Board noted the Advertiser is the New Zealand Quit Chinese Communist Party Service Centre ("**NZ Centre**"). The NZ Centre is a local centre of the Global Service Center for Quitting the Chinese Communist Party. It is also sometimes referred to by an abbreviated name, "End CCP". The Complaints Board also noted the advertisement contained a website address and QR Code. The Board said the position of the Advertiser was clear from the organisation's name and the content of the advertisement provided the necessary context for the messaging.

Is the advertisement stating fact or opinion?

The Complaints Board said the advertisement contained strong opinion-based statements within the context of political advocacy. The Board said it would be clear to most consumers that the advertisement was promoting a particular political perspective and the robust statements would be interpreted as the opinions of the advertiser. In this context the examples given of CCP's policies and actions did not require substantiation.

On the basis that the advertisement did not contain any factual statements requiring substantiation, the Complaints Board agreed the advertisement was not likely to mislead or deceive consumers and was not in breach of Principle 2 or Rules 2(b) and 2(e) of the Advertising Standards Code.

Does the advertisement contain anything which is degrading, offensive or gives rise to hostility?

The Complaints Board considered whether language used in the advertisement, such as "Demon" and "bloodthirsty" was likely to offend or give rise to hostility. The Complaints Board noted that the language was directed at a political party in a foreign jurisdiction. The majority of the Board said that although the language was provocative, it did not reach the threshold to cause serious or widespread offense or hostility because it was aimed at a political party rather than individuals or specific groups of people. The majority of the Complaints Board said strongly held opinions were acceptable in a political advocacy environment and the advertisement had not breached Rule 1(c) of the Advertising Standards Code.

A minority of the Complaints Board disagreed and said the language used in the advertisement was deliberately derogatory and could result in hostility and contempt towards the individuals controlling the political party. For a minority of the Complaints Board the advertisement was in breach of Rule 1(c) of the Advertising Standards Code.

However, in accordance with the majority, the Complaints Board ruled the advertisement was not in breach of Rule 1(c) of the Advertising Standards Code.

Does the advertisement cause fear or distress without justification?

The Complaints Board unanimously agreed the advertisement did not cause fear or distress without justification. The Board said the advertisement was promoting the peaceful action of signing a petition and was directed at an overseas organisation which would limit the level of engagement level of many consumers in New Zealand.

The Complaints Board ruled the advertisement was not in breach of Rule 1(g) of the Advertising Standards Code.

Is the advertisement socially responsible?

The majority of the Complaints Board said the advertisement had met the requisite level of social responsibility when viewed through the lens of advocacy advertising and was not in breach of Principle 1 of the Advertising Standards Code.

For a minority of the Complaints Board, the breach of Rule 1(c) due to the inflammatory language used meant the advertisement was not socially responsible and was in breach of Principle 1 of the Advertising Standards Code.

However, in accordance with the majority, the Complaints Board said, taking into account context, medium, audience and advocacy, the advertisement was not in breach of Principle 1, Principle 2 or Rules 1(c), 1(g), 2(b) or 2(e) 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
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Appendix 1

COMPLAINT

This brochure was left in my letterbox. It contains hate speech like using the adjective "demon," and calling the coronavirus the "CCP virus." The brochure blames China for all the cases and deaths regarding coronavirus and is saying they lied about it, created cover ups, and are distrustful. It is literally rallying people against the government of another nation. There are comments on the back saying the government of China is a "bloodthirsty terrorist organization" and that it's our job to "eliminate it." I don't know if all that's true, but I know hate speech when I see it. And I know it's not a good idea to rally against another nation's government or for NZ government to be accused of condoning such things by allowing it.

Appendix 2

RESPONSE FROM ADVERTISER, THE NEW ZEALAND QUIT CHINESE COMMUNIST PARTYSERVICE CENTRE

COMPLAINT 20/556

1. As you know, we act for Wendy Cao Akarana-Rewi. Ms Akarana-Rewi is a volunteer at the New Zealand Quit Chinese Communist Party Service Centre ("**NZ Centre**"). The NZ Centre is a local centre of the Global Service Centre for Quitting the Chinese Communist Party. It is also sometimes referred to by an abbreviated name, "End CCP". It is not a legal entity and consists entirely of volunteer individuals.
2. On 19 March 2021, we wrote on behalf of Ms Akarana-Rewi in relation to Complaint 20/556 ("**Complaint**"). The Complaint had been provided under cover of an ASA Complaints Board ("**Complaints Board**") letter dated 17 December 2020 ("**17 December Letter**"). The 17 December Letter indicated that the relevant sections of the Advertising Standards Code ("**Code**") appeared to be Principle 2, Rule 2(b) and Rule 2(e).
3. On 9 April 2021, Ms Maclean, Complaints Manager of the Advertising Standards Authority, advised that there was an error in the 17 December Letter and two further rules should have been included as relevant sections: Principle 1, Rule 1(c) and Rule 1(g). These amendments were confirmed in a further letter from the Complaints Board, dated 9 April 2021 ("**9 April Letter**").
4. Ms Maclean invited Ms Akarana-Rewi to provide a response to these amendments. This letter provides an updated response to Complaint 20/556 in its entirety. Accordingly, please disregard the 19 March 2021 letter and refer to this letter as Ms Akarana-Rewi's response to Complaint 20/556.

