

April 2023

## Guidance Note on Advocacy Advertising

*This Guidance Note is to be read in conjunction with Rule 2 (e) of the Advertising Standards Code. The note is intended to provide interpretation assistance to the industry and consumers on advocacy advertising. The advocacy principles are taken into consideration by the Complaints Board and the Appeal Board when applying Rule 2 (e) of the Advertising Standards Code.*

### Introduction

Advocacy advertising presents some of the most challenging advertising adjudicated on by the Advertising Standards Authority (ASA) Complaints and Appeal Boards. It is usually characterised by parties having differing views that are expressed in robust terms. This results in strong objections from complainants and an equally strong defence from advertisers. As a result of their intent to present a point of view, advocacy advertisements are not expected to be balanced.

It is important to note Board decisions consider complaints about the advertisement, not the position of the advertiser.

Through the requirements of the Advertising Standards Codes and the Advocacy Principles, the Boards support issues being openly debated and endeavour not to apply a technical or unduly strict interpretation of the rules and guidelines when adjudicating on complaints. The Boards also consider the protection for freedom of expression under the New Zealand Bill of Rights Act 1990 (NZBORA).

### Process to assess a possible Code breach

In the ASA process, if a complaint is accepted, the Complaints Board will consider the issues raised by the complainant, in the context of the ASA Codes and with reference to responses received from the advertiser (and the agency and media company if relevant).

Sometimes a complaint may be quite brief and in response the advertiser may provide limited information. If required to progress the complaint, the ASA Secretariat may contact the complainant and/or the advertiser for more information.

The Complaints Board's decision is based on the likely consumer takeout of the advertisement. The Board's assessment of this may differ from the takeout intended by the advertiser.

The Boards are sometimes asked to in effect decide which side in an advocacy debate is correct. It is not within the remit of the Boards to have a view on the merits of either side in an advocacy debate.

The role of the Boards is to determine whether there has been a breach of the ASA Codes.

A Not Upheld decision does not mean the advertiser is right and the complainant is wrong. It means the advertiser has not breached the ASA Codes in publishing or broadcasting the advertisement.

### **ASA Definition of Advocacy Advertising**

Advocacy Advertising is issues-based advertising where its purpose is to express the advertiser's position on a political, religious, industrial relations, environmental or societal matter or on an issue of public interest or concern, with the intent to influence the choice, opinion, or behaviour of those to whom it is addressed.

It includes election advertisements from political parties, candidates and interest groups, and Government advertising whose principal purpose is to promote the Government's (or local Government body) view and /or inform changes in public policy and/or educate the public on matters of public health, safety, or wellbeing.

### **Jurisdiction**

To assist consumers and the advertising industry, the ASA has developed an [Explanatory Statement on its Jurisdiction and Scope](#). The statement includes information on types of advocacy advertising which the ASA does not deal with.

### **Option for higher-level approach**

The importance of the protection of freedom of expression under the New Zealand Bill of Rights Act 1990 (NZBORA) is acknowledged. However, in exceptional circumstances, the Boards may consider there is a counterweight to the usual liberal assessment of advocacy advertising under the ASA Codes. An example was the broad public health implications of the COVID-19 global pandemic, at a population level.

Application of this approach and consideration of a counterweight will be advised to the parties to the complaint (complainant, advertiser, agency, media company) prior to the adjudication.

## **Current Advocacy Rule**

### **Advertising Standards Code**

#### **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.**

#### **Guidelines**

- Evidence (e.g., academic studies, expert opinion) in support of factual information must be appropriate and robust and must be readily available and obtainable.
- The identity of the advertiser must be obvious and easily recognised. Where an advertiser is not well known, additional information such as a physical address, website address or phone number may be appropriate to include

### **Advocacy Principles**

The Advocacy Principles were developed by the Complaints Board to assist in adjudicating complaints and applied in previous decisions under Rule 11 of the Code of Ethics. They remain relevant to the Board's assessment of advocacy advertising and support a different approach to advertising that sells products and services.

- 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.
- 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.
- That the Codes fetter the right 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.
- That robust debate in a democratic society is to be encouraged by the media and advertiser and that the Codes should be interpreted liberally to ensure fair play by the contestants.
- That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

## Notes to assist with Code interpretation

The ASA has a [searchable database](#) of decisions from 2015. You can search by code, rule, advertiser, and key words. Reviewing previous decisions may be helpful in new ad development or if you are thinking about making a complaint.

The following table provides information and examples to illustrate the application of the rules and guidelines.

