

<b>COMPLAINT NUMBER</b>	22/239
<b>ADVERTISER</b>	Te Whatu Ora/Health New Zealand
<b>ADVERTISEMENT</b>	Stick it to Hepatitis C, Television
<b>DATE OF MEETING</b>	13 September 2022
<b>OUTCOME</b>	Upheld  Advertisement to be removed and not used again in its current form

### Summary of the Complaints Board Decision

The Complaints Board upheld 18 complaints about a Te Whatu Ora/Health New Zealand television advertisement promoting the testing and treatment campaign for hepatitis C. The majority of the Complaints Board said the advertisement used an indecent and offensive hand gesture which was in breach of Principle 1 and Rule 1(c) of the Advertising Standards Code.

### Advertisement

The Te Whatu Ora/Health New Zealand television advertisement promoting the hepatitis C campaign shows a number of people holding up their middle finger. The voiceover says, "Hep c, we've one thing to say, stick it! If you reckon you could have been exposed to hepatitis C, there's an easy finger prick test to find out and a new cure which for most people takes just eight weeks. Which means there's no reason to feel judged for your past and every reason to get tested and stick it to hep C." The advertisement ends with the text "Easy test. Easy cure. Visit [stickittohepc.co.nz](http://stickittohepc.co.nz) for more info." The advertisement includes the names Te Whatu Ora, Health New Zealand and Te Aka Whai Ora, Māori Health Authority as well as a cartoon hand with a raised middle finger with a red dot on the finger highlighted with an arrow.

### Summary of the Complaints

18 Complainants were concerned the advertisement is using an offensive hand gesture which is vulgar and inappropriate for use within Government health messaging. Some Complainants were concerned the advertisement could normalise the use of the gesture if children are exposed to it. Copies of the complaints are in Appendix 1.

### Issues Raised:

- Social Responsibility
- Decency and Offensiveness
- Advocacy Advertising

### Summary of the Advertiser's Response

The Advertiser said the use of the finger gesture is only likely to cause offence when accompanied by verbal abuse, aggressive behaviour or body language such as sneering or an intimidating stance. The individuals in the advertisement are depicted with smiling friendly faces and others responding favourably to them. The advertisement then makes it clear the purpose of the finger is to represent the finger-prick test for hepatitis C. The Advertiser confirmed the AO rating meant all free-to-air broadcasts occurred after the 8:30pm watershed.

The Advertiser said the advocacy message promotes the rapid-point-of-care testing and the use of a direct-acting antiviral, Maviret, which can cure 95% of people with hepatitis C. A copy of the Advertiser's response is in Appendix 2.

### Summary of the Media's Response

The Commercial Approvals Bureau (CAB) confirmed the advertisement has been given a AO (Adults Only) rating which means the advertisement may only be broadcast after 8:30pm (or during adults only daytime programmes). CAB said it assessed the offence was unlikely to be serious or widespread due to the restrictive classification and a softening attitude to the F word. CAB said the middle finger gesture has a legitimate reason to feature in the important public health message.

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

### 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 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.

### Relevant precedent decisions

In considering these complaints the Complaints Board referred to three precedent decisions, Decision 13/347 and 19/463 were Upheld and Decision 15/356 was ruled No Grounds to Proceed.

The full versions of decisions from 2015 can be found on the ASA website:

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

**Decision 13/347** concerned a billboard advertisement for Radio Hauraki, which featured a host who had extended his middle fingers on both hands as a gesture to the viewer.

The majority of the Complaints Board upheld the complaints and said the highly visible advertisement in a central city location meant that the advertisement had an indiscriminate reach that went beyond its target audience and was visible to people who may find the gesture offensive and was also visible to children.

**Decision 15/356** concerned a website advertisement for Powershop, which showed an image of Angela Merkel, then Chancellor of Germany, giving the finger.

The Chair of the Complaints Board ruled there were no grounds for the complaint to proceed given the code allowed for the provision of humour and the website advertisement was unlikely to cause serious or widespread offence.

**Decision 19/463** concerned a billboard advertisement for First Credit Union which showed a woman saying, “Say FCU to your bank.”

The Complaints Board upheld the complaint and said the advertisement was likely to cause offence because the phrase “Say FCU to your bank was likely to be read as “Say fuck you to your bank” and the word “Fuck” is generally regarded as offensive. The Board said the billboard medium meant the advertisement had an unrestricted audience.

