

COMPLAINT NUMBER	22/248
ADVERTISER	Te Whatu Ora/Health New Zealand
ADVERTISEMENT	Stick it to Hepatitis C, Out-of-Home Digital Street Screens
DATE OF MEETING	13 September 2022
OUTCOME	Upheld Advertisement to be removed and not used again in its current form

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about a Te Whatu Ora/Health New Zealand out-of-home digital street screen advertisement promoting the testing and treatment campaign for hepatitis C. 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 street digital screen advertisement promoting the hepatitis C campaign rotates through three people holding up their middle finger. The text says, “Stick it to Hep C. Easy test. Easy cure. Visit stickittohepc.co.nz to find out more.” The advertisement includes a cartoon hand with a raised middle finger with a red dot on the finger highlighted with an arrow.

Summary of the Complaint

The Complainant was concerned the advertisement is using an offensive hand gesture which is long established as sign language for “F... You.”, which has no place on a billboard which can be seen by children and also offends adults. The Complainant said the advertisement has no context for its use should not have been sanctioned by a government department.

A copy of the complaint is 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.

The meaning of ‘the finger’ within the advertisements is made clear by the prominent placement of the text “Stick it to hep C.” and “Easy Test. Easy cure.” and the inclusion of the ‘stickittohepc’ graphic device with an arrow to the red dot on the finger.

The Advertiser said it instructed delivery partners to place all out of home advertising such as digital display boards and posters in locations most relevant to our target audience (men aged

45+). They also instructed our partners to immediately remove any advertisements identified by members of the public as being near to schools or kindergartens.

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

oOh! Media said the creative was assessed and reworked with the Advertiser to soften the imagery and show the raised finger in a friendly way to portray an important health message. The meaning of the finger with the advertisement is made clear by the prominent placement of the text "Stick it to hep C" and the graphic hand with the red dot emphasised by the arrow to represent the easy finger-prick test for Hepatitis C.

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 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.

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: Out-of-home digital street screens and posters
 - Audience: Unrestricted 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'.

Those consumers in close proximity to the advertisement or those familiar with the television advertisement may understand the connection to the finger prick test, however the Board said the context would be missing for most consumers who are likely to only focus on the hand gesture.

The Complaints Board noted that while the advertisement before it was part of a wider campaign promoting the testing and treatment of 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 displayed stickittohepc.co.nz website address which signalled where consumers could find out 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 as an explicit or obscene insult and can mean ‘fuck you’, ‘up yours’ or go fuck yourself’ amongst other meanings.

Audience/Placement

The Complaints Board noted the advertisement was displayed in the unrestricted medium of out-of-home digital street screens and posters. This meant the images could be seen by people of all ages and from all sectors of society, including children.

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.”

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

The Complaints Board unanimously agreed 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 Board said the gesture was one of the most offensive gestures you can give to another person and always has negative connotations. While the 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 Complaints Board 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 Complaints Board said the advertisement lacked sufficient context to link the gesture to the finger prick test and many viewers would be likely to focus on the hand gesture and miss the wider context of the campaign. The Board said regardless, the connection of the gesture and the finger prick test was not sufficient to justify its use, even in an advocacy advertisement.

The Complaints Board said the placement of the advertisement was not sufficiently targeted to avoid children and those likely to be offended by the gesture.

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

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 unanimously 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 complaint was **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. 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

Appendix 1

COMPLAINT

The attached images appear on a rolling digital display board attached to a bus shelter on Oteha Valley Road, Albany (opposite Mitre10). They face the oncoming traffic. My 13yr old daughter and I drove past, at 50km/p (the speed limit) and all we saw was a guy "Flipping the finger". She and I were deeply shocked and had no idea why that would be. I returned to take the attached images. I find this imagery deeply offensive, the gesture is long established as "sign language" for a series of very rude words, in short "F*%\$ You!". It has no place on a billboard nor where it can be seen by children. This hand gesture causes a lot of grief in playgrounds and schools across the country (my sister is a teacher). It also deeply offends me as an adult and should never be used in any form of gest nor casually. The lettering on the poster also gives no context for the gesture's use (not that the gesture is acceptable). Finally I am deeply un impressed that this appears to have been sanctioned by a government department and Health NZ

Appendix 2

RESPONSE FROM ADVERTISER, TE WHATU ORA/HEALTH NEW ZEALAND

Re: Health Promotion Agency Out of Home – Complaint 22/248

Thank you for the opportunity to respond to the complaint received by the Advertising Standards Authority about the 'Stick it to hep C' advertisements featured on a digital display board at a bus shelter on Oteha Valley Road, Albany.

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 complainant has objected to the inclusion of images within the advertisements that depict 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 offense only when accompanied by verbal abuse, aggressive behaviour or body language such as glaring/sneering or an intimidating stance. The individuals featured in the advertisements 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 meaning of 'the finger' within the advertisements is made clear by the prominent placement of the text "Stick it to hep C." and "Easy Test. Easy cure." and the inclusion 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. This makes it clear that the purpose of ‘the finger’ is to represent the easy finger-prick test for hepatitis C.

While we were confident that the advertisements were not likely to cause serious or widespread offence, we were also mindful that some children with prior knowledge that ‘the finger’ can be used deliberately to cause offence may, after seeing the advertisements, take the opportunity to test the behavioural boundaries set by their parents or guardians. For this reason, we instructed our delivery partners to place all out of home advertising such as digital display boards and posters in locations most relevant to our target audience (men aged 45+). We also instructed our partners to immediately remove any advertisements identified by members of the public as being near to schools or kindergartens.

You have also asked for information to provide assurance that the advertisements are in accordance with Principle 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 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 812 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 a television advertisement that includes the logos for both health agencies. Agency branding is also displayed on the campaign homepage at 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 Te Aka Whai Ora. Finally, by way of further context, the campaign spokespeople were carefully selected to ensure the campaign resonated with the at-risk population and to help remove the stigma some people feel is associated with hepatitis C. The campaign was developed in partnership with health sector representatives, peer workers and people with lived experience from across the motu.

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, OOH MEDIA

ASA COMPLAINT RESPONSE - 22/248

Hep C – “Stick it to Hep C” Campaign

In response to the complaint made by a member of the public regarding the content of the creative for the Health Promotion Agency, Hep C campaign, oOh! Media provide further insight and information regarding the decisions and processes undertaken.

Campaign Details

- Auckland ONLY
- Street Digital screens only
- Auckland only – 20 screens per day. 8 second Loop and 1 in 6 SOV.
- 15th August to 21st August
- 29th August to 4th September
- 12th September to 18th September

oOh! takes social responsibility seriously and ensure that all oOh! Media Services staff have participated in ASA training on the codes. Our Delivery Team assess all creative to ensure

compliance with guidelines and we have a strong process in place to recommend creative changes to clients or to escalate if there is ever any indecision within the team.

Upon receiving the initial creative for this Hep C campaign, our oOh! Delivery Team flagged it as a potential risk despite the positive messaging around getting tested and preventing further health complications for around 40,000 New Zealanders who are unaware they are living with the virus.

oOh! Media advised the client of the potential ASA compliance risk around the content of the creative and they agreed to alter it from the initial drawn sketches to softer imagery with the individuals featured in the advertisements to be purposely 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 meaning of 'the finger' within the advertisements is made clear by the prominent placement of the text "Stick it to hep C." and "Easy test. Easy cure." and the inclusion 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. This makes it clear that the purpose of 'the finger' is to represent the easy finger-prick test for Hepatitis C.

I also attach a copy of the site list used for this campaign and images scheduled on our screens.