

COMPLAINT NUMBER	17/327
COMPLAINANT	J Cullen, J Trlin and others
ADVERTISER	National Party
ADVERTISEMENT	National Party, Digital Marketing
DATE OF MEETING	18 September 2017
OUTCOME	Advertisement 1: Not Upheld; Advertisement 2: Not Upheld

SUMMARY

Advertisement 1: A post advertising the New Zealand National Party on Facebook was titled “Labour’s Tax Grab” and said in part: “You will pay \$1,060 more tax from 1 April 2018.” Underneath in smaller text, was the qualification: “For anyone earning more than \$52,000 pa.” The advertisement included an authorisation statement. The post was headed with a message from the National Party which said, in part: “Don’t risk it. Party Vote National and keep more of your hard earned money.”

The Complainant said the advertisement “contains misleading and untrue information. The public will NOT pay more from 1 April 2018, they simply won’t get a tax cut.”

The Advertiser said the advertisement was not misleading because “a change to the current system will in fact mean that the public will pay more tax than they would under the tax package already in law and coming in force in April 2018.”

The Complaints Board said the advertisement was an advocacy advertisement and had met the identification requirement under Rule 11 of the Code of Ethics. The Complaints Board said the advertisement presented the National Party’s opinion on the Labour Party position to revoke the tax cuts the National Government had put in place for 1 April 2018. The Complaints Board agreed this was part of the political discourse provided for under the provisions of Rule 11 of the Code of Ethics and did not reach the threshold to mislead consumers. The Complaints Board said the advertisement was not in breach of Rule 2 or Rule 11 and had been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

[No further action required]

Advertisement 2: The “Let’s Tax This” video was posted by the National Party to their Facebook page alongside the comment from the National Party “#WATCH Out brand new ad ‘Let’s Tax This’ highlights the tax burden Labour would impose on hard working New Zealanders.” The video listed various taxes which appeared in red arrows in contexts to which it related, for example a red arrow stating “Regional Fuel Tax” pointing to the petrol pump and a cow in a paddock with an arrow point to its rear end saying “Fart Tax”. On screen, the advertisement said “Labour. Let’s Do This” before changing to “Let’s Tax This” and the voiceover said, in part “There’s only one way to stop Labour’s taxes, Party Vote National.”

Complainant, J. Cullen, said the video advertisement “contained references to taxes that Labour has NOT campaigned on implementing, they have specifically said they will refer decisions until after the working group has done its job.”

Complainants, J. Trlin and others, said the advertisement “contains five separate misleading or false representations on the issues of capital gains tax, land tax, income tax, and fart tax.

The Complaints Board said the advertisement was an advocacy advertisement and had met the identification requirement under Rule 11 of the Code of Ethics. It noted there was a level of humour employed in the advertisement and the Advertiser had provided information supporting the Labour Party taxes it referred to in the advertisement.

The majority of the Complaints Board considered the likely consumer take out of the advertisement and said it referenced the recent debate on Labour’s tax policy as part of a political discourse that had been widely discussed in the public domain. The majority said the context of the advertisement from the National Party during an election campaign made it clear it presented the National Party’s opinion on possible Labour tax policy. The majority said the advertisement did not meet the threshold to mislead consumers taking into account the Advocacy Principles. The majority ruled the advertisement was not in breach of Rule 2, Rule 11 or Basic Principle 4 of the Code of Ethics.

A minority disagreed. In its view, the advertisement implied Labour would introduce the taxes presented and it conflated taxes that had been announced by the Labour Party with those were not confirmed as Labour Party policy. The minority said the advertisement had the potential to mislead consumers and was in breach of Rule 2 and Basic Principle 4 of the Code of Ethics.

However, in accordance with the majority, the Complaints Board ruled to Not Uphold the complaint.

[No further action required]

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

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisements with reference to Basic Principle 4 and Rules 2 and 11 of the Code of Ethics. This required the Complaints Board to consider whether the advertisements contained any statement or visual presentation or created an overall impression which directly or by implication, omission, ambiguity or exaggerated claim was misleading or deceptive, was likely to deceive or mislead the consumer, made false and misleading representation, abused the trust of the consumer or exploited his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

The Complaints Board was also required to consider whether the advertisements had been prepared with a due sense of social responsibility to consumers and society.

The Complaints Board said the advertisements before it fell into the category of advocacy advertising and noted the requirements of Rule 11 of the Code of Ethics. The Complaints Board noted Rule 11 allowed for expression of opinion in advocacy advertising, provided that the expression of opinion is robust and clearly distinguishable from fact. Also applicable

were the Advocacy Principles, developed by the Complaints Board in previous Decisions for the application of Rule 11. These said:

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 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.
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.

Having established the advertisements were from the New Zealand National Party, the Complaints Board noted that political advertisements were not only acceptable, but encouraged as they were an essential and desirable part of the functioning of a democratic society. The Complaints Board also observed that in a free and democratic society, differences of political opinion 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. Therefore, the Complaints Board considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

The Complaints Board ruled the complaints were Not Upheld.

The Complaints Board noted the complaints focused on two advertisements and the Complaints Board dealt with each separately.

Advertisement 1: LABOUR'S TAX GRAB, NATIONAL PARTY FACBOOK POST

A post advertising the New Zealand National Party on Facebook was titled "Labour's Tax Grab" and said in part: "You will pay \$1,060 more tax from 1 April 2018." Underneath in smaller text, was the qualification: "For anyone earning more than \$52,000 pa." The advertisement included an authorisation statement.

The post was headed with a message from the National Party which said, in part: "Don't risk it. Party Vote National and keep more of your hard earned money."

The Complaint from J Cullen

The Complainant said the advertisement "contains misleading and untrue information. The public will NOT pay more from 1 April 2018, they simply won't get a tax cut."

The response from the Advertiser, the New Zealand National Party

The Advertiser responded to the Complainant's concern the advertisement was misleading. It said the advertisement "intends to present National's view on the contrast between the Labour and National's approach to income tax as part of a political discourse allowed under the provisions of Rule 11 of the code of Ethics."

The Advertiser said the advertisement was not misleading as "the public will be paying more tax than under the current system. This is not misleading, since a change to the current system will in fact mean that the public will pay more tax than they would under the tax package already in law and coming in force in April 2018. It does not say the public will pay more than they do today – rather from 1 April 2018. The public will pay more tax by changing the government than by not changing it."

The Advertiser said the advertisement was opinion and "it is not unreasonable to expect the public to understand that this is National's interpretation on a Labour policy. This combined with their policy that Labour will reverse National's tax package effective at April 2018 means that the ad was not misleading."

Complaints Board Discussion

The Complaints Board said the advertisement was an advocacy advertisement and had met the identification requirement under Rule 11 of the Code of Ethics. It said the advertisement was posted by the National Party on Facebook and promoted National's view on 'Labour's Tax grab'. It claimed people earning more than \$52,000.00 would pay \$1,060 more tax per year from 1 April 2018 under a Labour Government. It said the accompanying text encouraged people to give their party vote to National and included an authorisation statement in the advertisement.

