

COMPLAINT NUMBER	22/048
ADVERTISER	Voices for Freedom
ADVERTISEMENT	Voices for Freedom Billboard
DATE OF MEETING	22 March 2022
OUTCOME	Upheld in part, Settled in part Advertisement not to be used again

Summary of the Complaints Board Decision

The Complaints Board upheld in part and settled in part a complaint about a Voices for Freedom billboard advertisement. The Board said the advertisement was likely to mislead consumers and was also in breach of Principle 1 of the Advertising Standards Code, Social Responsibility.

Advertisement

The Voices for Freedom billboard advertisement had the following text: “Have you reported your vax reaction to CARM www.carm.co.nz”.

Consumers who then search online using this URL are taken directly to the Voices for Freedom website, from where they can access the CARM website, using a tab which says: “Make a Report”.

Summary of the Complaint

The Complainant was concerned the advertisement:

- did not clearly identify that it was an advertisement or who the advertiser was
- could have been construed as public health advice from CARM (Centre for Adverse Reactions Monitoring)
- might have mislead people to think that Voices for Freedom and CARM are somehow connected

Issues Raised:

- Social responsibility
- Truthful presentation
- Advocacy advertising

Summary of the Advertiser’s Response

The Advertiser said the original billboard had been updated to say: “Billboard authorised by Voices for Freedom”. The Advertiser said the identity and position of the Advertiser, Voices for Freedom, was always available and could be seen, upon visiting the link www.carm.co.nz.

The Advertiser said it simply poses the question “Have you reported your vaccine reaction to CARM?” and enables viewers to do this via the link. The Advertiser said the new link is much clearer than CARM’s own link, which is <https://nzphvc.otago.ac.nz/carm>.

The Advertiser said there is a lack of awareness about CARM, even within the Government’s Helpline service. The Advertiser said the billboard is performing an important public service by making it easier to report vaccine reactions.

A full copy of the Advertiser’s response is in Appendix 2.

Summary of the Media Response

The Media said the name of the Advertiser was added to the billboard, after the complaint was received. The Media later said the billboard had since been taken down.

A full copy of the Media's response is in Appendix 3.

Summary of the Response from The New Zealand Pharmacovigilance Centre (CARM)

The New Zealand Pharmacovigilance Centre (NZPhvC) includes the Centre for Adverse Reactions Monitoring (CARM) at the University of Otago, under contract to Medsafe.

CARM said it was concerned consumers may think that they support or are affiliated with Voices for Freedom. CARM was also concerned any potential confusion arising from this misdirection could impact on wider reporting to CARM or affect the credentials of CARM at the University of Otago.

A full copy of the response from CARM is in Appendix 4.

Relevant ASA Codes of Practice

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

ADVERTISING STANDARDS CODE

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

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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to a precedent decision, Decision 21/539 which was Upheld.

The full version of this decision can be found on the ASA website:

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

Decision 21/539 concerned 56 complaints about two unaddressed mail advertisements on mask mandates in the pandemic and the claimed Advertising Standards Authority endorsement, published and distributed by Voices for Freedom. The Board said the advertisements were misleading and not socially responsible.

While the Complaints Board acknowledged the New Zealand Bill of Rights Act 1990 protection of freedom of expression, it agreed the following reasons justified it taking a higher-level approach to the assessment of this advertising based on the Principles in the Advertising Standards Code, which are the requirements for social responsibility and truthful presentation in responsible advertising.

The broad public health implications of the COVID-19 global pandemic at a population level provided a counterweight to the usual liberal assessment of advocacy advertising with regard to social responsibility and truthful presentation. The Board agreed the rapidly evolving nature of the pandemic also meant information used to support statements for and against the use of masks could quickly become out-of-date.

The Board said the advertising was misleading because it implied the Advertising Standards Authority (ASA) had granted formal approval and endorsement of the content, which is not correct and not an accurate reflection of the ASA process.

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: The dynamic nature of the global pandemic and criticism of Government decisions to address the spread and impact of it
 - Medium: Billboard
 - Audience: Unrestricted to adults and children
 - Product: Advocacy messaging from an organisation highlighting its views about the importance of reporting reactions to the vaccine against COVID-19

Adjudicating on Advocacy Advertising

The Chair noted that advocacy advertising presents some of the most challenging advertising adjudicated on by the Complaints Board. It is usually characterised by parties having differing views that are expressed in robust terms. This results in strong objections from complainants and an equally strong defence from advertisers.

