

COMPLAINT NUMBER	21/174
ADVERTISER	WorkSafe New Zealand
ADVERTISEMENT	WorkSafe New Zealand, Television
DATE OF MEETING	11 May 2021
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a 30 second television advertisement for WorkSafe New Zealand which showed one co-worker rescuing another and carrying them to safety. The Complaints Board said the advocacy advertisement about being alert to dangers in the workplace had a fleeting scene of physical contact between a male and female which did not reach the threshold to cause serious or widespread offense to most consumers.

Advertisement

The 30 second WorkSafe New Zealand television advertisement shows a scenario in a warehouse where a potential workplace accident is unfolding. Meerkats raise the alarm and a female supervisor (accompanied by others) races to save a male worker. The female supervisor carries him with legs straddled to the safety of a pile of loose-fill packaging and lays on top of him. The advertisement ends with the text “You can sense it. You can stop it.” The advertisement ends with a reference to WorkSafe Mahi Haumau Aotearoa.

Summary of the Complaint

The Complainant is concerned the rescue scene in the advertisement includes sexual connotations which would not be acceptable if the genders were reversed.

Issues Raised:

- Social Responsibility
- Decency and Offensiveness
- Advocacy Advertising

Summary of the Advertiser’s Response

The Advertiser defended the advertisement and said interpreting the scene where a colleague saves another from injury as having any sexual connotation is not a reasonable view. The Advertiser said the key message is about being fully aware in the workplace, so you can spot and stop an incident from occurring. The use of meerkats is as a vehicle for sensing danger. The advertisement was tested across a variety of audiences without this issue being raised.

Summary of the Media’s Response

The Commercial Approvals Bureau said the advertisement had a G rating and was part of a larger campaign aimed at keeping Kiwis safe and free from preventable injury. CAB said the complainants view was an outlier interpretation.

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.

The Complaints Board 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 Complaints Board noted its 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. If the identity and position of the

Advertiser is clear, a more liberal interpretation of the Advertising Standards Code is allowed.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 13/272 which was Not Upheld and 15/025, which 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 13/272 concerned a television advertisement for DVD rental service, Fatso in which a female worker Denise seeks more attention from her male co-worker Dennis by pushing his head into her backside.

The Complaints Board was of the view that the advertisement, while tasteless was clearly a satirical and slapstick take on a situation which was unlikely to happen in the workplace. The Complaints Board said the advertisement did not reach the threshold to cause serious or widespread offence.

Decision 15/025 concerned a television advertisement for Fatso in which Denise first meets her co-worker, Dennis. The female worker repeatedly touches Dennis, causing him to move away from her.

The Chair of the Complaints Board ruled the complaint had no grounds to proceed and was saved from reaching the threshold to offend by the presence of humour.

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.
 - Context: Addressing New Zealand's poor workplace safety record
 - Medium: Television
 - Audience: Adult workers
 - Product: Advocacy message from Government health and safety regulator tasked with improving workplace safety.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was that everyone should be alert for potential hazards in the workplace to help prevent accidents. The Board said the use of meerkats, who by nature are on the lookout for danger reinforced this message.

A minority of the Complaints Board had a similar general takeout, but also noted the scene showing close physical contact between two co-workers in the advertisement.

Has the advocacy advertisement been adequately identified?

The Complaints Board agreed the advertisement had been adequately identified as an advocacy advertisement.

The Complaints Board confirmed the Advertiser's identity is clear. The advertisement ends with WorkSafe's name on the screen. The Complaints Board said the Government health and safety regulator's call to action is clear. The final text in the advertisement "If you can sense it, you can stop it" is Worksafe's message that if you are fully aware in your workplace, you can spot and stop an incident from occurring. The advertisement complied with the requirements of Rule 2(e) of the Advertising Standards Code.

Does the 30 second advertisement contain images of sexual harassment in the workplace?

The majority of the Complaints Board said the rescue scene in the 30 second advertisement is fleeting. While the male and female characters end up in an awkward position, the takeout for most consumers is unlikely to be one of unwelcome or offensive sexual contact. The majority of the Complaints Board said the execution of the advertisement had a surreal, slightly tongue-in-cheek to nature to it, with the actions of the characters exaggerated for effect.

For the majority of the Complaints Board the advertisement did not reach the threshold to breach Rule 1(c) which requires the Board to consider whether the use of the scene, in this context, was likely to cause serious or widespread offence, in light of generally prevailing community standards.

A minority of the Complaints Board disagreed and said the advertisement showed a gratuitous scene of one worker making unnecessary physical contact with a colleague. The scene could be seen by some viewers as sexual harassment in the workplace. The scene did not add anything to the overall message and could cause serious offense given the advertiser's role was to improve health and safety in the workplace.

For the minority of the Complaints Board the advertisement reached the threshold to be in breach of Rule 1(c) of the Advertisement Standards Code.

In accordance with the majority, the complaint was not upheld under Rule 1(c) of the Advertising Standards Code.

Has the advertisement been prepared and placed with a due sense of social responsibility to consumers and to society?

The majority of the Complaints Board said the advertisement had been prepared with the requisite level of social responsibility.

The majority of the Board said the purpose of the advertisement was to communicate an important work safety message and the Advertiser was attempting to use an innovative way to reach new audiences. The majority said it was appropriate to defer to the Advertiser, as the relevant expert body, in how best to advertise the important workplace safety message.

A minority of the Board disagreed and said it was not socially responsible for the Advertiser, WorkSafe, who is the regulator for health and safety in the workplace, to use images of unnecessary physical contact between two co-workers in its messaging.

