

<b>COMPLAINT NUMBER</b>	19/336
<b>COMPLAINANT</b>	C. Klug
<b>ADVERTISER</b>	John Tamihere
<b>ADVERTISEMENT</b>	John Tamihere for Mayor, Print
<b>DATE OF MEETING</b>	2 October 2019
<b>OUTCOME</b>	Not Upheld No Further Action Required

### **Description of Advertisement**

The Rodney Times newspaper advertisement for John Tamihere for Mayor consists of two parts, the left-hand side of the advertisement has a photo of John Tamihere, against a red background with the text: "0% Rate Rise. Vote John Tamihere For Mayor. JTFORMAYOR.CO.NZ" Next to "Vote John Tamihere For Mayor" is a white box with a tick in it. The right-hand side of the advertisement has a photo of Phil Goff against a blue background. The text says: "10.5% Rate Rise." Next to the photo of Phil Goff is an empty white box and the word "Goff".

### **Summary of the Complaint**

The Complainant said the advertisement is misleading as there is no information in the advertisement indicating a time period for the claims and it insinuates the next rates bill will rise by 10.5%. The Complainant is also concerned that the colours used in the advertisement portray Mr Tamihere as a member of the Labour Party and Mr Goff as a member of the National Party.

### **Issues Raised**

- Truthful Presentation
- Advocacy advertising

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

The Advertiser confirmed its campaign colours are blue and red and they place red or blue behind each candidate and alternate these colours. The Advertiser noted both candidates are former Labour cabinet ministers. Both are running officially as independents and reach out to voters with a range of political views. The Advertiser said the rates increases quoted are those that have already been announced publicly.

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

The Complaints Board did not uphold the complaint about the print advertisement for John Tamihere.

The Board agreed the advertisement was an advocacy advertisement and the identity and position of the Advertiser was clear. It confirmed that a more liberal interpretation of the Code would be applied under Rule 2 (e) of the Advertising Standards Code

The Board unanimously agreed the way colour was used in the advertisement was not misleading.

The Complaints Board discussed the rates claim in the advertisement that if Mr Goff is elected rates will rise by 10.5%.

The majority of the Board said that making claims that related to a term in office was not unusual. In the context of robust debate during the local election campaign, the rates claim had been substantiated.

A minority said, without any qualification on the term of the rates rise, some readers would be misled and consider the 10.5% increase was imminent in the coming year, which was not the case.

The Complaints Board ruled the complaint was not upheld.

### **No further action required.**

Please note this headnote does not form part of the Decision.

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## **COMPLAINTS BOARD DECISION**

The Chair directed the Complaints Board to consider the complaint with reference to the Advertising Standards 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 19/279 which was Upheld in Part.

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

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

**Decision 19/279** concerned a New Zealand National Party Facebook advertisement which compared the Government funding for the Provincial Growth Fund with new funding for Pharmac. The majority of the Complaints Board said the substantiation provided by the Advertiser was insufficient for the level of claim made in the advertisement and the political advocacy advertisement was likely to confuse or deceive consumers.

## Complaints Board Discussion

### *Consumer Takeout*

The Complaints Board agreed there could be two consumer takeouts for the advertisement.

One takeout is that if you vote for John Tamihere for Mayor there will be a zero rate increase and if you vote for Phil Goff, rates will rise 10.5%.

The second takeout is that if you vote for John Tamihere for Mayor there will be a zero rate increase and if you vote for Phil Goff, rates will rise 10.5% and that increase is imminent.

### *Is the advertisement advocacy advertising?*

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 John Tamihere in support of his campaign to be elected Mayor of Auckland, 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 for advocacy advertising under Rule 2(e). The call to action is to vote for John Tamihere as Mayor and the advertisement includes an authorisation statement.

*In the use of colour in the advertisement misleading?*

The Complaints Board unanimously agreed that the colours used in the advertisement were not misleading. It noted that Mr Tamihere's campaign colours were blue and red and the colours placed behind candidates had been alternated in his advertisements. The Board also noted the National and Labour parties were not represented in the Auckland local body elections and local elections do not include a party vote option.

*Are the rate claims in the advertisement misleading?*

The Board considered the two rates claims in the advertisement and noted the substantiation provided by the Advertiser including reporting of public statements made by candidates.

The majority of the Board said the advertisement was not misleading. It noted the Complainant referred to Mr Goff's statement about a rates increase of 2.5%. It then referred to the substantiation provided by the Advertiser which confirmed Mr Goff had been reported as saying he will limit rate increases to 3.5% per year if elected. The Board noted that cumulatively, over a three year term, these increases total at least 10.5%. The Advertiser said Mr Tamihere will not increase rates in his first term as Mayor. The majority said in the context of the mayoral campaign with significant coverage of both candidates' positions, the claim did not meet the threshold to mislead voters.

A minority of the Board disagreed. A minority said the likely consumer takeout would be that Mr Goff would increase rates by 10.5% shortly after election and this was not substantiated by the Advertiser. The minority considered that without information about the term of the rates rise, the advertisement was misleading.

