

COMPLAINT NUMBER	21/560
ADVERTISER	NZME
ADVERTISEMENT	NZ Herald, Website, App
DATE OF MEETING	15 February 2021
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a NZ Herald website and app advertisement promoting the NZ Herald Premium subscription service. The Complaints Board said the advertisement contained sufficient indicators for consumers to understand they were viewing an advertisement and as such the viewing audience were unlikely to be misled or confused.

Advertisement

The NZ Herald website page is headlined, "New Zealand Herald Premium free trial: Our Black Friday special". The text promotes an offer of a NZ Herald Premium Subscription free for four weeks, highlighting features of the subscription and other details.

The thumbnail for the article on the NZ Herald app includes the bolded title, "Black Friday special: Try NZ Herald Premium free for four weeks" and the following text: "Now is your chance to read what you've been missing out on". The associated content 'tag' is "New Zealand", and the picture is of a person looking at their phone.

Summary of the Complaints

Two Complainants are concerned the advertisement on the website and the app was presented as a news article when the NZ Herald is advertising its premium subscription service and should be labelled as advertising.

Issues Raised:

- Truthful Presentation
- Advertising Identification

Summary of the Advertiser's Response

The Advertiser noted that in cases where it is obvious to the audience that they are engaging with an advertisement, no specific ad identifiers are required. The Advertiser said the advertisement was a promotional message within editorial style, an advertorial. The indicators included the language "free trial", "try NZ Herald Premium free", "black Friday special", "we are offering you...a subscription fee for the next four weeks"

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaints with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2(a) Identification: Advertisements must be identified as such.

Guidance Note on Identification of Advertisements

Identifying an Advertisement

Advertising Standards Code: Rule 2 (a). Identification – Advertisements must be identified as such.

When determining whether this rule has been complied with, in relation to content being generated regarding certain products, services, or brands, there are two steps to consider:

1. Is the content being generated in relation to the advertiser's product or services an "Advertisement"?
2. If the content is deemed to be an Advertisement, is this being appropriately identified to the relevant audiences?

In many cases it will be obvious to, and well understood by, the audience that they are engaging with an advertisement and in these instances a change to the way the advertisement is currently identifiable to them is not required.

Where it is not obvious or well understood by an audience that content is an advertisement, all parties to the advertisement (e.g. advertiser, agency, media, influencer) are responsible for ensuring the audience is aware they are engaging with an advertisement.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 19/351 and 19/059, both of which were ruled No Grounds to Proceed.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 19/351 concerned a newspaper advertisement for Dairy NZ Beef + Lamb New Zealand which was an open letter to the Prime Minister about the industry's commitment to a sustainable, competitive and viable farming sector. The Complainant was concerned the content was not clearly identified as advertising.

The Chair of the Complaints Board said the advertisement was not written in editorial format and included signatures names and titles of the company executives in the copy. The Chair said there was sufficient context within the newspaper format to indicate the content was advertising and ruled there were no grounds for the complaint to proceed.

Decision 19/059 concerned a radio advertisement for Dairy NZ promoting the Vision is Clear movement about looking after New Zealand waterways. The Complainant claimed the advertisement did not clearly identify the Advertiser and could be misleading.

The Chair of the Complaints Board said the advertisement contained sufficient indicators about the nature and identity of the Advertiser and ruled there were no grounds for the complaint to proceed.

Complaints Board Discussion

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised, which in this case is:
 - Context: Promotion of the NZ Herald premium subscription
 - Medium: Website and App
 - Audience: NZ Herald readers
 - Product: NZ Herald premium subscription service

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was that the NZ Herald is offering a free trial to its premium subscription service.

Is the content advertising?

The Complaints Board agreed the content was advertising and said it contained numerous indicators in the copy such as "Black Friday Special", "Try NZ Herald Premium free", confirming the commercial intent behind it, to increase subscriber numbers.

Has the advertisement been sufficiently identified?

The Complaints Board considered the format, a thumbnail under the Home tab and the sub-heading 'New Zealand' on www.nzherald.co.nz and on the NZ Herald App, and noted it links to more advertorial style information about the free subscription offer for the premium service.

The Complaints Board said that the use of "New Zealand" as the sub-heading in a style similar to the editorial story thumb nails was not ideal. It noted that some readers may expect a news story in this context, and it said advertisements from third party advertisers under such headings appear to have ad labels (advertisement / sponsored etc). The Complaints Board acknowledged the Advertiser and Media in this case were the same entity.

In reviewing the thumb nail and the advertorial content it linked to, the Board agreed the copy contained sufficient indicators to make it clear the content is an advertisement. These indicators included the use of the NZ Herald brand and repeated language promoting the free trial and the premium subscription service— a user-pays service that would be familiar to NZ Herald readers.

The Complaints Board agreed consumers were unlikely to be misled or confused.

The Complaints Board ruled the advertisement did not reach threshold to breach Principle 2 or Rule 2(a) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaints were **Not Upheld**.

No further action required

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.

APPENDICES

1. Complaints
 2. Response from Advertiser
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Appendix 1

COMPLAINT

Complaint 2: Kia ora, I would like to point out that the following website article is clearly advertising (but it is not labelled as such): <https://www.nzherald.co.nz/nz/new-zealand-herald-premium-free-trial-our-black-fridayspecial/2AFPZ5LNJEG4XVPDJIBBOVSDVY/> It is advertising which is porporting to be a NZ Herald news article. I consider this to be misleading to readers, and in breach of the following part of the ASA Advertising Standards Code:

Complaint 2: This advertisement for NZ Herald premium subscription was disguised as an article and not identified as an advertisement which contravenes the advertising code

Appendix 2

RESPONSE FROM ADVERTISER, NZME

Re: NZH Digital Marketing – Complaint 21/560

We write on behalf of NZME (the publisher) and the New Zealand Herald (the advertiser) in response to the above complaint regarding the advertisement for New Zealand Herald subscriptions.

The ASA has identified Principle 2, Rule 2(a) as potentially being relevant:

PRINCIPLE 1: SOCIAL RESPONSIBILITY: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 2 (a) Identification: Advertisements must be identified as such.

Discussion

NZME notes that in many cases it will be obvious to the audience that they are engaging with an advertisement. In these cases, no specific ad identifiers or call-outs are generally required. In circumstances where this is not evident, tags are inserted (such as “advertisement” or “ad”) to indicate to the audience that the material is not editorial content.

The advertisement in question provides a promotional message within editorial style content (an “advertorial”).

We consider that it will have been be obvious to consumers that they were engaging with an ad, including the following indicators:

- the inclusion of “Free Trial”, “Try NZ Herald Premium Free”, “Black Friday Special” in the title, body of the advertorial, and photo caption;
- wording in the article e.g. “we’re offering you an NZ Herald Premium subscription for the next four weeks, free”, “to sign up, click [link]”, “this special black Friday offer ends [...]”, “price details and T&Cs at the end of the this article”.

The above would suggest that a specific identifier (e.g. “Ad”, “Advert”, “sponsored”) was not necessary, as the content made it obvious to readers that it was an ad.

We also note that the advertisement was a one-off promotion for Black Friday.

Please let the writer know if you have any queries or concerns.