

<b>COMPLAINT NUMBER</b>	19/261
<b>APPEAL NUMBER</b>	19/006
<b>COMPLAINANT</b>	J Cooper
<b>APPLICANT</b>	J Cooper
<b>ADVERTISER</b>	New Zealand National Party
<b>ADVERTISEMENT</b>	New Zealand National Party, Twitter
<b>DATE OF MEETING</b>	12 September 2019
<b>OUTCOME</b>	Appeal Declined

### **SUMMARY**

The Chair of the Complaints Board ruled on 22 July 2019 the complaint from J Cooper about a New Zealand National Party Twitter advertisement had no grounds to proceed.

The Complainant appealed the Decision as, in their view, the evidence provided to the Chair of the Complaints Board has been misinterpreted to the extent that it has affected the decision.

This appeal application was considered by the Chairperson of the Appeal Board. She noted the Complainant's concern the advertisement spread misinformation by suggesting the car tax applies to all car sales and that it is targeted at low income earners.

The Chairperson said all the information from the Complainant had been considered by the Chair of the Complaints Board in making her Decision. She noted that the requirement for a liberal interpretation of the Codes in matters of political interest had been applied by the Chair.

The Chairperson said, in her view the Chair of the Complaints Board had considered all of the evidence before her 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."

The Chairperson also noted the Complaints Board had adjudicated on a subsequent National Party advertisement in which the Advertiser had provided substantiation to support the general statement quoted in the advertisement about the type of cars which could fall under the proposed car tax.

Therefore, 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:

- (a) The proper procedures have not been followed.
- (b) There is new evidence of sufficient substance to affect the decision.
- (c) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (d) The decision is against the weight of evidence.
- (e) It is in the interests of natural justice that the matter be reheard.

The Chairperson noted the Complainant's concern that the evidence provided to the Chair of the Complaints Board has been misinterpreted to the extent that it has affected the decision.

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

The Chairperson noted that the Chair of the Complaints Board had considered the advertisement under Rule 2(e) of the Advertising Standards Code and applied the Advocacy Principles. The Advocacy Principles developed by the Complaint Board in previous decisions considered under Rule 11 of the Code of Ethics remain relevant.

These 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 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, J Cooper, that the advertisement was misleading.

The Chairperson reviewed the information considered by the Chair of the Complaints Board and noted the following issues were raised by the Complainant in the appeal submission.

The Complainant said their key concern is the advertisement suggests the proposed tax applies to all car sales and does not clarify that it only applies to imported cars.

The Chairperson acknowledged the Complainant had a different interpretation of the advertisement and they considered the Chair of the Complaints Board has misinterpreted the evidence to the extent that it affected the decision.

The Chairperson said the advertisement presented the National Party's view of the proposed Clean Care Discount feebate scheme. In the Advertiser's view the feebate scheme will increase costs for some consumers. The Chairperson noted the advertisement said; "Labour's tax will slap thousands of dollars in tax on some of New Zealand's most popular cars." She said the use of the word 'some' meant consumers would be likely to understand the 'small fee' did not apply to all car sales.

Therefore, the Chairperson said in relation to the Complainant's claim that consumers would interpret the tax to be applicable to all car sales, their application had not met grounds for the appeal to proceed.

The Chairperson noted the Complainant's concern that the advertisement suggests the proposed tax is targeted at low income earners, when in fact it is primarily targeted at expensive vehicles.

In considering this issue, the Chairperson referred to a subsequent Decision, 19/259, in which Complainants had challenged a claim made by the New Zealand National Party that the proposed tax could apply to a used imported Toyota Corolla. That Decision said in part:

"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 full version of this decision can be found on the ASA website  
<https://www.asa.co.nz/decisions/>

The Chairperson took into account that the Advertiser was able to support claims that a wide range of vehicles were included in 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.

The Chairperson acknowledged the Complainant disagreed with the Complaints Board Chair's interpretation of the advertisement and the No Grounds to Proceed Ruling.

