

COMPLAINT NUMBER	19/275
COMPLAINANTS	J Lawson & A Currie
ADVERTISER	New Zealand National Party
ADVERTISEMENT	New Zealand National Party, Facebook
DATE OF MEETING	27 August 2019
OUTCOME	Upheld Advertisement to be Removed

Description of Advertisement

The advertisement on the New Zealand National Party Facebook page is headed “Labour’s Car Tax”. To the left is a photo of Julie Anne Genter, Associate Minister of Transport with the text: “What they said “Small Fee” and to the right the text “What they did ~~\$3,000~~ Now \$6,000”. To the right of the graphic the text says “What hope does an ordinary Kiwi have for getting some relief from taxes and costs if the people running the Government think \$6000 is a small fee”. The advertisement has a link to a press release by Simon Bridges with further comments about the policies.

Summary of the Complaints

Two Complainants are concerned the advertisement is misleading because the largest fee in the consultation document is \$3,000 not the \$6,000 quoted and the fee only applies to a small number of high-end, high emission vehicles.

Complainant A Currie also notes that Julie Anne Genter is a Green Party MP not a Labour MP.

Issues Raised

- Truthful Presentation
- Advocacy Advertising

Summary of the Advertiser’s Response

The Advertiser said Facebook post contained the pinned press release which put the figures in the advertisement into context by discussing the Labour-led Coalition Government’s Clean Car Discount Scheme and the Clean Car Standard Scheme. The Advertiser said the intent of the advertisement was to highlight the negative effect of both Government policies which are part of the consultation.

The Advertiser provided the method it used to calculate the \$6000 using a Nissan Patrol vehicle.

Summary of the Complaints Board Decision

The Complaints Board upheld the complaints about a New Zealand National Party Facebook advertisement about the true cost of the Labour-led Coalition Government’s proposed Clean Car Discount feebate and Clean Car Standard schemes. The Complaints Board said the substantiation provided by the Advertiser was insufficient for the level of claim made in the advertisement and it was likely 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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to precedent Decision 19/259 which was Not Upheld.

The full version of this decision can be found on the ASA website

<https://www.asa.co.nz/decisions/>

Decision 19/259 concerned a Twitter advertisement by the New Zealand National Party which compared the potential fees which could be imposed by the Clean Car Discount feebate scheme.

The Complaints Board was of the view that 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 as being sufficient for the level of claim made in the advertisement.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the current advertisement, was that the proposed cost of importing some cars would now be up to double the initial cost indicated by the Labour-led Coalition Government. The Complaints Board said the advertisement was making a very specific claim that rather than the previously announced fee of \$3000 for some cars, some ordinary Kiwi consumers would pay up to \$6000 in fees.

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, posted on the New Zealand National Party'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?

Complainants J Lawson and A Currie said the advertisement was misleading as to the fee payable. The Complaints Board agreed that the advertisement made an absolute claim which required substantiation.

The Complaints Board noted the Advertiser said the intent of the advertisement was to highlight the negative effect of both the Government's Clean Car Discount scheme and the Clean Car Standard scheme.

Having reviewed the LEV consultation document, the Complaints Board said there was no evidence the Clean Car Standard scheme would translate to a cost for the consumer as the advertisement claimed. The Board said the proposal was a penalty scheme for vehicle suppliers that failed to meet their emissions target. It said the initiative appeared to encourage suppliers to choose a fleet which balanced out high and low carbon emission

vehicles. The Complaints Board said the substantiation provided by the Advertiser in this case was insufficient for the level of claim made in the advertisement.

The Board noted the reference in the advertisement to the cost being directed towards “ordinary Kiwis”. It did not consider this was an accurate reflection of the supplier penalty and therefore the advertisement was likely to mislead consumers.

The Complaints Board said this Decision was distinguished from precedent Decision 19/259, where the Advertiser had used extreme but substantiated examples of car imports to highlight potential fees which could be imposed by the Clean Car Discount feebate scheme.