### **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: Hepatitis C is a liver infection caused by a virus spread through blood from an infected person such as sharing needles during drug use
  - Medium: Free to air and OnDemand television platforms
  - Audience: Adult target audience
  - Product: An advocacy Government health campaign for hepatitis C testing and treatment

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was that there is an easy finger prick test to determine if you have been exposed to hepatitis C and a new effective treatment, meaning you can say ‘Fuck you’ to hep C’.

The Complaints Board noted while the advertisement before it was part of a wider campaign promoting the testing and treatment for hepatitis C, there is no guarantee the consumers will be familiar with the campaign messaging and therefore each advertisement is assessed on its own merits, as a stand-alone advertisement.

#### *Is the advocacy advertisement adequately identified?*

The Complaints Board agreed the advertisement met the identity requirements of Rule 2(e) of the Advertising Standards Code for advocacy advertising. This is because the identity and position of the Advertiser were adequately identified. The advertisement includes the identity of Te Whatu Ora/Health New Zealand and Te Aka Whai Ora/Māori Health Authority, as well as the stickittohepc.co.nz website address for more information about the promotion of the test and treatment for hepatitis C.

#### *Application of Cameron*

The Complaints Board discussed the application of the Court of Appeal Decision in *Electoral Commission v Cameron* [1997] 2 NZLR 421 (“the *Cameron* decision”). It confirmed Te Whatu Ora – Health New Zealand is an expert body with regard to their statutory role in educating the public about health matters. However, the Board said the issue before it was not about an expert body’s position on health matters, but rather the execution of that message.

The Complaints Board began its deliberation by looking at context, audience and placement of the advertisement as well as community standards:

### *Context*

The Complaints Board agreed the advertisement was about being tested and treated for hepatitis C. It showed a number of people holding their middle finger up in a gesture which is synonymous with an explicit or obscene insult and can mean ‘fuck you’, ‘up yours’ or go fuck yourself’ amongst other meanings.

### *Audience*

The Complaints Board noted the advertisement had been given an AO rating by the Commercial Approvals Bureau which means it:

“May be broadcast after 8:30pm (or during appropriate adults only daytime programmes).

The Board also noted the Advertiser had indicated the target audience was consumers who have hepatitis C, who don’t know they have it. They are most likely to be 50-80 years of age, male (but not exclusively), pakeha (but not exclusively), and have used intravenous drugs in the 80/90s. The Advertiser noted that Māori males were also prioritised in this campaign.

When discussing audience and community standards, the Complaints Board referred to the report from the Broadcasting Standards Authority on [Language that may offend in broadcasting](#), published in February 2022. While the report showed that there has been a softening toward the use of the word “fuck”, it was still offensive. The key findings from the report included that “younger people generally find the use of offensive language in broadcasting more acceptable than those aged 55 years and over” and “the 65 plus age group generally finds the use of offensive language less acceptable than younger people.”

### *Placement*

The Complaints Board discussed the placement of the advertisement in the context of the complaints received. The Complaints Board referred to the list of free to air programmes in which the advertisement screened and noted that eight Complainants had seen the advertisement through the live-stream or OnDemand platforms during *TVNZ1 Midday News*, *Fair Go*, *Lingo*, *The Rookie*, *Danny McComick-Life on the Outside*, and *90 Day Fiancé*. The Board confirmed that advertisements on these platforms are served to consumers using the account holder profile information, such as age and gender. The remainder of the programmes viewed by the Complainants on free to air or subscription television screened after the 8:30pm watershed.

### *Does the advertisement contain anything that is indecent or likely to cause serious or widespread offence?*

The majority of the Complaints Board said the advertisement was in breach of Rule 1(c) Decency and Offensiveness. The Complaints Board referred to its precedent decisions particularly 19/463 where the Board said the text “Say FCU to your bank” was offensive. While the current advertisement did not use text, it used a gesture to say the same thing. The majority of the Board said the gesture was one of the most offensive gestures you can give to another person and always has negative connotations. While the majority of the Complaints Board noted the Advertiser’s response, which said the smiling faces of the characters in the advertisement making the gestures mitigated any aggressive intent, it did not agree. The majority said it was not uncommon for the gesture to be used with a smile in a passive aggressive manner, which still had offensive intent.