The Complaints Board considered the likely consumer take out of the advertisement and said it gave the impression that if you vote for Labour then people who earn over \$52,000.00 per annum, will pay more tax from 1 April 2018. The Complaints Board noted the Advertiser's response that this is because National have planned and legislated for tax cuts that Labour plans to remove should they be elected.

The Complaints Board acknowledged that there could be differing views about whether the removal of a tax cut was a tax increase, but regardless, based on current legislation, some people will pay more income tax under a Labour Government from 1 April 2018. The Complaints Board took into account the context of the advertisement as a National Party election advertisement, posted by it on its Facebook page. It also considered the information provided about Labour's plans to revoke the legislated tax cuts in 2018. The Complaints Board said the advertisement did not reach the threshold to mislead and was not in breach of Rule 2 of the Code of Ethics.

The Complaints Board said the advertisement presented the National Party's opinion on the impact of the Labour Party policy on revoking the tax cut if elected and was part of the political discourse allowed under the provisions of Rule 11 of the Code of Ethics. Therefore, the Complaints Board said the advertisement had been prepared with a due sense of social responsibility to consumers and society required by Basic Principle 4 of Code of Ethics.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

Advertisement 2: 'LET'S TAX THIS' VIDEO, NATIONAL PARTY FACEBOOK POST AND YOUTUBE

The "Let's Tax This" video was posted by the National Party to their Facebook page alongside the comment from the National Party "#WATCH Out brand new ad 'Let's Tax

This' highlights the tax burden Labour would impose on hard working New Zealanders." The video listed various taxes which appeared in red arrows in contexts to which it related, for example a red arrow stating "Regional Fuel Tax" pointing to the petrol pump and a cow in a paddock with an arrow point to its rear end saying "Fart Tax". The various taxes listed were:

- Capital Gains Tax
- Land Tax
- Regional Fuel Tax
- Income Tax
- Water Tax
- Fart Tax

On screen, the advertisement said "Labour. Let's Do This" before changing to "Let's Tax This" and the voiceover said, in part "There's only one way to stop Labour's taxes, Party Vote National."

The advertisement then showed Bill English and the on-screen message "Party Vote National. Delivering for New Zealanders".

The advertisement also included an authorisation statement.

The Complaint from J Cullen

The Complainant said the video advertisement "contained references to taxes that Labour has NOT campaigned on implementing, they have specifically said they will refer decisions until after the working group has done its job."

The Complaint from J. Trlin and others

The Complainants, J. Trlin and others, said the advertisement "contains five separate misleading or false representations on the issues of capital gains tax, land tax, income tax, and fart tax. Each of these claims are directly targeted at attacking Labour through establishing a narrative of excessive taxation. This is a manufactured narrative based on claims that are either misleading, or fly directly in the face of the explicit statements of the Labour party, and Labour's published tax policy."

The Complainants said the "lies and mistruths presented in the advertisement are deeply harmful to the facilitation of healthy democratic debate" and were of the view the advertisement presented opinion as fact.

The Complainant's raised concerns about the individual taxes referred to in the advertisement and those arguments are summarised below:

Capital Gains Tax: The Complainants said the reference to this tax was misleading as the imagery of a house could imply the Labour Party would introduce a Capital Gains Tax on the family home if elected which had been explicitly ruled out by the Labour party.

Land Tax: The Complainants said this reference was misleading as it pointed to the land under the house referred to above implied the Labour Party was going to introduce a Land Tax which again, had been ruled out explicitly.

Income Tax: The Complainants said the reference was misleading as the Labour Party has ruled out increases and said "given this, and given that the tax rates as they stand have been introduced by National, it is simply untruthful to claim in the ad that the only way to stop 'Labour's Taxes' is to vote for National... the message sent

by the ad is likely to suggest to the average observer that Labour is planning on raising income tax.”

Water Tax: The Complainants said this reference to a water tax being associated with municipal water supply was misleading as it is specifically excluded from the Labour Party’s policy which focuses on farming and bottled water.

Fart Tax: The Complainants said this was misleading as it was not a tax. Labour intended to include agriculture within the Emissions Trading Scheme, which is a market trading system. They noted that Hon. Dr. Nick Smith, Environment Minister, said it is not correct to refer to it as a tax..

The response from the Advertiser, the New Zealand National Party

The New Zealand National Party responded to the Complainants’ concerns stating, in part “the premise of the advert is that Labour is campaigning on making changes to the tax system in New Zealand, and they are specifically talking about seven taxes. Our argument is that their plans lack sufficient detail for New Zealanders to understand what they’re proposing and why. All of the examples presented in this ad are true and credible based on the broad and vague proposals Labour has made... It is our position that the representation in the advertisement is that Labour has a range of tax policies it will consider implementing that will affect New Zealanders.”

With regard to the advertisement, the Advertiser said the advertisement identifies some of the taxes that Labour has on its agenda reported in the media and “makes a play on Labour’s tagline ‘Lets do this’ by renaming it ‘Lets Tax This’ reflecting our view of their agenda. Finally, National reflects on its different stance to introducing new taxes by stating ‘The only way to stop Labour’s taxes is to Party Vote National’. Our opinion is that Labour has an agenda to change taxes – National does not.” The Advertiser said the advertisement was light-hearted and “does not attempt to provide any details including timing, likelihood, or the impact of the policies that have been discussed to date. It does not suggest the process that Labour might take including whether a working group is involved or not.”

The Advertiser said “it is not unreasonable to expect the public to understand that this is National’s interpretation on a Labour prevalence to introduce new taxes. This combined with National’s confirmed income tax cut (by virtue of income tax threshold settings adjustments) and National’s position on not introducing new taxes, means that the ad is not misleading.”

The Advertiser addressed each tax referred to in the advertisement individually, where its position was primarily that the Labour Party had not ruled out the various taxes. The Advertiser’s view in relation to the taxes is summarised below:

Capital Gains Tax: There is no suggestion that the home shown in the advertisement was the ‘family home’ and the Labour Party has not ruled out a Capital Gains Tax.

Land Tax: The Labour party has ruled out a land tax applying to land under the family home, but they have not ruled out a land tax.

Income Tax: The Labour Party have repeatedly stated that they will reverse National’s legislated tax cuts due to come into effect 1 April 2018 which will increase the tax that people would otherwise pay.

Regional Fuel Tax: The Labour Party has said it will give Auckland Council the ability to implement a regional fuel tax to fund infrastructure.

Water Tax: There is no suggestion the reference to the various beverages relates to the municipal supply of water but showed bottled water, beer and orange juice, as Labour has not ruled out that producers of these products would not be affected by a water tax.

Fart Tax: A tax is defined by Collins Dictionary as “a compulsory financial contribution imposed by a government to raise revenue, levied on the income or property of persons or organisations.” Making farmers pay as part of the Emission Trading Scheme is a type of tax. Labour’s policy implies agriculture will be added to the Emission Trading Scheme and farmers who own stock will be required to pay money to the Government because livestock produce significant emissions.

