

<b>COMPLAINT NUMBER</b>	17/408
<b>COMPLAINANT</b>	F. Dellebeke and others
<b>ADVERTISER</b>	Bank of New Zealand
<b>ADVERTISEMENT</b>	Digital Marketing, TVNZ OnDemand
<b>DATE OF MEETING</b>	12 December 2017
<b>OUTCOME</b>	Settled – Media Error

## **SUMMARY**

The BNZ “Bank of You” advertisement played on TVNZ OnDemand and showed New Zealanders going about their everyday lives. The advertisement included a personalised adaptation which allowed the TVNZ registered user’s first name from their TVNZ OnDemand account to appear in a graphic of the video. The graphic reads “Bank of [Name]” then changes to “Bank of New Zealand”.

Four Complainant’s were concerned the advertisement for BNZ “Bank of You” used their name in the TVNZ OnDemand advertisement and some were concerned the advertisement used subliminal messaging.

The Advertiser said the advertisement employed personalisation by merging the advertisement with data collected by TVNZ. The Complaints Board noted the relevant part of that policy referred to collection of personal information to make advertising more relevant to consumers.

The Media, TVNZ, said the advertisement had been removed while it reviews its Privacy Policy to make it clearer to people how their personal information might be used.

The Complaints Board noted the self-regulatory action of the Media in updating its Privacy Policy to better reflect personalisation advertising and ruled the matter was Settled: Media Error.

### **[No further action required]**

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

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## **COMPLAINTS BOARD DECISION**

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rule 10 of the Code of Ethics. This required the Complaints Board to consider whether, unless prior permission has been obtained, the advertisement portrayed or referred to any persons, whether in a private or public capacity, or referred to any person’s property, in a way likely to convey the impression of a genuine endorsement and

whether it had been prepared with a due sense of social responsibility to consumers and society.

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

#### **The Complaints**

Three Complainant's were concerned the advertisement for BNZ "Bank of You" used their name in the TVNZ OnDemand advertisement and some were concerned the advertisement used subliminal messaging.

F. Dellebeke said, in part: "I object to BNZ knowing what I watch and using my name in their ad, which I assume is targeting just me in a clever way to try and get me to change banks if I don't already bank with BNZ which I do not."

H. Murhpy said: "I thought subliminal advertising was illegal. Tonight the BNZ advert very quickly inserted my name before it brought up Bank of New Zealand."

P. Kukadia said, in part: "I am not a customer of BNZ, I don't how they accessed my name via the OnDemand service, I did not give BNZ permission to use my name, I do not appreciate BNZ using my name!"

#### **Response from Bank of New Zealand**

The Advertiser responded to the complaints and said the advertisement was "a personalised adaptation of our standard 30" advert from this campaign, began on 6 November 2017 on the TVNZ OnDemand platform. TVNZ offered BNZ the opportunity to add increased relevance to the advert on its channel, and engage users in a fun way, by replacing the generic name in the ad with the first name of the user. BNZ supplied the Advertisement to TVNZ with a blank space in place of the generic name usually used. TVNZ then applied the first name of the user in that space using their TVNZ OnDemand account details."

The Advertiser said it did not not consider that the reference "to the user's first name, which can only be seen by the user themselves and perhaps anyone watching with them, is likely to convey the impression that the user genuinely endorses BNZ. Instead, it would be clear to a reasonable user that the purpose of using their first name in the Bank of <name>' line is to personalise the Advertisement to them (and only to them, in that particular form)."

The Advertiser addressed the Complainant's concerns the advertisement used personal information stating, in part, "BNZ takes the protection of personal information and data security very seriously, for customers and non-customers alike. BNZ ensured that the process of TVNZ applying each user's name to the Advertisement did not involve the sharing of any personal information between BNZ and TVNZ. Specifically, TVNZ did not share any users' names, or the content watched by any particular user, with BNZ. Further, TVNZ advised BNZ that this process is undertaken in accordance with its Privacy Policy."