Through the requirements of the Advertising Standards Codes of Practice and the Advocacy Principles, the Board supports issues being openly debated and has generally endeavoured not to apply a technical or unduly strict interpretation of the rules and guidelines.

Complainants sometimes ask the Board to in effect decide which side in an advocacy debate is correct. The Complaints Board has consistently declined to have a view on the merits of either side in an advocacy debate. The Complaints Board's only role is to determine whether there has been a breach of our Codes.

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.

Complaints Board approach to advocacy advertising about COVID-19

The Complaints Board decided at its meeting on 1 February 2022 to take a higher-level approach to the assessment of complaints about advocacy advertising relating to COVID-19. This approach focuses on the two overarching Principles of the Advertising Standards Code, social responsibility and truthful presentation.

In making this decision, the Complaints Board took into account the exceptional circumstances of the COVID-19 pandemic, which has been declared a public health issue of international concern by the World Health Organisation.

The Complaints Board acknowledged the importance of the protection of freedom of expression under the New Zealand Bill of Rights Act 1990. At the same time the Board said the broad public health implications of the COVID-19 global pandemic, at a population level, provided a counterweight to the usual liberal assessment of advocacy advertising under the advertising codes.

The Complaints Board referred to a quote from a recent publication by the New Zealand Human Rights Commission:

“Under human rights law some rights can be limited by public health measures which respond to the outbreak of a disease posing a serious threat to the health of a population.”¹

The Complaints Board noted the Government’s public health measures continue to evolve over time, in response to the latest updates in scientific knowledge about the virus. These measures include the promotion of vaccinations to protect against COVID-19 and the use of masks.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was Voices for Freedom encourages consumers to report any reactions to the Comirnaty mRNA (Pfizer/BioTech) vaccine to CARM at carm.co.nz.

Was the advocacy advertisement adequately identified?

The Complaints Board agreed the original advertisement did not meet the identity requirements of Rule 2(e) of the Advertising Standards Code. This is because it did not include the name of the Advertiser or the Voices for Freedom logo or website address. The Board noted that the advertisement was amended, after the complaint was received, and the name of the Advertiser was added. The Board said as a result, this aspect of the complaint was settled.

Was the amended advertisement misleading?

The Complaints Board agreed the amended advertisement was misleading. The Board noted the following statement on the Voices for Freedom website: “Voices for Freedom acquired the domain name www.carm.co.nz in order to make it easier for people to find the site and submit their reports.” The Board said the advertisement gives the impression that the domain name “carm.co.nz” belongs to CARM when this is not correct, as it belongs to Voices for Freedom and links to its website. The Board said although the CARM website can be accessed via the Voices for Freedom website, this misrepresentation of what is the correct link could be confusing for some consumers. The Board said this serves to direct consumers to the Voices

¹ *A human rights and Te Tiriti o Waitangi approach to Aotearoa New Zealand’s proposed Covid-19 Protection Framework* – Human Right Commission - November 2021

for Freedom website when they might not otherwise visit it. The Board noted CARM's concern that consumers seeing this advertisement may think CARM is affiliated with Voices for Freedom, and this could cause confusion.

The Board noted that the colour purple used in the advertisement was similar to the purple used in some Government COVID-19 advertisements, which added to the potential for confusion.

Was the advertisement socially responsible?

The Complaints Board agreed the amended advertisement was not socially responsible as it did not include the correct URL for CARM.

The Complaints Board agreed the advertisement was in breach of Principle 1, Social Responsibility and Principle 2, Truthful Presentation, of the Advertising Standards Code, taking into account context, medium, audience and product. The Complaints Board agreed the amended advertisement settled the complaint with regards to the identity requirements of Rule 2(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld in part/Settled in part**.

Advertisement not to be used again.

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. Complaint
 2. Response from Advertiser
 3. Response from Media
 4. Response from CARM
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Appendix 1

COMPLAINT

On the corner of Ghuznee and Victoria Sts in Wellington, there is a billboard which purports to be from the Centre for Adverse Reactions Monitoring (CARM). It purports to advertise a link to CARM's website.

In fact, only after accessing the link is it discovered that the website is operated by Voices for Freedom (VFF). VFF is not named on the billboard, unlike other VFF billboards.