The majority of the Complaints Board said the targeting of the advertisement after the adult watershed of 8.30pm or through adult subscriber profiles was not sufficient to avoid exposure of a gesture to those consumers who consider it to be disrespectful, indecent and offensive.

The majority of the Board said the connection of the gesture and the finger prick test was not sufficient to justify its use, even in an advocacy advertisement.

A minority of the Complaints Board disagreed and said although the advertisement was close to the line, it did not breach Rule 1(c). This is because it was an important health message to a hard-to-reach audience and the finger prick test was clearly shown in the advertisement and provided context. For the minority of the Complaints Board, the restricted medium of the adult watershed and targeting adults through subscriber information prevented the advertisement from reaching the threshold to breach Rule 1(c) of the Advertising Standards Code.

*Was the advertisement prepared and placed with a due sense of social responsibility?*

The majority of the Complaints Board said the advertisement had not been prepared and placed with a due sense of social responsibility and was in breach of Principle 1 of the Advertising Standards Code, taking into account generally prevailing community standards. The Complaints Board said the use of the offensive hand gesture was not appropriate for a Government advocacy advertisement.

A minority of the Complaints Board disagreed and said the television advocacy advertisement had sufficient context and placement restrictions to prevent a breach of Principle 1 of the Advertising Standards Code.

However, in accordance with the majority, the Complaints Board ruled the advertisement was upheld, taking into account context, medium, audience and product and was in breach of Principle 1 and Rule 1(c) of the Advertising Standards Code.

### **Outcome**

The Complaints Board ruled the complaints were **Upheld**.

Advertisement to be removed and not used again in its current form.

### **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.

## APPENDICES

1. Complaint
  2. Response from Advertiser
  3. Response from Media
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### Appendix 1

#### COMPLAINT 1:

The advertisement is several people with their middle finger sticking up, which is a very disgusting and vulgar symbol. I should not have to see this as I prepare to watch the news. This advert is supposed to be about getting a test for hepatitis. Any finger can be pricked to get a blood test, the middle finger is not required. This advert is another example of the waste of money and lack of common sense with this ministry of health. This needs to be removed, now. The Ad was Titled "'stick it to Hep C. It is not creative but instead, vile, vulgar and wrong. I remember a Minister of Parliament being in trouble for using this gesture in Parliament, well if it is not allowed in Parliament it shouldn't be coming into our homes, paid for with tax payer money.

#### COMPLAINT 2

An offensive advert, normalising giving the middle finger. Disgusting.

#### COMPLAINT 3

This advertisement shows many people doing 'the finger'. This is an extremely offensive gesture and as such is unacceptable in television advertising especially for a government department.

#### COMPLAINT 4

The advert 'stick it to Hep c' of people giving the middle finger I found thoroughly offensive. This type of vulgar advertising is not fit for public viewing. What sort of message are you giving to young people for goodness sake. Take it down

#### COMPLAINT 5

Offensive finger gesture.

#### COMPLAINT 6

The advert shows multiple people giving the obscene middle finger sign. The ad is about giving Hep b the middle finger, something to do with a finger prick blood test. Cheap, rude and unnecessary, show lack of imagination. How is that being shown on daytime TV with children watching

#### COMPLAINT 7

This rate funded ad (stick it to hep c campaign) is very offensive and should not be allowed to be aired. Doing the fingers is not something that is kind or accepted in society due to the nature of what it means. Violence can be an outcome of doing the fingers at somebody so why is it ok that this is part of an ad on TV that anyone can see. I would like it removed as I believe it is immoral and irresponsible. It is even more disappointing that this is how our government, who stands by a slogan of being kind to everyone, chooses to communicate with us. It is not kind or applicable to the purpose of the ad. Please have it removed so that we can watch TV without being insulted.

**COMPLAINT 8**

Not appropriate for tv audience the pointing finger as every person knows shown in this manner is offensive

**COMPLAINT 9**

The Advertisement was advocating for HEP C testing. It included images of people pulling their finger. It is unacceptable to be showing such obscene imagery.

**COMPLAINT 10**

I don't like this advert showing the finger, not in good taste, and not suitable for children to see. I feel this should be removed.

**COMPLAINT 11**

I am writing to complain about the new "stick it to hep c" ad from the ministry of health. Completely unacceptable, offensive and disgusting rude gesture that I was not prepared for as it was not prefaced by a warning so I could switch channels. This was aired on channel 2 last night, 10 August at 9.10pm. Please have this ad removed from air as it is extremely offensive.