Complainant A Currie considered the advertisement implied Julie Anne Genter was a Labour MP and this was misleading. The Complaints Board noted Ms Genter is the Associate Minister of Transport and had a leading role in the announcements of these policies. The Board said the Labour Party is the majority coalition partner in the current government and it was not misleading to highlight that and Ms Genter’s role, taking into account the collective responsibility of Cabinet. The Complaints Board ruled this part of A Currie’s complaint was not upheld.

The Complaints Board unanimously ruled the advertisement was in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaints were **Upheld**.

Advertisement to be removed.

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.

APPENDICES

1. Complaints
 2. Response from Advertiser
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Appendix 1

COMPLAINT FROM J LAWSON

This advert contravenes principle 2 of the code as it is not true and, furthermore, rule 2(b) as it is misleading and deceptive advertising. The largest fee is \$3,000, not \$6,000, and that is only on the most gas guzzling brand new 4x4 SUVs which all sell for \$100k+. That is made clear in Appendix 4 on page 41 of <https://transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/11de862c28/LEV-consultation-document-final.pdf>.

COMPLAINT FROM A CURRIE

I submit that this ad is contrary to Principle 2 regarding truthful presentation. Principle 2 of the code deals with truthfulness and balance. In particular Rule 2(b) has been breached which about misleading or deceptive advertising.

The largest fee is \$3,000, not \$6,000, and event that is only on a very small number of cars, in particular luxury, brand new 4x4 SUVs which all sell for \$100k+.

There is NO \$6000 fee whatsoever, and the number is entirely made up. The wording conveys the message to the viewer that cars will be taxed by \$6000, whereas the average cost of the tax on new cars is 0\$, as the subsidy makes up for the tax.

That is apparent in Appendix 4 on page 41 of <https://transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/11de862c28/LEV-consultation-documentfinal>.

In addition to this, the MP pictured, Julie-Ann Genter, is not a Labour MP as implied in the ad. She is a Green Party MP.

Appendix 2

RESPONSE FROM ADVERTISER, NEW ZEALAND NATIONAL PARTY

Thank you for your letter dated 6 August regarding a complaint by Messrs Lawson and Currie.

You note in your letter the relevant section of Advertising Standards Codes of Practice Principle 2, Rule 2(b) and (e), that may apply here.

In regard 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, the graphic in question refers to two policies that were promoted by the Labour-led Government, the 'Clean Car Discount Scheme' and the 'Clean Car Standard Scheme' both of which were referred to in a pinned press release to the post, and accessible here:

https://www.national.org.nz/simon_bridges_apologises_to_julie_anne_genter

I note that the complainants neglected to show the additional information that was provided with the advertisement to give it context. I have included for you a screenshot of the pinned Press Release which further substantiates the factual representation of figures of the advertisement. A reasonable viewer of the advocacy advertisement would have seen this information freely.

It is however encouraging to see that both complainants indeed agree that the potential fee of the Clean Car Discount Scheme is \$3,000, but the point of the advertisement is to draw the viewers' attention to the negative effect of both Government policies which are part of the consultation. Clearly the complainants have not read the entirety of the consultation document.

This information, once put together to inform the viewer, correctly shows that the actual cost could be more than \$6,000 per vehicle. The pinned press release to post contained two background documents with workings and costings on how this figure was achieved, and some further background information is below.

Background

As part of the discussion document put out for consultation, which can be found here: <https://www.transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/11de862c28/LEV-consultation-document-final.pdf> the ministerial forward mentions the following:

"The Government is proposing to introduce two proven policies to increase the supply and reduce the cost of fuel efficient and electric vehicles coming into New Zealand.

The first policy is the Clean Car Standard (which is a vehicle fuel efficiency standard). This policy would require vehicle importers to bring in progressively more fuel efficient and electric vehicles.

