

COMPLAINT NUMBER	20/601
ADVERTISER	The New Zealand Quit Chinese Communist Party Centre
ADVERTISEMENT	The New Zealand Quit Chinese Communist Party Centre, Billboard
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 complaints about an electronic billboard concerning the New Zealand Quit Chinese Community 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, billboard says “END the Chinese Communist Party’s influence and keep New Zealand safe.” The billboard asks viewers to “Sign the petition to end the evil CCP” and includes the website EndCCP.com. The advertisement includes Chinese characters and the image of a man standing in front of tanks.

Summary of the Complaints

There were two complaints about the digital billboard. The Complainants are concerned the advertisement is spreading hate and misleading information. The Complainants said that although they support free speech, this advertisement is promoting discrimination of China and its people. Complainant 2 said the Chinese wording used was offensive as it translates to “God will diminish CCP.”

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 its identity and position is clear and the advertisement is a call to action to sign a petition calling for the end of the Chinese Communist Party. The Advertiser quotes the New Zealand Bill of Rights Act. The Advertiser said there is factual background about the CPP’s controversial history. It said NZ has a strong history of protecting and promoting human rights. The Advertiser said the use of the word

“evil” is their opinion based on references included in the response. The Advertiser is not making any comment about race and is criticising the CPP as an entity. The Advertiser addressed the Chinese wording featured on the billboard and said it means “Heaven destroys the Communist Party” which is an opinion based on the CPP’s historic behaviour.

Summary of the Media Response

JCDecaux have removed the advertisements and have implemented further vetting processes and will no longer accept untranslated or political messages.

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 billboard was an advertisement and the Advertising Standards Code applied. This is because the billboard met the definition of an advertisement as the content was controlled by the Advertiser on a paid media platform and had the intent of influencing those to whom it is addressed. The Complaints Board has previously accepted and ruled on complaints on political advocacy billboards.

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 the 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 these complaints 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 billboard promoting a call to action to sign a petition to end the government of the Chinese Communist Party (CCP). The use of the phrase "keep New Zealand safe" in the advertisement elevated the message for some members of the Board. The majority of the Complaints Board

recognised the tank image as a reference to Tiananmen Square. For a minority of the Board, the tank image, together with the phrase “keep New Zealand safe” suggested an element of fear and threat to New Zealand’s safety.

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 EndCCP.com, was clear given the direct message featured on the Billboard “End The Chinese Communist Party’s Influence.”.

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. 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.

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

The Complaints Board considered whether language used in the advertisement was likely to offend or give rise to hostility. This language included calling the Chinese Communist Party “evil” and the translations provided for the Chinese text were “God will diminish the CCP” or “Heaven destroys the CPP”. The Complaints Board noted that the language was directed at a political party in a foreign jurisdiction. The Complaints Board said that although the language was provocative, it did not reach the threshold to cause serious or widespread offense or hostility, taking into account that the language was aimed at a political party rather than individuals or specific groups of people. 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.

Does the advertisement cause fear or distress without justification?

The majority of the Complaints Board 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.

A minority of the Complaints Board disagreed and said the combination of the language used, the imagery of the tanks and implied violence as well as the reference to the potential safety of New Zealand on a large billboard, which is an unrestricted medium, could cause fear and distress without justification.

For a minority of the Complaints Board the advertisement was in breach of Rule 1(g) of the Advertising Standards Code.

However, in accordance with the majority, 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(g) due to the inflammatory language used and the heightened sense of threat by referencing New Zealand's safety 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 complaints were **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 1

This ad has been circulated on the giant digital billboard located on the busy corner of Hobson St and Union St in Auckland CBD as pictured . I have seen it a few times driving past it , I wasn't able to take a photo as I was driving , but the signage had a huge font stating " endccp.com END THE EVIL CHINESE COMMUNIST PARTY " slogan . People can very easily notice the content and the domain name is easy enough to memorize as well . As a NZ residence originated from Mainland China living in NZ for the past 16 years , this is extremely disturbing and I have very high concern of this ad been spreading as our community already has enough racism matters , I strongly believe this advertiser is purposely spreading more hatred , misled information to interfere local residences' understanding and to predominantly creating more conflicts in interests between different race and nationality . China is run by the CCP .