**COMPLAINT 12**

I find it completely inappropriate and crude to show people pulling the fingers to advertise seeking medical help and tests for Hep C

**COMPLAINT 13**

The campaign stick it to hep c is an understandable idea and an important issue. However What I find to be offensive is the use of "flipping the bird" as the stick it to part of the television advert.

**COMPLAINT 14**

What a terrible way of advertising for testing of hep C - I don't think we want all kids to think that sticking a middle figure is normal and maybe even funny. What is our community coming too if we need these types of advertising to get a point across. However approved this add should really be relieved off their duties.

**COMPLAINT 15**

Middle finger - showing the rude middle finger in an ad at any time is appalling. I can see the complaint process is designed so no one will complain. Get rid of this crap off our TV. As a teacher, we have enough issues with primary age children and rubbish like this. Regardless of the time, I know that young children will be watching.

**COMPLAINT 16**

The new "Hep c" ad is based on a very rude gesture. Raising the middle finger. Not acceptable

**COMPLAINT 17**

I find it disgusting that the advert is based around people pulling the middle finger at each other. I get what the ad is about and personally don't get offended by it. What disgusts me is that I have to try and explain to my young children what the middle finger means and why they can't do it in public like they see on the ad. I've seen it before at an earlier time of the night too, not to mention on TV shows that I've recorded and watch during the day time when the kids are awake.

**COMPLAINT 18**

I was shocked to see on the New Zealand Government "Stick it to Hep C Aotearoa" Hepatitis C Awareness Campaign on TV3 On Demand the actors are holding up their hands in this

manner to make an obscene gesture, actors are holding only the middle finger of a hand erect while the rest of the fingers are in a fist with the knuckles facing out.

## Appendix 2

### RESPONSE FROM ADVERTISER, TE WHATU ORA/HEALTH NEW ZEALAND

#### Re: Health Promotion Agency free-to-air television and television-on-demand – Complaint 22/239

Thank you for the opportunity to respond to the complaints received by the Advertising Standards Authority about the ‘Stick it to hep C’ advertisement featured on free-to-air television and television-on-demand.

I can confirm that Te Whatu Ora wishes to **defend** against the complaint. This letter sets out our response.

#### Principle 1 and Rule 1 (c)

The complainants have objected to depictions within the advertisement of several individuals making the gesture commonly known as ‘the finger’.

We understand the material issue is whether there is a breach of the requirements under the Advertising Standards Code for advertisements to be “*prepared and placed with a due sense of social responsibility to consumers and to society*” [Principle 1] and to “*...not contain anything that is [...] likely to cause [...] serious or widespread offence...*” [Rule 1 (c)].

Our position is that, under the current prevailing community standards, the use of ‘the finger’ is likely to cause serious or widespread offence only when accompanied by verbal abuse, aggressive behaviour or body language such as glaring/sneering or an intimidating stance.

The individuals featured in the advertisement are depicted with smiling/friendly faces that make it clear they are using ‘the finger’ in a light-hearted, cheeky and friendly way, and are not directing an insult, threat or abuse toward the viewer or any other individual or group. The lack of any offensive intent is further supported by the depiction of other individuals within the advertisement responding to the use of ‘the finger’ in a positive way.

The advertisement then presents a depiction of the finger-prick test for hepatitis C. This makes it clear that the purpose of ‘the finger’ is to represent the finger-prick test. This is further supported by an explanatory voice over, the use of the text “Stick it to hep C.” and “Easy Test. Easy cure.”, and the use of the ‘stickittohepC’ graphic device. The device depicts a hand that has the middle finger extended with a red dot on the fingertip, emphasised by an arrow.

The advertisement received an AO or Adults Only rating from the Commercial Approvals Bureau (CAB). For this reason, all free-to-air broadcasts of the advertisement have occurred after the 8.30pm watershed. Some broadcasters may have aired the advertisement during on-demand programs at other times of day, in accordance with their internal policies and the ‘AO’ rating for the advertisement.

We note that the AO rating relates only to the suitability of the advertisement for children. It does not by itself indicate that an advertisement is likely to cause serious or widespread offence.