Possible Precedents

Decision 17/303 – National Party Twitter, Not Upheld

The Complaints Board considered a possible precedent Decision 17/303 about a National Party advertisement on Twitter. The video advertisement on the National Party Twitter account showed farm scenes and on-screen text said: “Let’s work with farmers. Not against them.” The video is interrupted with a message featuring the New Zealand Labour Party logo and states the following on-screen:

“Labour. Tax Agenda:

- A water tax
- A capital gains tax
- Farming into the ETS
- Land taxes & wealth taxes.”

The advertisement concludes with the on-screen message: “Only National will deliver for regional NZ. Party vote National. Authorised by G Hamilton, 41 Pipitea St, Wellington.”

The Decision said in part:

“The Complaints Board said the advertisement presented the National Party’s opinion on the kinds of tax the Labour Party may introduce if elected which was part of a political discourse allowed under the provisions of Rule 11 of the Code of Ethics. Further, the Complaints Board said the reference to ‘Labour’s Tax Agenda’ in the context of an advertisement on Twitter did not meet the threshold to be likely to mislead voters into thinking the Labour Party was going to introduce a Capital Gains Tax if elected and therefore, was not in breach of Rule 2 of the Code of Ethics.

The Complaints Board agreed with the Advertiser that the advertisement did not state Labour *would* introduce a Capital Gains Tax if elected, but that it was ‘on Labour’s Agenda’. The Complaints Board said most people would interpret the reference to ‘Labour’s Tax Agenda’ and the list of taxes to mean they were taxes that were being discussed by Labour, not that they would become law if Labour was in Government. The Complaints Board also took into account the wider context of the claim in relation to Labour’s well publicised position on evaluating potential taxes through a working group and noted that position had been subject to wide public debate.

The majority of the Complaints Board said the brief use of the colour red and Labour Party logo in the advertisement did not reach the threshold to be misleading when the overall context, medium and political nature of the advertisement were considered.

A minority disagreed. It said the use of the Labour Party logo could give the impression it was the official position of the Labour Party, not the opinion of the National Party, and the

use of an opposition party logo in political advertising presenting opinion, was likely to cause confusion for consumers.

However, in accordance with the majority, the Complaints Board ruled to Not Uphold the complaint.”

The Complaints Board noted the complaint about the use of the Labour Party logo within a National Party advertisement referring to Labour’s Tax Agenda was not upheld.

Ruling 16/368 - Greenpeace NZ website, No Grounds to Proceed

The Complaints Board considered a possible precedent Ruling 16/368 about a Greenpeace advertisement which consisted of a Facebook page and a YouTube video. The Facebook page was headed “Petition: Stop the Solar Tax” and asked viewers to “Sign on now to tell the NZ Electricity Authority to take responsibility for protecting solar power and regulate to prohibit electricity providers from penalizing solar users, financially or otherwise.”

The YouTube video showed a group of people, dressed in yellow, singing and dancing, and following musician Tiki Taane to the office of the Electricity Authority, to deliver a petition called “Stop the Solar Tax”.

That Ruling said, in part:

“... the Complainant’s concerns that the advertisement was misleading because of the use of the word ‘tax’ to describe the network charges set by Unison power company.

The Chair ruled that the provisions of Rule 11 - Advocacy Advertising applied in this case.

The Chair said that as both the identity and the position of the Advertiser were clear, in compliance with Rule 11, the advertisement should be reviewed in the context of advocacy advertising, which is advertising designed to express an opinion. As such, and in the interests of freedom of expression under Section 14 of the Bill of Rights Act 1990, a more liberal interpretation of the Code was appropriate.

The Chair noted that there may be different views about whether the word ‘tax’ is the appropriate word to use in the context of this advertisement and in relation to the network charges.

She said one party might consider the word ‘tax’ appropriate because the network charges for solar power are compulsory and a demand on people’s resources. The Chair acknowledged that the network charge for solar power users does not fit the legal definition for the word tax as it is not ‘a levy imposed on a taxpayer by the state’.

The Chair noted that while there are different definitions and interpretations of the word ‘tax’, in this case it had been used to create an unfavourable impression of the network charges. This did not mean however, that the advertisement met the threshold required to be described as misleading.”

The Complaints Board noted the Chair ruled the word ‘tax’ had different definitions and interpretations and using it to describe “network charges” in the context of the above advertisement was not misleading and the complaint had No Grounds to Proceed.

Complaints Board Discussion

The Complaints Board said the advertisement was an advocacy advertisement and had met the identification requirement of Rule 11 of the Code of Ethics. It said the advertisement was posted by the National Party on Facebook and YouTube and promoted National's view on the Labour Party's likely tax policies. It said the encouraged people to give their party vote to National stating "There's only one way to stop Labour's taxes, Party Vote National" and included an authorisation statement.

The Complaints Board noted there was a level of humour employed in the advertisement, including the music and overall tone. It said the advertisement parodied the Labour slogan "Let's Do This" changing it to "Lets Tax This" and included a scene pointing to a cow's rear end with a red arrow saying "Fart Tax".

The Complaints Board noted the Advertiser provided information on Labour Party taxes referred to in the advertisement. In particular, the Complaints Board noted the reference to the "Fart Tax" specifically where J. Trlin raised concerns that Labour was not looking to create a tax, but to include agriculture in a market trading scheme. It took into account the precedent Ruling 16/368 which said the word 'tax' had different definitions and interpretations. The Complaints Board said the reference to "Fart Tax" was a colloquial term used to describe a levy imposed on agriculture due to resulting emissions.

The majority of the Complaints Board considered the likely consumer take out of the advertisement and said it referenced Labour's tax policies as part of a political discourse that had been widely discussed in the public domain. The majority said the context of the advertisement from the National Party, on their Facebook page and YouTube channel, made it clear it presented their opinion and what they considered to be a point of difference in policy.

The majority said the advertisement before it differed from the advertisement considered in precedent Decision 17/303 as that made it clear it was referencing "Labour's Tax Agenda", understood by most to mean taxes that were being discussed by Labour. The Complaints Board said the advertisement before it created a stronger impression that Labour would introduce the taxes referenced.

However, the majority said, taking into account the political nature of the advertisement, the context in which it appeared and level of parody, the advertisement had not met the threshold to mislead consumers. It said the advertisement was not in breach of Rule 2 or Rule 11 of the Code of Ethics and had been prepared with a due sense of social responsibility to consumers and society required by Basic Principle 4 of the Code of Ethics.

A minority disagreed. In its view, the advertisement implied Labour would introduce the taxes presented and it conflated taxes that had been announced by the Labour Party with those that had not. The minority said the advertisement was likely to mislead consumers in breach of Rule 2 of the Code of Ethics and had not been prepared with the due sense of social responsibility to consumers and society required by Basic Principle 4 of the Code of Ethics.

However, in accordance with the majority, the Complaints Board ruled to Not Uphold the complaint.