For the amount of positive cultural and economical influence /impact China has in NZ and for the Chinese people and more vulnerable Chinese international students in NZ society , how is someone spreading the idea of " coronavirus = CCP VIRUS " helpful to both our chinese community and other local NZ residents . How can we establish more fairness and equal rights for people with Chinese nationality here in NZ , if people base their understanding on " CHINA /CCP IS EVIL AND NEEDS TO BE ENDED " ? the information the advertiser is spreading is just simply a discrimination of China the country and also its people . I believe NZ as a diverse community and country , we can encourage free speech , but we can not encourage unverified / untrue or misleading information . It's not socially responsible to run such ad in our community at all .

I have simply experienced abusive acts from people who have this belief/understanding .please feel free to contact me for more details . Thank you very much for your time and consideration .

COMPLAINT 2 –

Intersection between Hobston street and Union Street
2020-12-07

This is a very offensive digital billboard ad for all our Chinese citizens and Chinese government. They words that were used are very inappropriate and offensive. which violates the Rule 1 (c) Decency and Offensiveness. And some inappropriate word such as 'to end the evil CCP' also violates Rule 1 (g) Fear and distress. They also have Chinese wording '天灭中共' meaning ' god will diminish CCP', which is very shocking word. I feel very uncomfortable when I saw these kind of message on the billboard in the public. Can you please escalate and make sure the content is appropriate and more respectful or replace it with sense of humor.

Appendix 2

RESPONSE FROM ADVERTISER, NEW ZEALAND QUIT CHINESE COMMUNIST PARTY SERVICE CENTRE

COMPLAINT 20/601

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 20/601 (“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). Ms Maclean also advised that a further complaint had been added to Complaint 20/601 as it was in relation to the same billboard (it had previously been included in Complaint 20/596). 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 20/601 in its entirety. Accordingly, please disregard the 19 March 2021 letter and refer to this letter as Ms Akarana-Rewi’s response to Complaint 20/601.

Complaint

5. Complaint 20/601 (“Complaint”) is in relation to a digital billboard displayed at the intersection of Hobson Street and Union Street in late 2020.
6. The Complaint now involves two complaints:
 - a) Complaint 1 – which describes the material complained about as a digital billboard located on the corner of Hobson Street and Union Street. It does not provide a date for the when the billboard was viewed (“Complaint 1”).
 - b) Complaint 2 – which provides the details of the material as a billboard, observed at the intersection between Hobson Street and Union Street on 07 December 2020 (“Complaint 2”). This complaint had previously been included in Complaint 20/596.
7. The 9 April Letter includes a picture of a billboard. We are instructed that this picture shows the billboard that is subject to both Complaint 1 and Complaint 2 (“Digital Billboard”). (Complaint 1 was originally provided under cover of the 17 December Letter which included a screen shot with the words “the ad looked like this”. We are instructed that the picture provided with the 17 December Letter does not show what was displayed on the Digital Billboard).
8. The Digital Billboard was prepared by the NZ Centre. The NZ Centre is happy for Ms Akarana-Rewi to respond to the Complaint on its behalf.

Jurisdiction

9. Our client has had a further opportunity to consider the Complaint. We are instructed that she is concerned that the Complaints Board does not have jurisdiction to determine the Complaint for the reasons set out below.
10. 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 Digital Billboard 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

11. If the Complaints Board considers that it does have jurisdiction to determine the Complaint, 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.
12. Our client does not accept that the Digital Billboard has breached the Code in any way.

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

13. 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.
14. 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)

15. Principle 2 of the Code, Truthful Presentation, provides that advertisements must be truthful, balanced and not misleading.
16. Rule 2(e), Principle 2, applies to advocacy advertising. Our client accepts that the Digital Billboard 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.

17. 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 [“BORA”] must also be considered.

