

COMPLAINT NUMBER	19/480
COMPLAINANTS	M Stout & A Hansen
ADVERTISER	New Zealand National Party
ADVERTISEMENT	New Zealand National Party, Facebook
DATE OF MEETING	18 February 2020
OUTCOME	Not Upheld No Further Action Required

Description of Advertisement

The advertisement on the New Zealand National Party Facebook page is headed “Labour inherited massive surpluses. In two years it has: Slashed Economic Growth, Piled on Debt, Dragged NZ into Deficit”.

The accompanying text says “Labour inherited surpluses as far as the eye can see. Now this failed experiment of a Government has dragged New Zealand back into deficit in just two short years.” The post includes funding and authorisation statements.

Summary of the Complaints

Two Complainants are concerned the advertisement is misleading to claim the Labour Party has turned surpluses into deficits. The Complainants quote figures from the Treasury for the period Labour has been in Government which show surpluses each year.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser confirmed the advertisement was not sponsored and appeared on the National Party Facebook page and related to government data published at the time of posting the advertisement. The Advertiser provided links to the Treasury Half Year Fiscal Update and the Interim Financial Statements. The Advertiser said the two documents covered the period between 29 November 2019 and 17 January 2020 detailing the most recent financial statements and showed a \$1.079 billion deficit. The Advertiser noted that the deficit was reported by media outlets at the time and provided links to this coverage. The Advertiser confirmed the advertisement was published on 11 December 2019 during the period which the forecasts by the Treasury of a deficit were correct.

Summary of the Complaints Board Decision

The Complaints Board did not uphold two complaints about an advertisement on the New Zealand National Party Facebook page which claimed the Labour Government had turned inherited surpluses into a deficit. The Complaints Board said the Advertiser had provided adequate substantiation to show the claim was factual at the time the advertisement was published.

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.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement posted to the National Party Facebook page was the National Party said the Labour-led Government had inherited a surplus from the previous Government and turned it into a deficit. It implied the Government has been fiscally irresponsible by “slashing economic growth” and had “piled on debt”.

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.

The Complaints Board confirmed 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.

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) of the Code. The advertisement was posted on the New Zealand National Party Facebook page, the identity of the Advertiser was clear and an authorisation statement from Simon Bridges, Leader of the National Party, was included.

Is the advertisement presenting fact or opinion?

The Complaints Board understood the statement that the Complainants considered misleading is that the Labour Government had turned a surplus into deficit in two years. The Board said this is a factual claim which required substantiation. The Complaints Board did not consider the other two statements made in the advertisement concerning increased debt and economic growth as these were not referred to in the complaints.

Has the factual claim that surpluses have been turned into a deficit been substantiated?

The Complaints Board said the Advertiser had provided sufficient substantiation to support the claim by providing links to the Treasury Half Year Fiscal Update, prepared by the Treasury on 11 December 2019 and the Interim Financial Statements, prepared by the Treasury on 29 November 2019. These documents covered the period between 29 November 2019 and 17 January 2020 detailing the most recent financial statements and showed a \$1.079 billion deficit.

The Complaints Board said that as the advertisement was posted on 14 December 2019, it was not misleading for the Advertiser to use Treasury forecasts of a deficit in its advertising. Although the source data was not explicitly quoted in the advertisement, the Board noted the deficit issue had been the subject of wider public debate and media interest at the time, which would have provided additional context for the statement made by the Advertiser. The Board noted the Advertiser had attached a press release from National Finance Spokesperson Paul Goldsmith to the advertisement, which would assist with context.

The Board noted the advertisement was not a sponsored post, so the target audience was people connected with the National Party Facebook page.

The Complaints Board said the advertisement was not likely to mislead or deceive consumers, taking into account context, medium, audience and product and when viewed through the lens of advocacy advertising.

The Complaints Board ruled the advertisement was not in breach of Principle 2 or Rules 2(b) and 2(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaints were **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. Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.

APPENDICES

1. Complaints
2. Response from Advertiser

Appendix 1

COMPLAINT FROM M STOUT

<https://www.facebook.com/NZNATS/photos/a.527149817300618/3293013104047595/?type=3&theater>

This advertisement on the National Party Facebook page is a lie and is therefore misleading people who view the page. This is what they say on the page "Labour inherited surpluses as far as the eye can see. Now this failed experiment of a Government has dragged New Zealand back into deficit in just two short years."

