

COMPLAINT NUMBER	19/440
COMPLAINANT	P Southwell
ADVERTISER	New Zealand Labour Party
ADVERTISEMENT	New Zealand Labour Party, Digital Marketing
DATE OF MEETING	22 January 2020
OUTCOME	No Jurisdiction

Description of Advertisement

The New Zealand Labour Party campaigned in the last election on the issue of ending secondary tax. The Labour Party website has a page headed “Ending Secondary Tax” which describes how “Labour will abolish secondary tax as it denies many New Zealanders access to wages they need to make ends meet.” The page explains how Labour will ensure workers are taxed at the appropriate rate throughout the year rather than be taxed on secondary income at a flat rate which requires workers to claim back an overpayment.

Summary of the Complaint

The Complainant is concerned the advertisement about abolishing secondary employment tax was misleading as this has not been actioned. The Complainant provided information from Inland Revenue on the tax.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser said prior to the 2017 election the policy being presented was an advertisement and the promise of implementation was not misleading.

Following the 2017 election, the policy no longer meets the criteria of an advertisement as the 2017 manifesto is present on the website as a record rather than as an intention to influence. Therefore, the Advertiser does not believe the ASA has jurisdiction over a historic posting.

The Advertiser said that regardless it has implemented the policy by introducing a tailored tax rate which now prevents overcharging rather than the interpretation the Complainant seems to have, that all secondary income is tax free.

Summary of the Complaints Board Decision

The Complaints Board said the content headed “Ending Secondary Tax” on the New Zealand Labour Party’s website was historical information which did not intend to influence the choice, opinion or behaviour of the reader and did not meet the Advertising Standards Authority’s definition of advertising.

The Complaints Board ruled it had No Jurisdiction to consider the complaint.

Relevant ASA Codes of Practice

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

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

Is the website content an advertisement?

The Complaints Board began its discussion by considering whether the New Zealand Labour Party website content headed "Ending Secondary Tax" met the Advertising Standards Authority's definition of an advertisement which states:

"Advertising and advertisement(s)" are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed."

The Complaints Board considered the context of the message and agreed that the "Ending Secondary Tax" website content was published in the context of the 2017 Labour Party election campaign. It said the content was part of the Labour Party manifesto issued prior to the election and now sits as an historic document on the website. The Board said the pathway taken to navigate to this page on the website clearly supports the view that the purpose of the content was as a historical record.

The Complaints Board said the key consideration when applying the definition of an advertisement was whether the intention of the message was to influence the choice, opinion or behaviour of the reader. The Complaints Board agreed with the Advertiser that the publication of the proposed tax policy prior to the 2017 election was an advertisement, with the intent to influence voters. However, the Board unanimously agreed historical content on a website did not have an intent to influence and was not an advertisement.

The Complaints Board ruled the content subject to the complaint before it did not fall within the definition of an advertisement and the Advertising Standards Authority did not have jurisdiction to consider the matter further.

Outcome

The Complaints Board ruled it had No Jurisdiction to consider the complaint.

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

Appendix 1

COMPLAINT FROM P SOUTHWELL

Prior to the last General Election NZ Labour Party stated in election advertising that a Labour Government would ABOLISH secondary employment tax.

The elected Labour Government did not do so despite the advertisement that they would. The pre election advertising would have had the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

I requested a statement from IRD that showed if secondary tax had indeed been abolished. The response showed it had not.

I wish to lay a formal complaint that the Labour Party misled and deceived the voting public of NZ including myself with this false advertising.

Appendix 2

RESPONSE FROM ADVERTISER, NEW ZEALAND LABOUR PARTY

Labour Party – 2017 Policy – Secondary Tax – Complaint 19/440

I refer to your letter of 9 December, which enclosed a complaint that the Labour Party “misled and deceived” the complainant with respect to the Labour Party’s policy regarding secondary tax that was contained in the Party’s 2017 manifesto.

The complaint does not concern the factual accuracy of any evidence presented in the policy. Instead, it alleges that the solution the Labour Party promised in its policy has not been implemented in government, and therefore argues that the original promise to implement the policy was misleading or deceptive.

Response

We submit that:

- there are no grounds to proceed with this complaint, because:
 - during the period before the 2017 general election, when the policy was an “advertisement”, the promise to implement the policy in the future was not misleading or deceptive; and
 - during the period after the 2017 general election, the policy was no longer an “advertisement”; and
- in the alternative, the Labour Party in government has in fact implemented the policy as promised.

No longer an “advertisement”

To be an “advertisement” under the Code, the message must be communicated “with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.” Although the Labour Party published its policy on secondary tax with the intent to influence voters during the period before the last election, that is no longer the case today. Instead, the Labour Party continues to publish its 2017 manifesto with the intention of providing a factual record and enabling stakeholders to hold the Party to account. As readers are aware they are reading the Party’s 2017 policy, it is clear to them that the policy applied to their voting choice in 2017, rather than today.

Accordingly, we submit that the policy as it continues to be published is no longer an “advertisement” under the Code and therefore does not fall within the scope of the Authority’s jurisdiction.

We further submit that it would not be in the public interest for the Authority to order the Labour Party to delete this policy from its website. Precisely because the ongoing publication of the Party’s policies enables stakeholders to hold the Party to account, New Zealand’s democracy is better served by a regulatory environment in which the policies of political parties can continue to be published after they have ceased to be an election “advertisement”, whether or not they have been implemented in government.

Promise not misleading

The Labour Party’s policy on secondary tax met the Authority’s definition of an “advertisement” during the period before the 2017 election.

During this period, the truth of the promise that the policy would be implemented in government could not be tested, as it was a statement about the future. If the complaint had been made prior to the election, the Authority would have had the inappropriate task of ruling on whether or not the Labour Party could be trusted to implement its policy on secondary tax. We submit that other institutions are better placed to advise voters on whether they can trust that political parties will implement the policies they advertise during an election campaign.

Nor would it be in the public interest for the Authority to judge whether or not a policy promise has been implemented after the fact. We submit that the Authority’s role is to protect the public from misleading election advertising during the period in which it is intended to influence their voting behaviour, being prior to an election rather than after one.

Accordingly, we submit there is no grounds to proceed with the complaint.

Policy has been implemented as promised

In the event that the Authority concludes that there are grounds to proceed with the complaint, we submit that the policy has been implemented as promised.

As described in the policy attached to the complaint, when a person was employed in more than one job, the problem the Labour Party was promising to fix was that:

“Tax on one income source is charged in the normal way while tax on the other source is charged at a flat rate. This means many employees pay a higher rate of income tax during the year than they needed to.”

The proposed solution was:

“To avoid people getting a large tax bill at the end of the year we will ensure that they are taxed at the appropriate rate through the year.”

As the messages attached to the complaint from IRD and MSD make clear, the government has introduced a “tailored tax rate” that now enables anyone employed in more than one job to be taxed at the appropriate rate throughout the year, thereby fulfilling the policy.

We consider that any potential for the headline to mislead (“Ending secondary tax”) is overcome by the body of the policy, which is only 260 words long. As set out above, this made it clear that the proposed policy was to end the overcharging that was previously inherent to taxing secondary income, rather than to make all secondary income tax free.

Accordingly, we submit that the “advertisement” was not misleading or deceptive, both at the time it was made and today.