

COMPLAINT NUMBER	21/342
ADVERTISER	Canterbury District Health Board and West Coast District Health Board
ADVERTISEMENT	Canterbury District Health Board and West Coast District Health Board Poster
DATE OF MEETING	2 November 2021
OUTCOME	No Grounds to Proceed

Advertisement: The advocacy advertisement from the Canterbury and West Coast District Health Boards promotes the COVID-19 vaccine. The poster shows a stylised cartoon image of Pastor Mike Sikuri with a quote at the top stating, "Get vaccinated - don't pass COVID on". The bottom of the poster contains the government "Unite against COVID-19" graphic and text stating, "For more information visit vaccinatecanterburywestcoast.co.nz".

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

Complaint: Hello. A friend just sent me the attached image. The statement that the Covid vaccine prevents spreading the virus is clearly and scientifically wrong. There are many studies to prove this point. It is a very sad time if a NZ Government Agency has to use false advertising to coerce people to get an experimental drug that has been rushed and is not fully tested nor fully approved by MedSafe. I trust that you will be independent and stop this breach of the law.

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 Canterbury and West Coast District Health Boards promoting 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 Advertising Standards Code to this advocacy advertisement

The Chair confirmed the Advertiser’s identity was clear. The advertisement included logos for the Canterbury and West Coast District Health Boards 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 Canterbury and West Coast District Health Boards. 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.

The Chair noted the Complainant was concerned the advertisement was spreading misinformation as the statement from Pastor Mike Sikuri said “Don’t pass it on” when promoting the COVID-19 vaccination. The Chair referred to a precedent Decision, 21/339 which considered the same claim about the vaccine reducing transmission of the COVID-19 virus. That decision said in part:

“Advertisement claim: “if you do catch COVID-19, you are far less likely to fall ill or transmit the virus to others.”

The Chair noted there was information available on the Ministry of Health website at the time the advertisement was published which cited a number of international studies have shown that vaccination leads to a significant reduction in the rate of transmission of COVID-19.

Information on this was published by the Ministry on 7 May 2021.

<https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-resources-and-tools/covid-19-science-news#updates>”

The Chair said this substantiation for the claim made in the advertisement was still on the Ministry of Health website.

The Chair said within the context of advocacy advertising, the advertisement was unlikely to mislead or deceive consumers and was not in breach Principle 2 or Rules 2(b) or 2(e) of the Advertising Standards Code.

The Chair ruled there were no grounds for the complaint 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.