DESCRIPTION OF ADVERTISEMENTS

Advertisement 1: LABOUR'S TAX GRAB, NATIONAL PARTY FACBOOK POST

A post advertising the New Zealand National Party on Facebook was titled “Labour’s Tax Grab” and said in part: “You will pay \$1,060 more tax from 1 April 2018.” Underneath in smaller text, was the qualification: “For anyone earning more than \$52,000 pa.” The advertisement included an authorisation statement.

The post was headed with a message from the National Party which said, in part: “Don’t risk it. Party Vote National and keep more of your hard earned money.”

Advertisement 2: ‘LET’S TAX THIS’ VIDEO, NATIONAL PARTY FACBOOK POST AND YOUTUBE

The “Let’s Tax This” video was posted by the National Party to their Facebook page alongside the comment from the National Party “#WATCH Out brand new ad ‘Let’s Tax This’ highlights the tax burden Labour would impose on hard working New Zealanders.” The video listed various taxes which appeared in red arrows in contexts to which it related, for example a red arrow staying “Regional Fuel Tax” pointing to the petrol pump and a cow in a field with an arrow point to its rear end saying “Fart Tax”. The various taxes listed were:

- Capital Gains Tax
- Land Tax
- Regional Fuel Tax
- Income Tax
- Water Tax
- Fart Tax

On screen, the advertisement said “Labour. Let’s Do This” before changing it to “Let’s Tax This” and the voiceover said, in part “There’s only one way to stop Labour’s taxes, Party Vote National.”

The advertisement then showed Bill English and the on-screen message “Party Vote National. Delivering for New Zealanders”.

The advertisement also included an authorisation statement.

CODE OF ETHICS

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

Rule 2: Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

Rule 11: Advocacy Advertising - Expression of opinion in advocacy advertising is an essential and desirable part of the functioning of a democratic society. Therefore such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an advertiser in matters of public interest or political issue should be clear.

Advertisement 1: LABOUR’S TAX GRAB, NATIONAL PARTY FACBOOK POST

COMPLAINT FROM J CULLEN

I wish to complain about the following ads from the National Party's election campaign:

This one:

<https://www.facebook.com/NZNATS/photos/a.527149817300618.137166.183355881680015/1924835017532084/?type=3&theater>

It contains misleading and untrue information. The public will NOT pay more tax from 1 April 2018, they simply won't get a tax cut.

RESPONSE FROM ADVERTISER – NZL NATIONAL PARTY

The complainant states that the advert “contains misleading and untrue information. The public will not pay more tax from 01 April 2018, they simply won’t get a tax cut.”

This advert intends to present National’s view on the contrast between the Labour and National’s approach to income tax as part of a political discourse allowed under the provisions of Rule 11 of the code of Ethics. National: Party Vote National and keep more of your hard earned money. Labour: You will pay \$1,060 more tax from 1 April 2018 – for anyone earning more than \$52,000p.a.

The over-arching message, which is the aspect of the advert that the complainant says is misleading and untrue, is that the public with the salary qualification that we have made, will pay more income tax under Labour than they will under National. We say that is not misleading nor untrue.

This advert states that the public will be paying more tax than under the current system. This is not misleading, since a change to the current system will in fact mean that the public will pay more tax than they would under the tax package already in law and coming in force in April 2018. It does not say the public will pay more than they do today – rather from 1 April 2018. The public will pay more tax by changing the government than by not changing it.

Labour have repeatedly announced that they will reverse National’s tax cuts.

“What we will do is reverse the tax cuts proposed by Bill English and Steven Joyce that will see \$400 million a year go to the top ten per cent of New Zealanders” Grant Robinson, Labour’s Finances spokesman – 13 September.

Grant Robinson, as recently as yesterday, confirmed again in his media statement <https://www.facebook.com/RadioNewZealand/videos/vb.7759768730/10155168564518731/?type=2&theater>) that Labour would legislate to remove National’s tax threshold changes that occur 1 April 2018.

Because this is clearly a campaign advert (as evidenced by the National party authorization clearly displayed in the corner and the National Party vote message), its purpose is to highlight labour’s policy comparing to National. It cannot be viewed as a Labour statement on its own. It simply highlights Labour’s announced approach to National’s tax cut package.

Under the principles of advocacy advertising, it is not unreasonable to expect the public to understand that this is National’s interpretation on a Labour policy. This combined with their policy that Labour will reverse National’s tax package effective at April 2018 means that the ad was not misleading. It is simply National’s policy contrasted to Labour’s announced intention to reverse the package, that is already legislated, resulting in people paying more tax than they otherwise will under National from 1 April 2018.

Advertisement 2: ‘LET’S TAX THIS’ VIDEO, NATIONAL PARTY FACBOOK POST AND YOUTUBE

ADDITIONAL COMPLAINT FROM J CULLEN

And the "Let's Tax This" video ad on their Facebook page (presumably also on TV). <https://www.facebook.com/NZNATS/>

It contains references to taxes that Labour has NOT campaigned on implementing, they have specifically said they will refer decisions until after the working group has done its job.

I'd hate to see our election campaign deteriorate into a torrent of fake news.

RESPONSE FROM ADVERTISER: - NZL NATIONAL PARTY

National Party's response to Advert #2 complaint - Lets Tax this - Complaint 17/327 Advert #2

The complainant states that this advert "contains references to taxes that Labour has not campaigned on implementing, they have specifically said they will refer decisions until after the working group has done its job."

Viewers of this ad would be under no misapprehension that this is political campaign advert as evidenced by the National party authorization clearly displayed in the corner and the National Party vote message. Its purpose is to highlight National policy compared to Labour. It is advocacy advertising expressing an opinion which is essential and desirable for the functioning of a democratic society.

The complainant gives the impression that the advert has misled the public into believing National's opinion on Labour's tax programme has been conveyed as fact. The complaint is very similar to the one which was rejected last week on the "Lets Tax This" advert about taxing farmers (ASA 17/303).

This advert intends to present National's view on the contrast between the Labour and National's approach to the tax system as part of a political discourse allowed under the provisions of Rule 11 of the code of Ethics.

Further the premise of the advert is that Labour is campaigning on making changes to the tax system in New Zealand, and they are specifically talking about seven taxes. Our argument is that their plans lack sufficient detail for New Zealanders to understand what they're proposing and why. All of the examples presented in this ad are true and credible based on the broad and vague proposals Labour has made.

The advert does intend to point out some of the taxes that Labour has on its agenda (as evidenced through announcements and comment in the media), makes a play on Labour's tagline "Lets do this" by renaming it "Lets Tax This" reflecting our view of their agenda. Finally National reflects on its different stance to introducing new taxes by stating "The only way to stop Labour's taxes is to Party Vote National". Our opinion is that Labour has an agenda to change taxes – National does not.

It is our position that the representation in the advertisement is that Labour has a range of tax policies it will consider implementing that will affect New Zealanders. This is demonstrated in a light hearted way by pointing to the subject areas, such as a cars fuel cap, that these taxes, such as regional fuel tax, would effect. This section of the advert does not attempt to provide any details including timing, likelihood, or the impact of the policies that have been discussed to date. It does not suggest the process that Labour might take including whether a working group is involved or not.

