

COMPLAINT NUMBER	21/453
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 of Prime Minister and Cabinet television advertisement promotes vaccination against COVID-19. The advertisement contains narrated text which appears on screen against a blue background bordered by yellow stripes. "Te Kāwanatanga o Aotearoa New Zealand Government" is visible in the bottom left corner. The advertisement states that the government has announced "the next stage of the COVID-19 response plan". Under the plan, people will "need to be fully vaccinated for guaranteed access to sports events, bars and restaurants". The advertisement encourages people to "get vaccinated today" and provides a website address to find a nearby vaccination centre.

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

Complaint 1: This is very concerning that an Advertiser is free to advertise false information and mislead the public - especially given it is the government.

Precisely the following statement; You'll need to be fully vaccinated for guaranteed access to sports events, bars and restaurants.

This is inappropriate, threatening and totally inaccurate as there is nothing in place that supports this as a correct statement. The Government has no system, rules, processes in place, nor has it passed Legislation to enable this or enforce it and there it does not exist.

Please note I am vaccinated and support the vaccine programme. However I cannot stand by as this Government is making such broad reaching, inaccurate and inappropriate statements.

It needs to be changed to at least be accurate and legal.

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 without 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 its worst form.

The relevant provisions were Advertising Standards Code - Principle 1, Principle 2, Rule 1(g), 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 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 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 noted the Complainants' concerns that the advertisement was misleading, "threatening" and "coerc[ive]".

The Chair said that the advertisement was future focused. She noted the use of the future tense in the advertisement's claim that "you'll need to be fully vaccinated for guaranteed access to sports events, bars and restaurants" and said that was referring to the Government's new COVID-19 Protection Framework. She cited the press release on the COVID-19 website, dated 21 October 2021, which stated that, "if you want to be guaranteed that no matter the setting you can go to bars, restaurants, close proximity businesses like a hairdresser – you'll need to be vaccinated". She noted the website also specifically refers to limits on numbers for indoor and outdoor events for the unvaccinated and that "Businesses, events, organisations, community and a range of sectors may legally choose to implement a vaccination entry requirement for customers." Based on this information, the Chair ruled that the claims in the advertisement were not misleading.

Further, the Chair noted that the advertisement was a public health announcement, intended to inform people about the next step of the Government's COVID-19 response plan.

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. 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 then considered the concerns that the advertisement was “threatening” and “coerc[ive]”. The Chair said the tone of the advertisement was educational and intended to inform New Zealanders about the Government’s new approach to managing COVID-19 in the community.

Having carefully reviewed the advertisement and complaints, the Chair said the advertisement was not misleading and had been prepared with a due sense of social responsibility when viewed through the lens of an advocacy advertisement. The Chair ruled the advertisement was not in breach Principle 1, Principle 2, or 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 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.