

COMPLAINT NUMBER	18/208
COMPLAINANT	S Gribben
ADVERTISER	New Zealand National Party
ADVERTISEMENT	New Zealand National Party, Digital Marketing, Twitter
DATE OF MEETING	24 July 2018
OUTCOME	Not Upheld

SUMMARY

The New Zealand National Party posted an advertisement on its Twitter account which consisted of a video clip and the statement 'Just 9 months ago, this Govt gave a "rock solid guarantee" there would be no national strikes. Yet here we are facing a nationwide nurses' strike next week.'. The video is made from an excerpt from the First Leaders Debate of the New Zealand General Election which screened on TVNZ on 31 August 2017. In the video the convenor of the debate, Mike Hosking, asked then Leader of the New Zealand Labour Party, Jacinda Ardern "Will you go back to seeing national strikes in an industry?" Jacinda Ardern replied "No we will not". Mike Hosking then asked: "Is that a rock solid guarantee?" This script is then repeated, accompanied by images of newspaper articles with headings such as "Nurses strike looms: Mediation between union and district health boards fails" and "Teachers vote on strike action in first meeting".

The Complainant said the advertisement misrepresented what the Prime Minister was saying because in the televised debate she was referring to industrial action in response to the Fair Pay Agreement process. The Complainant said any viewer would believe that the Prime Minister had ruled out industry-wide strikes, and now that the nurses are going on strike it would appear from the video that she was wrong.

The Advertiser said The National Party completely rejects the basis of the complaint and it was not their intention to mislead the reader. The Advertiser said it was a political party advertisement, and its purpose was to highlight the increasing number of strikes under the current Government, including national, industry wide strikes.

A majority of the Complaints Board said this statement 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 excerpt from the leaders' debate was taken out of context and this resulted in a misleading impression that the Prime Minister's comments were about industrial action in general, not industrial action in response to negotiations for a Fair Pay agreement.

However, in accordance with the majority, 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 Acting 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 the 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 rights 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.

The Complaint

The Complainant said the advertisement misrepresented what the Prime Minister was saying because in the televised debate she was referring to industrial action in response to the Fair Pay Agreement process. The Complainant said any viewer would believe that the

Prime Minister had ruled out industry-wide strikes, and now that the nurses are going on strike it would appear from the video that she was wrong.

The Advertiser's response

The Advertiser said it rejects the basis of the complaint and it was not their intention to mislead the reader. The Advertiser said it was a political party advertisement, and its purpose was to highlight the increasing number of strikes under the current Government, including national, industry wide strikes.

The Advertiser said the advertisement was an untargeted, non-funded Twitter post, which included a video with an excerpt of the 2017 Election Leader's Debate on 31 August 2017. The Advertiser said the video was a factual representation of a question put to the now Prime Minister Jacinda Ardern during the 2017 Leader's Debate, the transcript of which is enclosed below:

Mike Hosking: "Will we go back to seeing national strikes in an industry?"

Jacinda Ardern: "No. No we will not."

Mike Hosking: "And that's a rock solid guarantee?"

Jacinda Ardern: "Yes. No. We. Will. Not."

Complaints Board Discussion

Advocacy and Identification

The Complaints Board agreed the advertisement before it fell into the category of advocacy advertising by the New Zealand National Party.

In considering the challenges the Complaints Board can face in dealing with complaints about political advertising, the Complaints Board agreed that clear identification of the Advertiser and their position is essential to provide context for the consumer.

The Complaints Board acknowledged care must be taken to ensure the reader would readily be able to identify the material was an advertisement containing the opinions of the National Party. The Complaints Board said this was primarily indicated by:

- The advertisement was posted on the @NZNationalParty Twitter account
- The New Zealand National Party logo is at the top of the advertisement
- An authorisation statement on the Twitter Home Page which reads "Authorised by G. Hamilton, 41 Pipitea Street, Wellington".

Taking into account the above information, the Complaints Board said the identity of the Advertiser, the New Zealand National Party, was clear and ruled the Identification requirement of Rule 11 had been met.

The Complaints Board noted that advertisements of a political nature were not only acceptable but encouraged, as they were an essential and desirable part of the functioning of a democratic society. The Complaints Board 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.

Consumer Take-out

The Complaints Board considered the likely consumer take-out of the advertisement.

The Complaints Board said the advertisement presented the opinion of the New Zealand National Party that before the election the Prime Minister (then Leader of the New Zealand Labour Party) said there wouldn't be industrial action, but there has been industrial action.

Was the advertisement misleading?

The Complaints Board then considered whether the advertisement was likely to mislead or deceive the consumer.

A majority of the Complaints Board said the content of the advertisement was acceptable in the context of an advocacy advertisement on a political party's Twitter account. It took into account the question Mike Hosking asked: "Will you go back to seeing national strikes in an industry?", and Ms Ardern's response "No". A majority did not consider the specific context that may trigger nationwide strike action was material in the advertisement from the New Zealand National Party. It said the content of the advertisement would not mislead the general public and didn't reach the threshold to be considered a breach of Rule 2 of the Code of Ethics.

