

COMPLAINT NUMBER	21/294
ADVERTISER	The New Zealand Quit Chinese Communist Party Centre
ADVERTISEMENT	The New Zealand Quit Chinese Communist Party Centre, Poster
DATE OF MEETING	22 June 2021
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a Poster displayed by 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 poster advertisement says “Sign the Petition END CCP. The CCP is the biggest threat to humanity. Eliminate the Demon Communist Party.” It states “This pandemic could have been prevented if the Chinese Communist Party (CCP) did not lie. Yet, ever since it took over China, hundreds of millions of people have been suffering from its endless deceptions and brutality. The demon CCP has plundered the ancient land of China, and now its terror has spread globally, affecting everyone. It is time for all of us to reject its evil work and put an end to the Chinese Communist Party!” The poster includes a QR code and a website address, endccp.com and a seal of the Global Service Centre for Quitting the Chinese Communist Party.

Summary of the Complaint

The Complainant was concerned the advertisement was inappropriate to attack a nations sovereignty and is racist as well as using worrying language such as “Demons”. The Complaints were concerned about claims made in the advertisement were unproven, conspiratorial opinions.

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 Poster constituted advertising.

The Advertiser defends the advocacy advertisement saying identity and position is clear and is a call to action to sign a petition calling for the end of the Chinese Communist Party. The Advertiser quotes the Bill of Rights Act. The Advertiser said there is factual background about the CCP's controversial history. The Advertiser said the phrase "eliminate the demon" is their opinion based on references included in the response. The Advertiser is not making any comment about race and is criticising the CCP as an entity.

Summary of the Media Response

Phantom Media have removed the advertisement.

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 poster was an advertisement and the Advertising Standards Code applied. This is because the poster 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 posters that communicate a political message rather than purely commercial or consumer advertising.

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 poster 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 alleged 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 "Biggest threat to humanity" and the reference to "Evil work" 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**
 3. **Response from Media**
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Appendix 1

COMPLAINT

This poster has been seen on multiple Phantom Billstickers sites. The attached image is from a Symonds St site - approx 60 Symonds St Auckland. It is not immediately apparent who the advertiser is.

This poster is racist and somewhat concerning in some of its terminology – as well as advancing unproven, conspiratorial opinions about COVID-19. The use of “demon” is quite worrying, and it’s also concerning to me that this xenophobic, threatening message is posted where sizeable numbers of Chinese students will encounter it. (Near several tertiary institutions including AUT and the University of Auckland.

I raised these concerns with Phantom on Monday November 30, specifically noting "It would be great to know more about how this made it through your vetting process and hear your response to my comments above." At this time, I have not received a response.

Appendix 2

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

COMPLAINT 21/294

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 a complaint numbered 20/596. 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). Complaint 20/596 originally involved three complaints, but Ms Maclean advised that one of those complaints had been moved to another complaint (now included in Complaint 20/601). These amendments were confirmed in a further letter from the Complaints Board, dated 9 April 2021 (“**9 April Letter**”). Ms Maclean invited Ms Akarana-Rewi to provide a response to these amendments which was done by way of a letter dated 27 April 2021.
4. On 24 May 2021, Ms Maclean advised that the two remaining complaints covered by Complaint 20/596 actually related to two different posters and that a picture of only one poster had been supplied with the 9 April letter. A picture of the other poster was

provided by email on 24 May 2021. Ms Maclean invited Ms Akarana-Rewi to provide a further response to that poster if she wished. Ms Akarana-Rewi accepted that opportunity.

5. On 26 May 2021, the Complaints Board provided separate letters in relation to each of the posters and separately renumbered each complaint. This letter provides a response to Complaint 21/294 (“**Complaint**”).

Complaint

6. The Complaint is in relation to posters displayed at multiple sites including at approximately 60 Symonds Street.
7. A picture of the poster displayed at approximately 60 Symonds Street was provided with the 26 May 2021 letter (“**Poster**”).
8. The Poster 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 is concerned about whether the Complaints Board has 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 Poster 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 Poster has breached the Code in any way.

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

13. We understand from previous correspondence and the 26 May 2021 letter that the relevant sections of the Code appear to the ASA 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 Poster 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 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.)

18. 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).

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 begins by setting out the context and factual background to the Poster, before addressing the specific concerns raised by the Complaint.

Context - Identity and position of advertiser

22. It is submitted that the identity and position of the advertiser is clear on the Poster. The “endccp.com” website is displayed prominently in large text. The Poster also displays the seal of the Global Service Centre for Quitting the Chinese Communist Party and a QR code for the website. It is self-evident from the information displayed on the Poster what the position of the advertiser is – the advertisement is setting out the concerns held by the advertiser 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 Code against section 14 of the New Zealand Bill of Rights Act 1990 (“**NZBORA**”) is appropriate.

Context – Factual Background

23. In considering the Complaint, the Complaints Board must have regard to the context and the prevailing community standards.

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 China^{vi} 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}
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 main-stream media and various governments, including New Zealand's.
26. 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 such as the NZBORA 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}
27. It is against that background and standards that the Poster should be considered.

