

<b>COMPLAINT NUMBER</b>	19/251
<b>COMPLAINANT</b>	B Munro
<b>ADVERTISER</b>	Brett Hudson New Zealand National Party MP
<b>ADVERTISEMENT</b>	Brett Hudson New Zealand National Party MP, Facebook
<b>DATE OF MEETING</b>	13 August 2019
<b>OUTCOME</b>	Not Upheld No Further Action Required

### **Description of Advertisement**

The New Zealand National Party advertisement on MP Brett Hudson's Facebook page says "How's this fair? According to the Ministry of Transport, Labour's Car Tax will slap a \$1000 tax on someone buying a used imported Corolla in order to give a \$1500 discount to someone buying an imported electric Porsche Cayenne! Yet another tax on low and middle-income Kiwis."

### **Summary of the Complaint**

The Complainant was concerned the advertisement was misleading as the Porsche EV would fall outside the price range of \$80,000 for subsidised cars and so would not receive the \$1500 rebate.

### **Issues Raised**

- Truthful Presentation
- Advocacy Advertising

### **Summary of the Advertiser's Response**

- The Advertiser said the Corolla will be able to be imported in 2021 as a Special Interest vehicle or an immigrant vehicle and on-sold 12 months after arrival. The policy is for any vehicle being sold for the first time and the less efficient engine would incur a fee of at least the same as the 2013 model.
- The Porsche Cayenne is listed by the Ministry of Transport as an eligible used vehicle in its proposed feebate schedule.
- The Advertiser said the Ministry's Preliminary Social Impact Assessment lists the policy's objective as reducing the price of EVs so it's not unreasonable to suggest that by the time their schedule says a Porsche Cayenne PHEV will receive a discount (2022), the vehicle will be under the \$80,000 subsidy.

### **Summary of the Complaints Board Decision**

The Complaints Board did not uphold the complaint about an advertisement on National MP Brett Hudson's Facebook page about the Labour Party's proposed Clean Car Discount feebate scheme. The Board said the Advertiser had provided sufficient substantiation to support the comparison used and the political advocacy advertisement was unlikely to confuse or deceive consumers.

## Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following code:

### ADVERTISING STANDARDS CODE

**Principle 2: Truthful Presentation:** Advertisements must be truthful, balanced and not misleading.

**Rule 2(b): Truthful Presentation:** Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

**Rule 2(e): Advocacy Advertising:** Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

### Complaints Board Discussion

#### *Consumer Takeout*

The Complaints Board agreed the consumer takeout was that under the Labour-lead Government's proposed Clean Car Discount feebate scheme, everyday car buyers could be subsidising wealthy people buying expensive cars.

#### *Is the advertisement an advocacy advertisement?*

The Complaints Board said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 2(e) of the Advertising Standards Code. This Rule required the identity of the advertiser to be clear; opinion to be distinguished from factual information and factual information must be able to be substantiated. The Advocacy Principles developed by the Complaints Board in previous decisions considered under Rule 11 of the Code of Ethics remain relevant. They state:

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.

Having established the advertisement was from the New Zealand National Party, the Complaints Board noted 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. Therefore, the Complaints Board considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

*Is the identity of the Advertiser clear?*

The Complaints Board agreed the Advertiser had met the identity requirements of an advocacy advertisement. The advertisement was a Facebook post approved by the New Zealand National Party leader, Simon Bridges on the National MP Brett Hudson's Facebook page and contained the National Party logo. Therefore, the Board said the context, placement and content made the identity of the Advertiser clear.

*Is the advocacy advertisement misleading?*

The Complaints Board said the Advertiser had provided sufficient substantiation to support the Toyota Corolla and Porsche Cayenne PH/EV examples in the advertisement. The Ministry of Transport's Moving the light vehicle fleet to low emissions discussion paper on a Clean Car Standard and Clean Car Discount lists both of these car models in the proposed feebate schedule.

The Complaints Board acknowledged the Advertiser had used extreme examples in terms of the age and price of the cars for its comparison in order to make a political point but accepted the substantiation provided by the Advertiser. The Complaints Board said the context of the advertisement, clearly labelled as from the National Party, presented a robust view in opposition to a new Government policy. This is provided for under the advocacy principles. The Complaints Board said the advocacy advertisement did not reach the threshold to be misleading.

The Complaints Board unanimously ruled the advocacy advertisement before it was not in breach of Principle 2 or Rule 2(b) of the Advertising Standards Code.

**Outcome**

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

**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](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 days of receipt of this decision.

## APPENDICES

1. Complaint
  2. Response from Advertiser
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### Appendix 1

#### COMPLAINT FROM

Brett is using false and misleading information with regards to the vehicles presented here for political gain. The vehicle on the right, which Brett claims will receive a rebate of \$1500, will not be receiving the rebate due to the purchase price.

