

COMPLAINT NUMBER	21/462
ADVERTISER	International Coalition to End Transplant Abuse in China
ADVERTISEMENT	International Coalition to End Transplant Abuse in China Billboard
DATE OF MEETING	27 October 2021
OUTCOME	Upheld Advertisement not to be used again

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about a billboard advertisement for the International Coalition to End Transplant Abuse in China. The Board said the advocacy advertisement was misleading and could cause fear or distress without justification.

Advertisement

The billboard advertisement for the International Coalition to End Transplant Abuse in China had a photo of two masked people in an operating theatre and the text:

"They take your freedom - They take your organs - Then they take your life.
EndTransplantAbuse.org".

Summary of the Complaint

The Complainant was concerned the advertisement was misleading because it gives the impression the practice referred to in the advertisement could be happening in New Zealand. As a result, this advertisement could cause fear or distress, without justification, particularly to young or vulnerable people.

Issues Raised:

- Social responsibility
- Fear and distress
- Truthful presentation
- Advocacy advertising

Summary of the Advertiser's Response

The Advertiser defended the advertisement and said they have taken great care to choose words that educate but do not offend. The message is supposed to encourage people to think, and to go to their website to find out more. The website will confirm that this is not an issue in New Zealand, but it is happening in China.

Relevant ASA Codes of Practice

The Acting 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(g) Fear and distress: Advertisements must not cause fear or distress without justification.

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2(b) Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be 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.

The Board considers whether the advertisement includes statements of fact or opinion and then decides whether any factual claims have been adequately substantiated by the Advertiser. The Complaints Board 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 Complaints Board 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.

Complaints Board Discussion

The Acting 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: Campaign to end transplant abuse
 - Medium: Billboard
 - Audience: Unrestricted

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was it was raising awareness about human rights issues relating to the use of forced organ transplants. For anyone wanting more information a website address was included. The Board agreed that it was not clear from the advertisement whether the human rights abuses were being described as occurring in New Zealand or not. The takeout that this was an issue that might affect a consumer viewing the advertisement was accentuated by the use of the word "your" in the advertisement text.

Has the advocacy advertisement been adequately identified?

A majority of the Complaints Board said the advocacy advertisement had been adequately identified. The majority said the identity and position of the organisation was sufficiently clear from the name "End Transplant Abuse" and the reference to the website address - EndTransplantAbuse.org although it would have been clearer if the organisation had included its full name or logo on the advertisement.

A minority disagreed. The minority said the name of the organisation was not clear because the name used in the advertisement “End Transplant Abuse” was different to the name specified on the website, which is “International Coalition to End Transplant Abuse in China”.

In accordance with the majority the Complaints Board ruled the identity and position of the Advertiser was sufficiently clear and a more liberal interpretation of the Advertising Standards Code was allowed.

Was the advertisement misleading and did it cause fear or distress without justification?

The Complaints Board agreed the advertisement was misleading and did cause fear or distress without justification. This is because it is not clear from the advertisement that the Advertiser is concerned the practice of organ harvesting is occurring overseas, in China. The Board said it is possible some consumers may get the impression this practice could be happening in New Zealand, and this was likely to cause fear or distress to some people.

The Complaints Board said the billboard was located in a public place with an unrestricted audience, which would include children and vulnerable people.

The Complaints Board referred to the text in the advertisement “They take your freedom - They take your organs - Then they take your life”. The Board said while this text was addressed directly to the consumer with the use of the pronouns “they” and “your” implied that this was something that could happen to the consumer reading the advertisement. The Board said the idea that undergoing surgery could potentially result in the loss of organs, or one’s life, could be extremely distressing for some people, especially if they believe this could be happening in New Zealand. The Board said there is no wider context provided in the advertisement, and this could be confusing for some consumers. The Board noted that within certain sectors of society there is a level of mistrust of medical procedures.

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

The Complaints Board agreed the advertisement had not been prepared and placed with a due sense of social responsibility to consumers and to society. This is because it was misleading, had caused fear or distress without justification, and had the potential to cause mistrust in the medical profession.

