

COMPLAINT NUMBER	20/041
COMPLAINT	E Allen
ADVERTISER	NZ National Party
ADVERTISEMENT	NZ National Party, Facebook
DATE OF MEETING	10 March 2020
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a post on the NZ National Party Facebook page. The Complaints Board agreed the Advertiser had provided adequate substantiation for the claims made about the Labour Party failing to meet campaign promises on the Auckland light rail project. The Board said the advocacy advertisement did not meet the threshold to mislead consumers.

Description of Advertisement

The New Zealand National Party Facebook post is headed “Labour Misinformation” and shows images of the Prime Minister Rt Hon Jacinda Ardern with a 2020 quote which says “I will deliver a factual campaign” and a 2017 quote which says “We’ll start light rail straight away and it will be done by 2021.”

The accompanying text says “The PM’s commitment to telling the truth this election reminded us of when she promised to start her light rail project straight away and be done by next year. Three years later and she hasn’t even started it. Happy to hike your fuel taxes though!” The post includes an image credit and authorisation statement.

Summary of the Complaint

The Complainant said the advertisement is misleading to say Labour promised to deliver light rail by 2021 and therefore broke its promise. The Complainant said the actual election claim was to build light rail from the CBD to Auckland Airport and then extend the light rail network over the next decade.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser confirmed the advertisement was not a sponsored post and appeared on the NZ National Party Facebook page. It provided sources which supported the claim that Labour would start light rail straight away and that it would take 4 years to build to Mt Roskill. The Advertiser said light rail to Mt Roskill by 2021 has been promised so frequently it is reasonable for consumers to treat it as a stand-alone promise.

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

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was the National Party are highlighting the Labour Party had promised to start building a light rail project and complete it by 2021. The Board were divided about whether consumers were likely to interpret the Prime Minister's statement to mean the whole project would be completed 2021 or just a section of it but agreed the promise was at least some part of the light rail project would be completed by 2021.

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 NZ National Party Facebook page, the identity of the Advertiser was clear and an authorisation statement from Hon Simon Bridges, Leader of the Opposition, was included.

Is the advertisement presenting fact or opinion?

The Complaints Board agreed the statement made in the advertisement indicated Labour had promised the light rail project would be started straight away and at least an element of it would be completed by 2021. The Board said this was a factual claim which required substantiation.

Has the factual claim in the advertisement been substantiated?

The Complaints Board said the Advertiser has provided sufficient substantiation to support the claim through direct quotes from Rt Hon Jacinda Ardern and Transport Minister, Hon Phil Twyford that election campaign promises were made by the Labour Party in relation to the light rail project that they were “committed to starting light rail straight away” and that “light rail to Mt Roskill will take four years to build.”

The Complaints Board said regardless of whether the consumer takeout was that a section of the light rail would be completed by 2021 or the entire light rail project, neither promise would be met. The Complaints Board said that the advocacy nature of the advertisement and the context of its placement on the NZ National Party Facebook page meant the Advertiser could present factually correct statements with a bias in its favour.

The Board said that while the stated facts must be truthful, a selection of facts, or in this case not specifically stating which part of the light rail project had been promised by 2021 meant the advertisement was not misleading within the advocacy environment.

In addition, the Board noted the advertisement was not a sponsored post, meaning the target audience were people connected with the NZ 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 complaint was **Not Upheld**.

No further action required OR Advertisement to be removed.

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. Complaint
2. Response from Advertiser

Appendix 1

COMPLAINT FROM E ALLEN

The complaint is that the advertisement states that Jacinda Ardern promised to start light rail immediately and it would be build by 2021. This is in fact a lie. What she said was Labour would: "Build light rail from the CBD to Auckland Airport. This will be part of a new light rail network that will be built over the next decade with routes to the central suburbs, the airport, and West Auckland, and will later be extended to the North Shore." See attached.

The following advertisement from National implies that the government promised to deliver light rail by 2021 and failed, therefore breaking it's promise. The truth is, in Labour's 2017 election campaign they said they would deliver it in 10 years, which by my calculation would be late 2028. Therefore the advertisement is misleading, or worse than that, a flat out lie.

Auckland Transport – Making Auckland a world-class city

Labour will:

- Build light rail from the CBD to Auckland Airport. This will be part of a new light rail network that will be built over the next decade with routes to the central suburbs, the airport, and West Auckland, and will later be extended to the North Shore
- Build a new Bus Rapid Transit line from Howick to the airport, starting with a bus service which will connect Puhinui and Manukau train stations to the airport in one year

- Invest in more electric trains, electrification to Pukekohe, and building a third main trunk line urgently between Westfield and Papakura
- Build a range of significant cross-town bus priority routes including New Lynn-Flat Bush, Point Chevalier-Botany, Silverdale-Whangaparoa, and Howick-Glenfield
- Allow Auckland Council to collect a regional fuel tax to fund the acceleration of these investments, along with infrastructure bonds and targeted rates to capture value uplift. <https://www.labour.org.nz/transport>

Appendix 2

RESPONSE FROM ADVERTISER, NEW ZEALAND NATIONAL PARTY

In answer to the complainant's claim that Labour did not promise to start light rail straight away, here is what Jacinda Ardern said in her speech promising light rail:

"Under Labour, we are going to build light rail from our CBD to our airport. But I'm not just committed to that. I am committed to starting straight away."

Footage of this speech can be found [here](#).

In answer to the complainant's claim that Labour did not promise to deliver light rail by 2021, here is an excerpt from the link the complainant has themselves included in their complaint:

"Light rail to Mt Roskill will take four years to build, with the lines through to the airport and West Auckland completed within a decade."

Jacinda Ardern made two promises on light rail. Firstly, to build light rail from the Auckland to CBD to Mount Roskill within four years of taking government. Four years after 2017 is 2021. And secondly to build light rail to the airport within a decade. Light rail to Mt Roskill by 2021 has been promised so frequently, it is entirely reasonable for consumers to treat it as a standalone promise.

Here is a [New Zealand Herald article](#) that says:

"The Labour Party campaigned on having light rail from the CBD to Mt Roskill built by 2021"

Here is a [Newshub article](#) that says:

"It's Jacinda Ardern's first major policy announcement as Leader of the Opposition. Work on the project would begin with light rail to Mt Roskill, to be completed within four years."

Here is an [Otago Daily Times article](#) that says:

"Ardern's first public appearance as Labour leader was to announce the party would spend \$5b to build tram lines from the Auckland CBD to the airport and West Auckland within 10 years, and complete the first leg of the airport route to Mt Roskill by 2021."

We accept this complainant is complaining about a different issue to what the social media post is about but for their benefit, they might like to know the Government has conceded it will not fulfil its 'light rail to the airport in 10 years' promise either. [Story here](#).