

COMPLAINT NUMBER	19/335
COMPLAINANT	O Tong
ADVERTISER	New Zealand National Party
ADVERTISEMENT	New Zealand National Party, Brochure
DATE OF MEETING	15 October 2019
OUTCOME	Upheld in Part Advertisement to be Removed

Description of Advertisement

The New Zealand National Party flyer says: “Our bottom line...is you.” “Our bottom line of every issues is making sure you and your family have every opportunity to thrive and grow.” It contains a list headed “Where the Coalition has failed you” and including two statements “Cut in road safety funding – losing your loved ones” and “No new roads – traffic getting worse.”

Summary of the Complaint

The Complainant said the advertisement is misleading to say there has been a cut in road safety funding when the NZTA website states there is a government investment of \$4.3 billion on safety which is a 37% increase on the previous government.

The Complainant said the advertisement is misleading to say there are no new roads when new roads like Glenvar Ridge Road have been built since the election and other new roads have been announced.

Issues Raised

- Truthful presentation
- Advocacy advertising

Summary of the Advertiser’s Response

In response to claim one, the Advertiser said it is correct to say road safety funding has been cut. The Advertiser provided substantiation that the 2019 budget appropriated \$331 million in ‘Vote Police’ to cover the delivery of services outlined in the New Zealand Road Safety Programme directed towards the achievement of road safety outcomes, down from \$341 from 2018/19 – a cut of nearly \$10 million. In response to claim two, the Advertiser said it is correct to say there have been no new roads, as the current Government has not initiated any new roads since coming into office. The Advertiser provided substantiation for this claim.

Summary of the Complaints Board Decision

The Complaints Board upheld in part the complaint about a National Party flyer which listed areas it considers the Coalition Government has failed in, including “No new roads” and “A cut in road safety funding”.

The Complaints Board upheld the complaint about the claim there has been a cut in road safety funding and said the substantiation provided was not adequate for the broad claim made. The Complaints Board did not uphold the complaint about the claim “No new roads”

and ruled the Advertiser had provided adequate substantiation for the claim which was open to interpretation regarding what was meant by “new roads”.

Relevant ASA Codes of Practice

The Acting 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 likely overall consumer takeout of the advertisement is the flyer sets out the New Zealand National Party’s policy position on working for voters and lists areas the Coalition Government has failed to deliver on.

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 the New Zealand National Party in support of their bottom-line policies, 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 logo and position of the Advertiser in the flyer is clear and includes an authorisation statement from Simon Bridges, National Party Leader. A website address is provided for more information.

Are the claims made in the advertisement misleading?

The Complaints Board reviewed the substantiation provided by the Advertiser to support the two statements which the Complainant said were misleading:

Claim One: “Cut in road safety funding – losing our loved ones.”

The Complainant said this is misleading given that the NZTA website quotes an investment of \$4.3 billion in safety which is a 37% increase spend on the previous government. The Advertiser provided substantiation to show the Road Safety Programme 2019 budget had been cut by nearly \$10 million.

Consumer Takeout

The Complaints Board agreed that the likely consumer takeout of this statement would be there is less funding being allocated to road safety in the 2019 budget which could have an effect on the safety of loved ones on New Zealand roads.

The Complaints Board said the Advertiser is making a broad claim, implying overall road safety funding has been reduced. The Board said the specific wording “Cut in road safety funding” means an overall cut in budget. The Board said the addition of the emotive statement “losing our loved ones” also suggests a wider scope. The Complaints Board noted the substantiation provided by the Advertiser to support the claim was a budget reduction for one specific area of road safety funding. The Board said the Advertiser’s focus on a \$331 million policing programme relative to the overall NZTA road safety budget of \$4.3 billion was at odds with the broad claim being made in the advertisement and was likely to be misleading to most consumers.

The Complaints Board unanimously ruled that despite the advocacy nature of the advertisement, this claim was in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code. The Complaints Board ruled Claim One was Upheld.

Claim Two: “No new roads – traffic getting worse.”

The Complainant said the claim was misleading as new roads have been announced and built since the 2017 election.

Consumer Takeout

The Complaints Board said it was possible to interpret this claim to mean building new roads or plans for new roading being initiated. The Complaints Board also noted that some roads are funded by local councils rather than the Coalition Government.