Complaint

- 5 The Complaint is in relation to a brochure that was prepared by the NZ Centre ("**Brochure**"). The NZ Centre is happy for Ms Akarana-Rewi to respond to the Complaint on its behalf.

Jurisdiction

6. Our client has had a further opportunity to consider the Complaint. We are instructed that she is concerned the Complaints Board does not have jurisdiction to determine the Complaint for the reasons set out below.
7. While it is accepted that the definition of “advertising” and “advertisement” is worded broadly in the Code, there are also indications in the Code that there should be some commercial or consumer element to the material. For example, under the heading “Interpreting the Code”, the Code specifies that the Complaints Board will have regard to all relevant matters, including “the *consumer* takeout from the advertisement” and “the *product or service* being advertised” (emphasis added). The Brochure does not advertise any product or service and is not addressing consumers of anything. Before considering the Complaint, Ms Akarana-Rewi requires the Complaints Board to consider and determine whether it has jurisdiction to determine the Complaint.

Response to Complaint

8. If the Complaints Board considers that it does have jurisdiction, our client wishes to make the following submissions in response to the Complaint. For the avoidance of doubt, the submissions are made without prejudice to our client’s position that the Complaints Board does not have jurisdiction to determine the Complaint.
9. Our client does not accept that the Brochure has breached the Code in anyway.

Applicable sections of the Advertising Code and relevant matters to consider in assessing Complaint

10. As set out above, the 17 December Letter and the 9 April Letter indicated that the relevant sections of the Code appear to be Principle 2, Rule 2(b) and Rule 2(e) and Principle 1, Rule 1(c) and Rule 1(g). These rules are addressed below.
11. We also note that, in determining whether a Principle has been breached, the Complaints Board will have regard to all relevant matters, including;
 - (a) generally prevailing community standards;
 - (b) previous decisions;
 - (c) the consumer takeout from the advertisement;
 - (d) the context, medium and intended audience; and
 - (e) the product or service being advertised.
 (Advertising Standards Code, Interpreting the Code)
12. Principle 2 of the Code, Truthful presentation, provides that advertisements must be truthful, balanced and not misleading.
13. Rule 2(e) of Principle 2 applies to advocacy advertising. Our client accepts that the Brochure is an example of advocacy advertising. Rule 2(e) provides that 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.

14. Previous ASA decisions have provided guidance on considering complaints in relation to 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 such as abortion.

...

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

(Complaint 21/020. Gianna’s Choice. Decision dated 26 January 2021.)

15. The ASA also provides a guidance note which sets out Advocacy Principles:

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.

(Complaint Number 19/275, Appeal Number 19/013. NZ National Party. Appeal decision dated 28 January 2020).

16. Rule 2(b) of Principle 2, Truthful presentation, provides that 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.

17. Principle 1 of the Code, Social Responsibility, provides that advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society. Rule 1(c), Decency and Offensiveness, provides that advertisements must not contain anything that is indecent, exploitative, degrading, likely to cause harm, serious or widespread offence, or give

rise to hostility, contempt, abuse or ridicule. Rule 1(g), Fear and distress, provides that advertisements must not cause fear or distress without justification.

Submissions

18. This letter sets out the context and factual background to the Brochure, before addressing the specific concerns raised by the Complaint.

Context - Identity and position of advertiser

19. The identity and position of the advertiser is obvious. The Brochure clearly displays that material is the subject of copyright to the “Global Service Centre for Quitting the Chinese Communist Party”. The website address “endccp.com”, and a QR code which can be scanned to access that website, are obvious and easily accessible. It is self-evident from the Brochure what the position of the NZ Centre is – it holds serious concerns about the Chinese Communist Party (“**CCP**”) and invites the audience to visit its website and to sign a petition calling for the end of the CCP. We are instructed that the petition is intended to be provided to different governments and organisations as an expression of the worldwide public’s view on the CCP. In such circumstances, a liberal interpretation of the Advertising Standards Code against section 14 of the New Zealand Bill of Rights Act 1990 (“**NZBORA**”) is appropriate.

