

COMPLAINT NUMBER	17/335
COMPLAINANT	J. Trlin
ADVERTISER	New Zealand National Party
ADVERTISEMENT	Digital Marketing
DATE OF MEETING	18 September 2017
OUTCOME	No Grounds to Proceed

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 OUR UPDATED AD: Our team have worked overnight to incorporate yesterday’s changes to what has become the movable feast that is Labour’s tax policy.” 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 pointing to its rear end saying “Fart Tax”. The advertisement also includes a voiceover relating to each tax with words including “delayed”, “still on” and “absolutely”. 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 Chair ruled there were no grounds for the complaint to proceed.

Complainant, J. Trlin, said: I wrote to you on behalf of a group yesterday lodging a complaint against the election ad “Let’s Tax This”, released by the National Party. Today they have released a new ad, titled “Let’s Tax This (Updated)”, which takes the original ad and adds some new voiceover. The ad can be found:

- on Youtube at <https://www.youtube.com/watch?v=s9pmXtG2jr8>
- on Facebook at https://www.facebook.com/NZNATS/?ref=br_rs

I would like to lay a formal complaint against this new ad too. Below I have included the details from the original complaint, with some additional detail specific to the updated version.

Like the original, "Let's Tax This (Updated!)" 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". As the image is on screen, a voiceover yells out "DELAYED!".

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.

In regards to the addition of the "DELAYED!" voiceover that was not present in the original ad, this is in response to Labour explicitly ruling out any form of capital gains tax.² The suggestion that a capital gains tax has been planned but delayed until a later date is deeply misleading – Labour has made it clear that it will not be introducing capital gains, meaning the ad is speculating as to potential policy that could be released for the 2020 election, and presenting that speculation as fact. To the average observer of the ad, it is likely to appear that Labour has announced a capital gains tax policy and is merely delaying the implementation of it. This is an incorrect representation.

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

² <http://www.labour.org.nz/tax>

- 2) Land tax: In the same clip as above, a second annotation saying “Land Tax” points to the ground underneath the house. “. As the image is on screen, a voiceover yells out “COMING!”.

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.

In regards to the addition of the “COMING!” voiceover that was not present in the original ad, this is arguably even more misleading than the representation around capital gains tax. In addition to those reasons outline above, “COMING!” could be (and would likely be) interpreted by the average observer as much more imminent than “DELAYED!”, and in the absence of sufficient context, is likely to imply that Labour is planning on introducing a land tax if elected. Even if sufficient context was available (which the average observer cannot be expected to be exposed to), the claim is still incorrect. Again, the ad is speculating as to potential policy that could be released for the 2020 election, and presenting that speculation as fact.

Note: the changes to the ad from the original make no substantive difference to the remaining complaints below – the additions of “YEP!” and “ABSOLUTELY!” through voiceover only serve to strengthen the false representations already identified. For completions sake, I have included the rest of the original complaint as relating to those representations. These complaints are, of course, still relevant to the updated ad.

- 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.³ 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.

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.⁴ Municipal water supply is specifically excluded by the policy.⁵ 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.

³ http://www.labour.org.nz/factcheck_income_taxes

⁴ http://www.labour.org.nz/fact_check_water_royalty

⁵ <http://www.radionz.co.nz/news/national/336959/coke-exempt-under-labour-s-water-bottling-plan>

- 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 2010.⁶ 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.⁷ However, the presence of substantially true claims within the ad only serve to lend credibility to the other, false assertions made.

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”.⁸ However, the representations are made as statements, not questions, and as such are presented to the average observer as fact.

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.

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

⁶ <https://www.beehive.govt.nz/release/ets-proceed-1-july>

⁷ <http://www.labour.org.nz/transport>

⁸ <https://www.stuff.co.nz/national/politics/96802743/desperate-liars--jacinda-ardern-takes-aim-at-national>

The Chair noted the Complainant's concerns the advertisement was misleading as it falsely represented the Labour Party's position on taxes. The Complainant said this misrepresentation was exacerbated by the addition of a voiceover which made affirming comments on the individual taxes referred to in the advertisement.

The Chair noted the National Party was the Advertiser and the advertisement 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 the provisions of Rule 11.

The Chair then considered the Complainant's issue regarding the content of the advertisement. It said the advertisement was posted by the National Party on Facebook and promoted National's view on the Labour Party's likely tax policies. It said the advertisement 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 Chair said advertising presenting one political party's view on what another may do if elected 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 was about the same advertisement without the voiceover was Not Upheld, that Decision stated, in part:

“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 Chair said the Complaints Board finding in the above Decision was directly relevant to the complaint before her and the addition of the voiceover made little material difference to the likely consumer takeout. The Chair said that tax policy was a matter a significant public debate during this election and voters could choose a number of platforms to obtain information about this and other contentious election topics.

While she acknowledged the Complainant’s concern the advertisement was misleading, the Chair said the Complaints Board had consistently ruled that advertisements presenting one political party’s view on what another may do if elected 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**