The fact is that the 2016/2017 year showed a surplus of \$4.1bn; the 2017/2018 year a surplus of \$5.5bn and the 2018/2019 year a surplus of \$7.5bn. The current financial year is only four months in so the figures are interim but the projected surplus is \$1.174bn (Treasury figures). That being the case the National Party is being misleading."

COMPLAINT FROM A HANSEN

<https://www.facebook.com/NZNATS/>

I believe these advertisements, authorised by Simon Bridges, to be incorrect and misleading. The New Zealand Labour Party brought New Zealand in to surplus, so these advertisements are complete 'fake news' and misleading to the New Zealand public. They should be removed.

They were seen today 16/12/2019.

Appendix 2

RESPONSE FROM ADVERTISER, NEW ZEALAND NATIONAL PARTY

Thank you for your emails of 23 January 2020 regarding two advocacy advertisement that mentioned the Labour Government's projected budget deficit.

As both sets of complainants have referred to the "deficit" aspect of the advocacy advertisements respectively, we have chosen to reply to these jointly.

In regards 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.

It is also important for the Board to consider previous rulings in regard to audience and context, notably Appeal 19/011 "the Appeal Board ruled that consideration context and placement of the advertisement was important given the likely audience on a political party's social media platform would have an appreciation of the political landscape and advocacy advertising."

The advocacy advertisements in question were on the National Party's Facebook page were not "Sponsored" Ads.

In regard to the complaints at hand I note the relevant sections you mention in both 19/480 and 19/479 are:

- Principle 2 - Rule 2(b) and Rule 2(e).

In response to the complaint I would like to note the following in regard to each section:

Rule 2 (b) relates to truthful presentation, and as such the advocacy advertisements in question directly relate to government data published at the time of posting the advocacy advertisement, namely:

Source: <https://treasury.govt.nz/system/files/2019-11/fsgnz-4mths-oct19.pdf>

- Page 3, Operating balance before gains and losses

This document was prepared by the Treasury on 29 November 2019.

Also, the latest Treasury forecasts (HYEFU 2019) project a deficit for the current financial year of \$0.9 billion.

Source: <https://treasury.govt.nz/system/files/2019-12/hyefu19.pdf>

- Page 24, Total Crown OBEGAL

This document was prepared by the Treasury on 11 December 2019.

Both of these documents covered the period between 29 November 2019 and 17 January 2020, detailing the most recent financial statements showed a \$1.079 billion deficit.

This deficit was also noted at the time by media outlets in the public domain, namely:

- **RNZ – 11 December 2019:**

Link: <https://www.rnz.co.nz/news/political/405272/govt-finances-go-into-the-red>

- **NZ Herald – 11 December 2019:**

Link: https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12292976

- **Spinoff – 11 December 2019**

Link: <https://thespinoff.co.nz/business/11-12-2019/new-zealand-goes-into-the-red-with-12b-to-be-borrowed-for-infrastructure/>

- **Stuff – 15 December 2019**

Link: <https://www.stuff.co.nz/business/opinion-analysis/118199148/hey-big-spender--why-were-spending-more-but-have-nothing-to-show-for-it>

The advocacy advertisement subject to **19/480** was published on 11 December 2019, during the period which the forecasts by the Treasury showing a deficit were correct.

Furthermore, this press release detailing sources was pinned to the top of the comments for those viewing the advocacy advertisement to see:

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

The advocacy advertisement subject to **19/479** was published on 14 December 2019, during the period which the forecasts by the Treasury of a deficit were correct.

Therefore, in the context of the advocacy advertisements, during a time at which government financial statements were released and being openly debated in the public media, and the audience of those advocacy advertisements was, to quote appeal 19/011, likely to have “an appreciation of the political landscape and advocacy advertising”, we believe we have satisfied the presentation requirements under the code.

Rule 2(e) in regards to “Advertiser Identity” is not relevant in this case as the complainant has sought to address the concern to the National Party. As such, it is clear who the advertiser is, and the advert contains our correct authorisation and was displayed on our publicly available Facebook page.

I thank you again for your email and trust the above settles the matter in question.