A minority disagreed. It said the excerpt from the leaders' debate was taken out of context and this was misleading. In the full video of the leaders' debate the question asked by Mike Hosking begins with "*In these 'one to two of these per year', will you go back to seeing national strikes in an industry*". The minority said the full version of this question, which was not included in the Twitter video, shows that the question was in reference to an earlier question about Fair Pay reforms and the role of unions. A minority said Ms Ardern's comments were not about industrial action in general, but industrial action that might be taken in response to negotiations for a Fair Pay agreement.

Summary

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 New Zealand National Party opinion that before the election Ms Ardern, Leader of the New Zealand Labour Party said there wouldn't be industrial action, but there has been industrial action.

A majority of the Complaints Board said 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 excerpt from the leaders' debate was taken out of context and this resulted in a misleading impression that Ms Ardern's comments were about industrial action in general, not industrial action in response to negotiations for a Fair Pay agreement.

However, in accordance with the majority, the Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The New Zealand National Party posted an advertisement on its Twitter account which consisted of a video and the statement ‘Just 9 months ago, this Govt gave a “rock solid guarantee” there would be no national strikes. Yet here we are facing a nationwide nurses’ strike next week.’ The video is made from an excerpt from the First Leaders Debate of the New Zealand General Election which screened on TVNZ on 31 August 2017. In the video the convenor of the debate, Mike Hosking, asked then Leader of the New Zealand Labour Party, Jacinda Ardern “Will you go back to seeing national strikes in an industry?” Jacinda Ardern replies “No we will not”. Mike Hosking then asked: “Is that a rock solid guarantee?” This script is then repeated, accompanied by images of newspaper articles with headings such as “Nurses strike looms: Mediation between union and district health boards fails” and “Teachers vote on strike action in first meeting”.

COMPLAINT FROM S GRIBBEN

CODES OF PRACTICE

This video has taken words from the Prime Minister from a TV debate last year, and completely misrepresented them. The video and accompanying tweet say that the Prime Minister ruled out industrial action, and then says she is wrong because of the industrial action on at the moment. This is a deliberate misrepresentation of what the Prime Minister was saying - she was referring to industrial action under the Fair Pay Agreement process, and there has been no change to that. The person who put together the video will have seen the clip in full and has deliberately misled the audience by using the quote and removing the context. This is clearly in breach of Rule 2 of the Advertising Code of Ethics, relating to truthful presentation. Any viewer would believe that the Prime Minister had ruled out industry-wide strikes, and now that the nurses are going on strike it would appear from the video that she was wrong, but in relation to what the discussion was actually about, the Prime Minister is absolutely correct.

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, NEW ZEALAND NATIONAL PARTY
Re: Complaint 18/208182

I write in response to your letter of 6 July 2018 regarding the above complaint from Sam Gribben concerning a National Party digital marketing post.

The National Party completely rejects the basis of the complaint, which as you note appears to have been made under the Advertising Codes of Practice: Code of Ethics – Basic Principle 4, Rule 2, and Rule 11.

I will go through each of these sections as they relate to this complaint:

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

This was an untargeted, non-funded Twitter post, which included a video with an excerpt of the 2017 Election Leader's Debate. This was a direct, unedited excerpt from the 2017 Election Leader's Debate on 31 August 2017.

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).

Our intention was not to mislead the reader. The video was a factual representation of a question put to the now Prime Minister Jacinda Ardern during the 2017 Leader's Debate, the transcript of which is enclosed below:

Mike Hosking: "Will we go back to seeing national strikes in an industry?"

Jacinda Ardern: "No. No we will not."

Mike Hosking: "And that's a rock solid guarantee?"

Jacinda Ardern: "Yes. No. We. Will. Not."

The fact is we are seeing a significantly increasing number of strikes, including some national, industry wide strikes. These include a nationwide nurses/midwives strike on 12 July 2017, which involved around 27,000 people, as well as Auckland bus drivers, Burger King workers across the country, and Event Cinemas workers. It is the first time in 30 years there has been a nationwide nurses' strike. More people have gone on strike in the first nine months of this Government than in the nine years under the previous National Government. In addition to this, primary school teachers and principals have also voted to strike for the first time in nearly 25 years, which if it goes ahead would involve around 27,000 primary school staff – this would be another national, industry wide strike. I've enclosed links below to relevant media stories:

<https://www.radionz.co.nz/news/national/361643/nurses-strike-begins-what-you-need-to-know>

<https://www.stuff.co.nz/national/105199690/primary-school-teachers-vote-to-strike-reject-governments-pay-offer>

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.

Readers of this post would be under no misapprehension this is a political party advert as would be evidenced by the National Party authorisation clearly displayed in the corner of the video and that it was posted on the @NZNationalParty account. Its purpose was to highlight the increasing number of strikes under this Government, including national, industry wide strikes.

I trust this provides the information you require to consider this issue.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.