The Complaints Board said the advertisement was not socially responsible, taking into account context, medium, audience and product and was in breach of Principle 1, Rule 1(g), Principle 2 or Rule 2(b) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement not to be used again.

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
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Appendix 1

<https://endtransplantabuse.org/>

COMPLAINT

Hello, This billboard has appeared on Ghuznee Street opposite my office. As you can see in the image it reads: "They take your freedom They take your organs They take your life"

The messaging is extreme, and given there is no further information provided leads the reader to believe this is happening in NZ.

Based on this I believe it is breaking Rule 1(g) of the Advertising Code. as it is distressing and using unnecessary shock tactics for attention. Several of my colleagues have commented that they find this billboard distressing. I also believe it is breaking Rule 2(b) as it is not presenting an accurate and truthful view. It's clearly trying to mislead or confuse.

Appendix 2

RESPONSE FROM ADVERTISER, INTERNATIONAL COALITION TO END TRANSPLANT ABUSE IN CHINA (ETAC)

I would like to answer this complaint point by point to show that the advertising standards have not been breached. We have had a number of these billboards in Wellington, Auckland and Christchurch, for a couple of months. There have been no complaints until we installed this billboard in Ghuznee Street.

Complaint

This billboard has appeared on Ghuznee Street opposite my office. As you can see in the image it reads: "They take your freedom They take your organs They take your life" The messaging is extreme and given there is no further information provided leads the reader to believe this is happening in NZ. Based on this I believe it is breaking Rule 1(g) of the Advertising Code. as it is distressing and using unnecessary shock tactics for attention. Several of my colleagues have commented that they find this billboard distressing. I also believe it is breaking Rule 2(b) as it is not presenting an accurate and truthful view. It's clearly trying to mislead or confuse.

Response

1. "The message is extreme" - Different people will interpret the message in different ways. There are no graphic images or extreme words used on the advertisement. Public health education is often confronting, for example pictures of people whose lungs have been damaged by smoking etc. We have taken great care to choose words that educate but also do not offend. The message is supposed to encourage people to think and to go to the website to find out more. Sadly, the issue we are educating about is not a comfortable one, and like other human rights abuses that happen globally people are in fact losing their lives.

2. "The billboard leads the reader to believe this is happening in NZ" – There is nothing on the billboard that leads the reader to believe this is happening in NZ. Going to the website confirms that this is not an issue that happens in NZ, it is happening in China. Please see <https://endtransplantabuse.org/>

2. Rule 1(g) - There are no shock tactics being used and as explained the messaging has been developed with a tone suitable for the general public. This issue is a reality and evidence is credible as recently reported by the United Nations Office of the High Commissioner for Human Rights and 12 United Nations experts –

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27167&LangID=E>

We are a registered charity and part of our work is to educate the public, raise awareness, and get support in the hope that our government will address this issue with the Chinese delegates.

3. The complainant should be aware that billboards do not carry a host of information - this is why the website is very visible. If interested, people can go to the website so that they can view the research and information. The website states with clarity where this issue is taking place. Organ trafficking is a global human rights issue. In the bigger picture, the country where the organ harvesting is taking place is not the issue. This horrendous practice should not be happening anywhere in the world. Important to note; We avoided mentioning China on the billboard as none of the billboard site owners would allow mention of China on the billboards.

3. “Rule 2(b) not presenting an accurate and truthful view - It's clearly trying to mislead or confuse”. I presume therefore that they visited the website to form this opinion, because the words themselves only attract attention and encourage people to find out more. None of the information on the charity website is confusing or misleading. As mentioned, the United Nations recently announced they found the evidence to be credible –

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27167&LangID=E> As did an independent tribunal lead by Sir Geoffrey Nice QC www.chinatribunal.com

We base all our work on evidence which can be found on our website.

www.endtransplantabuse.org

I look forward to hearing from you.