

COMPLAINT NUMBER	21/451
ADVERTISER	Department of Prime Minister and Cabinet
ADVERTISEMENT	Unite Against COVID-19, Television
DATE OF MEETING	1 November 2021
OUTCOME	No Grounds to Proceed

Advertisement: The Department for Prime Minister and Cabinet "two shots" advertisement promotes double vaccination against COVID-19. The female voiceover opens by saying that "it's two shots for summer, fam", then lists a number of scenarios in which "two shots is the key", such as "to share a feed", "to do the deed", "beach hangs" and "house parties". The advertisement shows a number of images, text and animation overlaid on each other for emphasis. The voiceover closes by encouraging viewers to "Get your first [vaccination] now and your second one ASAP" and then shows the logos for Karawhīua, "Unite Against COVID-19" and the Ministry for Pacific Peoples.

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

Complaint 1: Advert promoting the benefits / need for 2 doses of Covid vaccine. Advert uses a repetitive "2 shots for...." theme, as in "2 shots for a festival ", suggesting that 2 doses of vaccine are required to attend or participate in certain activities.

While this is potentially true in the future, several examples used are plain false and completely misleading. For example "2 shots for a house party" , "2 shots for the park", "2 shots for the beach " , and even a reference to needing 2 shots for sex.

This is blatantly wrong. There is no need whatsoever to be vaccinated to go to the beach or the park or to hold a PRIVATE party in my house.

Complaint 2: An advertisement using incorrect information to try to coerce people into an experimental medication. The intimation, being they cannot carry on a normal life with out a Covid 19 mRNA medical injection. No side effects are listed, nor are the places that people can look to research their personal risk or health benefits provided. The ad is propaganda in it's worse form. [D]isgusting and abhorrent, targeting a vulnerable age group, who sadly, we have seen many die from the vaccine.

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e)

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 Karawhina, the Ministry for Pacific Peoples, 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 vaccination to eligible people. 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 acknowledged the Complainants' concerns that the advertisement was misleading as:

- it implies that people need to be vaccinated to go to public spaces such as the beach and the park, and to a private house party; and
- it omits information on side effects, benefits and risks of the vaccine.

The Chair said that the advertisement was part of the Government's campaign to vaccinate New Zealanders aged over 12 years. The Delta variant of COVID-19 was more transmissible than previous strains and Government-mandated lockdowns and restrictions had been in place for some time, particularly in the northern part of the North Island. These restrictions had impacted people's ability to get together with family and friends. She noted the advertisement focused on the sense of freedom and security that could be afforded by a high vaccination rate. It highlighted the vaccine as a tool to mitigate the risk of transmission and allow people to spend time together.

The Chair said the scenarios in the advertisement showed people participating in everyday activities together, once vaccinated. She did not consider the advertisement was intended to be definitive about activities that were or were not permitted. The Chair said the content of the advertisement was likely to appeal to younger people, who were over-represented in the groups of New Zealanders yet to be vaccinated.

The Chair said the omission of information on side effects, benefits and risks of the vaccine did not affect the overall message of the advertisement. The Chair referred to a precedent Decision, 21/283, about an earlier advertisement from the Government in the Unite Against Covid-19 campaign which applied to this issue in the advertisement before her. This Decision said in part:

"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 stated that as both the identity and position of the advertiser was clear, viewers would understand the advertisement as part of the broader Government campaign to vaccinate the population. The Chair said the advertisement did not breach Principle 2, Rule 2(b) or Rule 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. 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.