

COMPLAINT NUMBER	22/028
ADVERTISER	Waka Kotahi/NZ Transport Agency
ADVERTISEMENT	Waka Kotahi/NZ Transport Agency, Television
DATE OF MEETING	14 February 2022
OUTCOME	No Grounds to Proceed

Advertisement: The television advertisement for Waka Kotahi/NZ Transport Agency showed a couple inspecting a car for sale. The vendor states that the car is "in pretty good nick" and has both "WOF and rego". When the couple go to look inside however, they find the front seats and centre console are contorted. The vendor explains: "This is a one star safety rated car - people don't often think about how a car will crash and how it will protect you, that's what a star safety rating tells you." The advertisement ends with the text "The more stars the safer the car - rightcar.govt.nz".

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

Complaint: One star safety rated car for sale. The owner of the vehicle tells the perspective buyers that the vehicle has a wof and reg. This implies the vehicle is up to warrant of fitness standard, however the interior of the car would never pass a wof. This is misleading particularly as they are advertising vehicle standards.

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

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.

Under Rule 2(e) Advocacy advertising of 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 NZTA is the government body responsible for educating the public on road safety issues.

The role and jurisdiction of the Advertising Standards Authority (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.

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 government educating the public on road safety issues.

About this complaint

The Chair acknowledged the Complainant was concerned it was misleading to claim the car shown in the advertisement was up to Warrant of Fitness standard.

The Chair confirmed the Advertiser’s identity is clear and the advertisement complied with the requirements of Rule 2(e) of the Advertising Standards Code. The end of the advertisement shows the Waka Kotahi and New Zealand Government logos and the rightcar.govt.nz website address.

The Chair said the Advertiser’s position is also clear. The advertisement is part of a road safety strategy implemented by Waka Kotahi NZ Transport Agency aimed at educating consumers about the safety rating system for vehicles and to encourage them to consider this when buying a car.

The Chair said the advertisement was illustrative of how a car which had met the legal requirements of a Warrant of Fitness and registration could still prove to be an unsafe car in the event of an accident if it has a low star rating. The Chair said in the context of an advocacy advertisement encouraging buyers to think about safety, the advertisement was not misleading.

The Chair confirmed the advertisement had been prepared with due sense of social responsibility and was not in breach of Principle 1, Rule 1(c), Principle 2, or Rule 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.