Section 14 of the [BORA] 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.)

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

1. That section 14 of the [BORA], 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).

19. Rule 2(b), 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.

20. 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

21. This letter sets out the context and factual background to the Digital Billboard, before addressing the specific concerns raised by the individual complaints.

Context - Identity and position of advertiser

22. It is submitted that the identity and position of the advertiser is clear on Digital Billboard. While the Digital Billboard contains a limited amount of text, as appropriate for that medium, the "endccp.com" website (which includes its abbreviated name) is displayed prominently in large text. It is self-evident from the information displayed on the Digital Billboard what the position of the advertiser is – it holds serious concerns about the Chinese Communist Party ("CCP"). It 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 these circumstances, a liberal interpretation of the Advertising Standards Code, in light of section 14 of the BORA, is appropriate.

Context – Factual Background

23. In considering the Complaint, the Complaints Board must have regard to the context and the prevailing community standards which apply to the Digital Billboard.
24. The NZ Centre submits that the following factual context should be taken into account:
- a) There is a consensus among historians that the Great Leap Forward (1958-1962) and Cultural Revolution (1966-1976) under the CCP, including the Great Chinese Famine, directly or indirectly caused the deaths of millions of people.i
 - b) Accusations of human rights abuses and concerns about negative social consequences have been raised about the controversial one child policy which was a CCP policy in place between the late 1970s until 2015.ii
 - c) The 1989 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
 - d) The CCP's 22 year long 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
 - e) 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

- f) In 2019, the New Zealand government signed a joint letter condemning the treatment of Uighurs in Xianjiang in Chinavi and the New Zealand 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, organisations and academics have also raised similar concerns regarding breaches of human rights.ix
- g) Concerns have been raised by academics, commentators, and the media regarding the CCP's political influence in New Zealand and possible issues with this influence, both within New Zealand and with other countries.x
- 25 Having regard to this factual background, there is no question that the CCP has had a controversial history and is (and has previously been) the subject of serious and widespread concern or condemnation including by media organisations and various governments, including New Zealand's.
- 26 The prevailing community standards in New Zealand are relevant. New Zealand has a strong history of protecting and promoting human rights domestically and internationally, as shown through legislation such as BORA and New Zealand's ratification and support of international human rights, conventions and protocols.xi xii 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.
- 27 It is against that background and standards, that the Digital Billboard should be considered.
- New Zealand Bill of Rights Act 1990**
- 28 Under s 14 of the BORA, the NZ Centre is entitled to express its views on the CCP. Robust debate on issues such as human rights and political influence should be encouraged, including through the interpretation of the Code. The Digital Billboard contains statements which are obviously opinions held by the NZ Centre: that the CCP is described as "evil" and that its influence should be ended to keep New Zealand safe. These opinions are held in the factual context set out above, supported by the references included in this letter. The NZ Centre has a right to express these views and considers that it is justified in doing so. It is not necessary for the audience to agree with the opinions held by the NZ Centre and there is nothing in the Digital Billboard likely to mislead, confuse or exploit the lack of knowledge of the audience. The NZ Centre's identity and position is clear, it sets out its opinions on the CCP and invites the audience to visit the endccp.com website and to sign a petition supporting the NZ Centre's views, if the audience wishes to.
- 29 The Digital Billboard includes robust criticism of the CCP as an 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 Digital Billboard 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.

- 30 Our client also considers that it is significant that 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.
- 31 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