The contrasting position is in National's statement - "The only way to stop Labour's taxes is to Party Vote National". It aims to demonstrate that Labour has a very different view to taxation than National. National's position is made clear by the advert. It will not be implementing policies that increase taxes and if you want certainty of that you should Party Vote National.

The opinion that Labour will introduce new taxes, and in the case of income tax, repeal a tax reduction that has already been legislated, is based on widely reported comments and announcements from Labour regarding their tax policies. We run through these below.

Under the principles of advocacy advertising, it is not unreasonable to expect the public to understand that this is National's interpretation on a Labour prevalence to introduce new taxes. This combined with National's confirmed income tax cut (by virtue of income tax threshold settings adjustments) and National's position on not introducing new taxes, means that the ad is not misleading.

Supporting evidence of each tax category as mentioned in the advert:

1) Capital Gains Tax

There is no allegation or suggestion that this home is the 'family home'.

Labour has not ruled out that a Capital Gains Tax would not apply to other housing assets. Jacinda Adern herself said as much – *However, the party would give a mandate to a tax working group "to look at the way that we tax assets and wealth in New Zealand"* - <http://www.newshub.co.nz/home/election/2017/08/no-capital-gains-tax-yet-jacinda-ardern.html>

For many thousands of New Zealand families, it is an aspiration to own other properties for a range of reasons, including for other family members, as a bach, or because work commitments require habitation in two cities.

2) Land Tax

Labour has ruled out a land tax applying to land under the family home, but they have not ruled out a land tax. Phil Twyford, Labour's Housing spokesperson said "*So with our tax working group and our position on tax in the first three years – capital gains tax will be on the table, a land value tax will be on the table, asset and wealth taxes, so we can look at the problems within our tax system in the whole and design a fairer and more efficient tax system.*" – Weir House students meeting, evening of 10th August 2017

Further, when asked by the media about a land tax, RNZ reported the following - "Ms Ardern said the tax working group could still consider the possibility of a land tax, but not one which would hit the land underneath a family's house." <http://www.radionz.co.nz/news/political/338830/labour-clarifies-land-tax-position>

3) Income Tax

Labour have repeatedly stated that they will reverse National's tax cuts that National have announced. As these tax cuts are already legislated and will come into effect 01 April 2018, Labour's reversal of this legislation will in effect increase the tax that people would otherwise pay come 01 April.

"What we will do is reverse the tax cuts proposed by Bill English and Steven Joyce that will see \$400 million a year go to the top ten per cent of New Zealanders" Grant Robinson, Labour's Finances spokesman – 13 September.

Grant Robinson, as recently as yesterday, confirmed again in his media statement <https://www.facebook.com/RadioNewZealand/videos/vb.7759768730/10155168564518731/?type=2&theater>) that Labour would legislate to remove National's tax threshold changes that occur 1 April 2018.

4) Regional Fuel Tax

Labour has responded to the request of the Auckland Council to give it the ability to use new methods of funding infrastructure, like infrastructure bonds and targeted rates. It will also give Auckland Council the ability to implement a regional fuel tax. <http://www.labour.org.nz/tax>

5) Water Tax

There is no suggestion that this is from the municipal supply. As the complaint itself says, their water tax supposedly excludes the municipal supply and is about targeting water bottling.

Domestically produced bottled water is a common and popular product sold in almost every food or convenience store in New Zealand, either still or sparkling based on preference. People are encouraged to buy bottled water and keep a supply of it for use during, for example, natural disasters like earthquakes. Labour has not ruled out that a water tax would not apply to bottled water sold domestically.

Similarly with the beer and orange juice, Labour has not ruled out that producers of these products would not be affected by a water tax. Labour's website itself says "Commercial users who profit from our water should pay a fair and affordable royalty", with the only exception being "Households and councils will not pay any water royalty". <http://www.labour.org.nz/tax>. It is also true that most commercially sold beer and orange juice contain added water with other ingredients, so claiming because oranges are not grown through irrigation schemes is not really the point. Beer may be produced in municipal zones, but it also may not, as the recent rise in popularity of craft beer production would prove. The Cadorna Brewery is but one example.

The complainant does not know where and how either products are produced, and because of the lack in detail about Labour's policy and the lack of denial about these products be Labour's leadership, it remains a possibility.

6) Fart Tax

Including agriculture in the Emissions Trading Scheme will bring costs to farmers, imposed by the Government. This is because it is widely held that the emissions from livestock are significant sources of climate-altering emissions. The policy implication is farmers who own the stock are being required to pay money by the Government because of the fact that the livestock produce significant emissions.

A tax is defined by Collins Dictionary as
"a compulsory financial contribution imposed by a government to raise revenue, levied on the income or property of persons or organizations."

Including agriculture would be compulsory, would result in a financial contribution, would be imposed by the sovereign government of New Zealand if Labour was in office, and would be levied on the property of persons or organisations who own the farms and livestock.

COMPLAINT FROM J TRLIN AND OTHERS

My name is J Trlin, and I am a fifth year law student at Victoria University. I am writing on behalf of myself and the below co-signed to lay a complaint in regards to the most recent election advertisement released by the National Party. The advertisement is titled “Let’s Tax

This”, and can be found in the following places:

- on Youtube at <https://www.youtube.com/watch?v=HoIV2TGX1aE>
- on Facebook at <https://www.facebook.com/NZNATS/videos/1925840477431538/>

We believe “Let’s Tax This” violates Rule 2 “Truthful Presentation” of the Advertising Code of Ethics as found in the Advertising Codes of Practice 2014, which states the following:

“Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).”

The ad contains several presentations of “false and misleading” information relating to Labour’s tax policy, each of which are likely to deceive or mislead the public. The ad is clearly explicitly relating to Labour, through:

- the use of Labour’s red and white colour scheme
- the spin of Labour’s “Let’s Do This” slogan
- a narration at the end of the ad saying “There’s only one way to stop Labour’s taxes. Party vote National”
- an accompanying comment to the Facebook post saying “Our brand new ad "Let's Tax This" highlights the tax burden Labour would impose on hard working New Zealanders.”

