

COMPLAINT NUMBER	22/155
ADVERTISER	Kathmandu
ADVERTISEMENT	Kathmandu Television
DATE OF MEETING	12 July 2022
OUTCOME	Settled

Advertisement: The television advertisement for the Kathmandu BioDown jacket had a voiceover which said “It’s Kathmandu’s first BioDown jacket. Made for out there. Biodegrades in here”. Next there was an image of a jacket lying on top of a pile of rubbish. Using time lapse photography, the jacket was shown gradually biodegrading. Across the bottom of the screen, in small print, was the text “Occurs in biologically active landfills without oxygen. Please check with your council for facilities. Visit Kathmandu.eco/biodown”.

The Chair ruled the complaint was Settled.

Complaint: The advertisement for Kathmandu’s ‘BioDown’ jackets is misleading. They claim that their jacket, once it reaches the end of it’s life, can be put in a landfill, and will biodegrade. There are multiple shots of a conventional landfill, which represent the majority of landfills we have in Aotearoa. This would lead a consumer to believe that their jacket would, in fact, biodegrade in these conditions. The product, however, requires a biologically active, anaerobic landfill. It does state this in small print at the end of the advertisement, and suggests that a consumer ‘checks with their council for facilities’.

Rule 2 (b) of the Advertising Standards Code says that advertisements must not mislead or be likely to mislead, deceive or confuse customers, abuse their trust or exploit their lack of knowledge. It is clear that Kathmandu wishes to lead consumers to believe that their jacket will biodegrade in a standard landfill, while contradicting this in the fine print at the end of the article. The company is profiting from a claim (it can be reasonably inferred they are claiming it will biodegrade in a regular landfill) which is false.

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(h);

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(h) Environmental Claims: Environmental claims must be accurate and able to be substantiated by evidence that reflects scientific and technological developments.

The Chair noted the Complainant was concerned the advertisement was misleading because it infers the Biodown jacket will biodegrade in a regular landfill.

The Chair accepted the complaint to go before the Complaints Board to consider whether the Advertising Standards Code had been breached.

As part of the self-regulatory process, Advertisers and Media have the option of amending or removing advertising, in order to settle a complaint. The Chair noted the following response from the Advertiser:

...While we categorically disagree with the complaint and without admission of liability or fault, Kathmandu wishes to settle the complaint. Kathmandu has removed the Advertisement and undertakes that it will not use the Advertisement again in New Zealand....

Given the Advertiser's co-operative engagement with the process and the self-regulatory action taken in removing the advertisement, the Chair said it would serve no further purpose to place the matter before the Complaints Board.

The Chair ruled the matter was Settled.

Chair's Ruling: Complaint **Settled**

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.