

<b>COMPLAINT NUMBER</b>	20/336
<b>ADVERTISER</b>	NZ National Party
<b>ADVERTISEMENTS</b>	NZ National Party, Facebook
<b>DATE OF MEETING</b>	25 August 2020
<b>OUTCOME</b>	Not Upheld
	No Further Action required

### **Summary of the Complaints Board Decision**

The Complaints Board did not uphold complaints about a series of Facebook advertisements from the NZ National Party about the Green Party's water-only policy statement. The Complaints Board said the advertisements are the National Party's interpretation of an unqualified policy statement by the Green Party and the source of the statement was included. The advocacy advertisements published during the Election campaign were not in breach of the Advertising Standards Code.

### **Advertisements**

The Complaints Board grouped the nine sponsored Facebook advertisements into two groups with similar messaging. The full scripts of the advertisements are listed in Appendix 1 of this decision.

#### **Group One**

The first four advertisements show images of coffee cups, a beer bottle and a teacup with prohibited signs through them. The advertisements are headed with statements about no coffee, tea or beer after bowls if the Greens get back in. The accompanying text says "If the Greens get back into Parliament you can't have a beer after 18 holes or a cup of tea after bowls. National thinks you should have a choice."

#### **Group Two**

Advertisements five to nine show images of a bottle of beer, a coffee cup, a coffee cart, a sports field and a sports drink being kicked with prohibited signs through them. The accompanying text says "If the Greens get back into Parliament you won't be able to have a coffee while you watch your kids play sport on Saturday morning. National thinks you should have a choice."

The fine print at the end of each advertisement says "Authorised by Judith Collins, Leader of the Opposition, Parliament Buildings, Wellington.

Source: Think ahead Act now Our Green vision for Aotearoa [greens.org.nz/ourgreenvisionforAotearoa](https://greens.org.nz/ourgreenvisionforAotearoa)"

### **Summary of the Complaints**

There are 33 Complainants concerned the Advertiser is deliberately misrepresenting a Green Party policy position for water-only in schools, hospitals and sports clubs. The Complainants consider the advertisements are making false claims which are misleading as the water-only scheme applies to children only and the Green Party are calling for the policy to be supported by Government, not calling for legislative change.

**Issues Raised:**

- Truthful Presentation
- Advocacy Advertising

**Summary of the Advertiser's Response**

The Advertiser defended the advocacy advertisements, saying the Green Party's water-only policy in the Green Party Manifesto is one sentence with no substantiating information, background information or clarifying material to give context to their policy. It said a plain English interpretation is that there will be nothing available for drinking besides water. The Advertiser provided examples of on-line comments defending the literal interpretation of the water-only statement if taken at face value.

The Advertiser noted the subsequent substantiation provided from Green MP Julie Anne Genter, the Water-Only School Toolkit, describes a water-only school as "Being water only means making sure that water (and plain milk) is the only drink in your school". The Advertiser said the advertisements are questioning the ramifications of this as a benchmark of delivery to other environments such as sports clubs under the policy.

**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.

**Relevant precedent decisions**

In considering this complaint the Complaints Board referred to precedent Decision 20/037 which was Not Upheld.

The full versions of decisions since 2015 can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

**Decision 20/037** concerned about a post on the Labour Party Facebook page comparing the number of linear accelerator radiation machines directly funded by the Labour Government to the number directly funded by the previous National Government. The Advertiser used the word "directly" to differentiate its new funding from the National Government's health funding using the DHB model. The majority of the Board said the advocacy advertisement did not meet the threshold to mislead consumers.

## Complaints Board Discussion

### Group One Advertisements One-Four

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of advertisements 1-4 is the NZ National Party's view of the Green Party's water-only policy announcement means if the Greens get back into Parliament you can't have a beer after 18 holes or a cup of tea after bowls.

### Group Two – Advertisements Five-Nine

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of advertisements 5-9 is the NZ National Party's view of the Green Party's water-only policy announcement means if the Greens get back into Parliament you won't be able to have a coffee while you watch your kids play sport on Saturday morning.