The Complaints Board noted the Advertiser had removed the personalised advertisement from the OnDemand platform pending the outcome of the Complaints Board Decision.

#### **Response from Media, Television New Zealand (TVNZ)**

The Media, Television New Zealand responded to Complainants' concerns stating, in part that "TVNZ aims to provide our OnDemand service in a way that is relevant to our viewers. and to create a more personalised user experience where we can. One way we do this is through a technology called ad personalisation. This technology works to insert the name that is provided to TVNZ by a TVNZ OnDemand user (a 'viewer') when they set up a registered TVNZ OnDemand account, into the graphics of an advert that is shown to that viewer on TVNZ OnDemand."

The Media explained an Advertiser, such as BNZ, would provide an advertisement and TVNZ would then insert the viewer's name into the graphics. "...the insertion of a viewer's name into an advert is all done by TVNZ within our own systems, after we have received the advert from the advertiser."

TVNZ provided information in their Privacy Policy which it said "sets out how TVNZ collects the personal details that our viewers give us, such as their name, when they register for TVNZ OnDemand, and that we may use that information for various purposes, including to make advertising more relevant to them. Viewers accept this Privacy Policy when they register an account with TVNZ OnDemand... the name used within the Advertisement is intended to refer directly to the person watching the Advertisement. It would be clear to the viewer that the use of their name in the line '*Bank of [Name]*' is merely to personalize the Advertisement to them directly."

The Advertiser said that "after considering the concerns raised by this complainant and others, and given that ad personalisation is a relatively new type of video advertising technology for many New Zealanders, we'll be updating our OnDemand Privacy Policy with additional information to explain to our viewers how ad personalisation works."

### **Complaints Board Discussion**

The Complaints Board noted the Complainants' concerns the advertisement for BNZ "Bank of You" used their name in the TVNZ OnDemand advertisement.

The Complaints Board said that it was not the appropriate body to deal with breaches of an individual's privacy. That is more appropriately considered by the Office of the Privacy Commissioner. The Board confirmed its role was to consider the advertisement with reference to the relevant Advertising Codes.

The Complaints Board noted the response from BNZ that the advertisement employed personalisation by merging the advertisement with data collected by TVNZ. The Complaints Board noted the relevant part of the TVNZ Privacy Policy referred to collection personal information to make advertising more relevant to consumers.

The Complaints Board was of the view the act of personalisation in the video advertisement before them while relatively new in the OnDemand environment, was similar to traditional direct marketing advertising such as addressed mail. However, the Complaints Board said that when used in the format before it, there was clear confusion for the consumer about the source of the information and TVNZ's Privacy Policy in place at the time did not go far enough to signal to users' personal information would be used in that way. The Complaints Board said this aspect of the advertisement was socially irresponsible.

However, the Complaints Board noted TVNZ was reviewing its Privacy Policy to better reflect the nature of personalised advertising and, noting the self-regulatory action of the TVNZ ceasing the advertising while the Privacy Policy was being updated, it ruled the complaint was Settled: Media Error.

**Decision:** Complaint **Settled: Media Error**

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## **DESCRIPTION OF ADVERTISEMENT**

The BNZ "Bank of You" advertisement played on TVNZ OnDemand and showed New Zealanders going about their everyday lives. The advertisement included a personalised adaptation which allowed the TVNZ registered user's first name from their TVNZ OnDemand account to appear in a graphic of the video. The graphic reads "Bank of [Name]" then changes to "Bank of New Zealand".

#### **COMPLAINT FROM FRANS DELLEBEKE**

On a number of occasions while watching this programme a BNZ Ad appeared. At the end of these ads the words "BNZ bank of Frans" appeared briefly and was then replaced by "BNZ Bank of New Zealand".

I object to BNZ knowing what I watch and using my name in their ad, which I assume is targeting just me in a clever way to try and get me to change banks if I don't already bank with BNZ which I do not.

