

<b>COMPLAINT NUMBER</b>	21/218
<b>ADVERTISER</b>	New Zealand Government
<b>ADVERTISEMENT</b>	New Zealand Government, Brochure
<b>DATE OF MEETING</b>	27 July 2021
<b>OUTCOME</b>	No Grounds to Proceed

**Advertisement:** The New Government COVID-19 brochure advertisement headed “Our COVID-19 vaccination plan”, shows a cartoon of a family blowing bubbles. The advertisement provides information about securing enough Pfizer vaccine for everyone in New Zealand aged 16 and over and it being free. The advertisement gives a brief description of how the vaccine works and why it is safe. The advertisement explains how the staged vaccination roll out will work with advice about on how to be ready for each group’s rollout date. The advertisement has translations into various languages. The advertisement contains the All of Government logo and the Unite against Covid-19 logo.

**The Chair ruled there were no grounds for the complaints to proceed.**

**The relevant provisions were Advertising Standards Code - Principle 1, Principle 2, Rule 2(b), Rule 2(e) and Therapeutic Health Advertising Code Principle 1, Rule 1(a).**

### **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.

**Principle 2: Truthful Presentation:** Advertisements must be truthful, balanced and not misleading.

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

**Rule 1(g) Fear and distress:** Advertisements must not cause fear or distress without justification.

**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.

## Therapeutic and Health Advertising Code

**Principle 1 Social Responsibility:** Therapeutic and Health advertisements shall observe a high standard of social responsibility particularly as consumers often rely on such products, devices and services for their health and wellbeing.

**Rule 1(a) Mandatory information:** Advertisements shall contain the following mandatory information to encourage responsible prescribing, recommendation, sale and use.

Medicines

Mandatory information as required by the most recent edition of the Medicines Act, Medicines Regulations, Medsafe Guideline on Advertising therapeutic products, Medicines NZ Code of Practice and the Self-Medication Industry Code of Practice.

### About Advocacy Advertising under the Advertising Standards Code

The Chair confirmed the advertisement from the New Zealand Government on matters relating to the COVID-19 vaccination programme was advocacy advertising under the Advertising Standards Code.

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.

The Chair observed that in a free and democratic society, issues should be openly debated without undue hindrance or interference from authorities such as the Advertising Standards Authority (ASA), and it should not unduly restrict the Government's role in communicating public health information to the public.

Complainants sometimes ask the ASA to in effect decide which side in an advocacy debate is correct, but the Advertising Standards Complaints Board has consistently declined to have a view. The ASA is not an arbiter of scientific fact. 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. In the first instance the Chair's role is to decide if there are any grounds for the complaint to proceed.

Under Rule 2(e) Advocacy advertising in 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.

The Chair confirmed the Advertiser's identity was clear. The advertisement included logos for the New Zealand Government and the Unite against COVID-19 campaign seen throughout the pandemic response. The position of the Advertiser was also clear. It is an

advertisement to promote the vaccination rollout. The Chair said the advertisement complied with the identity requirements of Rule 2(e) of the Advertising Standards Code.

The Chair noted the advertisement had been approved by the New Zealand Government. The Chair confirmed the agencies supporting the Government's COVID-19 approach included the Ministry of Health, an expert body with regard to its statutory role relating to public health matters. The role and jurisdiction of the ASA in advertising from expert bodies is addressed in *Electoral Commission v Cameron* [1997] 2 NZLR 421. In accordance with the findings of the Court of Appeal, the Advertising Standards Authority was required to "tread carefully" and ensure that it did not substitute its opinion for that of the expert body.

### **Application of the Therapeutic and Health Advertising Code**

The Chair considered the Therapeutic and Health Advertising Code applied to the COVID-19 advertisement and whether it has been breached because mandatory information had not been included. The Therapeutic and Health Advertising Code includes the following statement in the introductory section "For the avoidance of doubt, where legislation relevant to this Code has been updated and/or if a conflict occurs in relation to legislative and code requirements, legislative requirements will prevail".