#### Principle 2 and Rule 2 (e)

You have also asked for information to provide assurance that the advertisements are in accordance with Principle 2 and Rule 2 (e) of the Advertising Standards Code:

- Advertisements must be truthful, balanced and not misleading
- [Principle 2]
- 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 [Rule 2 (e)]

The factual claim within the advertisement is that hepatitis C is 'easy test, easy cure'.

The basis for the claim of 'easy test' is the recent adoption of rapid point-of-care testing for hepatitis C. This involves a finger-prick test which can be administered by non-specialist personnel. The finger-prick test detects the presence of hepatitis C antibodies and takes only a few minutes to process. A negative test result provides immediate assurance that the person does not have hepatitis C.

Information that substantiates rapid point-of-care testing for hepatitis C is an 'easy test' can be found at:

- <https://www.nature.com/articles/s41598-018-33172-w>
- <https://journal.nzma.org.nz/journal-articles/point-of-care-rapid-testing-for-hepatitis-c-antibodies-at-new-zealand-needle-exchanges>
- <https://ourarchive.otago.ac.nz/handle/10523/12006>

The basis for the claim of 'easy cure' is the use of a direct-acting antiviral known as Maviret or Mavyret, which has revolutionised the treatment approach for hepatitis C. Maviret is taken once a day by mouth with food, for a period of 8-12 weeks, and has been established to cure approximately 95 percent of people who have hepatitis C with few side effects. It works by stopping the hepatitis C virus from multiplying and infecting new cells, which allows the infection to be eliminated from the body.

Maviret is a fixed-dose combination medicine containing glecaprevir and pibrentasvir. It was approved in 2017 for medical use in the United States and Europe and has been funded by Pharmac since February 2019. Previously, treatments for hepatitis C were known for their unpleasant side effects and limited effectiveness.

Information that substantiates Maviret is an easy and effective cure for hepatitis C can be found at:

- <https://www.who.int/news-room/fact-sheets/detail/hepatitis-c>
- <https://www.ema.europa.eu/en/medicines/human/EPAR/maviret>
- <https://www.fda.gov/news-events/press-announcements/fda-approves-mavyret-hepatitis-c>
- <https://www.health.govt.nz/your-health/conditions-and-treatments/diseases-and-illnesses/hepatitis-c>

We recognise the importance of ensuring that New Zealanders understand clearly that the 'Stick it to hep C' campaign is a government initiative delivered by Te Whatu Ora (Health New Zealand) and Te Aka Whai Ora (Māori Health Authority).

The main channel for reaching the target audiences has been the television advertisement, which includes the logos for both health agencies. Agency branding is also displayed on the campaign homepage at [stickittohepc.co.nz](http://stickittohepc.co.nz). The out-of-home advertisements including digital display boards and posters have been used as a supporting channel for the campaign and refer readers to the homepage for detailed information. Visiting the homepage where the agency branding is located is a necessary step for people to find out if they are at risk of hepatitis C and where they can get tested. For these reasons, we are confident that the target audiences are fully aware the campaign is supported by Te Whatu Ora and Health New Zealand.

**Further information**

Further information about hepatitis C and the national awareness campaign, together with a table listing the supporting information you have requested, is set out in the appendix to this letter. Thank you again for the opportunity to respond to this complaint.

**Appendix 3****RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU****Re: Health Promotion Agency Television – Complaint 22/239****Key number: HPA 30 0133, Rating: AO (Adults Only)**

Thank you for the opportunity to comment on the complaints the HPA's "Stick it to hep C" commercial is in breach of Rule 1(c) of the Advertising Standards Code.

I note firstly that we had expected this commercial to cause a degree of offence; however, in our assessment this offence was unlikely to be serious or widespread due to changing community standards and a restrictive CAB classification.

Specifically:

- The middle finger gesture is not being used to communicate the f-word and has a legitimate reason for being featured in the commercial,
- The commercial has an Adults Only (AO) rating and can therefore only be broadcast after 8:30pm or during appropriate adults only daytime programmes,
- The BSA's most recent "Language that may offend" research (2022) notes that there has been a softening of attitudes towards use of the f-word over the past two decades, particularly so when used later in the evening with the report noting that, "offensive language used after 8.30pm is likely to be more acceptable".

On balance, we continue to believe that the importance of this public health message justifies what, in our assessment, is a small risk of causing serious or widespread offence.