

COMPLAINT NUMBER	17/297
COMPLAINANT	A Lemprier
ADVERTISER	ActionStation
ADVERTISEMENT	ActionStation, Out of Home
DATE OF MEETING	26 September 2017
OUTCOME	Not Upheld

SUMMARY

The poster advertisement for ActionStation was headed “Perspective” and said, in part:

“Tax Fraud
1,240,000,000
[1.24 Billion]

2.5%
Welfare Fraud
30,600,000
[30.6 million]”

The Complainant the advertisement was “factually inaccurate and misleading” because “the poster claims that there is \$1.24 billion in Tax Fraud” when the Advertiser’s source material said the figure was \$13.7 million.

The Advertiser provided the sources for the claims made in the advertisement and said the “sources to back our claim were also printed on the posters and repeatedly referenced in the public dissemination of the promotion.”

The Complaints Board said the Advertiser had taken a wide interpretation of ‘tax fraud’ to encompass tax avoidance, non-compliance and tax fraud but that did not make the claim misleading in the context of an advocacy advertisement. It said the advertisement was presented from a particular perspective and noted the source was referenced in the advertisement. The Complaints Board ruled the advertisement was not in breach of Rule 2, Rule 11 or Basic Principle 4 of the Code of Ethics.

The Complaints Board ruled the complaint was Not Upheld.

[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 advertisement 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 advertisement 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 advertisement had been prepared with a due sense of social responsibility to consumers and society.

The Complaints Board said advertisement 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.

The Complaints Board ruled the complaint was Not Upheld.

Complaint from A. Lemprier

The Complainant was concerned the Advertiser published posters that "are factually inaccurate and misleading" because "the poster claims that there is \$1.24 billion in Tax Fraud when even their VERY OWN source says it is \$13.7 million."

Response from ActionStation

The Advertiser responded to the concerns of the Complainant stating that "benefit fraud in 2014 was found to be \$30.5m as reported by the Minister of Social Development in response to a Question for Written answer asked in June 2017... Tax fraud, as identified as 'tax position differences' of \$1.2 billion on page 24 of the 2016 Inland Revenue Annual Report.

The Advertiser said, in part: “these sources have these figures rounded down, however, we verified the figures we used as being more accurate with Associate Professor Lisa Marriott of Victoria University who has conducted research and written extensively on this issue...We believe it important to show total figures of tax non-compliance and this total figure of \$1.2 billion to be fraud - be it avoidance, non-compliance or fraud. To us, these are the same thing - Tax Fraud.”

The Advertiser said the “sources to back our claim were also printed on the posters and repeatedly referenced in the public dissemination of the promotion.”

Complaints Board Discussion

The Complaints Board said the advertisement was an advocacy advertisement and had met the identification requirement of advocacy advertising under Rule 11 of the Code of Ethics. It said the advertisement was from ActionStation and promoted its ‘perspective’ on ‘tax fraud’ versus ‘benefit process’. It said the advertisement showed the ActionStation logo, and included an authorisation statement and in some instances a website address.

The Complaints Board observed that in a free and democratic society, differences of 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 considered whether the figures presented in the advertisement were misleading. The Complaints Board noted the Advertiser provided substantiation to support the information in the advertisement.

The Complaints Board considered the claim of \$1.24 Billion of Tax Fraud. It said the Advertiser had taken a wide interpretation of ‘tax fraud’ to encompass tax avoidance, non-compliance and tax fraud which the Complainant said was misleading. However, the Complaints Board were of the view that this did not make the claim misleading in the context of an advocacy advertisement presented from a particular perspective. It accepted the wording used simplified the communication to draw attention to a comparison in the advertisement. The Complaints Board also noted the source of the figure was referenced.

The Complaints Board said the advertisement met the provisions of Rule 11, did not reach the threshold to mislead consumers and had been prepared with a due sense of social responsibility to consumers and society required by the Code of Ethics.

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

Decision: Complaint **Not Upheld**

DESCRIPTION OF ADVERTISEMENT

The poster advertisement for ActionStation was headed “Perspective” and said:

“Tax Fraud
1,240,000,000
[1.24 Billion]”

2.5%
Welfare Fraud
30,600,000
[30.6 million]

Crowd funded by the members of ActionStation
Source: Tax fraud from 2015/16 IRD Annual Report. Welfare fraud figure from Official Information Act request as.org.nz/taxvswelfare | Authorised by: ActionStation. 138 Wakefield St, Wellington 6011

Source: Lisa Marriott, Victoria University School of Accounting and Commercial Law

COMPLAINT FROM A LEMPRIER

Action Station have published posters that are factually inaccurate and misleading. There is a post on their website and Facebook about this:

<https://www.facebook.com/actionstationnz/posts/1295384693917069>

The crux of the poster claims that there is \$1.24 billion in Tax Fraud when even their VERY OWN source says it is \$13.7 million.

I have raised this with them twice but there has been no reply.

Here is the source quote:

"By comparison, Inland Revenue (IRD) uncovered \$1.2 billion in tax "discrepancies" in that period, recovering \$349.1m from tax non-compliance, and \$13.7m from fraud."

Here is the source:

[Http://www.stuff.co.nz/dominion-post/news/88924330/benefit-fraud-v-tax-avoidance-why-is-one-dealt-with-more-harshly-by-courts](http://www.stuff.co.nz/dominion-post/news/88924330/benefit-fraud-v-tax-avoidance-why-is-one-dealt-with-more-harshly-by-courts)

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.