(<https://www.transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/f794fdd5c6/LEVconsultation-document-final.pdf> -- pg. 26, para. 10:

"Vehicles with a retail price of \$80,000 or more would not be eligible for discounts"). This claim is demonstrably false, and Brett should have carried out due diligence before advertising such claims.

### Appendix 2

#### RESPONSE FROM ADVERTISER, NEW ZEALAND NATIONAL PARTY ON BEHALF OF BRETT HUDSON

In regards to advocacy advertising, and particularly regarding political matters, it has been the previous view and practice of the Advertising Standards Authority that the spirit of the Code is more important than any minor technical breaches. People have a right to express their views and this right should not be unduly or unreasonably restricted by Rules.

Furthermore, in very recent previous rulings the Chair of the ASA Board noted 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 Chair also observed that in a free and democratic society, differences of political opinion should be openly debated without undue hindrance or interference from authorities 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.

To address the matter of complaint directly, it is correct that the advocacy advertisement in question depicts a comparison between a Toyota Corolla and a Porsche Cayenne PHEV under the Labour Governments punitive Car Tax.

The Toyota Corolla featured in the National Party advocacy advertisement could have been produced at any time between June 1991 and July 1999. This vehicle will still be able to be imported in 2021 as it will be old enough to not have to meet many of the standards laid out for imported vehicles. It could be imported as a Special Interest vehicle or an Immigrant vehicle and on-sold 12 months after arrival. The policy applies to any vehicle being sold in New Zealand for the **first time**. The used car schedule lists all models as 2013, but the Corolla used in the graphic would have a less efficient engine than a 2013 model so would incur a fee of at least the same as the 2013 model.

On the Porsche Cayenne, the Ministry of Transport has specifically listed the Porsche Cayenne PHEV as an eligible used vehicle in its proposed feebate schedule. For your information I have attached a screen shot of the Vehicle Subsidy Schedule, and this table can also be found on page 42 of the further attached report 'LEV Consultation document' by the Ministry of Transport. **You can find the Porsche Cayenne PHEV listed in the top of Column 2, and the Corolla listed in Column 12.**

The Ministry's Preliminary Social Impact Assessment lists the policy's objective as reducing the price of EVs so it's not unreasonable to suggest that by the time their schedule says a Porsche Cayenne PHEV will receive a discount (2022), the vehicle will be under the \$80,000 subsidy.

The Porsche Cayenne PHEV used in the advertisement is already available used at well below NZD\$80,000 (including NZ GST) on UK car sales websites. If a New Zealander were to import a used Porsche Cayenne PHEV from the UK it's entirely likely it would be NZD\$80,000 and definitely eligible for the discount, according to the Ministry of Transport:

[https://www.autotrader.co.uk/classified/advert/201906229290678?radius=1500&make=PORSCHE&model=CAYENNE&onsearchad=Used&onsearchad=Nearly%20New&onsearchad=New&fuel-type=Hybrid%20%E2%80%93%20Petrol%2FElectric%20Plug-in&advertising-location=at\\_cars&sort=price-asc&postcode=ec4a2ah&page=1](https://www.autotrader.co.uk/classified/advert/201906229290678?radius=1500&make=PORSCHE&model=CAYENNE&onsearchad=Used&onsearchad=Nearly%20New&onsearchad=New&fuel-type=Hybrid%20%E2%80%93%20Petrol%2FElectric%20Plug-in&advertising-location=at_cars&sort=price-asc&postcode=ec4a2ah&page=1)

To conclude the above in response, the complainants notions that our advertisement is misleading are without merit. The mention of Principle 2(b) Truthful presentation, and 2(e) Advocacy Advertising, are also equally without merit.

Section 2(b) – Truthful presentation ensures that advertisers must be able to substantiate their claims, this can be demonstrated by simply as referring to the graphic itself, which clearly showed source documentation. And a person viewing that advertisement, having looked at the source documentation would be informed that on page 42 of the Ministry of Transport Consultation the Government indeed refers to Toyota Corollas and Porsche Cayenne PHEVs. The prices depicted in our graphic clearly match the schedule as printed by the Ministry of Transport on the sourced document.

Section 2(e) – Advocacy Advertising ensures that any and all advocacy adverts are clearly identifiable as to whom is publishing it. As all three complainants sought to address their complaints to the National Party, and the advertisement in question appeared on our social media channels, this would remove any doubt as to the application of this section for any complaint made. The National Party is a well-known political party in New Zealand. The graphic in question was also authorised by the Leader of the Opposition, Simon Bridges. The further application of this section regards “..factual information, appropriate and robust and must be readily available”, we consider the Ministry of Transport schedule information to be robust and factual for the purpose intended. If the complainants wish to make a counter argument, that the Ministry of Transport is misleading or inaccurate, that is their prerogative and I would suggest they take that issue up with the Ministry of Transport or the Minister Responsible.

Thank you again for your letter, and I hope the above proves helpful in addressing the matter.