

COMPLAINT NUMBER	18/299
COMPLAINANT	S Lewis
ADVERTISER	Seafood New Zealand
ADVERTISEMENT	Seafood New Zealand Television
DATE OF MEETING	9 October 2018
OUTCOME	Not Upheld

SUMMARY

The television advertisement for Seafood New Zealand begins with portraits of men who work in the fishing industry and shots of a fishing vessel in port and at sea. There were also some graphics to illustrate how the quota management system works. The voiceover for the advertisement said: “We’re keeping our promise to be guardians of our oceans. Thanks to smarter technology, we know how many fish there are. And, just as importantly, how many to leave. Our quota management system guarantees our fisheries stay sustainable. It’s something we live by every day we head out to sea and that is a promise.”

The Complainant said the advertisement was misleading because it made a number of claims which are unsubstantiated, for example: only 10% of fish stock is being caught, the quota management system guarantees our fisheries stay sustainable and we know how many fish there are.

The Advertiser defended the advertisement and the use of the statement: “*Our quota management system guarantees our fisheries stay sustainable*” and said because they abide by the law (the Quota Management System) New Zealand fisheries *are* sustainable. New Zealand’s QMS is lauded internationally as world leading.

The majority of the Complaints Board said the advertisement was not misleading. The advertisement states the New Zealand fishing industry is environmentally responsible because it has a Quota Management System which relies on advanced technology and is designed to ensure the New Zealand fishing industry remains sustainable. The average consumer would view the statements in the advertisement more as a promise or a commitment to sustainable fisheries, rather than an absolute guarantee.

A minority disagreed. It said the use of the word “guarantees” in the statement: “Our quota management system guarantees our fisheries stay sustainable” was misleading. The word “guarantees” implies a strong environmental claim, especially when talking about “our” QMS, and substantiation to support such a strong claim was not provided.

In accordance with the majority, the Complaints Board ruled the advertisement was not misleading.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the complaint with reference to Basic Principle 4 and Rule 2 of the Code of Ethics and Principle 1 and Principle 2 of the Code for Environmental Claims.

Basic Principle 4 required the Complaints Board to consider whether or not the advertisement had been prepared with a due sense of social responsibility.

Rule 2 required the Complaints Board to consider whether the advertisement contained any statement or visual presentation or created an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge.

Principle 1 of the Code for Environmental Claims required the Complaints Board to consider whether any environmental claims in the advertisement were prepared with a due sense of social responsibility to consumers and to society.

Principle 2 of the Code for Environmental Claims required the Complaints Board to consider whether any environmental claims in the advertisement contained any statement or visual presentation or created an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. (Obvious hyperbole, identifiable as such, is not considered to be misleading)

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant said the advertisement was misleading because it made a number of claims which are unsubstantiated. The points made by the Complainant are summarised as follows:

- The visual graphic in the advertisement shows 90% of fish 'escaping' and 10% of fish being caught. The advertiser needs to substantiate their claim that 90% of each fishery is left undisturbed by their activities.
- The voiceover states: 'Our quota management system guarantees our fisheries stay sustainable' The quota management system does not guarantee our fisheries stay sustainable. The facts are
 - a) that there is significant non-compliance within the industry; and
 - b) there is no consensus of opinion amongst the scientific community about sustainable quota levels in the New Zealand fishing industry. Therefore, the advertiser is required to substantiate these claims.
- The voiceover states: "We're keeping our promise to be guardians of our oceans". There is significant non-compliance within the fishing industry, so they are not keeping their promise.
- The voiceover states: 'Thanks to smarter technology we know how many fish there are, and just as importantly, how many to leave.' The exact size of fish stocks is not known, and the advertiser is unable to substantiate the claim that they know how many fish there are. Similarly, there is no consensus amongst scientists over how many fish to leave and the advertiser is therefore unable to substantiate the statement that they know how many fish to leave.
- The voiceover states 'it's something we live by every day we head out to sea, and that is a promise.' Again, there is significant non-compliance within the New Zealand

Fishing Industry and the advertiser is making a misleading claim in promising that they live by that behaviour every day.

The Advertiser's response

The Advertiser defended the advertisement including the statement: "*Our quota management system guarantees our fisheries stay sustainable*" and said because they abide by the law (the Quota Management System) New Zealand fisheries *are* sustainable.