<p><b>Rule 2(e)</b>  <b>Advocacy advertising must clearly state the identity and position of the advertiser.</b></p>	<p>This requirement helps provide context for the consumer.</p> <p><b>Example</b></p> <p>If an advertisement from a Parents Union is opposed to changing school hours, it provides context for the consumer to see the advertisement is from an organisation for parents.</p> <p>If an advertiser is well known, the organisation's name and a reference to social media pages or website details may be sufficient – for example: Greenpeace, the New Zealand Government, the Cancer Society.</p> <p>Advocacy Advertisements should contain sufficient details for a consumer to find more information if they wish to.</p> <p><b>Decision Examples:</b></p> <p>In Decision <a href="#">18/340</a> the Complaints Board said a website address was not sufficient to meet the identity requirements of the Code as the organisation was not well known through the website URL.</p> <p>In Decision <a href="#">21/462</a> the Complaints Board said the website address was sufficient to meet the identity requirements.</p> <p><b>Election Advertising</b></p> <p>The Electoral Act 1993 has promoter statement requirements in Section 204 (F) to identify advertisers. It states in part:</p> <p><i>(2) A promoter statement referred to in subsection (1) must state the name and address of the promoter of the election advertisement.</i></p> <p><i>(3) If the promoter is a registered promoter, the name and address of the promoter stated in the promoter statement must be the same name and address of the promoter that appear in the register.</i></p> <p><i>(4) If the promoter is an unregistered promoter and is a body corporate or unincorporated, the promoter statement must also include the name of a member of the body who is the duly authorised representative of the promoter.</i></p>
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	<p>After a change to the <b>Local Electoral Act in 2022</b>, the following applies to <b>local election candidate advertising only</b>:</p> <p><b>contact details</b> means <b>1 or more</b> of the following:</p> <p>(a) a residential or business address:</p> <p>(b) an email address:</p> <p>(c) a post office box number:</p> <p>(d) a phone number:</p> <p>(e) a link to a page on an Internet site, if the page contains 1 or more of the contact details specified in paragraphs (a) to (d).</p> <p>The ASA will apply these requirements to relevant election advertisements when considering advertiser identity.</p>
<p><b>Rule 2(e)</b> Opinion in support of the advertiser's position must be clearly distinguishable from factual information.</p>	<p>The easiest way to distinguish opinion from factual information is the presence of belief statements.</p> <p><b>Example:</b>  <i>I believe the Government wasted money on cycleways.</i>  <i>I think the result of the cannabis referendum was a joke.</i>  <i>We oppose the Council's proposal to ban cars from downtown.</i></p> <p>This approach significantly diminishes the risk that the Boards will consider the statements in the advertisement require substantiation.</p> <p><b>Example:</b>          If an advertiser includes a heading in the advertisement using the word "FACTS" and then lists opinion statements, the advertisement is likely to be misleading.</p>
<p><b>Rule 2(e)</b> Factual information must be able to be substantiated</p>	<p>If factual claims are made in the advertisement, the advertiser must be able to substantiate them. If the claims are challenged through the complaints process, the advertiser will be asked to provide evidence to support the statements.</p> <p>In the ASA process, the onus is on the advertiser to prove the statements are right, not on the complainant to provide information to prove them wrong.</p> <p>The level of substantiation required is determined on the strength of the claim.</p> <p><b>Example</b>          The Government spent \$26m on the flag referendum.</p>

	<p>What is the source for this number? If this is from a media release or statement supplied from a government agency, a link to one of these documents in the advertisement is likely to remove the need for the ASA to formally accept a complaint about the veracity of this number. It can make the advertisement more credible to include the source for a claim.</p> <p><b>Example</b></p> <p>“The Government spent millions on the flag referendum in 2015.” This statement refers to information which is likely to be common knowledge and may have been reported in the media during the referendum and via responses to Parliamentary questions. A specific source may be useful, but it is unlikely that this statement in this context would be misleading, and there would be no further action.</p> <p><b>Decision Examples:</b></p> <p>In <a href="#">Decision 15/389</a>, the Complaints Board did not uphold the complaint as the advertiser included references which supported the claims in the advertisement from Fluoride Free NZ.</p> <p>In <a href="#">Decision 17/336</a> the Complaints Board did not uphold the complaint as the advertiser substantiated the claims it made about the amount political parties had promised to spend.</p> <p>In <a href="#">Decision 19/071</a> the Complaints Board did not uphold the complaints querying a claim by the advertiser about Labour’s housing policy. The advertiser provided sufficient support for the claim.</p> <p>In <a href="#">Decision 20/037</a> the Complaints Board did not uphold a complaint as the advertiser had substantiated the qualified claim about Labour’s investment in hospital equipment.</p>
<p><b>Rule 2(a)</b>  <b>Advertisements must be identifiable as such</b></p>	<p>Content controlled, directly or indirectly, by the advertiser must not be disguised as something other than an advertisement.</p> <p>It must be obvious to, and well understood by, the audience that they are engaging with an advertisement regardless of the form the advertisement takes or the platform where it appears.</p> <p>Layout and context are important and special care must be taken to ensure the consumer is not misled about the nature of the communication.</p> <p>The risk of confusion is higher when the medium includes content generated by the platform (or account holder) alongside paid advertising. Examples are news sites and influencer content on</p>