The second policy is the Clean Car Discount (which is a feebate scheme). This policy would make fuel efficient and electric vehicles more affordable for Kiwis to buy, potentially by a discount of up to \$8000 for new vehicles and \$2,600 on used vehicles."

The \$3,000 referred to the cost of the Clean Car Discount. On page Page 41 / Appendix 3 a Nissan Patrol / Range Rover / Toyota Land Cruiser has a tax of \$3,000 from 2021.

The \$3,000 was based on a brand-new Nissan Patrol. The \$3,000 tax is proposed to kick in from 2021.

The \$6,000 refers to the potential costs of the complete Government proposal, i.e. the Clean Car Discount and the Clean Car Standard combined.

Alongside the Government's plan to tax higher-emissions vehicles, it is proposing a vehicle emissions target, or clean car standard, meaning importers will be charged a penalty of between \$50 and \$100 per gram of CO₂ on vehicles that don't come in under the target from 2025 (page 16).

Page 20 proposes that if an importer doesn't meet the standard, they will pay a penalty:

“We propose applying the following penalties where a supplier fails to meet its required fleet target:

- New vehicle suppliers: \$100 for each gram CO₂ per kilometre that a supplier exceeds its fleet target (i.e. net excess grams CO₂ per kilometre that the fleet exceeds the target multiplied by \$100)
- Used vehicle importers: \$50 for each gram CO₂ per kilometre that a supplier exceeds its fleet target (i.e. net excess grams CO₂ per kilometre that the fleet exceeds the target multiplied by \$50).”

Page 18 states the penalty could be applied on a basis relevant to the weight of the car.

To simplify the application of the limit line in the setting of suppliers’ fleet targets, it is proposed that the limit line be applied through a set of weight bands.

The measure of vehicle weight would be tare weight, which is the weight of the vehicle with all fluids and components but without the drivers, passengers, and cargo. The weight bands detailed on page 18 are proposed. The emissions targets that would apply to each weight band are also shown for the 105 gram target.

We have therefore based our example on a Nissan Patrol.

2019 Nissan Patrol:

Emissions can be found here:

<https://rightcar.govt.nz/vehicle-detail.html?q=g46324&bc=1|29||2|1340||&keywords=nissan%20patrol&Make=Nissan&Model=PATROL&selected=g46324>

CO₂ is 333 gram / km

Weight can be found here:

https://www.nissan.com.au/-/media/files/brochures/specifications/2019/patrol/pat0640r04_espec.ashx

Tare mass (kg) 2,715

Therefore: Emissions band is 2,200kg, which requires 141g CO₂ by 2025, compared to an actual rating of 333g CO₂ / km. We have based our example on a 2019 Nissan Patrol, being imported as a used car in 2025.

The policy requires an importer to reach an average efficiency. The document does not evaluate how much this is likely to cost. The document does state that under Business As Usual emissions will be higher than the a 105g projection (page 12).

As noted, as an example, a 2019 Nissan Patrol has 333g / km. This compares to a requirement of 141g, a difference of 192g. In this example, an importer is likely to face a penalty (or “tax”) of \$9,600 for every 2019 Nissan Patrol they import in 2025.

On top of this, Appendix 4 states that the import of a car with over 250g of CO₂/ km will face a “Fee” of \$1,500 under the fee bate policy. So together, the total taxes paid on importing a 2019 Nissan Patrol in 2025 will be \$11,100, under both policies combined.

We have used the \$6,000 as an example. Whilst running multiple scenarios of the negative outcomes of the policy on different vehicles, the actual cost is very dependent on the vehicle

model imported. This \$6,000 is a very conservative estimate when considering importing a 2019 Nissan Patrol would be expected to see a tax of \$11,100 in 2025.

In regard to Section 2(e) – Advocacy Advertising ensures that any and all advocacy adverts are clearly identifiable as to whom is publishing it. As the complainant sought to address their complaint 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 Information to be robust and factual for the purpose intended. If the complainants wish to make a counter argument, that the Ministry of Transport information 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.