The Advertiser also said:

- The graphic is indicative of the way the Quota Management System (QMS) works. The number of fish allowed to be caught is based on the science around the stock's ability to remain sustainable, and this varies depending on the species of fish. The graphic was devised using the species hoki as an example, as hoki is the most caught species by volume in New Zealand waters.
- As hoki is a fast-growing fish the fishing industry is permitted to take far more of this species than say orange roughy, which is slow growing, and where the catch permitted is only four fish out of every 100.
- The industry carries out a number of initiatives beyond what is required by the law, such as developing and overseeing industry fisheries management plans and reducing seabird and marine mammal interactions.
- It disagreed that there is *significant non-compliance* in the fishery industry.
- The contention that there is *no consensus of opinion in the scientific community about sustainable quota levels in the New Zealand fishing industry* is not only incorrect, the opposite applies.
- New Zealand's QMS is lauded internationally as world leading.
- There have been significant technological advances in the industry and work has been done to reduce the impact on seabirds and sea mammals.
- They do know the exact size of fish stocks and provided a link to the Ministry for Primary Industries annual fish stocks assessments.

The Media's response

The Media, the Commercial Approvals Bureau (CAB) said it sees no reason to uphold this complaint.

The Media said this commercial makes a statement promising all New Zealanders that this is the Code of Conduct the industry has signed to deliver on that promise, while at the same time supporting increased transparency.

Precedent

In considering the issues raised by the Complainant, the Complaints Board referred to a precedent decision, Decision 18/103, which was Not Upheld.

The television advertisement for Purex toilet paper showed different images at the Kawerau mill and stated: "If you want to make toilet paper that's not only soft, but soft on the environment, Kawerau's a pretty good place to do it."

The Complainant was concerned about the water quality of the Tarawera river, which they say is pristine before reaching the Kawerau mill and dirty and polluted when it leaves the mill, meaning the environmental claims made in the advertisement were misleading.

The Advertiser said its Kawerau site is required to meet all consent requirements handed down by the Regional Council and also voluntarily seeks assessment against the Environmental Choice New Zealand's (ECNZ) standard which applies to its manufacturing

process. The standard naturally deals with the discharge of effluent from its paper manufacturing facility.

The Complaints Board said the Advertiser had provided sufficient substantiation to support the environmental claim made in the advertisement that the product was ‘soft on the environment’.

Complaints Board Discussion

Consumer Takeout

The Complaints Board considered the likely consumer takeout of the advertisement for Seafood New Zealand. The Complaints Board agreed the advertisement portrays the New Zealand fishing industry as sustainable and encourages the viewer to buy New Zealand fish.

The Complaints Board then considered whether the advertisement was making environmental claims and whether the advertisement was likely to mislead the consumer.

The Complaints Board agreed there were environmental claims in the advertisement, specifically: “Thanks to smarter technology, we know how many fish there are. And, just as importantly, how many to leave. Our quota management system guarantees our fisheries stay sustainable.”

The Complaints Board agreed that the phrases “We’re keeping our promise to be guardians of our oceans” and “It’s something we live by every day we head out to sea and that is a promise” were not environmental claims and contained elements of hyperbole. They also have an aspirational theme and convey the Advertiser’s intention to be “guardians of our oceans”.

Were the environmental claims misleading?

The Complaints Board considered each of the environmental claims in turn.

The Complaints Board agreed that the phrase “Thanks to smarter technology, we know how many fish there are and how many to leave” refers to the Quota Management System (QMS) used in the New Zealand fishing industry, which relies on advanced technology and is designed to ensure the New Zealand fishing industry remains sustainable. Under this system the number of fish allowed to be caught is based on the science around the stock’s ability to remain sustainable, and this varies from species to species. The purpose of the graphic used in the advertisement was to illustrate how the QMS system works.

The Complaints Board noted the Advertiser sought advice from the National Institute of Water and Atmospheric Research (NIWA) before running the advertisement. According to the Advertiser, NIWA advised: “for a plain language interpretation of the fishing intensity your statement is good”.

The Complaints Board agreed the phrase “Thanks to smarter technology, we know how many fish there are and how many to leave” was not misleading.

