

<b>COMPLAINT NUMBER</b>	18/208
<b>APPEAL NUMBER</b>	18/010
<b>COMPLAINANT</b>	S Gribben
<b>APPLICANT</b>	S Gribben
<b>ADVERTISER</b>	New Zealand National Party
<b>ADVERTISEMENT</b>	New Zealand National Party, Digital Marketing, Twitter
<b>DATE OF MEETING</b>	6 August 2018
<b>OUTCOME</b>	Not Upheld, Appeal Declined

### **SUMMARY**

The Complaints Board ruled on 24 July 2018 the complaint from S Gribben about a New Zealand National Party Twitter advertisement was Not Upheld.

The Decision was appealed by the Complainant, S Gribben, as, in their view, it was against the weight of evidence.

This appeal application was considered by the Chairperson of the Appeal Board. She noted the Complainant's concern 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 of the advertisement would be led to 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 clip that she was wrong, which was misleading.

The Chairperson said all the information from the Complainant 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 there has been an increase in industrial action since the election.

The Chairperson acknowledged the Complainant had a different interpretation of the advertisement and the likely consumer takeout and considered the weight of evidence to support 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.

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## **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, as viewers of the original debate would have been aware of the context of the Prime Minister's comments, whereas viewers of the National Party Twitter advertisement would not. This was because in the full debate viewers would have heard the earlier comments, referring to industrial action resulting from negotiations for Fair Pay Agreements.

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

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.
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 Chairperson then turned to consider the substance of the appeal and the concern expressed by Complainant, S Gribben, that the advertisement was misleading because the comments made by the Prime Minister were taken out of context.

The Chairperson reviewed the information considered by the Complaints Board and noted the following issues were raised by the Complainant.

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 of the advertisement would be led to 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, which was misleading.

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 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 Chairperson agreed 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.

The Chairperson added that the length of time in the original debate between the discussion about the fair pay agreements and the emphatic "No" response from the Prime Minister, to the question "Will you go back to seeing national strikes in an industry?", gave additional weight to the Advertiser's view.

The Chairperson agreed with the view of a majority of the Complaints Board, which made the following comments:

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 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.

The Chairperson said the advertisement presented the National Party's view that under the current Government there has been an increasing number of strikes.

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 Complainant had a different interpretation of the advertisement and the likely consumer takeout, and considered the weight of evidence to support 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**

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**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".

**APPEAL APPLICATION FROM COMPLAINANT S GRIBBEN**

I wish to appeal the decision, based on point D of the grounds to appeal: *"The decision is against the weight of evidence."*

I draw attention to the 'Consumer take-out' section of the decision, which states that *"The Complaints Board said the advertisement presented the opinion of the New Zealand National Party that before the election the Prime Minister (then the Leader of the New Zealand Labour Party) said there wouldn't be industrial action, but there has been industrial action."*

This is the crux of my original complaint. The Prime Minister did not say that there wouldn't be industrial action in general, yet that is exactly what the National party advertisement claims she said. I draw attention to the headlines used in the article which refer to industrial action that very clearly would not be affected by the FPA process that the Prime Minister was

answering the question in relation to. I agree with the minority on the Board that said that the question was taken out of context and this was misleading.

I refer again to Rule 2, because the advertisement clearly creates an overall impression, which by omission is misleading and deceptive. The National Party's response to this once again omits the context of the line of questioning. It's concerning that, in their response to this complaint, the National Party continue to refuse to acknowledge that the line of questioning was about Fair Pay Agreements - they have again brought up examples of industrial action which is not related to the line of questioning.

Put another way - viewers of the original debate in full would have been aware that the PM was referring to industrial action under FPAs, but viewers of the edited National Party ad would not know this. Therefore it is deceptive by omission.

### **SUMMARY OF COMPLAINTS BOARD DECISION 24 JULY 2018**

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.