However, she said the appeal application had not met any of the grounds on which an 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 twitter advertisement, <https://twitter.com/NZNationalparty>, says "Labour's Car Tax will slap thousands of dollars in tax on some of New Zealand's most popular cars. But the Minister reckons it's just a 'small fee'. Will Kiwi's agree it's just a 'small fee' Minister? The advertisement includes a picture of the Associate Minister for Transport, Julie Anne Genter.

**APPEAL APPLICATION FROM COMPLAINANT J COOPER**

As previously indicated, I would like to appeal the decision of the Chair, reference number 19/261.

I agree with the Chair that it is important to allow free and robust discussion among those involved so closely in representing New Zealanders in Parliament. But that also brings responsibilities to not mislead or spread misinformation in the course of conducting public debate. We elect MPs as representatives to make decisions on our behalf on the understanding that they will be more informed about public policy issues given that is their full time job. Consequently, many people trust politicians and their parties when they speak and advertise. Rightly or wrongly, the public often trust a political party's description of policy on face value.

I accept that I cannot provide evidence of the image of Julie Anne Genter being altered - though I think it is relatively obvious and should therefore be incumbent on the National Party to prove that the image was unaltered. I also accept that we could reasonably argue about whether the policy is a Labour Car Tax as opposed to a Coalition Government Car Tax.

The key mischief in this advertisement that was missed by the Chair in her decision, is that the ad suggests the tax applies to all car sales and does not clarify that it only applies to all imported cars.

This assumption leads to the second mischief, that the advertisement suggests that this new tax is targeted at low income earners. Low income earners are very unlikely to purchase the cars that are targeted by the proposed levy because imported cars are too expensive for them irrespective of any additional 'car tax'. Low income earners generally purchase second hand vehicles that are already in New Zealand. For context the proposed tax is primarily targeted at large imported polluting vehicles such as the Toyota Land Cruiser which retails for \$100,000 NZD - far in excess of what a low income earner could or would attempt to purchase.

Although more succinctly framed, I made these points in my original complaint but they were not acknowledged and/or understood by Chair in her decision.

This advertisement constitutes misinformation which undermines our political debate because it influences voters based on false assumptions. The National Party have abandoned their responsibility to speak the truth and play fairly. This is a breach of principle 2 of the Code.

**CHAIR OF THE COMPLAINTS BOARD – NO GROUNDS TO PROCEED DECISION**

**The Chair** noted the Complainant's concern the advertisement is using the words 'small fees' in a misleading way and is falsely attributing the car tax policy to the Labour Party. The Chair

noted the Complainant was also concerned the photo of Minister Julie Anne Genter had been altered which was demeaning.

The Chair confirmed the advertisement for the National Party was an advocacy advertisement provided for under Rule 2(e) of the Advertising Standards Code. Robust expression of opinion is allowed, as long as the advertiser is clearly identified and the Advertiser's position is clear.

The Chair ruled the Advertiser had met the identity requirements of an advocacy advertisement. The advertisement appears on the National Party Twitter account and includes the National Party logo. Therefore, the Chair said the context, placement and content made the identity of the Advertiser and their position clear.

Having established the advertisement was from the New Zealand National Party, the Chair 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.

Turning to the Complainant's specific concerns, the Chair said the use of the term "small fee" in the advertisement could be interpreted in different ways, either the 'small fee' which the policy proposes charging for non-compliant cars, or 'small fee' as a proportion of the overall price of the product. The Chair said that as part of an advocacy advertisement, the Advertiser was entitled to put forward its opinion of the policy being considered.

The Chair said using the heading "Labour's Car Tax" did not meet the threshold to be considered misleading, given that the Labour Party is the majority coalition partner of the current government. She said a policy would only go ahead with the backing of Labour, making it acceptable to highlight their involvement with the proposal.

The Chair said there was no evidence the photo of Julie Anne Genter had been altered and said it was not a breach of the Advertising Standards Code for the Advertiser to select an unflattering photo for the purposes of its advertisement. The Chair said the image used did not meet the threshold to demean or denigrate the politician.

The Chair ruled the advocacy advertisement did not breach Principle 1, Principle 2 or Rules 1(c), 2(b) and 2(e) of the Advertising Standards Code.

The Chair ruled there were no grounds for the complaint to proceed.