The Complaints Board then considered the phrase “Our quota management system guarantees our fisheries stay sustainable.”

The majority of the Complaints Board said this statement was not misleading and had been adequately substantiated. The majority said the average consumer would view this statement more as a promise or a commitment to sustainable fisheries, rather than an absolute guarantee. The majority agreed however that the word “guarantees” was not the most suitable word to use in this context.

A minority disagreed, and said the advertisement was misleading. It said the use of the word “guarantees” in the statement “Our quota management system guarantees our fisheries stay sustainable” was misleading. The word “guarantees” implies a strong environmental claim, especially when talking about “our” QMS, and substantiation to support such a strong claim was not provided. The minority said this statement goes further than the statement on the Fisheries New Zealand website: “Fisheries New Zealand works to ensure that fisheries resources are managed to provide the greatest overall benefit to New Zealanders” or the statement on the QMS website: “By controlling the amount of fish taken from each stock, the QMS helps keep New Zealand fisheries sustainable”.

However, in accordance with the majority, the Complaints Board ruled the advertisement was not misleading and had been prepared with the required standard of social responsibility.

The Complaints Board ruled the advertisement was not in breach of Basic Principle 4 and Rule 2 of the Code of Ethics. The Complaints Board ruled the advertisement was not in breach of Principle 1 or 2 of the Code for Environmental Claims.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The television advertisement for Seafood New Zealand started with portraits of three men who work in the fishing industry. Next there was an image of a fishing vessel in port, and then a shot of the technology used in the bridge of a fishing vessel. Following that there were some graphics which used fish to illustrate how the quota management system works. The final shots showed men working on a fishing vessel out at sea. The website “Seafood.co.nz” was displayed. While these images were being shown the following voiceover was heard:

“We’re keeping our promise to be guardians of our oceans.
Thanks to smarter technology, we know how many fish there are
And, just as importantly, how many to leave
Our quota management system guarantees our fisheries stay sustainable
It’s something we live by
Every day we head out to sea
And that is a promise”.

COMPLAINT FROM S LEWIS

This advertisement appears to represent the New Zealand Fishing Industry as a whole. It uses phrases such as ‘... our fisheries stay sustainable ...’ which is an environmental claim. Therefore the Code for Environmental Claims applies.

They make a number of claims which are misleading or unsubstantiated:

1. The visual graphic in the advertisement shows 90 fish ‘escaping’ and 10 fish being caught. The code states: ‘Environmental claims shall be accurate and able to be substantiated by evidence that is current and reflects legislative, scientific and technological developments.’ This is arguably misleading and the advertiser needs to substantiate their claim that 90% of each fishery is left undisturbed by their activities.
2. The voiceover states: ‘Our quota management system guarantees our fisheries stay sustainable’ The code states: ‘Environmental claims shall only be made where there

is a genuine benefit, not where they are simply promoting the observance of existing law.' The quota management system is law and there is no additional benefit from the advertiser's activities. The code further states: 'Environmental claims shall be accurate and able to be substantiated by evidence that is current and reflects legislative, scientific and technological developments.' The quota management system does not guarantee our fisheries stay sustainable. The facts are

a) that there is significant non-compliance within the industry; and

b) there is no consensus of opinion amongst the scientific community about sustainable quota levels in the New Zealand fishing industry. Therefore the advertiser is required to substantiate these claims.

3. The voiceover states: "We're keeping our promise to be guardians of our oceans". The code states: 'Environmental claims shall be accurate and able to be substantiated by evidence that is current and reflects legislative, scientific and technological developments.' There is significant non-compliance within the fishing industry, so they are not keeping their promise. Therefore the claim is misleading.
4. The voiceover states: 'Thanks to smarter technology we know how many fish there are, and just as importantly, how many to leave.' The code states: 'Qualified claims such as "environmentally friendlier/safer/kinder" require an ability to prove a meaningful environmental advantage over competitors or a meaningful improvement on a previous formulation, components, packaging, method of manufacture or operation.' The advertiser is required to prove a meaningful improvement or advantage from the smarter technology. The code further states: 'Environmental claims shall be accurate and able to be substantiated by evidence that is current and reflects legislative, scientific and technological developments.' The exact size of fish stocks is not known and the advertiser is unable to substantiate the claim that they know how many fish there are. Similarly, there is no consensus amongst scientists over how many fish to leave and the advertiser is therefore unable to substantiate the statement that they know how many fish to leave.
5. The voiceover states 'it's something we live by every day we head out to sea, and that is a promise.' The code states: 'Environmental claims shall be accurate and able to be substantiated by evidence that is current and reflects legislative, scientific and technological developments.' Again, there is significant non-compliance within the New Zealand Fishing Industry and the advertiser is making a misleading claim in promising that they live by that behaviour every day.

