

COMPLAINT NUMBER	17/338
COMPLAINANT	T. Macintyre
ADVERTISER	Make New Zealand Great Again
ADVERTISEMENT	Make New Zealand Great Again, Facebook
DATE OF MEETING	10 October 2017
OUTCOME	Upheld

SUMMARY

The sponsored post for the Make New Zealand Great Again Party which appeared on Facebook said: New Zealand Labour Party will literally kill child poverty! But remember they are all about “the children”, nothing about parental responsibility!” The post was accompanied by a picture of Jacinda Ardern with following statement in quotation marks: “My Labour Party will end child poverty through abortion. No children. No poverty”.

The Complainant said the statement presented in the advertisement was misleading as it created the impression it was a quote from Jacinda Ardern.

The Advertiser said Facebook removed the post and provided no evidence to support the claim made.

The Complaints Board confirmed the advertisement met the identification provision of Rule 11, Advocacy but created the impression the statement shown next to the image of Jacinda Ardern was a quote from her and no evidence had been provided to support that impression. The Complaints Board said the advertisement was misleading and in breach of Rule 2, Rule 11 and Basic Principle 4 of the Code of Ethics.

The Complaints Board ruled the complaint was 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 and the identity of the advertiser was clear. Also applicable were the Advocacy Principles, developed by the Complaints Board in previous Decisions on 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 said that political advertisements were not only acceptable, but encouraged as they were an essential and desirable part of the functioning of a democratic society. The Complaints Board also 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 Complaints Board ruled the complaint was Upheld.

The Complaint

The Complainant said the advertisement, which showed Jacinda Ardern with the statement "My Labour Party will end child poverty through abortion. No children. No poverty". was misleading. The Complainant said Jacinda Arden "has never made the statement that this picture attempts to say she has made. This misrepresentation of Jacinda Ardern is clearly factually incorrect and misleading to the viewers of the advertisement."

Response from Advertiser, Make New Zealand Great Again Party

The Advertiser responded, in part: "To my knowledge, Facebook deleted the post and subsequently deleted the page for 'hate speech' violations... Since the page has been removed by Facebook I am not able to access any information about the post in question."

Response from Media, Facebook

Facebook responded to the Complaint stating, in part “the content does not violate our policies. Please let us know if it is deemed to violate local advertising regulations and we can take appropriate action.”

Complaints Board Discussion

The Complaints Board confirmed the item before it was an advertisement. The ASA definition of advertisement, updated in 2016 states:

“Advertising and advertisement(s) are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.”

The Complaints Board noted the content before it was posted on the Make New Zealand Great Again Party page and was sponsored to appear in newsfeeds. The post criticising the announcement made by Jacinda Arden that abortion would be decriminalised under a Labour Government used an image of Ms Ardern with the statement in quotation marks: “My Labour Party will end child poverty through abortion. No children. No poverty”.

Having determined the content before it was an advertisement, the Complaints Board turned to discuss the substance of the complaints and confirmed it would consider them in conjunction with a liberal interpretation of the Code under the application of the Advocacy Principles.

The Complaints Board said the advertisement was an advocacy advertisement under Rule 11 of the Code of Ethics. Rule 11 says the identity of an advertiser in matters of public interest or political issue should be clear.

The Complaints Board noted the advertisement was posted on the Make New Zealand Great Again Party Facebook group page and the Advertiser had paid to have the post promoted on people’s Facebook newsfeeds. The Complaints Board agreed this was clearly controlled by the Advertiser, Make New Zealand Great Again Party. The Complaints Board noted that in the social media sphere, the ability to access information by linking to the Advertiser’s direct page or group or messaging them directly and it was clear the Make New Zealand Great Again Party was the Advertiser. The Complaints Board said the advertisement therefore met the identification provision of Rule 11 of the Code of Ethics.

The Complaints Board noted the post had been removed and the general public no longer had access to the Advertiser’s Facebook page. However, the Complaints Board said as the Advertiser had not acted in a self-regulatory manner to remove the content of their own accord, it was not satisfied the complaint could be Settled.

The Complaints Board were then required to consider whether the claim made in the advertisement was likely to mislead people. It noted the statement which appeared alongside the image of Jacinda Adern which said “My Labour Party will end child poverty through abortion. No children. No poverty” and included quotation marks. The Complaints Board said the advertisement created the overall impression that the statement was a quote from Jacinda Adern. The Complaints Board noted no information had been provided to support the source of the claim by the Advertiser.

The Complaints Board said the advertisement was likely to mislead and people could think that the statement was a quote from Jacinda Adern. Therefore, it was in breach of Rule 2 and Rule 11 of the Code of Ethics. The Complaints Board said the advertisement had not been

prepared with a due sense of social responsibility and was in breach of Basic Principle 4 of the Code of Ethics.

Accordingly, the Complaints Board ruled the complaint was Upheld.

Decision: Complaint **Upheld**

DESCRIPTION OF ADVERTISEMENT

The sponsored post for the Make New Zealand Great Again Party which appeared on Facebook said: New Zealand Labour Party will literally kill child poverty! But remember they are all about “the children”, nothing about parental responsibility!”

The post was accompanied by a picture of Jacinda Ardern with following statement in quotation marks:

“My Labour Party will end child poverty through abortion. No children. No poverty”.

COMPLAINT FROM TESS MACINTYRE

I received the following political ad, which illustrates a picture of Jacinda Ardern, with text in quotation marks. Jacinda Ardern has never made the statement that this picture attempts to say she has made. This misrepresentation of Jacinda Ardern is clearly factually incorrect and misleading to the viewers of the advertisement.

<https://www.facebook.com/MakeNewZealandGreatAgain/posts/1427570980629892:0>

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, MAKE NEW ZEALAND GREAT AGAIN PARTY

> Confirmation of whether you initiated or instigated the Facebook sponsored post;

No, I did not initiate or instigate the sponsored post, likely another page admin did.

> The total cost of the sponsored post;

I do not have access to this information.

> Any steps you have taken to remedy the matter; and

To my knowledge, Facebook deleted the post and subsequently deleted the page for "hate speech" violations.

> Any other information you believe to be of relevance to the Commission's consideration. Since the page has been removed by Facebook I am not able to access any information about the post in question.

...

I also got an email from the Electoral Commission with the same complaint (asking for responses to those points), I sent a copy to them and to you since you did not have any specific questions.

RESPONSE FROM MEDIA, FACEBOOK

I've asked our ad policy team to review and advise.

...

Facebook Ireland's team advises that the content does not violate our policies. Please let us know if it is deemed to violate local advertising regulations and we can take appropriate action.