I am concerned that:

- The billboard does not clearly (or at all) identify the advertiser.
- The billboard does not identify that it is an advertisement.
- The billboard could be construed as public health advice from CARM.
- People who visit the link may be misled that VFF and CARM are somehow connected.
- The website advertised on the billboard includes links to donate and buy merchandise, which are commercial operations proffered in the context of public health advice.

I do not want my identifying or contact details supplied to the advertiser.

Appendix 2

RESPONSE FROM ADVERTISER, VOICES FOR FREEDOM

www.voicesforfreedom.co.nz/carm

Complaint 22/048

1. We are in receipt of your letter in respect of our billboard about C.A.R.M. ("**the CARM Billboard/our billboard**").
2. The CARM Billboard is part of our most recent nationwide billboard campaign which has been viewed by hundreds of thousands of New Zealanders via the billboards themselves and via subsequent reproductions on signs, flyers and social media.
3. In response we have received many thousands of messages of support. Meanwhile, it appears you received one complaint.

4. **Relevant to this complaint is that it relates to a version of the CARM Billboard which is no longer in circulation (“the Original CARM Billboard”).** The Original CARM Billboard was updated very early in the campaign with the addition of the words in the top right “Billboard authorised by: Voices For Freedom”. See next page for the example.
5. The CARM Billboard was prepared and placed with a due sense of social responsibility to consumers and to society. The identity and the position of the advertiser was always available and immediately seen upon visiting the link www.carm.co.nz and in the updated billboard this information was further made clear on the billboard itself.
6. The CARM Billboard is self-evidently an advertisement for how to find CARM as a result of both the billboard itself and the landing page where the viewer is directed to.
7. The CARM Billboard is a truthful presentation. It simply poses the question: “Have you reported your vaccine reaction to CARM?” and provides a clear pathway for the viewer to do that via the link www.carm.co.nz.
8. Here is the extract from the relevant webpage:

Report Your Adverse Reaction to CARM



CENTRE FOR ADVERSE REACTIONS MONITORING (CARM)

REPORT AN INJURY

Thank you for checking out our billboard. The Centre for Adverse Reactions Monitoring (also known as "CARM") website is administered by the New Zealand Pharmacovigilance Centre (NZPhvC) and located at <https://nzphvc.otago.ac.nz/reporting/>.

***Voices for Freedom is not affiliated with NZPhvC or CARM.** The links and information here are provided so that the public may learn about the existence of CARM and how to make a report. When a new medicine or vaccine is introduced into a population - especially one that utilises new technology and was fast-tracked through the clinical trials - proper pharmacovigilance practices (safety monitoring and evaluation) **should be mandatory.** Such practices **have not been implemented in NZ** and many adverse reactions are being missed as a result.*

*Reporting is voluntary and passive. When reactions are not acknowledged, assessed, and evaluated **safety signals may be missed and warnings go unissued.***

Patients must navigate bias from medical professionals who often declare reactions happening in the hours, days, and weeks following the receipt of a COVID vaccine as unrelated. Many people describe having to battle the system to be listened to, properly diagnosed, and treated. This can be a lonely and deflating experience to add to a patient's already challenging health condition.

It is a popularly held belief that the "system" will be there to help should something go wrong with a vaccination that has been promoted as safe and taken in good faith. It can come as a shock to people to find that such help can be difficult to find.

DID YOU KNOW?

- *The Ministry of Health admits to a **reporting rate of 5%** when it comes to the public reporting adverse events from vaccinations in NZ?*
- *New Zealand's health authorities refer to CARM from time to time but the website is not intuitive to find. Voices for Freedom acquired the domain name **www.carm.co.nz** in order to make it easier for people to find the site and submit their reports.*

9. The reason we decided to do a billboard on this topic with this simple URL is, quite frankly, because we became aware that there was a huge lack of awareness about CARM – both as to its existence and also in respect of what reactions people thought they were supposed to be reporting.
10. Even within the government Helpline service itself there was a lack of knowledge about CARM with many operators admitting they did not know it existed. This was exacerbated by the fact that the online reporting system was far from intuitive and hard to find.