Context – Factual Background

20. In considering the Complaint, the Complaints Board must have regard to the context and the prevailing community standards which apply to the Brochure.
21. The factual information contained in the Brochure can be substantiated. The Brochure lists a series of events involving the CCP. Further factual information about these events is readily available and obtainable (see the citations in the endnotes to this letter). There is a consensus among historians that the Cultural Revolution under the CCP, including the Great Chinese Famine, directly or indirectly caused the deaths of millions of people.ⁱ Accusations of human rights abuses and concerns about negative social consequences have been raised about the controversial one child policy.ⁱⁱ The Tiananmen Square Massacre, which is well-known to the general public, has an estimated death toll varying from several hundred to several thousand people, with thousands more wounded.ⁱⁱⁱ The CCP’s persecution of Falun Gong, including the practice of non-consenting organ harvesting, has been acknowledged around the world, including by a Special Rapporteur of the UN Commission on Human Rights and members of the US Senate.^{iv} The CCP’s response to COVID-19 has been criticised in the mainstream media and concerns have been raised that the failures inherent in that response have allowed the virus to spread around the globe.^v More generally, in 2019, the New Zealand government signed a joint letter condemning the treatment of Uighurs in Xianjiang in China^{vi} and the Prime Minister, Jacinda Ardern, has raised serious concerns over the treatment of the indigenous Muslim population directly with the ruling CCP’s leadership.^{vii} Serious concerns about the treatment of the Uighur people by the CCP has also been the subject of recent New Zealand media features.^{viii} Other

administrations and organisations have also raised similar concerns regarding breaches of human rights by the CCP.^{ix}

22. Against that background, there is no question that the CCP has had a controversial history, the events listed in the Brochure are serious and concerning, and the CCP is (and has been) the subject of serious and widespread concern or condemnation by media organisations and various governments, including New Zealand's.
23. The prevailing community standards in New Zealand are also relevant. New Zealand has a strong history of protecting and promoting human rights domestically and internationally, as shown through legislation and New Zealand's ratification and support of international human rights, conventions and protocols.^x There are also particular cultural sensitivities in relation to organ donation from a Māori perspective, even when the organ donation is consented. Unsurprisingly, Māori leaders have condemned the practice of live organ harvesting against Falun Gong practitioners.^{xi}
24. It is against that background, and those standards, that the opinions expressed in the Brochure should be considered.

New Zealand Bill of Rights Act 1990

25. Under s 14 of the NZBORA, the NZ Centre is entitled to express its views on the CCP and robust debate on such issues should be encouraged, including through the interpretation of the Code. The description of the events listed above as "endless tragedies", that the CCP is a demon (defined as a source or agent of evil, harm or distress^{xii}), and that the Chinese CCP has been lying about COVID-19 is the opinion of the NZ Centre, which is apparent from the Brochure. The opinions are expressed in the factual context set out above, the NZ Centre has a right to express those views and considers that it is justified in doing so. It is not necessary for the Brochure's audience to agree with the opinions held by the NZ Centre and there is nothing in the Brochure likely to mislead, confuse or exploit the lack of knowledge of the audience. The NZ Centre's position is clear, it sets out a series of factual events, provides its opinions on the CCP in light of those events, and invites the audience to visit the endccp.com website and to sign a petition supporting its position, if they wish to.
26. The Brochure includes robust criticism of the CCP as a political entity, but it does not refer to any individuals or groups of people. It does not encourage violence or harm. It instead invites the audience to express their views peacefully through an online petition. Our client submits that the Brochure would not reasonably cause fear or distress to any person, unless that fear or distress was in response to the controversial events involving the CCP, which is justified. It is this persecution of groups of people, and violence and abuse against them, that the NZ Centre is concerned with in advertising its views on the CCP. Freedom of speech should protect political discourse unless actual malice or falsehood is shown – nothing close to malice or falsehood is shown here. Therefore, it is open to conclude that the material is not properly a subject of complaint.
27. Our client also considers that it is significant the International Covenant on Civil and Political Rights ("ICCPR"), to which the NZBORA is intended to give effect, limits its obligation to prohibit incitement to hatred to incitement of national, racial or religious hatred (article 20(2)). Therefore, our client submits that is an acknowledgement that in matters of political discourse people have the right to express their views and that this right should not be unduly or unreasonably restricted.

