

<b>COMPLAINT NUMBER</b>	22/084
<b>ADVERTISER</b>	Spark NZ Ltd /OutLine
<b>ADVERTISEMENT</b>	Beyond Binary Code, YouTube
<b>DATE OF MEETING</b>	28 March 2022
<b>OUTCOME</b>	No Grounds to Proceed

**Advertisement:** The YouTube advertisement for Spark NZ promotes their product, Beyond Binary code and its aim to "build a more inclusive internet". It features several non-binary people speaking about how the gendered nature of the internet affects them, such as having to choose 'male' or 'female' from a dropdown box to identify themselves. They explain the Beyond Binary code is a piece of code that businesses can add to their websites to include "non-binary" in the options for gender, and make the gender field optional. The advertisement ends with the logos of Spark and OutLine.

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

**Complaint:** I was disgusted to see Spark's LGBTQ propaganda being displayed on a YouTube video that any child could click on and watch. As somebody who has children and wants to protect them from this abhorrent display of propaganda, it's sick and saddening to see that advertisements like these can be displayed without question. The ad in question occurred at the beginning of the YouTube video pasted above, and included the lies that people are 'misgendered' online because there are only 'male' and 'female' options on websites. These dangerous lies are being fed to children who are already vulnerable to the darkness of society, so for a big telecommunications company to be able to push propaganda like this and make people who don't agree with mental delusion feel bad for the offense that they have taken to something that isn't actually a problem is unacceptable. This marginalizes those in society - the majority of us - that don't agree with this view and don't want our children exposed to it.

**The relevant provisions were Advertising Standards Code - Principle 1, Principle 2 Rule 1(c); 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.

**Rule 1(c) Decency and Offensiveness:** Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.

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

The Chair noted that advocacy advertising presents some of the most challenging advertising adjudicated on by the ASA. 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 Chair 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 ASA to in effect decide which side in an advocacy debate is correct. The Chair and the Complaints Board have consistently declined to have a view on the merits of either side in an advocacy debate. The ASA’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.

If the identity and position of the Advertiser is clear, a more liberal interpretation of the Advertising Standards Code is allowed.

### **About this complaint**

**The Chair** noted the Complainant was concerned the advertisement included false information, marginalises those who don’t agree with the views it supports and was inappropriately placed where children would be part of the audience.

The Chair said the advertisement was advocacy because it was advocating for a more inclusive internet and the HTML code was being offered at no cost to businesses.

The Chair confirmed the Advertiser’s identity was clear. The Spark and Outline logos are shown at the end of the advertisement. The Advertiser’s position also clear. The advertisement ends with the text “Add Beyond Binary Code to your website and help build a more inclusive internet.” The Chair said the advertisement complied with the identity requirements of Rule 2(e) of the Advertising Standards Code.

The Chair said the likely consumer takeout of the advertisement was that Spark, in conjunction with Outline, is offering a free HTML code which businesses can incorporate into their own websites to help online forms provide more gender inclusive options.

The Chair said the advertisement was encouraging a more gender inclusive internet and did not consider the concept of adding more options to gender related data was likely to marginalise any other group in the process.

The Chair said the ASA Secretariat had sought clarification from the Advertiser about the targeting of its advertising. The Advertiser confirmed it did not use personal information to target the Beyond Binary Code film to particular audiences. and it did not target its film to those under 18 years old.

The Advertiser also confirmed it targeted shorter versions of the film to 18+ individuals, 18 – 35-year-old progressives and business owners on YouTube and also used key word targeting with words such as “binary language” and “inclusive gender”

Rule 1(c) of the Advertising Standards Code requires the Chair to consider whether the advertisement was indecent, exploitative, or degrading or likely to cause serious or widespread offence, in light of generally prevailing community standards. The Chair said that despite the Complainant’s objection to the advertisement, it did not reach the threshold to be exploitative or degrading or to cause serious or widespread offence, for most consumers.

The Chair said the advertisement had been prepared and placed with a due sense of social responsibility to consumers and to society, taking into account context, medium, audience and product and when viewed through an advocacy lens. The Chair said the advertisement was not in breach of Principle 1, Principle 2, or Rules 1(c), and 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](http://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.