

COMPLAINT NUMBER	22/230
ADVERTISER	Te Whatu Ora/Health New Zealand
ADVERTISEMENT	Unite Against COVID-19, Billboard
DATE OF MEETING	8 August 2022
OUTCOME	No Grounds to Proceed

The billboard advertisement from Te Whatu Ora/Health New Zealand shows a cartoon of a pregnant woman on one side and a breastfeeding woman on the other. The text says, "Pregnant? Breastfeeding? Get vaccinated. It's safe and free. The advertisement contains the Hauora and Unite against COVID-19 logos

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

Complaint: This billboard makes a clear statement that the Covid vaccine is safe for pregnant women. This is demonstrably not so as this one report alone makes clear: Doctors Blast Fauci's Admission That COVID Vaccines Induce Menstrual Irregularities https://link.theepochtimes.com/mkt_app/doctors-blast-faucis-admission-that-covid-vaccines-induce-menstrual-irregularities_4628227.html

The relevant provisions were Advertising Standards Code - Principle 1, Principle 2, 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.

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 under the Advertising Standards Code

The Chair confirmed the advertisement from the Te Whatu Ora/Health New Zealand on the vaccination programme for pregnant and breastfeeding was advocacy advertising under the Advertising Standards Code.

Complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

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

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 *Electoral Commission v Cameron* [1997] NZLR 421, the likely consumer takeout, and the context for advertising the New Zealand Government's COVID-19 vaccination programme to a pregnant or breastfeeding people..

The Chair noted the rapidly evolving nature of the COVID-19 pandemic. Taking these exceptional circumstances into account, she confirmed she would take 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 Chair confirmed that the identity and position of the Advertiser were clear. Consumers would understand the advertisement to be part the broader Government campaign to vaccinate the population against COVID-19.

The Chair noted the Ministry of Health is an expert body tasked with providing public health information. The role of expert bodies was addressed in *Cameron*. The Court of Appeal said the Advertising Standards Authority was required to "tread carefully" and ensure that it did not substitute its opinion for that of the expert body. As such, in relation to the safety and efficacy of the COVID-19 vaccination for pregnant and breastfeeding women, the Chair deferred to the expert body.

The Chair noted the Ministry of Health supports vaccination for pregnant people, as stated on the Ministry's website

<https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-vaccines/covid-19-vaccine-pregnancy-and-breastfeeding#:~:text=If%20you're%20breastfeeding%2C%20you,continuing%20to%20breasfeed%20after%20vaccination.>

The Chair said the advertisement was not in breach of Principle 1, Principle 2 or Rule 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.