	<p>social media platforms that are a mix of organic (unpaid) and paid content. See the ASA <a href="#">Influencer AdHelp</a> for more information.</p> <p>Recommended labels for influencer marketing include “Ad” or “Advertisement”. Digital sites with shared content often use “Ad” or “Sponsored Content”. Print publications may refer to “Sponsored Content”, “Advertorial” or “Advertising Feature”.</p> <p><b><u>Decision Examples:</u></b></p> <p>In Decision <a href="#">19/059</a>, the Chair of the Complaints Board ruled the content had been sufficiently identified as advertising and the identity of the advertiser was clear.</p> <p>In Decision <a href="#">19/173</a>, the Chair of the Complaints Board ruled the content which screened on television during an ad break was identifiable as an advertisement, despite the longer format and the use of a television journalist as the presenter.</p> <p>In Decision <a href="#">19/195</a>, the Chair ruled the complaint was settled as the content was removed. The nine sponsored articles were considered advertising and the identity of the advertiser was not clear.</p>
<p><b>Rule 1(c)</b>  <b>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.</b></p>	<p>Most advocacy advertising is characterised by individuals or groups with differing views expressed in robust terms.</p> <p>This can result in strong objections from complainants about ad content and an equally strong defence of that content from advertisers.</p> <p>The Boards acknowledge some advertising will be offensive to some people, but this does not necessarily mean it is a breach of the Advertising Standards Code.</p> <p>The test under Rule 1(c) Decency and Offensiveness of the Advertising Standards Code is whether the advertisement is likely to cause <b>serious or widespread offence</b>, considering context, medium, audience and the ad subject.</p> <p><b><u>Decision Examples:</u></b></p> <p>In Decision <a href="#">21/174</a>, the Complaints Board ruled the scene of physical contact between co-workers in a Worksafe advertisement was not likely to cause serious or widespread offence to most consumers.</p>

	<p>In Decision <a href="#">21/402</a>, the Complaints Board said some of the content in the booklet was offensive and misleading and the more liberal interpretation of the Code under the Advocacy rule had not saved it.</p> <p>In Decision <a href="#">20/177</a>, the Complaints Board said the execution and the placement of the advertisement from the Department of Internal Affairs was justifiable on educational grounds to address the fact that many young people use pornography to learn about sex.</p> <p>In Decision <a href="#">22/369</a>, taking into account the important health message in the billboard advertisement, it had not met the threshold to be likely to cause serious or widespread offence.</p>
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<p><b>What is the likely consumer takeout of the advertisement?</b></p>	<p>This is a key question for the Complaints and Appeal Boards. The likely consumer takeout of an advertisement will be influenced by the ad content, placement, and context, along with other factors.</p> <p><b>Example</b>  <i>2020 referendum on legalisation of cannabis</i>          If the ad is about a matter of current public debate, there is likely to be a range of information from different sources about the issue. This can provide context for some content.</p> <p><b>Example</b>  <i>General Election</i>          The General Election generates significant news coverage about parties and candidates and issues of the day. Election advertisements are often tailored to reflect party positions on these views. The election campaign provides context for many election ads.</p> <p><b>Example</b>  <i>Public health and safety advertising</i>          Sometimes, advocacy advertisements will generate an unintended reaction for some in the community.</p> <p>Some advocacy advertisements use strong imagery or words to help engage with hard-to-reach audiences. The importance of the message would provide context for the Board in assessing a code breach.</p> <p><b><u>Decision Examples:</u></b></p> <p>In Decision <a href="#">22/039</a>, the Complaints Board said the dark and disturbing nature of the advertisement was justifiable on educational grounds.</p>
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	<p>In <a href="#">Decision 21/204</a>, the Chair ruled No Grounds to Proceed in response to a complaint about an illegal act in a road safety advertisement for Waka Kotahi. The educational message of the advertisement meant it did not breach the Code.</p> <p>In Decision <a href="#">19/158</a>, the Complaints Board said the scenes showing drug use were justified due to the number of accidents and road deaths caused by drivers impaired by drugs.</p>
<p><b>Complaints seeking a view from the Complaints Board about the veracity of research or substantiation</b></p>	<p>Complainants sometimes ask the Boards to in effect decide which side in an advocacy debate is correct, but the Boards have consistently declined to have a view. Similarly, the Boards will not determine which of competing academic studies or other evidence is correct.</p> <p>The Boards’ role is to determine whether there has been a breach of the ASA Codes.</p> <p><b><u>Decision Examples:</u></b></p> <p>In <a href="#">Decision 19/465</a> the Complaints Board did not uphold complaints about a bar graph that was not to scale. The Board said there was sufficient information in the advertisement including the correct figures, and the data source, to offset the risk the proportions of the graph may be misleading.</p> <p>In <a href="#">Decision 21/405</a>, the complaint was settled as data compared in the advertisement contained an error and it was amended.</p>
<p><b>Use of selected academic studies to support an advertiser’s view</b></p>	<p>Academic studies are often cited as evidence in support of an Advertiser’s view.</p> <p>If a statement in an advertisement accurately reflects the research and the research or study is cited, this may not be misleading – even if there are other studies with contrary conclusions.</p> <p>It will reduce the risk of a Code breach to include references for the sources that the advertiser has based a statement on in the advertisement. This also provides context for the statements.</p> <p><b><u>Decision Examples:</u></b></p> <p>In <a href="#">Decision 20/440</a> the Complaints Board upheld seven complaints about an advertisement that compared the COVID-19 death rate to the seasonal flu. The studies referred to by the advertiser in the advertisement did not support the statement they made.</p>