Given the ambiguity of the claim, the Complaints Board agreed the Advertiser had provided sufficient substantiation to demonstrate the examples of new roading referred to in the complaint had either been initiated prior to the Coalition Government taking office in late 2017 or were funded by local councils.

The Complaints Board unanimously ruled that in the context of advocacy advertising, this claim was not in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code. The Complaints Board ruled Claim Two was Not Upheld.

Outcome

The Complaints Board ruled the complaint was **Upheld in Part**.

Advertisement to be removed and not used again in its current form.

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. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT FROM O TONG

In a pamphlet authorised by the National Party, there are at least two separate false, misleading claims. It's my understanding that this pamphlet has been widely circulated. I have attached a photo of the pamphlet.

First, National says there has been a "cut in road safety funding." But the NZTA website says the Government is investing \$4.3 billion on safety, which is a 37% (\$1.2 billion) increase compared to the previous government. There's a breakdown of the official figures in this NZ Herald article.

National may say this relates to claim they've made elsewhere that the road policing budget has been cut. But, the NZTA also says there's been a 10% increase in funding for road policing now, compared to under the previous government.

Second, National claims that there are "no new roads." This is clearly false. New roads like Glenvar Ridge Road have been built since the election, and other new roads like the Matakana Link Road or the Awakino Tunnel Bypass have been announced by this Government.

National's pamphlet is an obvious breach of Rule 2(b) of the Advertising Standards Code regarding truthful presentation. They have made clear, unambiguous, and inaccurate claims, which will mislead New Zealanders. I recently saw a quote from Simon Bridges – he said: "one person's misinformation is another person's fact." I think this type of "alternative facts" approach to politics, which National seems to have imported from Donald Trump, is really dangerous for New Zealand. It is the Advertising Standards Authority's job to call out these obvious untruths. The Authority must act immediately to seek correction from National about the claims in this pamphlet.

Appendix 2

RESPONSE FROM ADVERTISER, NEW ZEALAND NATIONAL PARTY

Thank you for your letter dated 10 September 2019 regarding a complaint by O Tong.

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, in the publication attached to the complaint, O Tong mentions 2 specific issues out of the 14 listed. He specifically complains about the following:

1. Cut in road safety funding – losing our loved ones
2. No new roads – traffic getting worse.

In regard to point number 1 raised by the complainant, it is entirely correct to say that road safety funding has been cut. Budget 2019 appropriated spending of \$331 million in Vote Police to cover the delivery of services outlined in the New Zealand Road Safety Programme directed towards the achievement of road safety outcomes, down from \$341 million in 2018/19 – therefore a cut of nearly \$10 million.

This information can be found on page 3 of the following link here:

<https://treasury.govt.nz/sites/default/files/2019-05/est19-v7-police.pdf>

Road Safety Programme (M51) This output class covers the delivery of services outlined in the New Zealand Road Safety Programme directed towards the achievement of the road safety outcomes.	341,300	341,300	331,615
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The complainant has made generalised statements, with reference to websites, but provided no links or evidence to support their statements that our advocacy advertising is untruthful or inaccurate. Therefore Principle 2, Rule (b) would not apply, and 2 (e) is clear in that this is government source documentation of the budget appropriation, and the complaint was addressed to the National Party. Therefore issues, around 2 (e) would also not apply.

In regard to point 2 raised by the complainant, it is entirely correct to say: “no new roads”. The Government have not initiated any new roads since coming into office in late 2017. There have been no new roads commissioned and/or funded by the National Land Transport Fund or the Ministry of Transport.

O Tong references 3 specific projects in their complaint:

1. Matakana Link Road – Local Auckland Council road, with some funding from NZTA. Public consultation began under National in May 2017.
2. Glenvar Ridge Road – Local Auckland Council Road – Consultation began in 2013, with the contract awarded in 2016. Not a government road.
3. Awakino Tunnel Bypass – Announced by Simon Bridges in May 2017 – link can be found here: <https://www.beehive.govt.nz/release/key-transport-project-taranaki-launched>

The complainant, like many other Labour Government supporters who use nearly identical examples for argument, has made generalised statements without verifying their facts. Even at a basic level.

Given the evidence above, Principle 2, parts (b) and (e) are not in breach in this publication and O Tong’s complaint should be dismissed.