

COMPLAINT NUMBER	21/283
ADVERTISER	New Zealand Government
ADVERTISEMENT	Unite against COVID-19, YouTube
DATE OF MEETING	27 July 2021
OUTCOME	No Grounds to Proceed

Advertisement: The New Government COVID-19 vaccination advertisement appeared on YouTube. It begins with a girl saying, “Hey Covid, you were a bit of an egg in 2020!” The advertisement shows various people saying how they plan to fight the virus. A health worker is shown opening a door to a vaccination centre and says, “Do you know what this is? – A metaphorical door to freedom.” School children are shown in school and say “We’re going to keep coming here every day, all year long.” People are shown celebrating the possibility of being able to freely visit relatives without the risk of cancellations, socialising, performing a hongi and planning large gatherings such as weddings. The advertisement directs messages to COVID such as “COVID, you’re gone”, “Ka Kite, COVID” and “We’re getting immunity.” The advertisement ends with the text “Do it for each other. Covid19.govt.nz/vaccines.” The advertisement contains the All of Government logo and the Unite against Covid-19 logo.

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

Complaint

Dear ASA I am making this complaint about an advertisement I saw on a Youtube advertisement on the 6th May at approximately 8pm. A copy of the advert can be found here. <https://www.nzherald.co.nz/entertainment/covid-19-coronavirus-new-vaccine-advertisement-winspraise/FRBRX4OBFWGD2F7ZECRA75U7LU/> This the following ASA codes: <https://www.asa.co.nz/codes/codes/children-and-young-people/> Rule 1 (a) Undue Influence The advert features children and young people, excited about getting this medication which urges 2 children and young people to ask their caregivers to get the medication. The whole design of the advert including the music makes it seem like a fun, cool thing to do. The command “Do it for each other” clearly directs the viewer to do it, regardless of the risks or advice from healthcare professionals. Furthermore this medication is only approved for people aged 16 and over and should not be targeting children or anyone under 16 years old, including the school group depicted in the advert. Rule 1 (b) Safety The advert does not mention that young people should speak to their parents about taking this medication. Rule 1 (d) Peer Pressure The directive statement “Do it for each other” clearly implies that not doing it makes you a selfish person. This influences young people to take this medication for fear of being socially ostracized for not taking the medication. This suggests people who refuse the medication will be inferior and not accepted in society. The quote “It’s the metaphorical door to freedom” clearly pressures the viewer to take the medication, implying a loss of or lack of freedom without taking it. This is coercive in nature. The phrase “We’re getting immunity” disregards people who, due to their own natural immunity, are already immune and don’t require a medication to gain it. This unduly peer pressures unsuspecting young people, who are the lowest risk of COVID, in the fraction of a fraction of a percent risk of dying from COVID. Rule 1 (f) Sexual appeal and imagery The advert features a gay couple, who after having the medication are now able to plan their wedding. This use of sexual appeal, implying that use of this medication will allow this couple to have a wedding, is a breach of

the code. <https://www.asa.co.nz/codes/codes/advertising-standards-code/> Rule 1 (c) Decency and Offensiveness Many religious groups including Muslims and Sikhs find these depictions of gay couples, planning for “Locking in a date for a big fab wedding” highly offensive, indecent and immoral. Rule 1 (e) Safety This whole advert disregards the risk of this medication and instead just commands the viewer to “Do it for each other”. The tag line could be “no matter the risk”. The disregard to safety, not referencing the CMI and RDP is a complete disregard for safety. Nowhere in the advert does it mention to check with a professional doctor for medical advice. The medication does not have long term safety studies and also should not be taken by people who are allergic to its ingredients. The CMI contains a list of people who should consult with their healthcare professional. The advert does not mention this at all, instead it uses catchy music and humour to try to convince the viewer to just do it. Rule 2 (b) Truthful presentation There is no evidence that the medication will enable people to visit their families internationally or that they won’t have cancellations after taking it. This is misleading and an outright lie, as governments worldwide have said, even after taking the vaccine, you still have to social distance, wear a mask and get anal swabbed. The New Zealand government has made no promise to stop lockdowns after vaccination and government agencies have also stated publicly that they do not know if the medication can stop the spread of the disease and the medication only provides limited immunity. The statement “It’s the metaphorical door to freedom” is a misleading statement for the above reasons. There is no promise for the government to ease up border restrictions or stop lockdowns after vaccination. Rule 2 (e) Advocacy advertising The advert implies that taking the medication will stop the community transmission of the disease and this is a complete lie. The CMI for the medication clearly states that “As with any vaccine, COMIRNATY may not fully protect all those who receive it and it is not known how long you will be protected.” The advert completely disregards this fact and instead implies that all will be well once the medication has been taken. <https://www.asa.co.nz/codes/codes/therapeutic-and-healthadvertising-code/> Rule 1 (a) Mandatory Information The advert does not contain any of the required mandatory information including warnings about side effects, risks or safety information. Rule 1 (b) Safety and Effectiveness The advert disregards the fact that the immunity protection length is unknown, it is not 100% effective and from the whole vibe and design of the advert, you are sold the lie that it will be effective in stopping loss of freedoms or bringing back a return to normalcy. The depiction and exploitation of children also makes the viewer feel that “if children are involved it must be safe”. No mention of risks are to be found in this advertisement. The long term safety data is not available for this medication and there is no mention of this in the advert. Rule 2 (a) Truthful Presentation As has already been mentioned, the advert postulates that taking this medication will give you back your freedom. This is very misleading and inaccurate. The phrase “No more cancelling” is an inaccurate and misleading lie.