Specific complaints

Each false and misleading representation will be individually addressed below:

- 1) Capital gains tax: The ad shows a house with a “for sale” sign outside it, with the annotation “Capital Gains Tax”. Labour is not campaigning on a platform involving capital gains tax, and has in fact explicitly ruled out any form of tax on the family home.¹ The ad implies that under Labour, selling your home will result in a tax on capital gains, which is untruthful. While it could certainly be argued that the ad is not supposed to depict a family home, the issue here is not the intention of the advertiser but the potential harm caused – to the average observer, the house appears to be a standard home, and the ad claims Labour will make you pay tax on it. This is at worst deliberately misleading, and at best negligent misrepresentation. In either case, it is in violation of Rule 2 as stated above.
- 2) Land tax: In the same clip as above, a second annotation saying “Land Tax” points to the ground underneath the house. Labour has no policy on introducing a land tax. This is harmful for the same reason outlined in regards to the capital gains claim above – Labour has specifically ruled out any tax related to the family home, and an average observer is likely to perceive the house depicted in the ad as being one.
- 3) Income tax: In another clip, an annotation pointing to a wallet in a man’s back pocket says “Income Tax”. This too is in violation of Rule 2 as stated above. While Labour certainly plans on maintaining income tax, it has explicitly ruled out any increases in it.² Given this, and

¹ http://www.labour.org.nz/fact_check_capital_gains_tax

² http://www.labour.org.nz/factcheck_income_taxes

given that the tax rates as they stand have been introduced by National, it is simply untruthful to claim in the ad that the only way to stop “Labour’s taxes” is to vote for National.

It could be argued that this representation is in reference to Labour disagreeing with National’s policy of tax cuts. Refusing to give a tax cut is not the same as a tax increase, but the message sent by the ad is likely to suggest to the average observer that Labour is planning on raising income tax. This, as stated above, is untrue. Again, the issue here is not the intention of the ad maker but the potential harm caused to the average observer.

- 4) Water tax: In another clip, an annotation saying “Water Tax” points to a glass of water. While Labour does have a water tax policy, the presentation of it in this ad is deeply misleading. Labour’s policy specifically relates to the use of water in farming, and for pristine bottle water used in exports.³ Municipal water supply is specifically excluded by the policy.⁴ The ad implies that normal drinking water will be taxed under Labour, and this is simply incorrect and untruthful. The same applies to beer and orange juice which are also given by the ad as examples of things that will be taxed by Labour’s policy – beer in New Zealand is primarily produced in municipal zones, and oranges are not grown through irrigation schemes that would be subject to tax. The suggestion that these things will be subject to tax under Labour is simply incorrect and deliberately misleading.
- 5) “Fart tax”: Finally, an annotation saying “Fart Tax” is made pointing towards a cow. This is perhaps the strongest untruth presented in the ad. The claim is presumably in reference to Labour’s plan to eventually include agriculture within the Emissions Trading Scheme, which is not a tax but a market trading system. In fact, National’s own Nick Smith is on record as saying “it is also not correct that the ETS is a tax” in a statement from 2010.⁵ Labour has specifically ruled out introducing a carbon tax in favour of using the Emissions Trading Scheme as its tool for emissions reduction. This can be directly contrasted with other political parties which have included a carbon tax in their policy platform. While use of the word “tax” fits into the narrative the ad is attempting to establish, in this circumstance it is simply incorrect, and, based on National’s own position, deeply misleading.
- 6) It is important to note that in between the false representations made within the ad, some true representations have been made. For example, Labour has announced a plan to introduce a regional fuel tax.⁶ However, the presence of substantially true claims within the ad only serve to lend credibility to the other, false assertions made.

Evidence of harm

“Let’s Tax This” makes at least five misleading and false representations. The impact of these misrepresentations is clear and obvious as demonstrated by the comment section on the Facebook ad. While many commenters pointed out the inaccuracies in the ad, many others were clearly influenced into believing the mistruths. I have included some screenshots of comments indicating the extent of the misunderstanding created below:



³ <http://www.labour.org.nz/fact-check-water-royalty>

⁴ <http://www.radionz.co.nz/news/national/336959/coke-exempt-under-labour-s-water-bottling-plan>

⁵ <https://www.beehive.govt.nz/release/ets-proceed-1-july>

⁶ <http://www.labour.org.nz/transport>

 **Linda Jane** No one can argue with this, it's what has been said. It's no good waffling on about how good the country will be under labour. If you want socially dependant people, farms gone, business unable to operate then go for it. You will be worse off than you ever dreamed possible unless you are one of the ones with your hands out
Like · Reply ·  4 · 7 hrs
 1 Reply · 3 hrs

 **Terrezz Pfynerski** Wake up call for all New Zealanders!!!
Taxcinda gone crazy on her tax policy. Capital gain tax, Wealth tax, Inheritance tax, Airport Tax, Land Tax, Water Tax, Farmers Tax, Petrol Tax, Road Tax
We are not an ATM for Labour. 😡
NO to LABOUR!!!
NO to Taxcindamania!!
Vote wisely!!
#PartyVoteNational
#BackingBill   
Like · Reply ·  6 · 6 hrs · Edited

 **Hanie Al-Sabtie** This labour will ruin working people, they will take all our efforts through these taxes
Like · Reply · 30 mins

These comments have all clearly taken the ad at its word, which is to be expected given the high degree of trust voters are likely to have in the established governing party. The blatant lies and mistruths presented in this ad are an abuse of that trust, and deeply harmful to the facilitation of healthy democratic debate.

Summary of Argument

“Let’s Tax This” contains five separate misleading or false representations on the issues of capital gains tax, land tax, income tax, and “fart tax”. Each of these claims are directly targeted at attacking Labour through establishing a narrative of excessive taxation. This is a manufactured narrative based on claims that are either misleading, or fly directly in the face of the explicit statements of the Labour party, and Labour’s published tax policy.

While political parties should of course be allowed to argue strongly for their opinion, there is also an onus on them to do so through reference to accurate information. This onus is reflected in both Rule 2 (Truthful Presentation) and Rule 11 (Advocacy Advertising) of the Advertising Code of Ethics. It is further established by the “Basic Principle” that “no advertisement should be misleading or deceptive or likely to mislead or deceive the consumer”. This ad is clearly in violation of these requirements.

In response to the hypothetical counter argument that National is merely expressing its opinion on Labour’s tax policy, Rule 11 requires that opinion must be clearly distinguishable from factual information. There is nothing within the ad to indicate that the claims it is making are mere opinion, and are instead presented as statements of fact. Rule 11, therefore, does not provide any protection.

This could have been avoided through something as simple as the addition of a question mark to the annotations within the video. This would suggest speculation, or as National have defended the advertisement so far, as “asking questions”.⁷ However, the representations are made as statements, not questions, and as such are presented to the average observer as fact.

⁷ <https://www.stuff.co.nz/national/politics/96802743/desperate-liars--jacinda-ardern-takes-aim-at-national>

Making even a single false representation is a clear violation of the Advertising Code of Ethics. In this ad, there are five. As the early voting period has already begun, we would therefore request that the ad be withdrawn immediately.

P.S. The majority of this complaint was completed prior to today's announcement by the Labour party ruling out any new taxes before the 2020 election. Given this new development, it is even more important that the ad be retracted.

RESPONSE FROM ADVERTISER – NZL NATIONAL PARTY

National Party's response to ASA Complaint: "Let's Tax This" National Party campaign advert 17/327 J Trlin

Advert per attachment

The complainant state that this advert "contains references to taxes that Labour has not campaigned on implementing, they have specifically said they will refer decisions until after the working group has done its job."