32 The NZ Centre addresses the specific points raised in the individual complaints below:

Complaint 1

- 33 In response to the specific matters raised in Complaint 1, the NZ Centre says:
- a) The complainant suggests that the Digital Billboard is racist and discriminates against China and its people. The NZ Centre denies this. The NZ Centre is not making any comment on any race or nationality. The Digital Billboard includes robust and justified criticism of the CCP as an entity but does not make any comment on any race, ethnic group or nation.
 - b) The complainant claims that the Digital Billboard is “extremely disturbing” and is spreading “hatred”. The Digital Billboard does not express hatred and does not contain any threatening messages or abusive or offensive language. It does not encourage or promote violence or harm. Rather, it provides its justifiable views on the CCP and invites the audience to express their views, peacefully, through an online petition. For the same reasons, the NZ Centre also does not accept that the Digital Billboard is “disturbing”.
 - c) The NZ Centre also disagrees with suggestion that the Digital Billboard contains unverified, untrue or misleading information. Its views about the CCP are obviously opinion and, in light of the factual background set out in paragraph 24, those opinions are justifiable, consistent with s 14 of the BORA, and is not in breach of the Code. The Digital Billboard makes the NZ Centre’s position clear and prominently displays its abbreviated name and website.

- d) The NZ Centre notes that the complainant records that he or she has experienced “abusive acts from people who have this belief/understanding”. While the NZ Centre is sorry to read that the complainant has had such an experience, it is not clear what “belief/understanding” the complainant is referring to and the complainant does not suggest that the experience was as a result of the Digital Billboard. No further specifics of the experience are provided so the NZ Centre is unable to comment further on this matter.
- e) The complainant also refers to the idea that “coronavirus = CCP virus” is being unhelpful. The NZ Centre notes that “coronavirus = CCP virus” was not displayed on the Digital Billboard. It appears to be a reference to material from the endccp.com website. The Digital Billboard, not the endccp.com website, is the subject of the Complaint and accordingly the complainant’s comments on the material taken from the website should not be included in ASA’s consideration of the Complaint. If, despite these submissions, the ASA considers the material referred to from the website is the subject of the Complaint, the NZ Centre does not accept that the Complaints Board has jurisdiction to consider the endccp.com website. The NZ Centre reserves its rights to make further submissions on this if the ASA does consider it is entitled to consider the material from the endccp.com website, but, it says for the time being, that in any event, the NZ Centre is justified in raising concerns and giving its opinion about CCP’s response to the outbreak of COVID-19 in China and is justified in doing so given the factual context set out in paragraph 24(e) above and in end note (v).

Complaint 2

34 In response to the specific matters raised in Complaint 2, the NZ Centre says:

- a) The complainant claims that the Digital Billboard is very offensive and that the words used are offensive, inappropriate, and shocking. In particular, the complainant is concerned with the wording “[Sign the Petition] to end the evil CCP” and “天灭中共” which the complainant alleges means “god will diminish CCP”.
- b) The NZ Centre does not agree that the Digital Billboard or the wording used is offensive, inappropriate or shocking. We are instructed that “天灭中共” in English can be translated as “Heaven destroys the Chinese Communist Party”. In light of the factual background set out above at paragraph 24, the NZ Centre’s opinion is that the CCP’s historical behaviour is evil and inconsistent with fundamental religious and moral principles. It is entitled to express the opinion under s 14 of the NZBORA and the Code.
- c) The complainant refers to rules 1(c) and 1(g) of the Code. The NZ Centre does not accept that anything in the Digital Billboard breaches either of those rules. The Digital Billboard includes robust criticism of the CCP as an 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. The NZ Centre submits that the Digital Billboard 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.

Conclusion

35 For the reasons set out above, the material contained in the Digital Billboard 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 Digital Billboard clearly meets the requirements of advocacy advertising (rule 2(e)). The identity and position of the advertiser are absolutely clear. The material on the Digital Billboard is clearly opinion and, as set out in paragraph 24, the factual basis for that opinion is readily available and obtainable.
- b) The Digital Billboard 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 Digital Billboard 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 Digital Billboard does not breach rule 1(c) or 1(g). It is not likely to cause serious or widespread offence xiii 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.