The relevant provisions were:

Advertising Standards Code - Principle 1, Principle 2, Rule 1(c), Rule 2(b), Rule 2(e).

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(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(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 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.

Application of the Children and Young People's Advertising Code

The Chair noted the Complainant had raised issues in relation to targeting children and young people under the Children and Young People's Advertising Code <https://www.asa.co.nz/codes/codes/children-and-young-people/>

The Chair confirmed the advertisement was addressed to all New Zealanders and was not specifically targeted towards children or young people.

The Chair noted that in order for an advertisement to be targeting children and young people, the product or service being advertised and the presentation of the advertisement needed to be principally appealing to minors. In addition, the expected audience at the time or place the advertisement appears needed to include a significant proportion of children or young people. The Chair said the advertisement before her did not meet these requirements.

Application of the Therapeutic and Health Advertising Code

The Chair noted the Complainant considered the [Therapeutic and Health Advertising Code](#) applied to the COVID-19 advertisement and it has been breached because mandatory information had not been included. The Chair noted the Code states: "This Code covers all words and visual depictions in all advertising for therapeutic products (medicines and medical devices), natural health products and dietary supplements, health services and methods of treatment."

The Chair confirmed the advertisement before her was primarily an advocacy advertisement and it did not include specific information about the vaccine (a medicine) that would trigger the application of the Therapeutic and Health Advertising Code.

With regard to the specific issue of the requirement for mandatory information, the Chair noted 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 that the complaint and the advertisement would be dealt with under the requirements of the Advertising Standards Code.

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.

Application of the identity requirements of the Advertising Standards Code

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 was from 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 was 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 Advertising Standards Code to this advocacy advertisement

In reviewing the complaint 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.

Is the use of the word "immunity" in the advertisement misleading?

Advertisement claim - "We're getting immunity"

The Chair said most people would consider this to be a reference to the protection 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 immunity 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 "immunity" was not misleading in the advertisement.

Does the advertisement overstate the safety and effectiveness of the vaccine?

Advertisement claim: - "Ka Kite, Covid"

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

The Chair acknowledged the Complainant's sincere concerns and their takeout 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 advertisement was not in breach of Rule 2(b) and Principle 2 of the Advertising Standards Code.

Is the advertisement misleading to make a reference to freedom?

Advertisement claims: - "Metaphorical door to freedom" - "No more cancellations"

The Chair noted the Complainant was concerned that the reference to 'freedom' and "no more cancellations" were misleading as many border restrictions were still in place. In the Chair's view the use of the word 'freedom' in the phrases "the metaphorical door to freedom" and "no more cancellations" only suggested the vaccine provided an opportunity to have less restrictions in place in the future, so New Zealanders could try to get on with their lives. The Chair said this part of the advertisement was not misleading.

Is the inclusion of children in the advertisement misleading?

Advertisement claim: - “We’re going to keep coming here every day, all year long.”

The Chair said the inclusion of the school children in the advertisement saying, “We’re going to keep coming here every day, all year long”, was a reference to the Government’s policy of vaccinating a significant majority of the adult population to help minimise possible future lockdowns and school closures. She said it was this threat of closures which the advertisement was implying would be lessened, rather than the virus itself. Neither did the advertisement imply that all children would be vaccinated.

Is the advertisement socially responsible and is it likely to cause serious or widespread offence?

The Chair noted the Complainant raised a number of issues that she considered under Principle 1 of the Advertising Standards Code, which requires a due sense of social responsibility in advertising. The Complainant said the celebratory tone of the advertisement, including two men talking about planning a wedding would be offensive to some people.

The Chair acknowledged the Complainant’s concerns and their takeout of the advertisement.

In the Chair’s view, the upbeat tone of the advertisement, while considered inappropriate by the Complainant, was designed to reach a wide audience and reflected New Zealand’s collective management of the pandemic risks thus far. The Chair said two people talking about holding a legal wedding was not in breach of the Advertising Standards Code.

The Chair noted the Complainant 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 “do it for each other” 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.

Summary

Having carefully reviewed the advertisement and complaint submitted, the Chair said the advertisement had been prepared with a due sense of social responsibility when viewed through the lens of an advocacy advertisement on behalf of the Government. The Chair ruled the advertisement was not in breach Principle 1, Principle 2 or Rules 1(c), 1(e), 2(b) or 2(e) of the Advertising Standards Code.

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. Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.