

COMPLAINT NUMBER	21/474
ADVERTISER	Department of Prime Minister and Cabinet
ADVERTISEMENT	Unite Against COVID19 Television
DATE OF MEETING	27 September 2021
OUTCOME	No Grounds to Proceed

Advertisement: The voiceover for the New Zealand Government advertisement promoting the COVID-19 vaccination says "Everyone aged 12 and over can now book a free COVID 19 vaccination. Vaccinations are one of the most powerful tools against the virus. Play your part in protecting everyone in New Zealand and help give us more options in the future". The advertisement ends with a website URL for the vaccine booking system, icons signifying COVID-19 safety measures as well as the government "Unite against COVID-19" logo and the New Zealand Government name in branding.

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

Complaint: Advertisement for 12 to 15 years old to get vaccinated. Healthy kids don't need this and it is against human rights, parent rights and bullying children.

The relevant provisions were Advertising Standards Code - Principle 1, Principle 2, Rule 1(g), Rule 1(h), 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.

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

Rule 1(h) Health and well-being: Advertisements must not undermine the health and well-being of individuals.

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.

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 to those aged 12 and over. 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.

The Chair noted the Complainant's concern the advertisement was against human rights, parent rights and was bullying children.

The Chair said the advertisement is designed to advise the public that the COVID-19 vaccination is available to those aged 12 and over, which it had not been previously.

Was the advertisement likely to cause fear or distress without justification or undermine the health and well-being of individuals?

The Chair said the advertisement was not likely to cause fear or distress without justification or undermine the health and well-being of individuals.

The Chair said the advertisement was a public health announcement encouraging more people to get vaccinated.

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, Rules 1(c), 1(g), 1(h), 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: Complaint **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 with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.