CODES OF PRACTICE

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2: Truthful Presentation Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

CODE FOR ENVIRONMENTAL CLAIMS

Principle 1: Advertisements making an environmental claim should be prepared with a due sense of social responsibility to consumers and to society.

Principle 2: Advertisements making environmental claims should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. (Obvious hyperbole, identifiable as such, is not considered to be misleading)

RESPONSE FROM ADVERTISER, SEAFOOD NEW ZEALAND

1. The graphic is indicative of the way the Quota Management System (QMS) works. The number of fish allowed to be caught is based on the science around the stock's ability to remain sustainable. The graphic was devised using the species hoki as an example, as hoki is the most caught species by volume in New Zealand waters. Hoki is a fast growing fish and the fishing industry is permitted to take far more of this species than say orange roughy, which is slow growing, and where the catch permitted is only four fish out of every 100. Before using the graphic we ran the science past Dr Andy Lewis, Fisheries Modeller for the National Institute of Water and Atmospheric Research (NIWA). NIWA conduct the science around stock assessments. Dr Lewis' response was: *The fishing intensity U gives the catch as a proportion by numbers, so the statement: "If U is 0.1, for every 100 adult hoki, we catch 10" is valid. There's some technical subtleties in that of the "100 adult hoki" some die before fishing takes place upon them, and the way the fishing intensity is defined "we catch no more than 10" would be more accurate (the proportion can differ by age groups, but be no more than 0.10 for any age group). But for a plain language interpretation of the fishing intensity your statement is good.* If ASA would like to see this email, or confirm its veracity with Dr Lewis, we are happy to supply.
2. Mr Lewis' contention that just because the QMS is law, the statement made in the advertisement (*Our quota management system guarantees our fisheries stay sustainable*) is wrong, is nonsensical. We abide by the law, therefore the fisheries *are* sustainable. Further, we not only comply with the law, the industry goes much further than that. The industry pays some \$30 million in levies each year to support both the science behind the QMS, and some compliance costs. The industry also carries out a number of initiatives beyond what is required by the law, including
 - developing and overseeing industry fisheries management plans,
 - reducing seabird and marine mammal interactions,
 - privately funding research into technology designed to fish more selectively
 - conducting research into alternatives to plastics,
 - continuing to pursue and receive independent international accreditation that our stocks are sustainable. Some 17 New Zealand fisheries catching hoki, hake, ling and southern blue whiting have just been re-certified against the gold standard for sustainable seafood, the Marine Stewardship Council (MSC) certification. After a rigorous independent assessment spent over a year scrutinising the science and management of these fisheries, the final public consultation period closed on 12 September with no objections and no conditions.

Only 12 percent of the world's wild-caught seafood is MSC certified – and even fewer fisheries are certified without conditions (which are given when a fishery meets the standard but improvements are required). This puts these New Zealand fisheries in the top four percent of the world for providing the highest international standard of sustainable seafood.

- a. The contention that there is *significant non-compliance* in the fishery is incorrect. There are 1,165 commercial fishing vessels in New Zealand and in 2016/2017 MPI successfully prosecuted six for violations. This is not 'significant non-compliance.' The Official Information Act (OIA) response supporting this data is attached. Page 23.

Further, the industry is very vocal when laws are transgressed. We work to a strict Code of Conduct that states we will not condone illegal behaviour. The Code of Conduct is attached and an example of industry condemning bad behaviour is here; <https://www.stuff.co.nz/environment/105239766/fishermen-found-guilty-of-multiple-acts-of-cruelty-to-sea-birds>

- b. The contention by Mr Lewis that there is *no consensus of opinion in the scientific community about sustainable quota levels in the New Zealand fishing industry* is not only incorrect, the opposite applies.