#### **COMPLAINT FROM HELEN MURPHY**

I thought subliminal advertising was illegal. Tonight the BNZ advert very quickly inserted my name before it brought up Bank of New Zealand.

#### **COMPLAINT FROM PRASHANT KUKADIA**

Bank of New Zealand (BNZ) has a advert running on TV, at the end it has "Bank of - with several names of people, then it's end with New Zealand". While watching shows on TVNZOnDemand via the web browser Firefox Mozilla, BNZ is running the same advert but it has changed, not with several names, it has "Bank of Prashant, then Bank of New Zealand" I am not a customer of BNZ, I don't how they accessed my name via the OnDemand service, I did not give BNZ permission to use my name, I do not appreciate BNZ using my name!

#### **CODE OF ETHICS**

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

**Rule 10 - Privacy:** Unless prior permission has been obtained an advertisement should not portray or refer to any persons, whether in a private or public capacity, or refer to any person's property, in a way likely to convey the impression of a genuine endorsement.

#### **RESPONSE FROM ADVERTISER, BANK OF NEW ZEALAND**

##### Background

BNZ commenced a brand campaign in August 2017 across numerous broadcast mediums. The campaign adverts feature people/businesses with their names across the advert, for example "Bank of Mike", "Bank of Tessa", "Bank of Orphans Kitchen". The "Bank of <name>" line has been a core piece of the creative to showcase humans and 'customer inspired banking' at the Bank of New Zealand.

The Advertisement, which was a personalised adaptation of our standard 30" advert from this campaign, began on 6 November 2017 on the TVNZ OnDemand platform. TVNZ offered BNZ the opportunity to add increased relevance to the advert on its channel, and engage users in a fun way, by replacing the generic name in the ad with the first name of the user.

BNZ supplied the Advertisement to TVNZ with a blank space in place of the generic name usually used. TVNZ then applied the first name of the user in that space using their TVNZ OnDemand account details.

Code of Ethics — Basic Principle 4, Rule 10

Basic Principle 4 provides:

"All advertisements should be prepared with a due sense of social responsibility to consumers and to society"

BNZ always considers its social responsibility to customers, non-customers and society when preparing its advertising. The Advertisement was prepared by BNZ accordingly.

Rule 10 provides:

"Privacy — Unless prior permission has been obtained an advertisement should not portray or refer to any persons, whether in a private or public capacity, or refer to any person's property, in a way likely to convey the impression of a genuine endorsement."

BNZ does not consider that the reference in the Advertisement only to the user's first name, which can only be seen by the user themselves and perhaps anyone watching with them, is likely to convey the impression that the user genuinely endorses BNZ. Instead, it would be clear to a reasonable user that the purpose of using their first name in the "Bank of <name>" line is to personalise the Advertisement to them (and only to them, in that particular form).

As such, BNZ does not consider that the Advertisement breaches this Rule.

Users' personal information

BNZ takes the protection of personal information and data security very seriously, for customers and non-customers alike.

BNZ ensured that the process of TVNZ applying each user's name to the Advertisement did not involve the sharing of any personal information between BNZ and TVNZ. Specifically, TVNZ did not share any users' names, or the content watched by any particular user, with BNZ.

Further, TVNZ advised BNZ that this process is undertaken in accordance with its Privacy Policy.

Removal of Advertisement

Notwithstanding BNZ's view above, the Advertisement (in its personalised format) has been removed from the TVNZ OnDemand platform from 17 November 2017. This decision will be reviewed following the determination of the Complaints Board.

We understand that TVNZ is also responding directly to the Advertising Standards Authority in relation to the Advertisement with further explanation of how its ad personalisation technology works.