#### *Are the nine advertisements advocacy advertising?*

The Complaints Board said the advertisements 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 advertisements were posted on the New Zealand National Party Facebook page and boosted out to a wider audience. The identity of the Advertiser was clear, and each contained an authorisation statement from Judith Collins, Leader of the National Party, together with source information.

*Are the advertisements stating a fact or opinion?*

The Complaints Board said the advertisements were presenting the National Party's opinion on how the Green Party's water-only policy, expressed in a one sentence statement in the Green Party's manifesto, could impact on sporting environments.

*The context of the advertisements*

The Complaints Board noted the context in which the advertisements appeared. The advertisements were posted on the National Party's Facebook page on 31 July 2020 and they were considered within the context of that timeframe. The Advertiser was promoting its interpretation of the Green Party's support for the water-only policy in schools, hospitals and sports clubs in the run-up to the Election, prior to new date for the Election being announced.

*Procedural matter*

The Chair noted the complaints were initially fast-tracked to be dealt with shortly after receipt, under the ASA fast-track complaints process in place a month out from the Election date. When the Election date was delayed, the Advertiser was provided with additional time to respond.

*Are the advertisements misleading?*

The Complaints Board said the Advertiser had taken a literal interpretation of the one line policy statement which said the Green Party will "Support water-only policies in schools, hospitals and sports clubs." The Complaints Board noted the Advertiser had referred to the Green Party manifesto *Think Ahead. Act Now. Our green vision for Aotearoa* in each advertisement.

The Complaints Board agreed the wording of the water-only policy statement gave the Advertiser the opportunity to put forward its own interpretation of how sporting venues and clubs might be affected. The Board noted there was no indication in the Green Party's policy that it only applied to children nor did there appear to be an agreed definition for what water-only actually means.

The Complaints Board noted some Complainants said the National Party had previously supported the water-only policy in schools so should be aware of its meaning. However, the Board said an Opposition political party had taken a statement from a Green Party policy and speculated on how that might be implemented when extended to sporting venues and clubs. There is no requirement for one party to help another political party explain their policies.

The Board noted some Complainants said the policy was about support for a water-only approach, not a call for legislative change and this was not clear in the advertisements. The Complaints Board agreed the National Party advertisements presented a possible implementation of the policy in a scenario where the Green Party could be part of a governing coalition. This did not meet the threshold to breach the Advertising Standards Code.

The Complaints Board said giving an opinion on a sourced policy statement which did not include any qualifiers, did not make the advertisements misleading within the advocacy environment and it unanimously ruled the advertisements were 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](http://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. Advertisements
  2. Complaints
  3. Response from Advertiser
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### Appendix 1

#### Group One

##### Advertisement 1

Image of a hand holding a coffee cup with a prohibited sign through it

Heading says "The coffee cart is closed if the Greens get back in."

Accompanying text says "If the Greens get back into Parliament you can't have a beer after 18 holes or a cup of tea after bowls. National thinks you should have a choice."

##### Advertisement 2

Image of a hand holding a beer bottle with a prohibited sign through it

Heading says "The Bar's closed if the Greens get back in."

Accompanying text says "If the Greens get back into Parliament you can't have a beer after 18 holes or a cup of tea after bowls. National thinks you should have a choice."

##### Advertisement 3

Image of a teacup and saucer with a prohibited sign through it

Heading says "No cup of tea after bowls if the Greens get back in."

Accompanying text says "If the Greens get back into Parliament you can't have a beer after 18 holes or a cup of tea after bowls. National thinks you should have a choice."

##### Advertisement 4

Image of a coffee cup with a prohibited sign through it

Heading says "No coffee at bowls if the Greens get back in."

Accompanying text says "If the Greens get back into Parliament you can't have a beer after 18 holes or a cup of tea after bowls. National thinks you should have a choice."

#### Group Two

##### Advertisement 5

Image of a hand holding a beer bottle with a prohibited sign through it

Heading says "The Bar's closed if the Greens get back in."

Accompanying text says "If the greens get back into Parliament you won't be able to have a coffee while you watch you kids play sport on Saturday morning. National thinks you should have a choice."