Viewers of this ad would be under no misapprehension that this is political campaign advert as evidenced by the National party authorization clearly displayed in the corner and the National Party vote message. Its purpose is to highlight National policy compared to Labour. It is advocacy advertising expressing an opinion which is essential and desirable for the functioning of a democratic society.

The complainant gives the impression that the advert has misled the public into believing National's opinion on Labour's tax programme has been conveyed as fact. The complaint is very similar to the one which was rejected last week on the "Let's Tax This" advert about taxing farmers (ASA 17/303).

This advert intends to present National's view on the contrast between the Labour and National's approach to the tax system as part of a political discourse allowed under the provisions of Rule 11 of the code of Ethics.

Further the premise of the advert is that Labour is campaigning on making changes to the tax system in New Zealand, and they are specifically talking about seven taxes. Our argument is that their plans lack sufficient detail for New Zealanders to understand what they're proposing and why. All of the examples presented in this ad are true and credible based on the broad and vague proposals Labour has made.

The advert does intend to point out some of the taxes that Labour has on its agenda (as evidenced through announcements and comment in the media), makes a play on Labour's tagline "Let's do this" by renaming it "Let's Tax This" reflecting our view of their agenda. Finally National reflects on its different stance to introducing new taxes by stating "The only way to stop Labour's taxes is to Party Vote National". Our opinion is that Labour has an agenda to change taxes – National does not.

It is our position that the representation in the advertisement is that Labour has a range of tax policies it will consider implementing that will affect New Zealanders. This is demonstrated in a light hearted way by pointing to the subject areas, such as a cars fuel cap, that these taxes, such as regional fuel tax, would effect. This section of the advert does not attempt to provide any details including timing, likelihood, or the impact of the policies that have been discussed to date. It does not suggest the process that Labour might take including whether a working group is involved or not.

The contrasting position is in National's statement - "The only way to stop Labour's taxes is to Party Vote National". It aims to demonstrate that Labour has a very different view to taxation than National. National's position is made clear by the advert. It will not be implementing policies that increase taxes and if you want certainty of that you should Party Vote National.

The opinion that Labour will introduce new taxes, and in the case of income tax, repeal a tax reduction that has already been legislated, is based on widely reported comments and announcements from Labour regarding their tax policies. We run through these below. Under the principles of advocacy advertising, it is not unreasonable to expect the public to understand that this is National's interpretation on a Labour prevalence to introduce new taxes. This combined with National's confirmed income tax cut (by virtue of income tax threshold settings adjustments) and National's position on not introducing new taxes, means that the ad is not misleading.

Supporting evidence of each tax category as mentioned in the advert:

1) Capital Gains Tax

There is no allegation or suggestion that this home is the 'family home'.

Labour has not ruled out that a Capital Gains Tax would not apply to other housing assets. Jacinda Ardern herself said as much – *However, the party would give a mandate to a tax working group "to look at the way that we tax assets and wealth in New Zealand"* - <http://www.newshub.co.nz/home/election/2017/08/no-capital-gains-tax-yet-jacinda-ardern.html>

For many thousands of New Zealand families, it is an aspiration to own other properties for a range of reasons, including for other family members, as a bach, or because work commitments require habitation in two cities.

2) Land Tax

Labour has ruled out a land tax applying to land under the family home, but they have not ruled out a land tax. Phil Twyford, Labour's Housing spokesperson said *"So with our tax working group and our position on tax in the first three years – capital gains tax will be on the table, a land value tax will be on the table, asset and wealth taxes, so we can look at the problems within our tax system in the whole and design a fairer and more efficient tax system."* – Weir House students meeting, evening of 10th August 2017

Further, when asked by the media about a land tax, RNZ reported the following - "Ms Ardern said the tax working group could still consider the possibility of a land tax, but not one which would hit the land underneath a family's house."

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[?type=2&theater](#)) that Labour would legislate to remove National's tax threshold changes that occur 1 April 2018.

4) **Regional Fuel Tax**

Labour has responded to the request of the Auckland Council to give it the ability to use new methods of funding infrastructure, like infrastructure bonds and targeted rates. It will also give Auckland Council the ability to implement a regional fuel tax. <http://www.labour.org.nz/tax>

5) **Water Tax**

There is no suggestion that this is from the municipal supply. As the complaint itself says, their water tax supposedly excludes the municipal supply and is about targeting water bottling.

Domestically produced bottled water is a common and popular product sold in almost every food or convenience store in New Zealand, either still or sparkling based on preference. People are encouraged to buy bottled water and keep a supply of it for use during, for example, natural disasters like earthquakes. Labour has not ruled out that a water tax would not apply to bottled water sold domestically.

Similarly with the beer and orange juice, Labour has not ruled out that producers of these products would not be affected by a water tax. Labour's website itself says "Commercial users who profit from our water should pay a fair and affordable royalty", with the only exception being "Households and councils will not pay any water royalty". <http://www.labour.org.nz/tax>. It is also true that most commercially sold beer and orange juice contain added water with other ingredients, so claiming because oranges are not grown through irrigation schemes is not really the point. Beer may be produced in municipal zones, but it also may not, as the recent rise in popularity of craft beer production would prove. The Cadorna Brewery is but one example.

The complainant does not know where and how either products are produced, and because of the lack in detail about Labour's policy and the lack of denial about these products be Labour's leadership, it remains a possibility.

6) **Fart Tax**

Including agriculture in the Emissions Trading Scheme will bring costs to farmers, imposed by the Government. This is because it is widely held that the emissions from livestock are significant sources of climate-altering emissions. The policy implication is farmers who own the stock are being required to pay money by the Government because of the fact that the livestock produce significant emissions.

A tax is defined by Collins Dictionary as *"a compulsory financial contribution imposed by a government to raise revenue, levied on the income or property of persons or organizations."*

Including agriculture would be compulsory, would result in a financial contribution, would be imposed by the sovereign government of New Zealand if Labour was in office, and would be levied on the property of persons or organisations who own the farms and livestock.



COMPLAINT NUMBER	17/327
APPEAL NUMBER	17/016
APPLICANT	J. Trlin
ADVERTISER	New Zealand National Party
ADVERTISEMENT	National Party Digital Marketing
DATE	21 September 2017
OUTCOME	Declined

SUMMARY

The Complaints Board ruled on 18 September the complaint made by J. Cullen, J. Trlin and others about the National Party “Let’s Tax This” advertisement was Not Upheld.

The Decision was appealed by J. Trlin as, in their view, it was against the weight of evidence.

The appeal application was considered by the Chairperson of the Appeal Board. She noted the Applicant’s concern the Complaints Board Decision did not refer to any evidence to substantiate the assertions in the advertisement and there was evidence to support that some of the claims made in the advertisement had been ruled out by the Labour Party.

The Chairperson said all the information from the Complainants and the Advertiser had been considered by the Complaints Board in making its Decision. She noted that the requirement for a liberal interpretation of the Codes in matters of political interest had been applied by the Complaints Board. The Chairperson also noted that taxation had been the subject of extensive debate in coverage of the Election.