28. Our client also notes that while s 19 of the NZBORA (as well as article 26 of the ICCPR and the 1948 Universal Declaration of Human Rights (articles 2 and 7)) asserts a right to freedom from discrimination based on, among other grounds, political opinion, our client submits that not every differentiation is discrimination: the purpose of combatting discrimination is to promote equality, which in turn means addressing the plight of the disadvantaged. Discrimination is differentiation which disfavors those who are disadvantaged based on identity characteristics. The CCP is not disadvantaged and therefore differentiation of the CCP does not amount to discrimination under the NZBORA or applicable international human rights law instruments. Our client submits that this reinforces the position that in matters of political discourse, people have the right to express their views, that this right should not be unduly or unreasonably restricted and, in fact, implies that robust debate in a democratic society is to be encouraged.

Specific complaints

29. In response to the specific complaints raised in the Complaint, the NZ Centre says
- (a) The Complaint claims that the Brochure contains “hate speech”. The NZ Centre strongly denies this. The complainant provides no basis for this serious allegation, saying “I know it when I see it”. There is no legal definition of hate speech in New Zealand, but a recent Royal Commission of Inquiry companion paper suggests that it is speech that expresses hatred towards people who share a characteristic, such as race, religion or sexual orientation^{xiii} and that any decision to create a hate speech offence (which was being considered in the paper) would need to balance a number of considerations including “the desirability of limiting speech that encourages hostility that may result in harms, such as discrimination, abuse or actual violence or is psychologically and socially damaging for those targeted”.^{xiv} The Brochure does not express hatred to any person or people and does not encourage violence or hostility that might result in harm or damage to any person or people. The Brochure includes robust criticism of the CCP as an entity, but it does not refer to any individuals or groups of people. It certainly does not encourage violence or harm against any person – it invites the audience to express their views peacefully through an online petition. As set out above, in fact, it is persecution of groups of people and violence and abuse against them that the NZ Centre is concerned with, in advertising its views on the CCP.
 - (b) The Complaint refers to the use of the word “demon”. The NZ Centre considers that against the factual background set out above it is entitled to express its opinion that the CCP could be described as a “demon” – a source or agent of evil, harm or distress^{xv}. The NZ Centre has the right to express this opinion under s 14 of the NZBORA and, in the circumstances set out in this letter, that right should not be restricted by the Code.
 - (c) The Complaint refers to the Brochure calling COVID-19 the CCP virus and suggesting that the CCP lied, created cover-ups and asks “should we stop trusting?”. It is not accepted that the Brochure blames China for anything. Its concerns are in relation to the CCP and the Brochure raises concerns about the CCP’s response to the outbreak of COVID-19 in China and refers to the number of cases and deaths as at the time that the Brochure was

produced. The NZ Centre is justified in raising concerns and giving its opinion about CCP's response to the outbreak of COVID-19 given the factual context set out in paragraph 21 above and in end note (v).

- (d) The Complaint also refers to some of the quotes set out on the back of the Brochure. We are instructed that the section of the Brochure called "voice of the people" are direct quotes from people around the world who have previously provided their views on the Chinese Communist Party. It is obvious from the Brochure, which includes the individuals' first names and the flag of their country, that these are opinions of individuals who feel strongly about the CCP and its actions. As set out above, this is not hate speech and the NZ Centre is entitled to include these opinions from individuals under s 14 of the NZBORA and the Code.

Conclusion

30. For the reasons set out above, the material contained in the Brochure is not in breach of the Code, including rules 1(c) or 1(g) of Principle 1 or rules 2(b) and (e) of Principle 2:

- (a) The Brochure clearly meets the requirements of advocacy advertising (rule 2(e)). The identity and position of the advertiser are absolutely clear. The material on the Brochure is clearly opinion and, as set out in paragraph 21, the factual basis for that opinion is set out in the Brochure or is otherwise readily available and obtainable.
- (b) The Brochure is not misleading or likely to mislead, deceive or confuse consumers (rule 2(b)). It is clearly advocacy advertising, and the identity and position of the advertiser are clear. While the Brochure includes robust criticism of the CCP, given the factual background set out above, this criticism, and the strong language used, is justified and does not mislead or otherwise breach rule 2(b).
- (c) The Brochure does not breach rule 1(c) or 1(g). It is not likely to serious or widespread offence^{xvi} or cause any fear or distress. As set out above, it does not contain any threatening messages. It does not encourage violence or harm against any person or people. The NZ Centre sets out its views and concerns regarding the CCP, robustly, which it is entitled to do under s 14 of the NZBORA. It then invites the audience to seek further information and to sign a petition on its website.

31. For the reasons set out above, the NZ Centre submits that, even if the Complaints Board has jurisdiction to consider the Complaint, it should not be upheld.

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