

COMPLAINT NUMBER	17/320
COMPLAINANT	M. Sweet
ADVERTISER	New Zealand National Party
ADVERTISEMENT	Digital Marketing
DATE OF MEETING	18 September 2017
OUTCOME	No Grounds to Proceed

Advertisement: A post advertising the New Zealand National Party on Facebook was titled “Labour’s Tax Surprise” inside a Christmas cracker 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: “Labour’s plan will remove \$1,060 from the pay packets of middle income earners. Under National you will keep more of what you earn.”

The Chair ruled there were no grounds for the complaint to proceed.

Complainant, M Sweet, said: “I write to complain about misleading wording in an election advertisement. The National Party’s Facebook page has posted an image implying that Labour will be increasing income tax, when this clearly is not the case. Simply removing a future tax break is not increasing tax. The planned beneficiaries of this tax break will be paying the same amount of tax as they do this year. The image is headed 'Labour’s Tax Surprise', when it is not - this policy has been publicly stated and promoted. I request the removal of this misleading advertisement, and a public retraction so that public opinion that has been swayed by this lie can be brought back in line with the truth.”

The relevant provisions were Basic Principle 4 and Rule 2 and Rule 11 of the Code of Ethics.

The Chair noted the Complainant’s concerns the advertisement was misleading as it implied the Labour Party was increasing income tax when it was only “removing a future tax break not increasing tax”.

The Chair noted the National Party was the Advertiser and it was posted by the National Party on Facebook. The Chair said the advertisement was an advocacy advertisement and Rule 11 of the Code of Ethics applied. Rule 11 states:

“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.”

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.

Turning to the advertisement before her, the Chair confirmed that the identity of the Advertiser, the New Zealand National Party was clear, a requirement under Rule 11.

The Chair then considered the Complainant's issue regarding the content of the advertisement. The Chair said the advertisement stated the National Party's view of the Labour Party policy of revoking the tax cuts the National Government had put in place for 1 April 2018 and this was provided for under Rule 11 of the Code of Ethics.

The Chair 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.

The Chair noted a precedent Decision (17/327) which concerned the same claim, albeit with a slightly different presentation, that Decision stated, in part:

"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."

The Chair said the Complaints Board finding in the above Decision was directly relevant to the complaint before her. While she acknowledged the Complainant's concern the advertisement was misleading, the Chair said the Complaints Board had consistently ruled that advertisements presenting an opinion on another party's policies were allowed as part of advocacy election advertising.

The Chair said the advertisement complied with the requirements of Rule 11 and taking into account the Advocacy Principles, did not reach the threshold to breach Rule 2 or Basic Principle 4 of the Code of Ethics.

Accordingly, she ruled that there were no grounds for the complaint to proceed.

Chair's Ruling: Complaint **No Grounds to Proceed**