##### Advertisement 6

Image of a woman in sports gear kicking a bottle of green liquid.

Heading says, "The Greens giving sports drinks the boot."

Accompanying text says "If the greens get back into Parliament you won't be able to have a coffee while you watch you kids play sport on Saturday morning. National thinks you should have a choice."

##### Advertisement 7

Image of a coffee cup with a prohibited sign through it

Heading says "No coffee at basketball if the Greens get back in."

Accompanying text says "If the greens get back into Parliament you won't be able to have a coffee while you watch you kids play sport on Saturday morning. National thinks you should have a choice."

#### **Advertisement 8**

Image of a coffee cart with a prohibited sign through it.

Heading says "The coffee cart is closed if the Greens get back in."

Accompanying text says "If the greens get back into Parliament you won't be able to have a coffee while you watch you kids play sport on Saturday morning. National thinks you should have a choice."

#### **Advertisement 9**

Image of a giant coffee cup with a prohibited sign through it with a sports field in the foreground.

Heading says "No coffee at soccer if the Greens get back in."

Accompanying text says "If the greens get back into Parliament you won't be able to have a coffee while you watch you kids play sport on Saturday morning. National thinks you should have a choice."

### **Appendix 2**

#### **COMPLAINTS**

**There were 33 complaints about these advertisements.**

##### **COMPLAINT 1 (Example)**

From 31 July the National Party promoted ten different Facebook adverts falsely stating a policy position of a different party (the Greens).

My complaint is that the National Party advertising was a lie in that it stated the Green Party policy is to ban coffee, cups of tea and alcohol from sports clubs. There is no evidence for this claim.

##### **COMPLAINT 2 (Example)**

The ad clearly claims that the Green Party will ban coffee carts at sports clubs.

The only policy, or comment the greens have made about this matter is to get rid of fizzy drinks for kids in sports clubs; their 'water-only' policy is clear in the policy - and in international 'water-only' policies are also the same - that the policy is about getting fizzy drinks away from kids, it's nothing to do with adults drinking coffee whatsoever.

NZ National party is clearly saying the Greens would get rid of coffee by saying "you should be able to have a coffee while you watch the kids play sport on Saturday mornings". This is knowingly false, and this ad violates Principle two of the advertising standards code; Truthful presentation; in particular 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.'

##### **COMPLAINT 3 (Example)**

I saw these two paid ads on the National Party Facebook page this afternoon (3 August 2020) but according to the Ad Library Report, they started running on 31 July. Both adverts are designed to discredit the Green Party by wrongly stating that the Green party will ban the sale of coffee and alcohol at sports clubs. This is not true. The Green party's policy is to support sports clubs, schools and hospitals to stop the sale of sugary, fizzy drinks for children. It does not apply to adults. This water-only policy is part of the Ministry of Health's action on obesity and diabetes and has been around since 2016 when it was introduced by National when they

were in government! The Greens are not trying to limit coffee or alcohol for parents/adults at sports games, it is solely about promoting children's health. To suggest or state otherwise as the National Party ad does is false. The National Party knows this but is deliberately misleading the public on Green Party policy.

**The following is a Summary of the Issues covered in the 33 Complaints:**

- Misrepresenting a policy position of a different party.
- Only policy statement by the Green Party is about high sugar drinks for children at sports clubs, schools and hospitals. Nothing about adults drinking coffee, tea or alcohol
- Water-only policy is about children
- Blatantly false claims and deliberately misleading
- False details for political gain
- The Green Party are calling for water-only policies to be 'supported' by Government not making a legislative change.
- Falsely claim businesses such as bars and coffee carts will be shut down

**Appendix 2**

**RESPONSE FROM ADVERTISER, NZ NATIONAL PARTY**

Thank you for your email dated 4 August 2020, regarding complaint 20/336 which details a series of unattributed and unsubstantiated complaints about a series of advocacy advertisements on our Facebook Page.

You note in your email that the relevant sections of the ASA Code in breach “appears to be Principle 2, Rule 2(b), Rule 2(e).”