Section 32A of the Medicines Act provides exemptions to the Crown when selling, distributing, and advertising a medicine. Given this exemption, the Ministry of Health, is not required to include the mandatory information in advertisements for medicines as usually required in the Medicines Act 1981. The Chair ruled the advertisement does not breach Principle 1 or Rule 1(a) of Therapeutic and Health Advertising Code.

### **Application of the Advertising Standards Code for an advocacy advertisement**

In reviewing the complaints about this advertisement, the Chair took into account the role of advocacy advertising, the liberal interpretation of the Codes required by the [Advocacy Principles](#), the application of [Cameron](#), the likely consumer takeout, and the context for the advertising; the New Zealand Government's response to the COVID-19 pandemic with an audience of all New Zealanders. The Chair also noted the large amount of information available from a variety of sources about COVID-19, including the Government, the science community, news media and interest groups.

18 Complainants have raised a number of issues about this advertisement, and these are summarised below:

- The use of the word "protected"
- The safety and efficacy claims made about the vaccine
- The Pfizer approval process
- The DNA claim
- The claim the vaccination is free and for everyone when children will not receive it
- The absence of information about vaccine risks
- The absence of mandatory information about the vaccine
- Coercive nature of the messaging
- The play on fear
- The distribution to households with no circular notification

*Is the advertisement likely to mislead or deceive most consumers?*

**Advertisement claim: - "We've secured enough Pfizer vaccine for everyone...to get the two doses they need to be protected."**

The Chair said most people would consider the word "protected" would refer to the defence the vaccination can offer as part of the Government's strategy in response to COVID19.

The Chair noted the Ministry of Health's position that protection is about how well the body responds to harmful infections. The Chair noted information that confirmed the Government's vaccination plan is aimed at teaching an individual's immune system to recognise an infectious disease so that when exposed to that disease the immune system can fight it off.

The Chair said the use of the word "protected" was not misleading in the advertisement.

**Advertisement claim: - "Medsafe...only grants consent for a vaccine...once they are satisfied it's safe and effective. There have been no shortcuts in granting approval."**

The Chair noted that Complainants raised a number of issues that she considered under Principle 2 of the Advertising Standards Code, relating to truthful presentation. Some Complainants said the advertisement overstated the effectiveness of the vaccine and noted it only has provisional approval from Medsafe. Some Complainants expressed concern at the lack of mandatory information in a prescription medicine advertisement.

The Chair acknowledged the Complainants' sincere concerns and their takeouts of the advertising.

The Chair said these issues related to the efficacy of the vaccine. The Chair confirmed the efficacy of the vaccine was not a matter for the ASA. The vaccine referred to in the advertising had received approval from Medsafe, the Government regulator for prescription medicines. The Chair noted the [Datasheet](#) which sets out all the relevant information for the vaccine, under Medsafe's [approval process](#) is available on the Medsafe website.

With regard to the requirement for mandatory information for prescription medicine advertising, the Chair referred to section 32A (1)(b) Exemptions for the Crown which waives the requirement for mandatory information when the Government is promoting the availability and distribution of a medicine.

The Chair said the above statements in the advertisement are not misleading.

**Advertisement claim: - "The vaccine works by teaching your immune system to recognize and fight off the virus. It doesn't contain the virus, or anything that can affect your DNA."**

Some Complainants said the advertisement misrepresented the way the vaccine worked, including that it does not "teach" the immune system, rather the mRNA instructs the DNA to produce spike protein so does affect DNA" and the references to "protect" and "protecting" implies the vaccine will stop people contracting COVID-19 but there is information that it may not fully protect people and it is not known how long the vaccine will be effective for.

The Chair acknowledged the Complainants' sincere concerns and their takeouts of the advertising.

The Chair reiterated the vaccine had received approval from Medsafe, the Government regulator for prescription medicines. The Chair noted the [Datasheet](#) which sets out all the relevant information for the vaccine, under Medsafe's [approval process](#) is available on the Medsafe website.