New Zealand's QMS is lauded internationally as world leading. Here is a link to the science underpinning the QMS; <https://www.mpi.govt.nz/law-and-policy/legal-overviews/fisheries/quota-management-system/> I also attach four international reports on the success of the QMS and in praise of our fisheries management. In the Worm, Hilborn study of 2009, they concluded; *we found that only Alaska and New Zealand seemed to have acted with such foresight, whereas other regions experienced systemic overexploitation.*

<http://science.sciencemag.org/content/325/5940/578> And the Pramod research in 2011 ranked New Zealand's fisheries management as number one in the world when compared to 41 other fishing nations. A NZ government link to these publications is here; <https://www.mpi.govt.nz/protection-and-response/sustainable-fisheries/the-health-of-new-zealands-fisheries/> In 2016, The Proceedings of the National Academy of Sciences of the United States of America again cited New Zealand's fisheries management as among the best in the world. The reference is here; http://www.pnas.org/content/114/1/178?ikey=01400c92a57dc25fd91d81507011058cb0070f4a&keytype2=tf_ipsecsha Even environmental NGOs conclude New Zealand's fisheries management is outstanding. Please see a link to The Nature Conservancy's 2017 publication, Key Lessons from 30 years of New Zealand's Quota Management System; <https://www.nature.org/media/asia-pacific/new-zealand-fisheries-quota-management.pdf>

3. See response to 2a
4. The technological advances in the industry are well known and have been highlighted in the excellent Ocean Bounty television series. We list some below;

- The smarter technology includes Precision Seafood Harvesting (PSH) which holds fish in an aquarium-like environment in a state-of-the-art net before lowering them into a tank on board the vessel. The fish is harvested in a way that is not only less stressful for the fish, it is revolutionary. The technology is the result of a government/industry partnership that has been a multi-million dollar investment for the industry. A link to this technology is here; <http://www.precisionseafoodharvesting.co.nz/>
- Another revolutionary advance is the Acoustical Optical System (AOS) fitted to trawl equipment. This enables skippers to see schools of fish 1000 metres below the surface, thus targeting the correct target species, eliminating bycatch and also is a valuable scientific tool in fish research (confirming species identification). This is to be rolled across the New Zealand trawler fleet, and more information is here; <https://www.csiro.au/en/Research/OandA/Areas/Marine-resources-and-industries/Sustaining-Australian-fisheries/Monitoring-orange-roughy>
- Significant work has also been initiated (and put into operational practice) by the industry to reduce the impact and interaction with seabirds and sea mammals, from designing and implementing Threat Management Plans at the vessel level, to designing equipment for Sea lion protection from trawl nets. Again this is beyond the requirement of the law – but is a reflection of industries commitment to the Code of Practice and the Promise – which Mr Lewis seems to object to. A recent submission to the parliamentary Environmental Select Committee on the seafood industry's plastics strategy is attached.

Mr Lewis is also mistaken in his belief that; *‘the exact size of the fish stocks is not known and the advertiser is unable to substantiate the claim that they know how many fish there are.’* Actually, we do. Here is a link to the Ministry for Primary Industries annual fish stocks assessments. <https://www.mpi.govt.nz/growing-and-harvesting/fisheries/fisheries-management/fish-stock-status/>

The industry also engages in multi-party stock assessment plenary workshops as part of the sustainability round in setting total allowable catches. These are robust scientific discussions and the industry willingly invests considerable time and independent scientific expertise to these fora.

5. Please see response to 2a

RESPONSE FROM MEDIA, CAB

We have been asked to respond to this complaint under the Code of Ethics, Basic Principle 4, Rule 2 (social responsibility and truthful presentation); and Code for Environmental Claims – Principle 1 and 2 (social responsibility and misleading information).

Seafood New Zealand is working closely with the seafood industry to promote sustainable, nutritious and responsibly caught seafood. This commercial makes a statement promising all New Zealanders that this is the Code of Conduct the industry has signed to deliver on that Promise and at the same time supporting increased transparency.

The industry should be congratulated on this initiative while working closely with the Government to sustain and grow this vital trade.

CAB sees no reason to uphold this complaint.

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 via email or letter within 14 days of receipt of this decision.