RESPONSE FROM ADVERTISER, ACTIONSTATION

Main contact	Laura O'Connell Rapira
A basic, neutral description of the advertisement	Public education on perceptions of benefit fraud and tax evasion.
Date advertisement began	27 August - 3 September 2017
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	Social Media pages, email, website, street posters
Is the advertisement still accessible – where and until when?	The street posters are no longer up, the website and social media posts are still live.
A copy of digital media file(s) of the advertisement	See attached
Who is the product / brand target audience?	General public

A Lempriere suggests the ActionStation “Perspective” posters are factually inaccurate and misleading and quotes sources of our information from a single source as follows:
<http://www.stuff.co.nz/dominion-post/news/88924330/Benefit-fraud-v-tax-avoidance-why-is-one-dealt-with-more-harshly-by-courts>

However, the source the complainant lists is incorrect (see below).

Benefit fraud in 2014 was found to be \$30.5m as reported by the Minister of Social Development in response to a Question for Written answer asked in June 2017.^{1 2}

Tax fraud, as identified as “tax position differences” of \$1.2 billion on page 24 of the 2016 Inland Revenue Annual Report.³

These sources have these figures rounded down, however, we verified the figures we used as being more accurate with Associate Professor Lisa Marriott of Victoria University who has conducted research and written extensively on this issue.⁴

¹ https://www.parliament.nz/resource/en-NZ/QWA_06167_2017/caca2989d401d28d45dbca6eaa58d14600828c0c

² https://www.parliament.nz/en/pb/order-paper-questions/written-questions/document/QWA_06167_2017/6167-2017-metiria-turei-to-the-minister-for-social-development#RelatedAnchor

³ <http://www.ird.govt.nz/resources/3/0/30b48dc6-0bf7-4fbf-9f5d-f84f2d5c153d/annual-report-2016.pdf>

⁴ <http://www.newstalkzb.co.nz/news/national/welfare-fraudsters-hit-harder-than-tax-evaders-research/>

We note that A Lempriere says the source quote is as follows:

“By comparison, Inland Revenue (IRD) uncovered \$1.2 billion in tax “discrepancies” in that period, recovering \$349.1m from tax non-compliance, and 13.7m from fraud”.

We believe it important to show total figures of tax non-compliance and this total figure of \$1.2 billion to be fraud - be it avoidance, non-compliance or fraud. To us, these are the same thing - Tax Fraud.

A Lempriere also claims that ActionStation did not respond to repeated requests for our sources, however, we did respond publicly on our Facebook Page (see appendix 1)

The sources to back our claim were also printed on the posters and repeatedly referenced in the public dissemination of the promotion (see appendix 2).

Appendix 1

The screenshot shows the Facebook page for ActionStation (@ActionStationNZ). The page header includes the Facebook logo, the name 'ActionStation', and a search icon. Below the header are navigation buttons for 'Liked', 'Following', 'Save', and a menu icon. The main content area features a post from ActionStation with the following text:

ActionStation Huge thanks to the 455 awesome humans who chipped in to put these posters everywhere!

If you would like to, please chip in so we can keep spreading this message far and wide: donate.actionstation.org.nz/taxfraud

Chip in to help us put these street posters everywhere!
Help us shine a light on the real problem - which is...
DONATE.ACTIONSTATION.ORG.NZ

The post has 15 likes and was posted on August 27 at 4:09pm. Below the post are several comments:

- Adam Lempriere** Um I've warned you twice about the incorrect figure you are using so will now have to report you to the ASA. While I can tolerate differences of opinion, I cannot tolerate misleading information.
Like · Reply · 5 · August 27 at 5:28pm
- Mark Purdie** C'mon Adam, never let the actual facts get in the way of a good, wildly misleading story!!!
Like · Reply · 4 · August 27 at 5:51pm
- ActionStation** Hi Adam.
The sources for the figures are actually on the poster.
The \$1.24 billion is from the 2015/16 Inland Revenue Annual Report. The IRD call it 'tax non-compliance' but we prefer to call a spade a spade.
It's also important to note, this figure only includes what investigations have been able to so far uncover. The Tax Justice Network's research places the amount lost to elite tax cheats and fraudsters closer to \$7 billion per year.
Read more here: <https://www.taxjustice.net/.../Cost-of-Tax-Abuse-TJN-2011...>
And here: <http://www.ird.govt.nz/.../30b48dc.../annual-report-2016.pdf>
The welfare figure is from an Official Information Request which you can see here:
<https://www.parliament.nz/.../caca2989d401d28d45dbca6eaa5...>
Like · Reply · 10 · August 27 at 7:16pm · Edited
- Michael Will Boom** .
Like · Reply · 3 · August 27 at 8:42pm

The page also shows a sidebar with navigation options: Home, About, Events, Photos, Videos, Posts (selected), Notes, and Community. A 'Create a Page' button is visible at the bottom of the sidebar.

Appendix 2

RESPONSE FROM MEDIA - PHANTOM BILLSTICKERS

The poster is not hate speech, it's not indecent and if there's a disagreement over economic data then surely opposing views can be expressed as part of normal political discourse - people are certainly disagreeing strongly over budget figures right now.