Contact person for advertising complaints	Jason Chan - Chief Marketing Officer, BNZ ( <a href="mailto:Jason.Chan@bnz.co.nz">Jason.Chan@bnz.co.nz</a> )
Name and contact at creative agency	Colenso produced original video assets: Olly Boden – Group Business Director ( <a href="mailto:Olly.Boden@colensobbdo.co.nz">Olly.Boden@colensobbdo.co.nz</a> )  TVNZ re-purposed for use OnDemand: Louis Niven – GM Online Sales ( <a href="mailto:Louis.Niven@tvnz.co.nz">Louis.Niven@tvnz.co.nz</a> )
Name and contact at media agency	Craig Marshall – Client Service Director, MediaCom ( <a href="mailto:craig.marshall@mediacom.com">craig.marshall@mediacom.com</a> )
A basic, neutral description of the advertisement	The 30-second BNZ “Brand” video advertisement is a personalised adaptation of the broadcast 30-second advertisement for the current BNZ “Bank of You” campaign. The ad filters through images of New Zealanders going about their everyday lives, from a man eating noodles, to a couple holding a baby, to a woman doing yoga. It then focuses back on the man eating noodles, in the broadcast version of the ad a generic Bank of Mike' appears on screen which then resolves to 'Bank of New Zealand'. For this personalised adaptation, the advertisement in question uses personalisation technology to pull through the TVNZ registered user's first name from their TVNZ OnDemand account registration details. The user's first name appears in a graphic of the video at the 27” mark. The graphic reads “Bank of [Name]” for 1” then changes to “Bank of New Zealand”.  Please refer to letter for more contextual detail.
Date advertisement began	6 <sup>th</sup> November 2017
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	TVNZ OnDemand
Is the advertisement still accessible – where and until when?	No – the personalised version of the advertisement was removed from the TVNZ OnDemand platform on Friday 17 November. This decision will be reviewed following the determination of the Complaints Board.

A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	Attached separately
Who is the product / brand target audience?  Please provide a copy of the media schedule with any spend redacted	AP 20-54
Pre-vetting Approval number if applicable	n/a
Clear substantiation on claims that are challenged by the complainant. Please see the Guidance Note.	n/a
The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	
<b>For Broadcast advertisements:</b>	
A copy of the script	<p><b>30” SCRIPT</b></p> <p>Who’s leading the world into a new age of banking?</p> <p>You are.</p> <p>Banking isn’t just about these.</p> <p>It’s about these.</p> <p>Your transactions.</p> <p>Balance.</p> <p>Appreciating that rich</p> <p>May look like this.</p> <p>(Yes) being good with money means</p> <p>Letting your life</p> <p>Dictate your banking.</p>
CAB key number and rating	NB: advertisement was an edited version (to allow for personalisation) of the following: Cab = G, Key number = BNZ 030 17210

## RESPONSE FROM MEDIA, TELEVISION NEW ZEALAND

The complainant has raised concerns as to the use of his first name in the Advertisement, and to how BNZ knows what he is watching on TVNZ OnDemand.

TVNZ has considered the Advertisement in light of the complainant's concerns, and the Code of Ethics - Basic Principle 4, Rule 10 that provides:

Privacy - Unless prior permission has been obtained an advertisement should not portray or refer to any persons. whether in a private or public capacity. or refer to any person's property, in a way likely to convey the impression of a genuine endorsement.

TVNZ do not consider the Advertisement breaches this Rule, and responds to the complainant's concerns below.

TVNZ aims to provide our OnDemand service in a way that is relevant to our viewers. and to create a more personalised user experience where we can.

One way we do this is through a technology called ad personalisation. This technology works to insert the name that is provided to TVNZ by a TVNZ OnDemand user (a "viewer") when they set up a registered TVNZ OnDemand account, into the graphics of an advert that is shown to that viewer on TVNZ OnDemand.

Attached as Appendix 1, is a screen shot of a frame from the Advertisement showing how a viewer's name is used when they are shown this Advertisement.

An advertiser, such as BNZ, will supply their advert to TVNZ, and TVNZ will then use this technology to insert the viewer's name into the graphics of that advert, similar to the way a mail merge system would work.

Importantly, TVNZ do not share any viewers' names, or the content watched by any particular viewer, with any advertiser when we use this type of technology. Further. we do not give an advertiser permission to use a viewer's personal details in any way.

