

COMPLAINT NUMBER	20/092
ADVERTISER	NZ National Party
ADVERTISEMENT	NZ National Party, Facebook
DATE OF MEETING	16 March 2020
OUTCOME	No Grounds to Proceed

Advertisement: The NZ National Party Facebook advertisement which commented on the demise of the Clean Car Discount policy. The advertisement showed a picture of a Porsche and a Toyota Corolla with the proposed taxes for each. The image is stamped with "Stopped by: National." The accompanying text says "#WIN: National listened to Kiwis and fought hard against the Government's punitive Car Tax. Labour wanted to slap you with a tax on a used Corolla to subsidise a banker's Porsche. This back down is a win for all the Kiwis who made their voice heard."

The Chair ruled there were no grounds for the complaint to proceed.

Complaint: On 21 February, the New Zealand National Party released the attached image on social media through its Facebook page. The ad made the claim that the Government's proposed Clean Car Discount policy, if implemented, would result in a "used Toyota Corolla" incurring a fee of \$1000, whereas a "bankers Porsche" would receive a discount of \$1500. Page 41 (Appendix 4) of the LEV Consultation Document (see <https://www.transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/11de862c28/LEV-consultation-document-final.pdf>) gives a summary of the likely discounts and fees payable for a range of new and used cars. It is difficult to comprehend how the National Party calculated their quoted fee and discount if they were referring to the officially cited Government figures. Under the proposed policy, a discount of \$1,500 would only be paid if the Porsche in question would have emissions of less than 131 g/CO2/km. I have been unable to find a model of Porsche (new or used) that has emissions less than 180 g/CO2/km. Also, a core aspect of the discount policy is that vehicles with a retail price of \$80,000 or more would not qualify for the discount (see p. 24 of the consultation document). To my best knowledge there are no new Porsches that retail for less than \$80,000 and I would contend that it is significant that the advertisement refers to a "used Corolla" but doesn't refer to a "used Porsche". In any case, I cannot imagine that a used Porsche would have lower emissions than an equivalent newer model. Therefore, I would contend that the claims made by the National Party in their advertisement are contrary to a number of rules in the Advertising Standards Code, specifically Rule 2 (b) Truthful presentation, but potentially also Rule 2 (d) Comparative Advertising and Rule 1 (i) Protecting the Environment (given the Government's policy is designed to address climate change). I hope that you would come to a similar conclusion.

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e);

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.

The Chair noted the Complainant's concerns the advertisement is misleading in its comparison of car types while critiquing the Government's Clean Car Discount Scheme.

The Chair confirmed the advertisement for the National Party was an advocacy advertisement provided for under Rule 2(e) of the Advertising Standards Code. Robust expression of opinion is allowed, as long as the advertiser is clearly identified and the Advertiser's position is clear.

The Chair ruled the Advertiser had met the identity requirements of an advocacy advertisement. The advertisement appears on the National Party Facebook page and includes the National Party logo. Therefore, the Chair said the context, placement and content made the identity of the Advertiser and their position clear.

Having established the advertisement was from the New Zealand National Party, the Chair 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.

In her consideration of the Complainant's concerns, the Chair referred to a precedent decision, Decision 19/259, about similar issues and was Not Upheld by the Complaints Board.

That decision said in part:

"...The Complaints Board said the Advertiser had provided sufficient substantiation to support the Toyota Corolla and Porsche Cayenne PH/EV examples in the advertisement. The Ministry of Transport's Moving the light vehicle fleet to low emissions discussion paper on a Clean Car Standard and Clean Car Discount lists both of these car models in the proposed feebate schedule.

The Complaints Board acknowledged the Advertiser had used extreme examples in terms of the age and price of the cars for its comparison in order to make a political point but accepted the substantiation provided by the Advertiser. The Complaints Board said the context of the advertisement, clearly labelled as from the National Party, presented a robust view in opposition to a new Government policy. This is provided for under the advocacy principles. The Complaints Board said the advocacy advertisement did not reach the threshold to be misleading..."

The Chair said the Advertiser had provided adequate substantiation to support its use of the Porsche and Toyota Corolla in response to the previous complaint. The Chair said the

advocacy nature of the advertisement meant the Advertiser could present factually correct statements with a bias in its favour in order to make a political point.

The Chair ruled the advocacy advertisement before her was not in breach of Principle 2 or Rule 2(b) and 2(e) of the Advertising Standards Code.

The Chair ruled there were no grounds for the complaint to proceed.

Chair's Ruling: Complaint **No Grounds to Proceed**

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.