

COMPLAINT NUMBER	21/204
ADVERTISER	Waka Kotahi/ NZ Transport Agency
ADVERTISEMENT	Waka Kotahi/ NZ Transport Agency Television
DATE OF MEETING	30 April 2021
OUTCOME	No Grounds to Proceed

Advertisement: The Waka Kotahi/NZ Transport Agency television advertisement titled "Apprentice" shows Jimmy, an apprentice, catching a ride with "Big Rod". Rod drives fast and overtakes several vehicles. The apprentice is clearly uncomfortable, but Rod doesn't notice. The advertisement ends with the text "Slow down".

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

Complaint: <https://www.youtube.com/watch?v=q-LE17hm18E> - link to the NZTA on Youtube, as shown on TV3.

This ad purports to be about reducing speed. However, during the ad (in breach of Rule 1(e) Safety, depicts a legal act - overtaking or passing two cars, as being undesirable. But at this time also clearly depicts an illegal act which is two vehicles following extremely close together (Tailgating). Which is a breach of the Land Transport Act.

In the footage it can be seen that the two cars being overtaken are travelling so close together that there is only about 1 dotted white line space on the road between them. This gap is set in the Manual of Traffic Signs and Road Markings (MOTSAM) and is a spacing of 10 metres. The speed for the road area depicted in the advertisement is 80 kph meaning that there should be a substantially larger gap between these vehicles.

Tailgating and following too closely are key factors in nose to tail crashes in all speed zones, plus it creates the potential for aggressive driving and other poor driving decisions because traffic cannot safely pass or overtake a slower vehicle.

The NZTA (Waka Kotahi) are the NZ Regulator for Road Safety and must at all times reflect the highest standards when creating advertisements, unless of course the educational component needs to reflect something illegal. However, in this situation the ad does not need to show the overtaking of the two vehicles, and most certainly does not need to have two vehicles travelling closely together (depicting tailgating - which is not the focus of the ad).

The relevant provisions were Advertising Standards Code - Principle 1, Principle 2, Rule 1(e), 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(e) Safety: Advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.

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.

The Chair said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 2(e) of the Advertising Standards Code. This Rule required the identity of the advertiser to be clear; opinion to be distinguished from factual information and factual information must be able to be substantiated. The Advocacy Principles developed by the Complaints Board in previous decisions considered under Rule 11 of the Code of Ethics remain relevant. They say:

1. That section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people's rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the rights granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

Role of the ASA when considering an advocacy advertisement

The Chair noted her role is to consider the likely consumer takeout of an advertisement and complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

The Chair will consider whether the advertisement includes statements of fact or opinion and decide whether any factual claims have been adequately substantiated by the Advertiser. The Chair noted that a fact is something that is objectively true and can be verified as such whereas an opinion is a personal belief. Others may agree or disagree with an opinion, but they cannot prove or disprove it. Some statements contain both fact and opinion.

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 Complaints Board, and

in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations.

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.

The Chair acknowledged the Complainant's concern that the advertisement depicts an illegal act.

The Chair said the advertisement was part of a Waka Kotahi/NZ Transport Agency campaign called "Apprentice". This campaign targets drivers who like to be thought of as good drivers but tend to drive faster than they should and overtake in an unsafe manner.

The Chair said the intention of this advocacy advertisement is to show audiences that others may perceive their driving very differently to them, with the hope they'll start to rethink their behaviour. The Chair noted Waka Kotahi/NZ Transport Agency has responsibility to educate the public about safe driving, on behalf of the Government.

The Chair noted the Complainant's view that the advertisement depicted two drivers tailgating, which is illegal. The Chair said the purpose of the advertisement is to show unsafe driving practices, and the impact they have on others. In this case the focus is on Rod, who speeds and unsafely overtakes not just one but two cars. The Chair said this scenario was designed to emphasise the extent of Rod's bad driving. The Chair said while it is also unsafe, and illegal, to tailgate, this depiction was justifiable, in this context, on educational grounds.

The Chair said in the context of advocacy, the advertisement had been prepared with the due sense of social responsibility required and was not in breach of Principle 1, Principle 2, Rule 1(e) 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 via email or letter within 14 calendar days of receipt of this decision.