For the minority of the Board, as the advertisement was likely to cause offence, it was also in breach of Principle 1 of the Advertising Standards Code.

However, in accordance with the majority, the Complaints Board ruled the advertisement, when viewed through an advocacy lens and taking into account context, medium, audience

and product, was not in breach of Principle 1, Principle 2 or Rules 1(c) and 2(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

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.

APPENDICES

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

COMPLAINT

Advert on channel 3 which is about safety where meerkats are running around a warehouse all a bit crazy however, the part where a woman in safety gear grabs a young male and lifts his leg up as she pushes him into a crate and lies on him. If this was opposite genders it would surely have been identified earlier as inappropriate. Every time I watch it I cringe regarding the sexual connotations. Thanks for looking into this.

Appendix 2

RESPONSE FROM ADVERTISER, WORKSAFE

Worksafe New Zealand Television –ASA Complaint 21/174

WorkSafe wishes to defend the complaint WKS0052 30 3 made 2021-04-06.

The complainant's view of the moment in question is unsustainable. To suggest there is some form of sexual connotation is extending the concept of saving a colleague from injury beyond any reasonable interpretation. WorkSafe is surprised that this view has been deemed worthy of investigation by the ASA.

The challenge we set our advertising agency was to create content that galvanise New Zealanders to focus, however briefly, on health and safety in workplaces. New Zealand's health and safety performance is not meeting society's expectations and requires a significant culture change if it is to improve. Current advertising theory is that to cut through advertising clutter, an advertisement must trigger emotional responses. This advertisement does, but not for the reasons the complainant alleges.

We extensively tested the concept and the pre-publication version of the advertisement across a variety of audiences. The key message – if you're fully aware in your workplace, you can spot and stop an incident from occurring – resonated strongly, as did the visual and script treatment. The use of meerkats as the vehicle for sensing danger was strongly validated by this research. The issue raised by the complainant did not arise in this research, although there have been limited comments on social media.

Anecdotal feedback around the campaign which has now reached over 1.94 million people is polarised but far more positive than negative. A formal, objective research programme testing consumer recall, message understanding and overall effectiveness is currently being undertaken by Colmar Brunton. Results will be available in early May and we would be happy to share this with the ASA.

This research will be the basis for an evaluation and decisions on future use beyond the current media schedule.

Appendix in response to Accepted advertiser Letter

Question 3. Please provide the ASA with a digital media file(s) copy of the advertisement. If the complaint relates to on-screen graphic in a video, provide a broadcast quality version.

15sec video

<https://www.youtube.com/watch?v=L6X1OrIfEZE>

30sec video

<https://www.youtube.com/watch?v=wIMG19KGfMk>

60sec video

<https://youtu.be/ZjMKkuh6qfU>

90sec video

<https://youtu.be/frWN1Je90Ds>

Question 4. Is the advertisement still accessible – where and until when?

The specific moment outlined in the complaint, that being (paraphrased):

“...the part where a woman in safety gear grabs a young male and lifts his legs up as she pushes him into a crate and lies upon him”

For response clarity, this moment is present in the 15sec, 30sec, 60sec & 90sec durational video versions

- The closest spot time match on TV3 is 19:30:52 (The Project) on that day
- The execution that run was our 30sec version
- Key number: WKS 0052 30 3 “Meerkat Sense it Stop it, are you alright Tim”
- ‘The Project’ programme environment is classified in terms of Programme Typology as ‘Current Affairs’
- The Television buying target audience for all TV3 programming was brought against All People 25-54.

Currently in April, only the 15sec, 30sec and 90sec versions are airing.

The advertisement is still accessible currently via:

- Broadcast TV – 15/30sec
- YouTube – 15sec/30sec
- TVNZ Video-on-demand digital platform – 30sec
- Cinema – 90sec
- Social – 15sec.

This activity is currently planned to end by the 6th of June 2021.

Question 5. List all media where the advertisement is placed e.g. TV, Radio, Outdoor, Newspaper, Cinema, Website, Social Media, App, and Email.

The advertisement is still accessible currently via:

- Broadcast TV – 15/30sec
- YouTube – 15sec/30sec
- TVNZ Video-on-demand digital platform – 30sec
- Cinema – 90sec
- Social – 15sec.

Question 6. For Broadcast advertisements, provide:

- A copy of the script
- A copy of the media schedule and spot list (please remove all financial information)
- CAB key number and rating

See attached files

- WorkSafe storyboard
- SISI and Seatbelts Schedule Q1 2021-2-2.pdf

Question 5. Who is the target audience for the product / brand / service? And what tools and/ or data were used to target this audience?

WorkSafe uses McCready Bale Media Limited to advise and purchase our media. This campaign is targeting all 25-54 year olds via our TV activity, using a 'breadth' approach to target a broad worker, covering the broad cross section of working environment audiences that reflect the diverse nature of 'at work' incidents.

McCready Bale Media Limited TV planning is informed via TV Map a media forecasting, trading and analysis tool and Arianna a TV audience measurement tool as well as planning data sets such as CMI.

Appendix 3**RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU**

CAB approved this Worksafe commercial on 15/10/20 with a 'G' general classification.

The commercial is part of a large campaign encouraging vigilance around the dangers that exist in the workplace, aiming to keep working kiwis safe and free from preventable injury.

A complainant says that the commercial has sexual connotations, but these aren't apparent to the average viewer who is likely to interpret the scenario at face value.

Complaints of this nature involve the 'theatre of the mind', where certain actions or activities have meanings projected onto them by a minority of viewers. Such cases will be rare across the wide breadth of the New Zealand television audience, and the advertiser should not be penalised for these outlier experiences.