However, in accordance with the majority, the Complaints Board ruled the advertisement was not misleading and was not in breach of Principle 2 and 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

### Appendix 1

#### COMPLAINT FROM C. KLUG

This ad is misleading in two ways.

There is no time period given and thus it insinuates that the next rates bill will rise by 10.5% with Phil Goff as mayor (which would be a financial shock for many) -- in contrast to Goff's own statement of "committed to keeping the average rates rise to 2.5% next year"

Colours have significant meaning in politics. There is no mistaking Green's green, Act's yellow, Labour's red and National's blue. Some members of the public have fixed allegiances to particular parties. My daughter saw the ad and proclaimed "I didn't know Goff was National".

This ad appears to portray Tamihere as a member of the The Labour Party because of the red background colour used and Goff as National because of the blue background.

### Appendix 2

#### RESPONSE FROM ADVERTISER, JOHN TAMIHERE FOR MAYOR

Contact person for advertising complaints	James Polhill
Name and contact at creative agency	James Polhill, Managing Director, Hello Limited
Name and contact at media agency	Jason Theodore, Media Director, Hello Limited
A basic, neutral description of the advertisement	The advertisement is very simple. There is picture of John Tamihere and Phil Goff alongside each other with their publicly announced rate increases underneath them – if they were to be successful in the 2019 Auckland Mayoral Election. 10.5% under Goff. 0% under Tamihere. Goff has announced his rates policy to increase 3.5% each year rising 10.5% by the end of the third year (compounded, it is actually 10.87% but we kept it simple). John Tamihere has announced a zero increase over the 3 year term.
Date advertisement	Campaign: 26 <sup>th</sup> August

began	Rodney times: 27 <sup>th</sup> August & 3 <sup>rd</sup> September
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	Newspapers (NZ Herald and Auckland local titles), Radio (various Auckland stations), Digital Billboard (4x Lumo sites)
Is the advertisement still accessible – where and until when?	Not applicable – this campaign execution ended on 8 <sup>th</sup> September
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	See attached file - ASA 19_336 Rodney Times
Who is the product / brand target audience?	Advertiser: John Tamihere for Mayor Target Audience: All Adults in Auckland, eligible to vote.
Clear substantiation on claims that are challenged by the complainant.	<p>The complaint is in two parts, both of which are inaccurate and unfounded.</p> <p><b>Colours:</b></p> <p>Our campaign colours are blue and red. In our advertisements we place red or blue behind each candidate. Half of advertising have blue and red behind each of them. It's optical, not political.</p> <p>Both candidates are former Labour cabinet ministers. Both are running officially as independents and reach out to voters from all political stripes.</p> <p>In a single print insertion, it is impossible to do this colour rotation, but please see attached examples from last week's OOH activity where you can see both candidates on both colour backgrounds, for the same message in the same location (ASA 19_336 OOH example)</p>

**Rates:**

Phil Goff has announced he will raise rates by 3.5% annually during the next term rising to 10.5% before the term expires. (The compounded total is actually 10.87%).

Please see the attached article from the New Zealand Herald (ASA 19\_336 NZ Herald Article) or use the link below:

[https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12209065](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12209065)

The complaint states Goff has only said rates will be increased by 2.5%, but this applies to his first term which ends with this Mayoral election. Again please refer to the attached article (ASA 19\_336 NZ Herald Article) or link above.

Therefore, it is entirely reasonable and accurate to portray the comparisons that Goff will raise rates by 10.5% whilst Tamihere will keep it at zero. The mayor term is for 3 years and it is an announced fact Goff will raise rates by 10.5% during that term.

Election policies should always be considered for an upcoming term, not in specific time periods within that. For example, if a candidate announces a policy costing \$x, does that mean their opponent, when critiquing it, must break that number down in annual or quarterly instalments. Of course not.

Therefore, again it is reasonable that we show the total rise over the whole term for each candidate. Goff and Tamihere are in the media daily and will have had over 30 public events where every claim they make is debated.

Our headline message that Goff will increase rates by 10.5% is true. Our message that Tamihere will keep rates at zero is true.

We stand behind our advertisements. Our advertisements do a public service by articulating a clear message that Goff will increase rates by 10.5% whilst Tamihere will maintain rates at 0%.

Both campaigns have Facebook and Websites where electors can access when they want further information. We include our website on every advertisement for people to be able to review our policies.

Finally, we contend that ASA should not be put in a position to start directing political campaigns and parties to what details and dates campaign opponents for political office must include in their headline announcements.

	<p>Civil democracy requires a robust democratic contest where candidates are advocate their vision and criticise their opponent's ideas. To ask ASA to treat political contests on the same basis as commercial companies selling widgets surely starts to impinge on the democratic process.</p> <p>We do however recognise the ASA role to ensure that no message is untrue and we believe the above justification demonstrates that we have been both true and fair in both elements raised by the complainant.</p>
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