The insertion of a viewer's name into an advert is all done by TVNZ within our own systems, after we have received the advert from the advertiser.

TVNZ take privacy concerns seriously. which is reflected in our Privacy Policy - available here <http://tvnz.co.nz/community/privacy-policy-4662861>

Our Privacy Policy sets out how TVNZ collects the personal details that our viewers give us, such as their name, when they register for TVNZ OnDemand. and that we may use that information for various purposes, including to make advertising more relevant to them. Viewers accept this Privacy Policy when they register an account with TVNZ OnDemand.

We also do not consider the reference to a viewer's name in the context of this Advertisement is likely to convey an impression that the viewer genuinely endorses BNZ.

The name used within the Advertisement is intended to refer directly to the person watching the Advertisement. It would be clear to the viewer that the use of their name in the line "*Bank of [Name]*." is merely to personalize the Advertisement to them directly.



The Advertisement makes a humorous and aspirational suggestion to the viewer of the possibility of having their own bank. or a bank named after them. It is highly unlikely any viewer would understand from this line that BNZ is asserting the named viewer must genuinely endorse, or otherwise publically support, BNZ or its products and services. The complainant himself writes how he assumed the Advertisement is simply *'targeting just me in a clever way to try and get me to change banks...'*

After considering the concerns raised by this complainant and others, and given that ad personalisation is a relatively new type of video advertising technology for many New Zealanders, we'll be updating our OnDemand Privacy Policy with additional information to explain to our viewers how ad personalisation works.

We understand that BNZ will be responding directly to the Advertising Standards Authority with its comments also.

Contact person for advertising complaints	Joseph Patchett – Online Solutions Manager <a href="mailto:Joseph.Patchett@tvnz.co.nz">Joseph.Patchett@tvnz.co.nz</a>
Name and contact at creative agency	Colenso produced original video assets: Olly Boden – Group Business Director <a href="mailto:Olly.Boden@colensobbdo.co.nz">Olly.Boden@colensobbdo.co.nz</a>  TVNZ re-purposed for use OnDemand: Louis Niven – GM Online Sales <a href="mailto:Louis.Niven@tvnz.co.nz">Louis.Niven@tvnz.co.nz</a>
Name and contact at media agency	Craig Marshall – Client Service Director, MediaCom ( <a href="mailto:craig.marshall@mediacom.com">craig.marshall@mediacom.com</a> )
A basic, neutral description of the advertisement	30-second BNZ “Brand” video advertisement  This is a personalised video ad for the current BNZ “Bank of You” campaign.  The ad filters through images of New Zealanders going about their everyday lives, from a man eating noodles, to a couple holding a baby, to a woman doing yoga. It then focuses back on the man eating noodles and “Bank of New Zealand” appears across the screen.  The ad then uses personalisation technology to pull through the TVNZ registered user’s first name from their TVNZ OnDemand account registration details. The user’s first name appears in a graphic of the video at the 27” mark. The graphic reads “Bank of [Name]” for 1” then changes to “Bank of New Zealand”.
Date advertisement began	3 <sup>rd</sup> November 2017
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper)	TVNZ OnDemand - ROS, Desktop only

Website	
Is the advertisement still accessible – where and until when?	No – the personalized version of the advertisement was paused Friday 17 November.
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	Attached separately. Version where blank appears where personalised ad would appear and also a recorded version of the personalisation in play.
Who is the product / brand target audience?  Please provide a copy of the media schedule with any spend redacted	AP 20-54  TVNZ insertion order attached.
Pre-vetting Approval number if applicable	n/a
Clear substantiation on claims that are challenged by the complainant. Please see the Guidance Note.	
The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	
<b>For Broadcast advertisements:</b>	
A copy of the script	
CAB key number and rating	NB: advertisement was an edited version (to allow for personalisation) of the following CAB approved key:  Key number: BNZ 030 17210  CAB Rating: G