New Zealand Bill of Rights Act 1990

28. Under s 14 of the NZBORA, the NZ Centre is entitled to express its views on the CCP. Robust debate on issues such as human rights should be encouraged, including through the interpretation of the Code. The Poster contains statements which are obviously opinions held by the NZ Centre: that the CCP is evil, brutal and has caused suffering, it has been deceptive in relation to the COVID-19 pandemic

and can be described as a demon (which can be defined as “a source or agent of evil, harm, distress, or ruin^{xiii}”). These opinions are held in the factual context set out above and 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 audience to agree with the opinions held by the NZ Centre and there is nothing in the Poster 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 Poster 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. It submits that the Poster 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)). This, our client submits, 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 disfavours 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. As above, our client submits 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, robust debate in a democratic society is to be encouraged.

Specific complaints

32. The NZ Centre addresses the specific points raised in the complaint below:
 - (a) The complainant suggests that it is not immediately apparent who the advertiser is. This is not accepted for the reasons already set out above. The poster displays “endccp.com”, incorporating the commonly used abbreviation of the advertiser’s name, in large font, at the top of the Poster. The seal of the Global Service Centre for Quitting the Chinese Communist Party, setting out its full name, is also displayed on the Poster. Further, the position of the advertiser is made clear so there can be no suggestion that the audience would be misled as to position of the advertiser.

- (b) The complainant suggests that the Poster is racist and contains a xenophobic, threatening message. This is strongly denied. The NZ Centre's concerns are with the CCP as a political entity not with any persons or people. It does not make any comment on any race, ethnic group, or nation. It does not contain any threatening messages. It does not encourage violence or harm against any person or people. Instead, it invites the audience to express their views peacefully through an online petition if they wish.
- (c) The complaint says that the use of the word "demon" is worrying. 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.^{xiii} 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.
- (d) The complainant also raises a concern about the poster being displayed near tertiary institutions, including AUT and the University of Auckland, where "sizeable numbers of Chinese students will encounter it." As set out above, the NZ Centre does not accept that the poster is xenophobic or threatening. The poster sets out the NZ Centre's concerns with the CCP and makes no comment about any race, ethnic group or nation. The NZ Centre does not accept the implicit suggestion that tertiary students of Chinese ethnicity or nationality might be more vulnerable or that the NZ Centre's rights to express its opinions under the NZBORA should be limited in any way given that potential audience. The NZ Centre's ability to express its opinion should continue to be protected, particularly given recent media reports of the CCP's alleged influence over, and even censorship of, tertiary institutions such as those named by the complainant.^{xiv}

Conclusion

33. For the reasons set out above, the Poster is not in breach of the Code, including rules 1(c) or 1(g) of Principle 1 or 2(b) and (e) of Principle 2:
- (a) The Poster clearly meets the requirements of advocacy advertising (rule 2(e)). The identity and position of the advertiser are absolutely clear. The material on the Poster which is opinion is also apparent and, as set out in paragraph 23, the factual basis for that opinion is readily available and obtainable.
 - (b) The Poster 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 Poster includes robust criticism of the CCP, given the factual background as set out above, this criticism, and the strong language used in the Poster, is justified, and does not mislead or otherwise breach rule 2(b).
 - (c) The Poster does not breach rule 1(c) or 1(g). It is not likely to cause serious or widespread offence^{xv} 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.

34. 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.

- ⁱ “Mass killings under communist regimes - China” (accessed 16 March 2021) Wikipedia <en.wikipeda.org> https://en.wikipedia.org/wiki/Mass_killings_under_communist_regimes#China; “Remembering the biggest mass murder in the history of the world” (4 August 2016) The Washington Post <washingtonpost.com/news/> <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/08/03/giving-historys-greatest-mass-murderer-his-due/>; “The Cultural Revolution: all you need to know about China’s political convulsion” (11 May 2016) The Guardian <theguardian.com> <https://www.theguardian.com/world/2016/may/11/the-cultural-revolution-50-years-on-all-you-need-to-know-about-chinas-political-convulsion>
- 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.wikipedia.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/RR4KMGG4R3K6VY76GTWV74MS5Y/>; “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>
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- ^{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 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>

^{xi} 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>

^{xii} Merriam Webster dictionary (accessed 16 March 2021) <merriam-webster.com>

^{xiii} *ibid*

^{xiv} “We must speak out on AUT, China and threats to academic freedom” (3 August 2019) The Spinoff <thespinoff.co.nz> <https://thespinoff.co.nz/society/03-08-2019/we-must-speak-out-on-aut-china-and-threats-to-academic-freedom/>; “How China Tries to Take its Totalitarian Social Control Tactics Global” (2 August 2019) The Federalist <thefederalist.com> <https://thefederalist.com/2019/08/02/china-tries-take-totalitarian-social-control-tactics-global/>

^{xv} 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.

RESPONSE FROM MEDIA, PHANTOM MEDIA

As previously mentioned we have already pulled this campaign from our network. We therefore are happy to settle.

Our network team will do a sweep to ensure that none remain on our network.