Whilst we cannot verify or substantiate the validity of the persons making the highly defamatory complaints against us, as we would expect in the course of natural justice, as the names have not been provided in this instance, our response is as follows to address the issues you raise on their behalf:

**Background**

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.

Furthermore, in 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.

The advocacy advertisements in question relate to a Green Party Policy of “water-only policies in schools, hospitals, and sports clubs.” (Refer to page 24 of Green Party Manifesto [here](#)) It is also available on their health policy summary page here: [https://www.greens.org.nz/health\\_2020](https://www.greens.org.nz/health_2020).

The Policy in question is one sentence in the Green Party Manifesto, with no substantiating information, background information, or clarifying material to give further context to their policy.

Any reasonable person, upon viewing their water-only policy, would assume a plain English interpretation and acknowledge that “water-only” means just that, water only. And its application per the publicly stated policy would mean that water only is to be available in schools, hospitals, and sports clubs. This has been substantiated by many Kiwis online in response to Ms Genter’s comments on the matter with a couple copied below for your reference:



In regard to the sections of the Code you believe “appear to..” be in breach:

**Rule 2 (b)** relates to truthful presentation, and as such the advocacy advertisements in question directly relates to the policy information publicly available in the Green Party Manifesto:

Page 24:

[https://d3n8a8pro7vhmx.cloudfront.net/beachheroes/pages/13106/attachments/original/1596771661/Think ahead. Act now. Our Green Vision for Aotearoa.pdf?1596771661](https://d3n8a8pro7vhmx.cloudfront.net/beachheroes/pages/13106/attachments/original/1596771661/Think%20ahead.%20Act%20now.%20Our%20Green%20Vision%20for%20Aotearoa.pdf?1596771661)

And online here: [https://www.greens.org.nz/health\\_2020](https://www.greens.org.nz/health_2020)

Quote: “The Green Party will...support water-only policies in schools, hospitals, and sports clubs.”

No other substantiating information was provided to the public or other political parties, and we take the policy at its face value and plain English interpretation, as many other Kiwis do.

As a matter of course with all our Advocacy advertising, we include a disclaimer where the source information is available. The application of this advocacy advertisement is no different, with a link provided to the publicly available relevant policy of the Green Party.

I would also note in supporting evidence for our claim that in robust dialogue with users on twitter, subsequent to our advocacy advertising being published, Ms Genter (Green Party Minister, MP, and Spokesperson) further substantiated their water-only policy with the following:



In lieu of further information on the one-sentence policy available on the Green Party website, if anyone were to look at the contents of the subsequent information provided in Ms Genter’s link, it only further substantiates our claim of the plain English definition. Namely on page 3 and 5 of the [resource linked](#) in Ms Genter’s tweet “Being water-only means making sure that water (and plain milk) is the **only** drink in your school.”

It is hardly misleading if the policy, and now further substantiating information from a Green Party Minister, MP and Spokesperson, confirms that our interpretation was indeed correct. This substantiation of the term “water-only”, as contained in the resource linked by Ms Genter, is supported by numerous District Health Boards, Government Ministries and NGO’s. Hardly just a National Party interpretation or opinion for the purpose of our advocacy advertisement in question.

Therefore, based on the information at hand from the Green party and subsequently Ms Genter, it is entirely legitimate for our advocacy advertising, allowed within our right to freedom

of speech in New Zealand, to clearly articulate the ramifications of such a policy on schools, hospitals and sports clubs. And we have done so. The water-only policy made clear the effects on a school, "...making sure that water (and plain milk) is the only drink.." (page 3,5 – Wai Anake-Water Only Resource) and that this is their benchmark of delivery to other institutions such as sports clubs under their policy.

Therefore, the allegation that our advocacy advertising is misleading under section 2(b) is without merit per the above evidence. The complainant has also not substantiated their case of how our interpretation is incorrect other than their 'personal belief' on the matter.

**Rule 2(e)** is not relevant in this case as the unnamed complainant has sought to address the concern to the National Party (through the ASA). 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.

For your further information, the adverts in question ran their normal 1 week scheduled course and are no longer been funded.