<p><b>Combining statements of fact and opinion</b></p>	<p>Individuals and organisations expressing robust views about advocacy issues, often do so using a mix of opinion and fact.</p> <p><b>Example</b></p> <p>The statement that “The Government spent \$26m on the flag referendum in 2015” is a mix of fact and opinion. That the money was wasted is an opinion, the number \$26m and 2015 are facts that require substantiation if challenged.</p> <p>In assessing a complaint about this, the Boards would expect to see support for the number. The view that the money is wasted is not likely to be assessed as a breach of the Code.</p> <p><b>Decision Examples:</b></p> <p>In <a href="#">Decision 19/379</a> contained a mix of opinion and fact. Some statements were opinion and substantiation was not required. The Appeal Board said the advertisement included a statement with an absolute number, presented as a fact, and the evidence provided to the Board was not sufficient to support it.</p>
<p><b>ASA approach to advertising from expert bodies</b></p>	<p>The Boards regularly deal with complaints about advertising from Government agencies who are charged with informing the public about Government policies or their implementation.</p> <p>Factors the Complaints and Appeal Boards may consider when adjudicating on Government advertising include:</p> <ul style="list-style-type: none"> <li>• The context for the messaging</li> <li>• The level of public concern</li> <li>• Population health impacts</li> <li>• The need for the messaging to reach a difficult target audience</li> <li>• Whether it is information from an expert body (see Electoral Commission v Cameron - [1997] 2 NZLR 421)</li> </ul> <p><b>Decision Examples:</b></p> <p>In <a href="#">Decision 22/195</a> the Complaints Board upheld complaints about a “Protect for Life” claim in a Te Whatu Ora advertisement because the likely consumer takeout was misleading.</p> <p>In <a href="#">Decision 21/330</a> the Complaints Board did not uphold complaints about the statements relating to the COVID-19 vaccine.</p> <p>In <a href="#">Decision 22/078</a> the Complaints Board did not uphold complaints about an unsafe driving practice in a Waka Kotahi Road to Zero advertisement.</p>

<p><b>The Advocacy Rule may not apply to some advertisements from advocacy organisations</b></p>	<p>When a complaint is received, part of the assessment by the Board Chair and the ASA Secretariat relates to the correct Code and rules to apply. In some circumstances, the Boards may agree the Advocacy Rule is not relevant.</p> <p>The consumer takeout and the call to action in the advertisements would be key considerations.</p> <p><b><u>Decision Examples:</u></b></p> <p>In <a href="#">Decision 18/299</a> the Appeal Board upheld a complaint about an advertisement from Seafood NZ on quota management and the use of the term “guarantee”. The complaint was considered under the truthful presentation rule.</p> <p>In <a href="#">Decision 22/306</a>, the Chair of the Complaints Board ruled to settle a complaint about a World Vision advertisement. Complainants were concerned an image in the advertisement was offensive and the advertisement was changed. The relevant rules in the Advertising Standards Code were decency and offensiveness and fear and distress.</p> <p>In <a href="#">Decision 22/326</a>, the Chair of the Complaints Board ruled a complaint about a Cancer Society advertisement had no grounds to proceed. The advertisement promoted the Society’s role. The Complainant found the statement at the start of the advertisement distressing. The relevant rule in the Advertising Standards Code was fear and distress.</p>
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