36 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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ii “Nanfu Wang: the untold history of China’s one child policy” (3 July 2019) Radio New Zealand <rnz.co.nz> <https://www.rnz.co.nz/national/programmes/ninetoon/audio/2018702437/nanfu-wang-the-untold-history-of-china-s-one-child-policy>; “One-child policy” (accessed 16 March 2021) Wikipedia <en.wikipeda.org> https://en.wikipedia.org/wiki/One-child_policy#Criticism

iii “1989 Tiananmen Square protests” (accessed 16 March 2021) Wikipedia <en.wikipeda.org> https://en.wikipedia.org/wiki/1989_Tiananmen_Square_protests

iv “Torture, though on decline, remains widespread in China, UN expert reports” (2 December 2005) UN News <news.un.org/en/>. <https://news.un.org/en/story/2005/12/162092-torture-though-decline-remains-widespread-china-un-expert-reports>; “Short form conclusion of the China Tribunal’s judgment” China Tribunal <chinatribunal.com>. <https://chinatribunal.com/final-judgment/>; “Sens. Moran, Menendez Introduce Bipartisan Resolution in Support of Falun Gong” United States Senator for Kansas - Jerry Moran <moran.senate.gov/public/index.cfm/>. <https://www.moran.senate.gov/public/index.cfm/2019/7/sens-moran-menendez-introduce-bipartisan-resolution-in-support-of-falun-gong>.

v “China Is Avoiding Blame by Trolling the World” (19 March 2020) The Atlantic <theatlantic.com/world/>. <https://www.theatlantic.com/ideas/archive/2020/03/china-trolling-world-and-avoiding-blame/608332/>; “Coronavirus: Dr Li Wenliang treated ‘inappropriately’ before death from Covid-19, Chinese

officials admit" (20 March 2020) NZ Herald <nzherald.co.nz>. <https://www.nzherald.co.nz/world/coronavirus-dr-li-wenliang-treated-inappropriately-before-death-from-covid-19-chinese-officials-admit/RR4KMG4R3K6VY76GTWV74MS5Y/>; "Holding the Chinese Communist Party Accountable for Its Response to the COVID-19 Outbreak" (12 May 2020) The Heritage Foundation <heritage.org> <https://www.heritage.org/asia/report/holding-the-chinese-communist-party-accountable-its-response-the-covid-19-outbreak>.

vi UN Ambassadors "Open Letter from UN Ambassadors from 22 states" (8 July 2019) Human Rights Watch <hrw.org>. https://www.hrw.org/sites/default/files/supporting_resources/190708_joint_statement_xinjiang.pdf; Falun Gong ask PM to stand up to China" (19 July 2019) Newsroom <newsroom.co.nz> <https://www.newsroom.co.nz/falun-gong-ask-pm-to-stand-up-to-china>.

vii "PM defends NZ stance after allegations of rape of Uighurs in Chinese camps" (5 February 2021) Stuff <stuff.co.nz>. <https://www.stuff.co.nz/national/politics/300222994/pm-defends-nz-stance-after-allegations-of-rape-of-uighurs-in-chinese-camps>

viii Stuff Circuit investigation video clip available at: <https://www.stuff.co.nz/national/stuff-circuit/300257321/chinese-consulate-voices-displeasure-at-stuff-circuit-uyghur-investigation--deleted> Newshub feature video clip available at: <https://www.newshub.co.nz/home/shows/2019/07/kiwi-uyghur-man-claims-harassment-and-threats-by-chinese-embassy.html>

ix "Canada's parliament declares China's treatment of Uighurs 'genocide'" (23 February 2021) BBC <bbc.com/news>. <https://www.bbc.com/news/world-us-canada-56163220>; "Secretary of State Antony Blinken says he stands by Mike Pompeo's designation that China committed genocide against the Uighurs" (28 January 2021) MSN <msn.com/en-us/news> <https://www.msn.com/en-us/news/world/secretary-of-state-antony-blinken-says-he-stands-by-mike-pompeo-s-designation-that-china-committed-genocide-against-the-uighurs/ar-BB1daxXE>; "Xinjiang: Landmark report finds China breaching every act of UN Genocide Convention with treatment of Uighurs" (10 March 2021) Newshub <newshub.co.nz> <https://www.newshub.co.nz/home/world/2021/03/xinjiang-landmark-report-finds-china-breaching-every-act-of-un-genocide-convention-with-treatment-of-uighurs.html>; "China's 'XXX Files': 25 Thousand People Disappear Each Year, Their Organs Are Harvested" (4 December 2020) Haaretz <Haaretz.com> <https://www.haaretz.com/world-news/MAGAZINE-china-s-xinjiang-xxx-files-thousands-uighur-disappear-organs-harvested-1.9340106>; "UK parliament declares genocide in China's Xinjiang; Beijing condemns move" (23 April 2021) Reuters <reuters.com> <https://www.reuters.com/world/uk/uk-parliament-declares-genocide-chinas-xinjiang-raises-pressure-johnson-2021-04-22/>