11. We are perplexed as to why the government would not want to do everything it could to make access to, and understanding of, this reporting system, a top priority.
12. The landing page www.carm.co.nz is clearly focused on assisting people to report to CARM and is arguably much clearer to members of the public how and when they should do this when compared to the landing page for CARM - if indeed members of the public can find that link (<https://nzphvc.otago.ac.nz/carm>).
13. We have not been made aware of any confusion resulting from our billboard. On the contrary, we have had many reports of people confirming to us that it is **because** of our billboard that they learnt about CARM and knew where to go to make a report.
14. We note that there was no complaint from the Centre prior to being put on notice as to our billboard by your organisation.
15. New Zealand law requires that individuals are provided with the information they need to make a fully informed choice.²
16. We believe that in the case of adverse event reporting Kiwis have been sorely let down. First, by lack of awareness as to the real risks of potential vaccine harm and then by a reporting system that (at least for the larger part of the vaccination campaign) has not been well known about and where known was not intuitive to locate and then was complicated, cumbersome to work through.
17. The CARM billboard makes it both easier and more likely that vaccine reactions are reported and in this respect performs an important public service.

Appendix 3

RESPONSES FROM MEDIA, JOLLY BILLBOARDS

This billboard should have been changed/updated.

I too believed it needed their logo on it and requested a sticker for it which I thought was done. Let me check with installers/printers in the AM and confirm the change has been done. Be back to you tomorrow.

Part 2 (24 February)

Find attached of what the billboard now looks like with sticker applied on behalf of client. This sticker was authorized to be printed and installed as soon as they realised their error I believe last week.

²<https://www.hdc.org.nz/your-rights/about-the-code/code-of-health-and-disability-services-consumers-rights/>

Please do let me know if this now meets your criteria as otherwise I can sort immediately.

Part 3 (4 March)

All of the billboards for cases 22/048 /044 /042 I have had confirmation have been uninstalled.

Appendix 4

RESPONSE FROM CARM

Thank you for providing and opportunity for me to comment.

The New Zealand Pharmacovigilance Centre (NZPhvC) includes the Centre for Adverse Reactions Monitoring (CARM) at the University of Otago which provides New Zealand's national Pharmacovigilance monitoring service under contract to Medsafe in the Ministry of hHealth. The CARM function is specifically focused on receiving voluntary reports of adverse reactions to medicines, vaccines and other therapeutic products prescribed and used in New Zealand. Adverse event reports to CARM are encouraged for Pharmacovigilance purposes which includes reviewing and recording them into a national database to inform and support the safe use of medicines in New Zealand, related regulatory activities, and/or research.

With the advent of the Internet, direct online reporting was enabled in early 2000's when reporters could submit reports directly to CARM at the website URL: <https://nzphvc.otago.ac.nz/>. In earlier years the website included variations on '...carm...' in the URL, but with what has become a widely recognised CARM 'brand-name', a simple Google search identifies the correct URL for those long-standing users who had misplaced the link, or advising new reporters to simply and easily find CARM.

In the lead up to and commencement of the COVID-19 vaccine rollout in New Zealand, CARM worked alongside the Ministry of Health COVID Vaccine Immunisation Programme (now the National Immunisation Programme) to establish a system and web-based reporting facility tailored to receive reports of adverse events for the COVID-19 vaccine.

Although CARM/NZPhvC was advised some while ago of billboards promoting the reporting of adverse events to CARM, it was also reported to me that the URL was not the CARM URL, but directed users to another site. CARM/NZPhvC had no prior knowledge that this billboard was in the making. CARM does not have any relationship with the organisers, or have been involved in the final product in any way.

I've been just recently been advised by the University of Otago Media & Communications team that the University Twitter account has received comments that the billboard's URL directs potential reporters to an alternative site which has led to confusion. This is a concern to me as it may mean that misdirected reporters may think that the NZPhvC/CARM supports, or is affiliated with the organisers, or that they may not be able to, or choose not to follow through on reporting the COVID-19 vaccine adverse effects directly to the correct URL. Consequently, these reports may be lost to the COVID Vaccine Immunisation Programme monitoring and surveillance purpose. I am also concerned that the potential confusion arising from this misdirection to an alternative site may impact on wider reporting to CARM as well as impact upon the credentials of CARM at the University of Otago.

Whilst I am supportive of encouraging the reporting of COVID-19 vaccine adverse events, and in that regard public reminders have value, however messaging to action should be to the correct site, not utilise what has become a well-recognised 'brand' to divert reporters elsewhere where they may be distracted by other agendas which can create confusion.