The Chairperson acknowledged the Complainants had a different interpretation of the advertisement and the likely consumer takeout and considered the weight of evidence supported the Complaint being upheld.

However, the Chairperson said, in her view the Complaints Board had considered all of the evidence before it and the Decision reflected the Advocacy Principle which states in part “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.”

Accordingly, the Chairperson ruled there were no grounds on which the appeal could proceed and the application was declined.

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

CHAIRPERSON'S RULING

The Chairperson viewed the application for appeal. She noted that there were five grounds upon which an appeal was able to proceed. These were listed at Clause 6(c) of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and were as follows:

- (i) The proper procedures have not been followed.
- (ii) There is new evidence of sufficient substance to affect the decision.
- (iii) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (iv) The decision is against the weight of evidence.
- (v) It is in the interests of natural justice that the matter be reheard.

The Chairperson noted the Complainant's concern that the Decision was against the weight of evidence and did not refer to any evidence that clearly substantiated the claims made in the advertisement.

In the first instance, the Chairperson confirmed the advertisement before her was an advocacy advertisement, promoting the New Zealand National Party in the upcoming General Election.

The Chairperson noted that the Complaints Board had considered the advertisement under Rule 11 of the Code of Ethics and applied the Advocacy Principles.

These said:

- 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.
4. 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.
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.

The Chairperson then turned to consider the substance of the appeal and the concern expressed by Complainant, J Trlin, that the Decision did not refer to any evidence that substantiates the claims made in the advertisement.

The Chairperson reviewed the information considered by the Complaints Board and noted the following issues, summarised below, were raised by the Complainant (with references included):

Capital Gains Tax: The Complainants said the reference to this tax was misleading as the imagery of a house could imply the Labour Party would introduce a Capital Gains Tax on the family home if elected which had been explicitly ruled out by the Labour party.

Land Tax: The Complainants said this reference was misleading as it pointed to the land under the house referred to above implied the Labour Party was going to introduce a Land Tax which again, had been ruled out explicitly.

Income Tax: The Complainants said the reference was misleading as the Labour Party has ruled out increases and said “given this, and given that the tax rates as they stand have been introduced by National, it is simply untruthful to claim in the ad that the only way to stop ‘Labour’s Taxes’ is to vote for National... the message sent by the ad is likely to suggest to the average observer that Labour is planning on raising income tax.”

Water Tax: The Complainants said this reference to a water tax being associated with municipal water supply was misleading as it is specifically excluded from the Labour Party’s policy which focuses on farming and bottled water.

Fart Tax: The Complainants said this was misleading as it was not a tax. Labour intended to include agriculture within the Emissions Trading Scheme, which is a market trading system. They noted that Hon. Dr. Nick Smith, Environment Minister, said it is not correct to refer to it as a tax.”

The Chairperson considered the response by the Advertiser, the New Zealand National Party, and confirmed that under the Advocacy Principles, the threshold for substantiation of oppositional views in matters of political debate was lower than that required of advertisers selling products or services in a commercial environment.

The Advertiser’s response included links to news stories with comment from Labour Party spokespeople and information from the Labour Party website. In the Chairperson’s view, the material supplied to support the complaint and the material supplied in defence of the advertisement was illustrative of the point made in the majority Decision which said:

“The majority of the Complaints Board considered the likely consumer take out of the advertisement and said it referenced Labour’s tax policies as part of a political discourse that had been widely discussed in the public domain. The majority said the context of the advertisement from the National Party, on their Facebook page and YouTube channel, made it clear it presented their opinion and what they considered to be a point of difference in policy.”

The Chairperson said the advertisement presented the National Party’s interpretation of possible taxes under a Labour government. She also noted the Labour Party had also made public statements about its approach to tax policy. The Chairperson said under a liberal

interpretation of the Code, the claims made in the advertisement are provided for under Rule 11 of the Code of Ethics.

The Chairperson acknowledged the Complainants had a different interpretation of the advertisement and the likely consumer takeout and considered the weight of evidence supported the Complaint being upheld.

However, the Chairperson said, in her view the Complaints Board had considered all of the evidence before it and the Decision reflected the Advocacy Principle which states in part “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.”

Accordingly, the Chairperson ruled there were no grounds on which the appeal could proceed and the application was declined.

Chairperson’s Ruling: Appeal application **Declined**

DESCRIPTION OF ADVERTISEMENT

The “Let’s Tax This” video was posted by the National Party to their Facebook page alongside the comment from the National Party “#WATCH Out brand new ad ‘Let’s Tax This’ highlights the tax burden Labour would impose on hard working New Zealanders.” The video listed various taxes which appeared in red arrows in contexts to which it related, for example a red arrow stating “Regional Fuel Tax” pointing to the petrol pump and a cow in a paddock with an arrow point to its rear end saying “Fart Tax”. On screen, the advertisement said “Labour. Let’s Do This” before changing to “Let’s Tax This” and the voiceover said, in part “There’s only one way to stop Labour’s taxes, Party Vote National.”

APPEAL APPLICATION FROM COMPLAINANT J. TRLIN

I would like to appeal the decision on the grounds that the decision is against the weight of evidence. The ASCB ruling did not refer to any evidence that actually substantiates the assertions actually contained within the advertisement. For example, there is no evidence that Labour is promising capital gains or land taxes as the ad asserts. Further to that, there is clear and explicit evidence that those policies have been ruled out. Additionally, the ACSB didn’t address the evidence provided in my complaint about Labour’s actual policies.

SUMMARY OF COMPLAINTS BOARD DECISION

Complainant, J. Cullen, said the video advertisement “contained references to taxes that Labour has NOT campaigned on implementing, they have specifically said they will refer decisions until after the working group has done its job.”

Complainants, J. Trlin and others, said the advertisement “contains five separate misleading or false representations on the issues of capital gains tax, land tax, income tax, and fart tax.

The Complaints Board said the advertisement was an advocacy advertisement and had met the identification requirement under Rule 11 of the Code of Ethics. It noted there was a level of humour employed in the advertisement and the Advertiser had provided information supporting the Labour Party taxes it referred to in the advertisement.

The majority of the Complaints Board considered the likely consumer take out of the advertisement and said it referenced the recent debate on Labour's tax policy as part of a political discourse that had been widely discussed in the public domain. The majority said the context of the advertisement from the National Party during an election campaign made it clear it presented the National Party's opinion on possible Labour tax policy. The majority said the advertisement did not meet the threshold to mislead consumers taking into account the Advocacy Principles. The majority ruled the advertisement was not in breach of Rule 2, Rule 11 or Basic Principle 4 of the Code of Ethics.

A minority disagreed. In its view, the advertisement implied Labour would introduce the taxes presented and it conflated taxes that had been announced by the Labour Party with those were not confirmed as Labour Party policy. The minority said the advertisement had the potential to mislead consumers and was in breach of Rule 2 and Basic Principle 4 of the Code of Ethics.

However, in accordance with the majority, the Complaints Board ruled to Not Uphold the complaint.