x "Spy within Five Eyes describes NZ's political system as 'compromised' by Chinese influence" (13 January 2020) Newshub <newshub.co.nz> <https://www.newshub.co.nz/home/politics/2020/01/spy-within-five-eyes-describes-nz-s-political-system-as-compromised-by-chinese-influence.html>; "Chinese 'soft power' influence becomes election issue in New Zealand" (21 September 2017) ABC <abc.net.au> <https://www.abc.net.au/radio/programs/worldtoday/chinese-soft-power-influence-in-new-zealand/8967852>; "Paper on Chinese influence tests academic freedom in New Zealand" (6 November 2020) Inside Higher ED <insidehighered.com> <https://www.insidehighered.com/print/news/2020/11/06/paper-chinese-influence-tests-academic-freedom-new-zealand>; "China's influence on campus chills free speech in Australia, New Zealand" (9 August 2019) The Straits Times <straitstimes.com> <https://www.straitstimes.com/asia/australianz/chinas-influence-on-campus-chills-free-speech-in-australia-new-zealand>

xi This includes the ICCPR which New Zealand ratified in 1968 and the Universal Declaration of Human Rights. See also "Human rights and freedoms" (28 January 2021) New Zealand Government <govt.nz> <https://www.govt.nz/browse/law-crime-and-justice/human-rights-in-nz/human-rights-and-freedoms/> and "New Zealand Human Rights Action Plan 2019-2023: Advocacy Priorities" <https://www.mfat.govt.nz/assets/Peace-Rights-and-Security/Human-rights/NZ-Human-Rights-Action-Plan.pdf>

xii Lewis G. & Pickering, N. 2003. Māori Spiritual Beliefs and Attitudes Towards Organ Donation. NZ Bioeth J. 4(1), p31-5. <http://www.nzlii.org/nz/journals/NZBioethJl/2003/9.pdf>; "New Zealand: Maori Chief Files Lawsuit Against Jiang Zemin" (13 August 2015) Mighui.org <en.minghui.org>. <https://en.minghui.org/html/articles/2015/8/13/152051.html>

xiii It is not sufficient that a small number of individuals may feel offended by an advertisement. The offence that is likely to be caused must either be serious or widespread. (Selene Mize "From Goldstein to the Burger King Babes: People Issues in Advertising" in Ursula Cheer (ed) *The Real Deal!* (The Centre for Commercial & Corporate Law Inc, Christchurch, 2008) 109 at 111-112.

Appendix 3

RESPONSE FROM MEDIA, JCDECAUX

1 x static site went live on 7.12.2020, 5 digital sites were live w/c 7th Dec, 14th Dec, 21st and one was live for w/c 28th Dec. The digital sites ran for 1 week and the static was booked for 2 months but was removed on 8 January 2021 when we were advised the messaging was potentially offensive.

The team when accepting the booking reviewed the English message and did not seek a translation of the Chinese text. The offensiveness of both messages is subjective if it breaches Principle 1(c), but clearly deemed highly by a number of individuals.

As a result of this campaign we have implemented additional steps to our approval process:

- 1) Any foreign language must be translated by an independent third party before approval
- 2) Outside of the New Zealand electoral process (Govt and councils) no political messages will be accepted
- 3) Revert back to the ASA if the message is on the outskirts of 1 and/or 2 prior to acceptance.

In addition we advised the client we can not accept any future advertising from them.