

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.

Note: This information is not legal advice, and it does not bind the Complaints or Appeal Boards.



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 where the 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, wellbeing, or other matters of public interest.



Introduction

Advocacy advertising is usually characterised by parties having differing views 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.

The role of the Complaints and Appeal Boards (the Boards) is to determine whether there has been a breach of the ASA Codes. The Boards consider complaints about the advertisement, not the position of 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.



Process to assess a possible Code breach

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.

In determining whether there has been a breach of the ASA Codes, decisions are based on the likely consumer takeout of the advertisement. The Boards' assessment of this may differ from the takeout intended by the advertiser.

Complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

The Advertising Standards Code is applied to advocacy advertising in a way that considers the protections for (among other things) freedom of expression and opinion in the New Zealand Bill of Rights Act (BORA).

The Complaints Board considers whether the identity of the advertiser is clear, and if the advertisement includes statements of fact or opinion. If the advertiser is clearly stating an opinion, and the identity is clear, it is unlikely to breach Rule 2 (e) in the Code. If opinion is not clearly distinguishable from fact, the advertisement may breach Rule 2 (e).

If the advertisement includes factual claims (including implied factual claims) that are challenged by a complainant, the Complaints Board will determine if those claims have been adequately substantiated by the advertiser.

A fact is something that is objectively true and can be verified whereas an opinion is a belief held by a person or an organisation. Others may agree or disagree with an opinion, but they cannot prove or disprove it. Sometimes statements and claims are a combination of fact and opinion.

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.

Information on our appeal process is available [here](#).



Jurisdiction

To assist consumers and the advertising industry, the ASA has an explanatory note on [Our Jurisdiction](#). It includes information on types of advocacy advertising which the ASA does not deal with.



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.



New Zealand Bill of Rights Act 1990

The rights and freedoms contained in the New Zealand Bill of Rights Act may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. If a right is engaged, the Complaints and Appeal Boards are required to consider whether the application of the Advertising Standards Code is a limit on the rights protected by sections 13 and 14 and whether the limits in the Code are justified limits.

- Section 13: Everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.
- Section 14: Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.



Notes to assist with Code interpretation

The ASA has a [searchable database](#) of decisions from 2024 onwards. You can search by Code, product, outcome and key words. Reviewing previous decisions may be helpful in new ad development or if you are thinking about making a complaint. You can also search older ASA decisions on the [New Zealand Legal Information Institute Database](#).

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

Rule 2 (e) Advocacy advertising must clearly state the identity and position of the advertiser.	<p>This requirement helps provide context for the consumer.</p> <p>Example</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: the New Zealand Government, the New Zealand Cancer Society, Greenpeace.</p>
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	<p>Advocacy advertisements should contain sufficient details for a consumer to find more information if they wish to.</p> <p>Election Advertising (General Election)</p> <p>The Electoral Act 1993 requires a promoter statement to identify advertisers in Section 204 (F). It states in part:</p> <p>(2) A promoter statement referred to in subsection (1) must state the name and address of the promoter of the election advertisement.</p> <p>(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 appears in the register.</p> <p>(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.</p> <p>Election Advertising (Local Elections)</p> <p>The Local Electoral Act requires the name and contact details of the person publishing candidate advertising (Section 113):</p> <p>Contact details means one or more of the following:</p> <ul style="list-style-type: none"> (a) a residential or business address; (b) an email address; (c) a post office box number; (d) a phone number; (e) a link to a page on an Internet site, if the page contains one or more of the contact details specified in paragraphs (a) to (d). <p>The ASA will apply these requirements to relevant election advertisements when considering advertiser identity.</p>
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<p>Rule 2 (e) 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>Example</p> <p><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>
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	<p>Example</p> <p>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>
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<p>Rule 2 (e) 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 claims.</p> <p>In the ASA process, the onus is on the advertiser to prove the claims 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>Example</p> <p>“The Government spent \$85m on trees in 2021.”</p> <p>What is the source for this number? If this is from a media release from the Minister of Trees, or an annual report from the Ministry of Trees, 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 the claim.</p> <p>Example</p> <p>“The Government spent millions on trees in 2021.” This statement refers to information which is common knowledge and may have been reported on in the media during the Budget announcements 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 a complaint about this is unlikely to proceed.</p>
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<p>Rule 2 (a) Advertisements must be identifiable as such.</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>
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	<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 social media platforms that are a mix of organic (unpaid) and paid content.</p> <p>Recommended labels for influencer marketing include "Ad" "Advert" or "Advertisement." Digital sites with shared content often use "Ad" or "Sponsored Content." Print publications may refer to "Sponsored Content," "Advertisorial" or "Advertising Feature."</p>
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<p>Rule 1 (c) 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.</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 serious or widespread offence or harm or abuse, considering context, medium, audience and the ad subject. The Boards will also consider the protections in the New Zealand Bill of Rights Act for freedom of expression.</p>
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<p>What is the likely consumer takeout of the advertisement?</p>	<p>This is a key question for the Boards. The likely consumer takeout of an advertisement will be influenced by the ad content, placement, and context, along with other factors.</p> <p>Example <i>Zoning changes for a public area</i> If the ad is about a matter of current public debate, there is likely to be a range of information from various sources about the issue. This can provide context for some content.</p>
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	<p>Example</p> <p><i>General Election</i></p> <p>The General Election generates significant news coverage about parties and candidates and issues of the day along with commentary across a range of platforms. Election advertisements are often tailored to reflect party positions on matters of current public debate. The election campaign provides context for many election ads.</p> <p>Example</p> <p><i>Public health and safety advertising</i></p> <p>Some advocacy advertisements use strong imagery or words to help engage with hard-to-reach audiences and sometimes, this will generate an unintended reaction for some in the community. The importance of the message provides context for the Complaints Board when assessing a code breach.</p>
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<p>Complaints seeking a view from the Complaints Board about the veracity of research or substantiation</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.</p> <p>Similarly, the Boards will not determine which of competing academic studies or other evidence is correct.</p> <p>The Boards' roles are to determine whether there has been a breach of the ASA Codes.</p>
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<p>Use of selected academic studies to support an advertiser's view</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>
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<p>Combining statements of fact and opinion</p>	<p>Individuals and organisations expressing robust views about advocacy issues, often do so using a mix of opinion and fact.</p>
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	<p>Example</p> <p>The statement that “the Government wasted \$85m on trees in 2021” is a mix of fact and opinion. That the money was wasted is an opinion, the number \$85m and 2021 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>
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<p>ASA approach to advertising from expert bodies</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. Note, not all content from Government agencies is advertising – see Our Jurisdiction.</p> <p>Factors the Boards may consider when deciding on Government advertising include:</p> <ul style="list-style-type: none"> • The context for the messaging • The level of public concern • Impact on the population • The need for the messaging to reach a difficult target audience. • Whether it is information from an expert body (Electoral Commission v Cameron [1997] 2 NZLR 421).
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<p>The Advocacy Rule may not apply to some advertisements from advocacy organisations</p>	<p>When a complaint is received, part of the assessment by the Board Chairs relates to the correct Code and rules to apply. In some circumstances, the Boards decide the Advocacy Rule is not relevant.</p> <p>The consumer takeout and the call to action in the advertisements are key considerations.</p>
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FURTHER ASSISTANCE

The ASA is available to provide advice and assistance about the complaints process. Contact us at asa@asa.co.nz, on 0800 AD HELP (0800 234 357), or (04) 472 7852.