The Chair also referred to information in the [Ministry of Health Website](#) which states:

"The Pfizer vaccine (Comirnaty) is an mRNA vaccine that contains the genetic code for an important part of the SARS-CoV-2 (COVID-19) virus called the 'spike protein'. Spike proteins are the little projections on the surface of the virus.

1. Once you've had the vaccine, your body reads the genetic code and makes copies of the spike protein.
2. Your immune system detects these spike proteins and learns how to recognise and fight against COVID-19. It knows it needs to attack the virus to protect it from spreading in your body.
3. The genetic code then gets broken down and removed very quickly and easily by our body.

It does not affect or interact with your DNA or genes, mRNA vaccines never enter the nucleus of the cell which is where our DNA is kept.”

The Chair confirmed Medsafe and the Ministry of Health are expert bodies in the context of the ASA complaints process and information from those agencies about the vaccine is readily available.

The Chair said the above statements in the advertisement are not misleading.

**Advertisement claim: - We've secured enough of the vaccine for everyone in New Zealand aged 16 and over.”**

The Chair noted some Complainants were concerned the advertisement referred to “enough vaccine for everyone”, when under 16 year olds are not included or eligible. The Chair said this was not misleading. The Chair said the advertisement qualified that everyone in New Zealand currently meant those 16 years of age and over.

The Chair said the above statement in the advertisement is not misleading.

**Advertisement claim: - “Getting the vaccine is free for everyone, regardless of your residency or citizenship status.”**

The Chair noted some Complainants were concerned the statement “We have secured enough of the vaccine for everyone and its free” is misleading, given the vaccine is directly funded by taxpayers.

The Chair said most consumers would consider the term “free” to mean there is no additional doctors fee or charge to receive the vaccination and would not be misled by the statement.

*Does the advertisement encourage an unsafe practice or encourage fear and distress without justification?*

The Chair noted that some Complainants raised issues that she considered under Principle 1 of the Advertising Standards Code, which requires a due sense of social responsibility in advertising. Some Complainants said the advertisement played on fear and were concerned about the lack of information about risks associated with the vaccine and that it did not encourage eligible teenagers under 18 years old to consult with their parents.

The Chair acknowledged the Complainants' sincere concerns and their takeouts of the advertisement.

The Chair said the advertisement was designed to reach a wide audience and reflected New Zealand's collective management of the pandemic risks thus far as well as to encourage as many people as possible within the eligible age groups to get a vaccine. The Chair noted the advertisement had an awareness-raising focus. It was not, and did not purport to be, a comprehensive communication about the safety or risks relating to the vaccine, a prescription medicine approved by Medsafe. The Chair said the advertisement did not

encourage an unsafe practice or cause fear and distress without justification and it was not in breach of Rules 1(e) or 1(g) of the Advertising Standards Code.

*Is the advertisement like to cause serious or widespread offence?*

**Advertisement heading: - “Our COVID-19 Vaccination Plan.” – “Our Plan...Your Plan”**

The Chair noted some Complainants considered the tone and content of the advertisement used coercion and peer pressure to make New Zealanders get the COVID-19 vaccine.

The Chair said this was not the likely consumer takeout for most people. The Chair noted the advertisement included wording such as “Our Plan” and “Your Plan” which she considered a reference to the team approach the Government has advocated over the last 18 months to minimise the impact of the virus in New Zealand.

The Chair said the advertisement did not reach the threshold to cause serious or widespread offence and was not in breach Rule 1(c) of the Advertising Standards Code.

**Brochure distribution**

The Chair noted that some Complainants had expressed concern about receiving the brochure in their letterbox when they had signage requesting “no junk mail” or “addressed mail only”. The Chair confirmed this matter was outside the ASA’s jurisdiction.

**In Summary**

The Chair said the advertisement had been prepared with a due sense of social responsibility when viewed through the lens of advocacy advertising. and was not in breach of Principle 1, Principle 2 or Rules, 1(e), 1(g), 2(b) or 2(e) of the Advertising Standards Code

The Chair ruled there were no grounds for the complaints to proceed.

**Chair’s Ruling: Complaints No Grounds to Proceed**

**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](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.